THE DEMOCRATIC DEFICIT OF THE EUROPEAN UNION: AN INSTITUTIONALIST APPROACH

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ABSTRACT

THE DEMOCRATIC DEFICIT OF THE EUROPEAN UNION:
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This thesis analyses the democratic deficit problem of the European Union in a historical context. As the Union develops from a purely economic community into political and social entity, its democratic credentials are put into question. In this thesis, it is argued that technocratic and elitist institutional structure of the Union causes this democratic deficit. Therefore, in order to rectify it and make the Union more legitimate in the eyes of its citizens, the institutions of the Union should be re-structured.

Keywords: Democracy, Democratic Deficit, European Union, Legitimacy

ÖZ

AVRUPA BİRLİĞİNDE DEMOKRASİ EKSİKLİĞİ:
KURUMSAL YAKLAŞIM

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Bu çalışma, Avrupa Birliğinin yapılanmasındaki demokrasi eksikliğini tarihsel bir çerçeve içerisinde incelemiştir. Birlik, zaman içerisinde yanlızca ekonomik amaçları olan bir topluluktan politik ve sosyal bir yapıya büründükçe, demokratik kimliği de sorgulanmaya başlanmıştır. Bu çalışmalda, Birliğin teknokrat ve elitist kurumsal yapılanmasının söz konusu demokrasi eksikliğine yol açtığı savunulmaktadır. Bu nedenle, söz konusu eksikliği ortadan kaldırmak ve Birliği kendisini oluşturan üye ülke halklarının gözünde daha meşru kılmak için Birlik kurumları yeniden yapılandırılmalıdır.

Anahtar Kelimeler: Demokrasi, Demokrasi Eksikliği, Avrupa Birliği, Meşruluk

To my wife Selcen, without her support,
I would still be reading and not writing.

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CHAPTER 1

INTRODUCTION

European Union, which was initially established in order to prevent another devastating war in the old continent, is certainly the most successful regional integration movement in history. Starting from purely economic considerations as a common market, it evolved into a unique supranational political system with social and political dimensions as well. In order to carry out its functions, the Union has developed an institutional structure based on the idea of Monnet's technocratic elitism. The Union has three main political institutions; the European Commission, the Council of Ministers and the European Parliament. From the very beginning, the Commission, as a representative of the interests of the Union, and the Council, as a representative of that of the Member States, have been more dominant than the European Parliament and the main driving forces behind the legislation and policy implementation in the Union. Due to this institutional structure, which disregards the interests of the European people, the democratic credentials of the Union has always been weak and the Union is deemed to be suffering from the so-called `democratic deficit` problem.

In order to understand how political system works, or does not work, it is necessary to understand its institutions and how they interact with each other. In this dissertation, the socio-psychological conditions of the democratic deficit in the EU are not evaluated. Rather, it is argued that the existing institutional structure of the Union, developed on the heritage of the Monnet's technocratic elitism, is the main reason that lies behind the democratic deficit problem of the Union and to remedy this, the institutions of the Union should be re-structured and their powers and responsibilities should be re-defined in accordance with the systems of the liberal-democratic social states. As it will be seen in the conclusion part of the dissertation, in

this purely institutionalist approach, a liberal-democratic nation state, based on federalist ideas, is inevitably the only appropriate solution to remove the so-called democratic deficit problem of the Union. In this context, it can be argued that different approaches may provide different solutions to the above-mentioned problem. This also indicates the restraint of the approach, discussed in this dissertation.

This dissertation has five Chapters. In the second Chapter, the origins of the problem of democratic deficit are explored. In order to understand the democratic deficit problem, it is necessary to understand what democracy means and what theoretical explanations thereof are. Therefore, in this Chapter, these questions are discussed and methodology of the dissertation is set. Accordingly, the dissertation elaborates the problem and develops solution proposals from the perspective of institutionalist model and it is argued that an effective institutional reform is suffice to make the Union more understandable and democratic in the eyes of the people. In addition to this, the earliest institutional structure of the European integration movement that was established in the Paris Treaty and modified in the Rome Treaties and the main decision-making mechanism are also discussed in this Chapter since it is asserted that this elitist structure causes the democratic deficit and it has not radically been altered in the succeeding Treaty amendments.

Having analyzed the meaning of democracy, theoretical explanations and institutional structure and decision-making mechanism in the initial period of the integration movement in the second Chapter, the emergence of the problem of democratic deficit and solution efforts are explained with a historical approach in the third Chapter. The efforts to remedy the so-called `democratic deficit` problem are mainly focused on strengthening the power of the Parliament vis-à-vis the Commission and the Council and increasing its decision-making capacity, and enhancing the legitimacy and accountability of the Commission. As the Union has been developing vertically and increasing its competences over social and political matters as well as economic one, its democratic credentials were getting more and more questioned and to

remedy the democratic deficit, a number of institutional reforms have been realized in succeeding Treaty amendments, such as; empowerment of the Parliament in the budgetary sphere of the Community in Treaty of Luxembourg (1970) and Treaty of Brussels (1975), ensuring direct elections for the EP in 1979, introduction of the co-operation procedure in Single European Act (1987) and co-decision procedure in Maastricht Treaty (1992) and modifying the appointment procedure of the Commission President and the Commission as a whole in Maastricht Treaty (1992) and Amsterdam Treaty (1997). In addition to these institutional reforms, the European Charter of Fundamental Rights has also been proclaimed in the Nice IGC, to strengthen the democratic credentials of the Union. Although it has some deficiencies, there is no doubt that the Charter is a part of the constitutionalisation efforts of the European Union, which is discussed in detail in the forth Chapter.

In the beginning of the new millennium, the Union still suffers from the legacy of the Monnet Method and the upcoming enlargement further necessitates the existence of the democratically functioning Union institutions. Thus, in the forth Chapter, new approaches to the democratic deficit problem of the Union and the Constitutionalisation process are discussed. In addition, European Commission's efforts to remedy the democratic deficit and the document entitled `European Governance: A White Paper` is evaluated. 2001 Laeken Declaration set the agenda of the Convention on the Future of Europe, where the `Draft Treaty Establishing the Constitution for Europe` was adopted. The Draft Constitution further amends the existing structure of the main political institutions to ensure effective and efficient functioning of the Union. It also devotes separate chapter to the democratic life of the Union. However, it is argued here that these reforms are not adequate to remedy the so-called democratic deficit of the Union, continuing from the days of the Jean Monnet and that is vital to develop solution proposals, mainly based on to re-structuring of the political institutions of the Union, to make it more legitimate and democratic in the eyes of the European peoples.

CHAPTER 2

THE ORIGINS OF THE PROBLEM OF DEMOCRATIC DEFICIT

This Chapter explores the origins of the problem of democratic deficit in the European Union. In this framework, the meaning of democracy, the reasons that stem from the so-called Monnet Method and lie behind the democratic deficit of the Union together with the several theoretical explanations developed to solve this problem are explained. The institutional structure and decision-making mechanism in the initial stage are also elaborated since today's Union's institutions are developed on the basis of this edifice.

2.1 Democracy and the Democratic Deficit of the European Union

Democracy is the best form of government that the mankind has invented so far. Giving the precise definition of democracy is a difficult task considering that it has developed over the course of history, independent from time and space. Linguistically speaking, the word `democracy` comes from the ancient Greek terms of `demos` (people) and `cratos` (power). Accordingly, democracy is a political system where the power resides with the people. In the dictionary definitions[1], there are several resemblances that refer to democracy. If these resemblances are strained, a common definition can be given: the democracy is government by the people, in which the supreme power is vested in the people and exercised directly by them or by their elected agents under a free electoral system. President Lincoln perfectly

[1] See for instance, *Cambridge International Dictionary of English*, 1st Edition, Cambridge: Cambridge University Press, 1995; *Collins Coubild Essential English Dictionary*, 6th Edition, Glasgov: Harper Collins Manufacturing, 1992; *Oxford Dictionary*, 2nd Edition, Oxford: Oxford University Press, 1993.

summarized this as the government `of the people, by the people and for the people`.[2] It is no exaggeration to argue that democracy is probably one of the most debated concepts in political science and it can be divided into many categories according to how people exercise their power (direct / representative); according to ideology (liberal / social); according to means and ends distinction (input oriented / output oriented); according to formation (formal / substantive) etc., depending on the time and space and in accordance with the perspectives of researcher and / or reader.

Among them, the most familiar division is the direct / representative one. In direct democracy, all citizens actively participate in the decision-making mechanism, without the intermediary of any elected body(ies) or individual(s). Such a system is only practical with relatively small numbers of people, like it was the case in Athens in 3000 B.C. Thus, today, sovereign states, with their size and population, offer no opportunities for the implementation of direct democracy. Therefore, the most common form of democracy is representative democracy, in which citizens elect officials to make political decisions, formulate laws and administer policies and programs in their names.[3] Liberal democracy / social democracy is the division on the basis of a set of values regarding the goals of politics. Liberal democracy is rooted in liberalism and emphasizes individual political and economic freedom over collective equality. It argues that a high degree of freedom will produce the greatest prosperity for the society. Social democracy on the other hand is rooted in socialism and respects individual liberty in political and civil rights. In economic and social issues, it emphasizes equality among the citizens.[4] Input oriented / output oriented democracy is the division on the basis of the means and ends distinction. Input oriented democracy refers to the fact that the representative body(ies) and

[2] Lincoln, A., `The Gettysburg Address`, at http://www.loc.gov/exhibits/gadd/4403/html

[3] For further information see, Chryssochoou, D., `Models of Democracy and the European Polity`, at http://www.ex.ac.uk/shipss/politics/research/strategies/civic1-01.pdf and Held, D., *Models of Democracy*, London: Oxford, 1988.

[4] For further information see, Held, D., *Models of Democracy*, London: Oxford, 1988.

individual(s) are properly empowered by demos. What they produce is not taken into consideration. Output oriented democracy, on the other hand, refers to the fact that the representative body(ies) and individuals' outcomes serve the common interest of the demos. In this approach, the legitimacy of the representative units is not taken into consideration as long as they serve for the common interest of the society.[5] Formal democracy / substantive democracy is the division on the basis of the formation of the system. Formal democracy refers to the establishment of the legitimate set of procedures and principles as the principle of rule of law. This is all at once process. Substantive democracy, on the other hand, is an everlasting process of regulating power relations between the institutions to maximize the opportunities for individuals.[6]

The meaning of democracy in the EU is more controversial and polemical than it is at the state level. Democracy is a political system that the sovereign states enjoy. The fundamental difficulty in applying democracy to EU is that the Union is a non-state political system. It is a political entity that is more than international organization but less then a state. Therefore, considering the EU, transnational concept of democracy becomes important. When it is argued that the democratic credentials of the EU are inadequate and the Union suffers from the so-called `democratic deficit`, what does it actually mean? Is there a universal understanding of the transnational concept of democracy? Clearly, there is no such magical explanation, definition or a cure. As the Union develops vertically, integration theorists are increasingly concerned with two main constitutive conditions of the EU's democratic deficit shortfall: socio-psychological and institutional. Indeed,

[5] For further information see, Scharpf, F., `Interdependence and Democratic Legitimation`, MPIfG Working Paper, 98/2, pp. 1 – 5, 1998, at http://www.mpi-fg-koeln.mpg.de/pu/workpap/wp98-2/wp98-2.html and Thomassen, J., `Democracy and Legitimacy of European Union`, at http://www.mzes.uni-mannheim.de/publications/papers/Schmitt_26_1_04.pdf

[6] For further information see, Warleigh, A., *Democracy in the European Union*, London: SAGE Publications, pp.1—29, 2003 and Held, D., *Models of Democracy*, London: Oxford, 1988.

> (A) proper discussion of the relationship between democracy (as a system of indirect demos control) and European integration (as a process of large-scale polity building) ... takes place in the context of the two general approaches to the `democratic deficit` of the EU.[7]

Socio-psychological condition requires that democracy, in the form of representative government, presuppose the existence of demos. Thus, authors as Chryssochoou argue that the major problem of democracy in the EU is the question of how to encourage EU citizens to participate actively in the integration process and to construct a demos based on a civic identity.[8] Acquisition of Union citizenship, which is not in contradiction with the national citizenships but the complementary to it, has been hailed as a step towards the formation of transnational demos. Yet, so far it generates insignificant shift to the Union loyalty and does not create a deep sense of shared interests. Institutional condition, on the other hand, requires proper institutions that truly represent the European peoples. However, there is no well-established inter-institutional asymmetry in the balance of power (legislative, control, representative etc.) among the institutions of the European Union. Theoretically speaking, representation is directly proportionate to power, which means that an unrepresentative and therefore the illegitimate body does have no power at all. The institutional view of democratic deficit of the EU, however, implies that there is a mismatch in the transfer of legislative powers and responsibilities from the Member States' institutions to the EU institutions.

It is argued that the democratic deficit problem of the European Union stems from the so-called Monnet Method and the idea of `technocratic elitism`. Due to the heritage of this method, main political institutions of the Union, namely the Commission, the Council of Ministers and the European Parliament were not appropriately designed in the sense that the exercise of

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[7] Chryssochoou, D., `Models of Democracy and the European Polity`, p.2, at http://www.ex.ac.uk/shipss/politics/research/strategies/civic1-01.pdf

[8] For further information see, Chryssochoou, D., `The Nature of Democracy in the European Union and the Limits of Treaty Reform`, *Current Politics and Economics of Europe*, 10:3, pp. 245 – 264, 2001.

power by certain institutions did not correspond to the ideal structure and functioning of a democratic state, as a result of which, the key decision making institutions of the Union were not directly accountable to the peoples of Europe. According to the so-called `Monnet Method`, a brief summary of the institutional structure will be provided below in order to highlight the main problem areas in the functioning of the mechanism as regards the democratic deficit.

2.2 Political Institutions of the European Union

The European Union has three political institutions. The Commission is the main driving force behind the European integration movement. It has always been the most important and controversial of all Union institutions, mainly due to its non-elected and pro-integration character. The Commission has three main duties. Firstly, and most importantly, it is the main policy implementing body of the Union. It manages the Union's administration and budget and represents the Union in international affairs by negotiating international agreements and by maintaining Union offices and envoys in other countries. Secondly, the Commission has legislative function. It plays a crucial role in the creation of the EU legislation. It has the exclusive right to create legislative proposals in most policy areas. The Commission alone is represented at all stages of legislative creation in the Parliament and the Council and it can contribute to both. Thirdly, the Commission is the guardian of the existing treaties. Commission exercises this function in collaboration with the ECJ. This function places the Commission in the role of the watchdog. Thus, it is responsible for ensuring that the Treaties constituting the EU are respected and duly implemented. Although it was granted such tasks of cardinal importance, the legitimacy of the Commission was very indirect, as its appointed members relied on the national electorates of each elected representatives of the Council of Ministers to grant its legitimacy. It was also secretive in nature and insufficiently transparent in its working methods. Especially during the legislation process, it initiated the procedure without consulting to the Parliament, the only representative

institution of the European peoples, and defended itself by arguing to seek the highest interest of the Community.

The Council of Ministers is the intergovernmental institution of the supranational Community. It is composed of the one representative from each Member State. Thus, although it has a certain degree of legitimacy, such legitimacy is quite indirect. It is a forum in which ministers of national governments meet to discuss the EU policies, reach consensus and make decisions regarding EU law and policy. The Council is the main legislative institution of the Union. It is not an exaggeration to argue that without the Council, there will be no European legislation at all. Like the Commission, its members do not represent the European peoples; unlike the Commission, it does not seek the highest interests of the Community but seeks that of the Member States' governments. Although the Council is the main legislative institution of the Community, its decisions are excluded from any effective parliamentary control.

The European Parliament is established to insert some sort of democratic element into the EU. Although it was aimed to represent the peoples of Europe, until the first direct elections in 1979, its members were elected by the national parliaments of the Member States. With the first direct elections, the Parliament gained direct legitimacy as well. However, ensuring the legitimacy of the EP was not as simple as securing the universal suffrage in the EP election. The Parliament is still inefficient in the decision-making process and cannot initiate a legislative proposal at all. Put it very briefly, the Commission proposes and the Council disposes. Likewise, the Parliament has a limited role in the controlling of the preparation and spending of the Union budget. Last, but not the least, it has inadequate control and sanctioning mechanism, with the exception of the motion of censure, over the acts and actions of the Commission and has no control over that of the Council. Moreover, today, the EP suffers from apathy and lack of democratic participation of the European peoples. Although the MEPs have been selected directly by the European peoples since 1979, the participation

to the EP election is very low.[9] This situation undermines the trustworthiness of the EP. The role and responsibilities of the EP are still very weak compared to that of the national parliaments. National parliaments are the main legislative organs of the Member States. They also select executive organs (governments) among their members and have control over them albeit, ineffectively in EU matters. In EU, however, the European Commission, members of which are elected not by the European peoples but by the national governments, exercises the power to initiate the legislative process and exercise the executive power. In addition, the EP does not have any effective control mechanism on Council actions at all. Besides, today, there is a wide gap between the EP and national parliaments. As a result, both are not aware of what is really going on at Union level and at national levels respectively.

This technocratic and elitist institutional structure, which is a natural outcome of the Monnet Method, caused the so-called democratic deficit of the European Union. Because, Monnet believed that only an elitist bureaucratic structure could lead to the European unification. In the subsequent Treaty revisions, this democratic deficit has occasionally been addressed. However, more than five decades after its formation, the Union citizen still suffers from the democratic deficit of the Union. In the initial stage of the European integration, the suit, tailored by the Monnet fit the European states since the decisions of the ECSC did not directly affect the daily lives of the European citizens. But, in the course of time, it became tight and as Spinelli comments: `Monnet has the great merit of having built Europe and the great responsibility to have built it badly`.[10]

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[9] Turnout in the EP elections was 67,2 % in 1979; 64,7 % in 1984; 63,8 % in 1989; 55,1 % in 1994 and 49,9 % in 1999. The mean turnout for the five elections is 59,0 %. The data is taken from Studlar, D., Flickinger, R. and Bennett, S. (eds.), `Turnout in European Parliament Elections: Toward a European Centred Explanation`, in Rallings, C., Scully, R., Tonge, J. and Webb, P. (eds.), *British Parties and Elections Review – 13*, London: Frank Cass, 2003, pp. 195 – 209. The first Greek election was held in 1987, the first elections in Portugal and Spain were held in 1987, the first elections in Austria and Finland was held in 1995 and in Sweden was held in 1996.

[10] Featherstone, K., *op.cit.,* p. 150

2.3 Theoretical Explanations

At theoretical level, many theories have been developed to explain the reasons of the so-called democratic deficit of the European Union and to propose solutions to remedy it. In this dissertation, some of these theories will be explained on the basis of liberal-democratic nation state model. Historically speaking, the nation state formation in Europe goes back as early as the 1789 French Revolution. With the end of the First World War, all monarchies, kingdoms and emperors were swept away and replaced with nation states all over the Europe. Due to the industrial revolution, first emerged in Great Britain in 17th century and then expanded over the continent in the following centuries, a liberal democratic form of governance was established in European states. Thus, by 1949, all European states (leaving aside the Eastern European States ruled under the `communist regime`) were nation states on the basis of liberal-democratic values. In this framework, main theories focusing on the democratic deficit problem of the European Union from liberal-democratic nation state perspective are `state-centrist view`, `federalism`, `nation-state model`, `democratic outputs`, `consociational model` and `institutional model`.

In the `state-centrist view`, the nation state is at the centre of the explanation in order to establish and maintain the full-fledged liberal democracy. Thus, the central argument is that the power and influence of the nation states within the EU should be increased. This intergovernmental explanation inevitably inherits maintaining and even strengthening the veto power of the Union members at the Council of Ministers, decreasing the power of the European Court of Justice within the EU sphere, increasing the Council's control over the Commission, decreasing the power of EP, which is the only representative of the European citizens at Union level and decreasing the Community competences in general. This means that the EU demarcates from the current level of integration until the intergovernmentalism is fully restored. Therefore, state-centrist model provides individual states with a variety of opportunities, which enables them to achieve mutually advantageous cooperation without resigning their

individual sovereignty to a single common government.[11] This anti-EU theory has two major obstacles that decrease its applicability. Firstly, the current level of integration at EU level creates not only the high degree of interdependence between the member states but also secures some rights for the Union citizens as well. Thus, the member states and citizens probably would not support a return to intergovernmentalism. Secondly, in the era of globalisation, no single European state favours to compete with the strong US, Japan and Chinese economies alone but prefers to stay in the strong Euro-zone.

The idea of `federalism` is nearly as old as the idea of the unity of Europe itself. Many scholars[12] insisted that the idea in the minds of the founders of Europe was to establish a United States of Europe. They argue that, today, the EU has evolved into a kind of federal state, which is highly decentralized. Federalists argue that several indicators support their ideas. A federal kind of legal system has evolved in the course of time especially when the ECJ was entrusted with the power of fulfilling the vague parts of the Community legislation. Completion of the single market, reinforced with the introduction of the single currency and evolving the supranational political and executive institutions also strengthen the federal character of the Union. In the current level of integration, what is missing is a logically written and well-structured constitution, which establishes a clear link between democracy and accountability.[13] Although federalists state expressly that the EU is a highly integrated political and economic unity, which has also its own legal sphere, it does not genuinely resemble a federal state. Because, advanced level of integration is established only in the first pillar

[11] For more information, see Forsyth, M., *Union of States: The Theory and Practice of Confederation*, Leicester: Leicester University Press, 1981.

[12] Spinelli, A., `The Manifesto of Ventotene`, at http://www.eurplace.org/diba/cultura/ventmaen.html; Burgess, M., *Federalism and the EU: Building of Euopre 1950 – 2000,* Routledge, 2000; Jeffery, C. and Sturm, R. (eds.), *Federalism, Unification and European Integration*, Frank Cass Publishers, 1993; `Federalism and European Union after Maastricht – Wilton Park Papers`, The Stationery Office Books, 1993 etc.

[13] For more information, see Woodard, S., `The Simple Guide to the Federal Idea`, at http://www.eurplace.org/federal/woodard.html

(Community pillar) and in the second (Common Foreign and Security Policy) and third (Justice and Home Affairs) pillars the policies of the Member States indicate great differences. Especially powerful countries' foreign policies are generally in conflict with that of the Union. United Kingdom's foreign policy during the Gulf Crisis and the invasion of Iraq is one of the best examples of this conflict. Thus, `despite the aspirations of the Common Foreign and Security Policy, the bilateral relationships of individual states, particularly with the United States, are often of greater significance than those between the member states`.[14] They also place too much emphasis on the idea of a central constitutional settlement that means a clear demarcation between the Union and its members. This however ignores the dynamic nature of the European integration, according to which, in some cases the Union institutions and in other cases the Member States act as a driving force of the Union policies. In conclusion, federalists are quite right in arguing that there are democracy and accountability problems at EU level, however, solutions to these problems must be sought not at intergovernmental level but at supranational level.

In nation-state model, it is believed that the European Union is in the process of transforming into a single, huge quasi-nation state. Thus, the EU institutions, especially the Council and the Commission seek legitimation by acting as the central government institutions of the nation-state. In the process of nation-state building, the most important and also the most difficult obstacle is inventing the common symbols for this super-state. In order to overcome this obstacle, the Union has developed its own anthem, passport, flag, currency etc. and with the Maastricht Treaty, it formally introduced the concept of EU citizenship.[15] However, these common symbols have been barely embraced by the Member State citizens. Particularly, it is

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[14] Newman, M., `Democracy and Accountability in the EU` in Richardson, J. (ed.), *European Union – Power and Policy Making,* London: Routledge, 2001, p.363

[15] Fossum, J.E., `The Transformation of the Nation-State: Why Compare the EU and Canada?`, ARENA Working Papers, WP 01/19, 2001, at http://www.arena.uio.no/publications/wp02_28.htm

argued that as long as the Union does not develop a genuine `citizenship`, the democratic deficit problem remains forever. Thus, the `no demos thesis`[16] lies at the core of the democratic deficit problem of the EU. The common identity problem is the most important deficient of this theory.

In democratic outputs model, what is important is to ensure the effectiveness and efficiency of the Union policies, so that it can compete more effectively in the globalized world. Therefore, the model proposes that the EU's capacity to act should be enhanced.[17] This theory only focuses on sufficient demonstrable benefits and thus so much output oriented. It brings no explanation on the reasons of democratic deficit and on the solution proposals. However, enhancing the power of the EU without addressing the democratic deficit of the Union simply exacerbates the existing problems.

Consociational model of governance has been used in explaining the territories, where more than one community or social group are living together.[18] When the EU is concerned, the member states represent these communities or social groups. The consociational theory is mainly based on four assumptions: the first one is the grand coalition of elites. Accordingly, decisions are taken and bargains are made among these elites. The reached conclusion will later be embraced by the society. The second assumption is proportionality. The elites are represented in accordance with their respective power and influences. The third assumption is the segmental autonomy. Each of these elites has full control over their own particular territory and sovereignty. Separate constitutional entities are, thus, responsible for issues that are exclusive to their jurisdiction. The last assumption is the mutual

[16] The Constitutional Judge Paul Kirchhof first used this expression at Karlsruhe ruling of the German Constitutional Court. For more information, see Fossum, J.E., `Identity – Politics in the European Union`, Arena Working Papers WP 01/17, 2001 and Weiler, J.H., `The State "über alles" – Demos, Telos and the German Maastricht Decision, NYU School of Law Jean Monnet Center, 1995, at http://www.jeanmonnetprogram.org/papers/95/9506ind.html

[17] Peters, A., `A Plea for a European Semi-Parliamentary and Semi-Consociational Democracy`, European Integration Online Papers (EIoP), Vol.7, No.3, 2003, at http://eiop.or.at/eiop/texte/2003-003.htm

[18] For more information, see, Wessels, W., *European Integration: Theories Revisited for the European Union*, The Perseus Books Group, 1997

veto. In mutual veto, unanimity is required among the elites on deciding certain issues, which have considerable impact on the interests of the society. When we adapt these assumptions of the consociational model into the EU, we see that they overlap almost in all areas. It is a well-known fact that the European integration was initiated as an elitist movement around the charismatic figure of Jean Monnet. These elites represent their countries in accordance with the respective power of those countries, which is materialized in the qualitative majority voting (QMV) system of the Council. The Member States have full control in the implementation of the EU policies in their sovereign territories. They also have veto power over some issues, which are vitally important.[19] Thus, it is not wrong to argue that the consociational model is the best theory that explains the EU institutions and the interactions not only among these institutions but also among the Member States as well. However, rather than analytical, the theory is mainly descriptive. As for democracy and the current democratic deficit problem of the Union, it does not provide any inputs. It is rather an institutional-descriptive device that explains the mutually acceptable solutions among sovereign states. Thus, though it reflects many characteristics of the EU, it is not the most appropriate model if our aim is to enhance the democratic credentials of the European Union.

In the institutional model, the democratic deficit problem of the EU is explained as an end result of the structuring and functioning of the EU institutions. This model explicitly excludes the discussions on common identity problem of the EU. What are common at the EU level are the tangible institutions of the Union, which are so much alike to those of a state both in terms of administrative structure and functioning mechanism. In this framework, the theorists argue that the main problem of the democratic deficit stems from the institutional structure of the EU. They direct their attention especially on the EP, since it is the only representative of the European peoples. Since holding the first direct elections in 1979, the EP has been the engine of the democratisation efforts in the Union. Though the EP steadily increases its power, beginning with the budget proposals of 1974 and

[19] Chryssochoou, D., op.cit.

1975, co-operation procedure, co-decision procedure and assent procedure, it is still not as powerful as the national parliaments of the Member States. For example, the control of the EP over the actions of the other EU institutions, especially the Council and the Commission, is very loose. The government of the EU (if one considers the Commission as the government) is not elected within the major party grouping in the EP. The Parliament is also completely remote from its electorates, which rebounds in the low turnout for the EP elections. [20]

Having elaborated the reason of democratic deficit in EU, which stems from the heritage of the Monnet Method, and some theoretical explanations that attempt to remedy this deficit, I will explain the developments in the institutional structure of the Union from the historical institutional perspective.

2.4 Out of the Ashes: 1951 Paris Treaty

Unity of Europe is an idea that is nearly as old as modern history itself. Throughout the history, there have been times, when it came close to reality. At the heyday of their power, Roman emperors, Charlemagne, Napoleon and Kaiser Wilhelm II tried to unite Europe with the sword. Only 21 years after the World War I ended, the well-known drama was once again performed in the European scene and this time, the leading actor was Adolph Hitler. However, the end of the play, like before, was destruction and disaster. Within a period of six years, between 1939 and 1945, a devastating fire almost swept European civilization away. In 1946, post war leaders of Europe made efforts to find a way to assure that there would not be another war in the old continent that could threaten the European civilization. Among them, there was a consensus on a European union or European federation at an intellectual level, yet, in reality; there was nothing but a series of problems

[20] Turnout in the EP elections was 67,2 % in 1979; 64,7 % in 1984; 63,8 % in 1989; 55,1 % in 1994 and 49,9 % in 1999. The mean turnout for the five elections is 59,0 %. The data is taken from Studlar, D., Flickinger, R. and Bennett, S. (eds.), `Turnout in European Parliament Elections: Toward a European Centred Explanation`, in Rallings, C., Scully, R., Tonge, J. and Webb, P. (eds.), *British Parties and Elections Review – 13*, London: Frank Cass, 2003, pp. 195 – 209. For more information, see Pasquino, G., `The Democratic Legitimation of the European Institutions`, The International Spectator, 2002/4, pp. 35 – 48.

ended in deadlock such as the problem of Germany, the continuation of French recovery and the very place of France in Europe and in the world. Out of the ashes, one man, who is not an emperor or military dictator, succeeded to open the path to the European unity.

The name of the man was Jean Monnet, who was originally a French wine distiller from the Cognac and a veteran war bureaucrat who usually worked behind the scenes. For many, Monnet is regarded as the father of the European Union. Educated locally, Monnet became a civil servant in the French Ministry of Commerce in 1915. Later, he held a consultant economist post at the League of Nations. And on the outbreak of the World War II, he went to Washington where he chaired Anglo – French Economic Collaboration Committee. In 1945, Monnet was called back to France and appointed as Planning Commissioner. In this new post, he was responsible for the economic recovery and reconstruction of France. For him, this was very much related with the post-war situation of Germany. Humiliated as was the case in the aftermath of the World War I – but this time also divided – Germany would cause nothing but another war in the continent. Thus, `The continuation of France's recovery will be halted if the question of German industrial production and its competitive capacity is not rapidly solved`.[21] Monnet believed that this problem could only be solved above the national level.

During the World War II, Monnet had come to believe that only collective governance could maintain the everlasting peace in Europe. The idea to unite Europe around a common good is not a new one. What was new was the way or method, which Monnet envisaged for the uniting of Europe. This is known as `Monnet Method`. Having worked in the League of Nations as a consultant economist, Monnet understood that in international organizations, it is almost impossible to reach common objectives since individual states use these organizations to maximize their interests. Besides, if the ultimate goals of an organization are too assertive, then member states

[21] Brinkley, D. and Hackett, C. (eds.), *Jean Monnet: The Path to European Unity*, New York: St. Martin's Press, 1991, p.2

generally loose their impetus to reach these goals in time. Therefore, Monnet thought that the organization that will be established to bring peace and prosperity to the old continent should have a supranational character; it should be free from the politics and politicians of individual states. Also, he thought that such kind of collective governance couldn't be established all at once. Rather, he proposed that concrete objectives should be determined limitedly and decisively, and they should be modified gradually. `Europe will not be built all at once, or as a single whole. It will be built by concrete achievements which first create de-facto stability`.[22] In the post World War II period, all European countries, especially France and Germany were hungry for coal and steel to re-run their economic machines. By pooling coal and steel production, formal enemies France and Germany could end cyclic wars and built a more peaceful continent based on economic cooperation. Thus, `the states of Europe must form a federation or a European entity, which will make them a single economic entity`.[23] Monnet believed that, if European states could establish such kind of economic cooperation, this would eventually move to other areas. This is called `spillover effect`. Theoretically speaking, spillover is one of the most important and most discussed concepts of the neo-functionalist theory, which was particularly used to explain the European integration process from 1950s to mid 1960s. Spillover effect simply means that cooperation in one area would eventually lead to cooperation in other areas. Particularly, `creation and deepening of integration in one economic sector would create a kind of pressure for further economic integration within and beyond that sector`.[24] As states benefit from cooperation on a concrete objective, they have an incentive to define new objectives to maximize their benefits. For instance, full integration of coal and steel sectors wouldn't be accomplished without integration in akin sectors as transportation. Therefore, spillover effect has both deepening and

[22] Monnet, J., *Memoirs*, Mayne, R. (trans.), New York: Collins Publisher, 1978, p.300.

[23] Dinan, D., *Ever Closer Union: An Introduction to European Integration*, 2nd Edition, Basingstoke: The Macmillan Press Ltd., 1994, p.11

[24] Rosamond, B., *Theories of European Integration*, Basingstoke: The Macmillan Press Ltd., 2000, p.60

widening processes embedded with each other. In addition to this, some sectors have more spillover potential than the others. As the common interests of the actors increase in one specific area, then the spillover effect also increases. From this point of view, pooling the coal and steel sectors of Western European countries would generate substantial benefits for participant countries. However, this is not an automatic process at all. Monnet understood that spontaneity of spillover process in other areas (especially in non-political ones) require political activism, direction and coordination. Thus, it is not wrong to say that there is a manual mechanism, embedded into the spillover mechanism. States needed experts to give the first impetus to the process. Thus, he gave great importance to the actions of European-minded technocrats that would oversee and guide integration process. According to him, politicians tend to take populist decisions that are not served for the top notches of the supranational authority. For this reason, in the kitchen of the process, technocrats should prepare policies and serve them to the politicians. Indeed, `Monnet was motivated by a vision of Europe united by a bureaucracy`.[25]

All these ideas of Monnet are fleshed out in the Schumann Declaration. Drafted by Jean Monnet and his colleagues, a program for the creation of a coal and steel pool was submitted on 3 May 1950, in the form of memorandum to the Minister of Foreign Affairs, Robert Schumann. On 9 May 1950, in a famous declaration, he announced the contents of the program. In the program, it is proposed that;

> Franco – German production of coal and steel as a whole be placed under a common High Authority, within the framework of an organization open to the participation of the other countries of Europe. The pooling of coal and steel production should immediately provide for the setting up of common foundations for economic development as a first step in the federation of Europe and will change the destinies of those regions, which have long been devoted to the manufacture of

[25] Featherstone, K., `Jean Monnet and the "Democratic Deficit" in the European Union`, in *Journal of Common Market Studies*, Vol.32, No.2, 1994, p.150

> munitions of war, of which they have been most constant victims.[26]

The proposal on the pooling of coal and steel production raised public attention and enthusiasm. The governments of Germany (which had already been acting with France), Italy, Belgium, the Netherlands and Luxembourg welcomed the proposal. In fact, even though the proposal was about economic integration among the European countries around the Franco – German core, the underlying reason of the Schumann Declaration was mainly political and aimed at the control of German recovery. Therefore, German acceptance of the proposal was vital for the French government. A few hours before he published the contents of the proposal, Robert Schumann had informed Chancellor Adenauer about the proposal. In his memories, Conrad Adenauer wrote:

> Blankenhorn handed me the letters in the cabinet room. One was a handwritten, personal letter by Robert Schumann. The other was an official covering letter for the project laid down in a memorandum, which later became known as the Schumann Plan... In his personal letter to me, Schumann wrote that the purpose of his proposal was not economic, but eminently political. In France, there was a fear that once Germany had recovered, she would attack France... If an organization such as he was proposing were to be set up, it would enable each country to detect the first signs of rearmament, and would have extraordinarily calming effect in France... I informed Robert Schumann at once that I accepted his proposal whole-heartedly.[27]

In Paris, on the basis of the Schumann Declaration, France, Federal Republic of Germany, Belgium, Italy, the Netherlands and Luxembourg signed the treaty that established the European Coal and Steel Community (ECSC), on 18 April 1951, which came into force on 25 July 1952. Thus, for the first time in the history, six European states delegated a part of their sovereignty to a higher, supranational and independent authority.

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[26] `Schumann Declaration` at http://europa.eu.int/abc/symbols/9-may/decl_en.htm

[27] Adenauer, C., *Memoirs 1945 – 1953*, Chicago: Henry Rangery, 1966, p.49

2.4.1 Paris Treaty and the European Coal and Steel Community (ECSC)

European Coal and Steel Community (ECSC) was the first stone in the European edifice. It was a completely new form of organization in two aspects. Firstly, unlike other economic formations of the era, it was not a free trade area but a common market. Secondly, and more importantly, member states of the ECSC transferred substantial portion of their national sovereignty to the newly created `supranational` institutions. Today, by looking back to the early days of the ECSC, it can be asserted that pooling the coal and steel production was not so realistic since the European states had been internally regulating it for decades. Also, ECSC lacked the required power to do it effectively. But, establishment of the ECSC was one of the corner stones in the European history in the sense that first time in their histories, six European States willingly transferred some part of their sovereign powers to a supranational body. The institutional structure and decision-making mechanism of this supranational body, however, was not democratic at all. In fact, since its establishment, the concept of democracy had never been on the agenda of the Community and Member States, and there was no referral to the democratic legitimacy of its institutions. One of the main reasons for this was that the Community `was born in an era when public approval mattered relatively little and when the wider geo-political agenda was utterly dominated by the Cold War`.[28]

The Treaty Establishing the Coal and Steel Community (known as Paris Treaty) was signed on 18 April 1951. It consisted of 100 articles and an appendix, describing transnational agreements. During the negotiations, `The main agenda items were the proposed community's competence, institutions and decision-making procedures`.[29] Based on the French document, prepared by the Jean Monnet, it was proposed that the main

[28] Grundman, R., `The European Public Sphere and the Deficit of European Democracy`, in Smith, D. and Wright S. (eds.), *Whose Europe? The Turn Towards Democracy*, Oxford: Blackwell Publishers, 1999, p.128

[29] Dinan, D., *op.cit.*, p.25

institutional structure of the ECSC should be composed of High Authority, Parliamentary Assembly and the Court of Justice. For Monnet, High Authority was meant to be `a strong executive authority, whose primary function would be developmental and which would act by enforcing a code of industrial good conduct`.[30] He thought that the creation of a parliamentary assembly served to insert some democratic accountability into the new Community. And the Court of Justice ensured the compliance to the treaty provisions. The simplicity of the structure emphasized the strong executive role of the High Authority. In fact, the independence and power of the High Authority were never questioned. However, Benelux countries, especially Belgium and the Netherlands insisted that a Council of Ministers, composed of the representatives of the Member States, should also be established to ensure governmental supervision and political support for the ECSC:

> The Benelux delegations insisted from the outset that the final treaty should lay down detailed and absolute provisions for the powers of the High Authority and they were determined that there should be some governmental supervision over its decisions. Both the Dutch and Belgian delegations wanted a Council of Ministers to be able to issue directions to High Authority.[31]

Monnet had not envisaged Council of Ministers at all and he tried to block its establishment thinking that the Parliamentary Assembly in collaboration with the Council of Ministers could affect the decisions of the High Authority. However, at the end of the negotiations, Monnet was forced to accept the Council of Ministers. Establishment of the Council of Ministers was a milestone event for the ECSC since from the very beginning of its operation a clear intergovernmental element had been inserted to the supranational system. On August 10, 1952, the High Authority, chaired by Jean Monnet, took up its seat in Luxembourg.

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[30] Brinkley, D. and Hackett, C. (eds.), *op.cit.*, p.16

[31] Featherstone, K., *op.cit.*, p. 158

2.4.2 Institutional Structure of the ECSC

2.4.2.1 The High Authority under the ECSC

The High Authority was one of the most important institutions of the ECSC. It was a unique type of international institution in the sense that it had more power than the secretariat of any international organization, yet less power than the executive of a nation state. `It shall be the duty of the High Authority to ensure that the objectives set out in this Treaty are attained in accordance with the provisions thereof` (Article 8). It was composed of nine members for an office of six years and they would act independently of the member states (Article 9). The governments of the participating countries jointly appointed eight of its members and these eight members elected the ninth. It was supported by a secretariat. Articles 1 – 5 of the ECSC Treaty defined the objectives of the High Authority and in which manner these objectives are to be achieved. The most important objectives of the High Authority were to contribute to the economic expansion, create new employment opportunities and increase the living standard in the Member States. In order to reach these objectives, it ensured regular supply to the market at the lowest possible price, guaranteed equal access to the market and ensured sustainable conditions for the workers and investors. High Authority strictly prohibited import and export duties or quantitative restrictions, discriminations among the producers and / or consumers, state subsidies or aids and market restrictive activities. However, during `manifest crisis`, Council of Ministers were to be granted more power.

The High Authority acted by a majority of its members. In order to perform its functions, it could take `decisions`, make `recommendations` or deliver `opinions`.[32] Among them, decisions were totally binding, recommendations were binding as to the ends but not to the means, which left the choice and implementation of the appropriate methods to the will of

[32] The instruments provided for the subsequent EEC treaty have a different terminology. Thus, `ECSC Decisions` have the effect of `EEC Regulations`, `ECSC Recommendations` have the effect of `EEC Directives` and `ECSC Opinions` have the effect of `EEC Recommendations`.

the Member States; and opinions were non-binding. High Authority also prepared and published annual report on the activities and administrative expenditures of the Community.

The idea of technocratic elitism lies at the heart of the High Authority. It was composed of these technocrats, who did not represent the Member States or their nationals; moreover, they were not responsible to those Member States. As a result of this, decisions were taken at a level where the interests and expectations of the European people were not taken into account at all. In the Paris Treaty, the High Authority had a different and apparently more superior power than in the subsequent Treaties. It was the only driving force behind the ECSC, whereas in subsequent Treaties, as will be seen, the Commission and the Council had to operate in tandem.

2.4.2.2 The Council of Ministers under the ECSC

The ECSC Council was created at the insistence of Benelux countries in order to defend their national interests against the three dominant member states. It was composed of one representative from each member states. Since it consisted of the ministers from national governments, it provided a balance to the supranational drive of the High Authority:[33]

> The Council were to exercise its powers in the cases provided for and in the manner set out in this Treaty, in particular in order to harmonize the action of the High Authority and that of the Governments, which are responsible for the general economic policies of their countries (Article 26).

Therefore, it was mainly established to serve the sanctioning process between High Authority and Member States' governments. Also, it monitored activities of the High Authority in certain areas. The Council met when convened by the president, at the request of a Member State or of the High Authority. Decisions were taken by unanimity; qualitative majority or simple majority depends on the issue being discussed.

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[33] Mc Cormick, J., *The European Union*, Boulder: Westview Press, 1999, p.125

2.4.2.3 The Common Assembly under the ECSC

The Common Assembly of the ECSC was the first international assembly with legally guaranteed powers.[34] These powers were fairly limited however. It mainly exercised supervisory powers, assigned to it by the Treaty. The structure and functions of the Common Assembly were set out in Articles 20 – 25 of the ECSC. The Assembly was composed of `representatives of the peoples of states` (Article 20), who were appointed by the Member States' national parliaments on an annual basis[35]. Representatives were selected on the basis of the principle of proportionality, which reflected the populations of the Member States. Accordingly, Germany, France and Italy had 18, Belgium and the Netherlands had 10 and Luxembourg had 4 representatives in the Assembly. It selected its President and officers among its members. Assembly held sessions annually and there was also possibility of holding extraordinary sessions if High Authority or Council of Ministers requested; or if the Assembly itself needed to deliver an opinion on an issue presented to it by the Council of Ministers (Article 22). The High Authority was required to answer oral or written questions of the Assembly or of its Members. The Common Assembly was armoured with very strong weapon against the High Authority: the motion of censure. It could proceed a motion of censure against the High Authority with two-thirds majority, but was given no role in the nomination of a replacement. Assembly had also no role in treaty amendment. It may be argued that a Common Assembly was established to insert some sort of democratic element into the ECSC. However, since the members of the Common Assembly were not elected directly by the European citizens but by the national Parliaments of the Member States, it was hard to talk about a genuine democratic representation in the Common Assembly.

In this institutional structure, the High Authority was extremely influential in the sense that it was entrusted with both policy formation and

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[34] Westlake, M., *A Modern Guide to the European Parliament*, London: Printer Publishers Ltd, 1994, p.11

[35] Although no member state choose this course of action, a member state could also select its representatives by direct universal suffrage, if it so wished.

policy implementation powers for the ECSC. The Council mainly represented the Member States and ensured national control mechanism over the acts and actions of the High Authority. The Common Assembly, on the other hand, was assumed to represent the peoples of Europe with symbolic authority. Therefore, in ECSC, as compared to the Council and the Assembly, the High Authority was quite dominant. In the successive Rome Treaty, however, the dominance of the High Authority was ended and a kind of institutional balance was established between the European Commission (successor of the High Authority) and the Council of Ministers, leaving the European Parliament (successor of the Common Assembly) still inefficient.

2.5 Europe Again: 1957 Rome Treaties, the European Atomic Energy Community (EURATOM) and the European Economic Community (EEC)

The rejection of the European Defence Community (EDC) and European Political Community (EPC) in the first half of the 1950s was the first major crisis in the European politics since 1945. After the rejection of the EDC, the shockwaves were deep. Only the ECSC survived and the `spillover effect` legend ended. Collapse of both EDC and EPC proposals denoted the limits of the EU integration process in the 1950s. ECSC's slow progress and failure in the EDC and EPC formations disappointed Jean Monnet. In November 1954, planning to play a more active role in the European integration, Monnet announced his intention to resign from the ECSC and joined to the Action Committee for A United States of Europe, a private supranational lobbying group composed of political party and trade union leaders.[36]

After a series of catastrophic events and Monnet's resignation, the biggest question in the minds of the Europeans was `what now?`. Benelux countries soon in the Messina Meeting (Italy) gave the answer to this question. In Messina, on 1 – 3 June 1955, ECSC Council of Ministers discussed Monnet's replacement as well as further integration. In the

[36] Brinkley, D. and Hackett, C. (eds.), *op.cit.*

meeting, on behalf of the Benelux countries, Paul Henri Spaak, Belgian Prime Minister, suggested to take additional steps in line with Monnet's ideas towards an atomic energy community and closer cooperation on economic issues. Upon this, Spaak was assigned to write a report on the future options of cooperation on atomic energy and further economic integration. Within a year, he finalized his studies and submitted his report in May 1956, in Venice, proposing two sectoral integrations; one in atomic energy (EURATOM) and the other on a common market (EEC), meaning the abolition of trade barriers among Member States and setting up of common external tariffs and common trade barriers, as two separate organizations with two different treaties. His report was approved and he took the responsibility to draw the treaties. Spaak's report underlined the fact that a large common market would facilitate mass production without monopoly. However, since there was a difference among the Member States' economic development, the advantages of a common market could only come about if the required transitional period were provided to its members in order to enable the enterprises to adapt. Spaak report also mentioned the difficulties in the decision making mechanism of the ECSC and it underlined the `need to override the unanimity rule, in defined cases, or after a certain period.[37]

In the next ECSC Council of Ministers in Rome on 25 March 1957, the Treaties were signed, which came into force on 1 July 1967. A week later, the TIME magazine announced this event to the world as below:

> In Rome, last week, statesmen of six European nations assembled in a vast, fresced hall atop Capitoline Hill. Before them, on damask covered table lay the latest instrument for the re-unifying Europe – the treaties that would establish the Western European Common Market and the European Atomic Energy Community. Under the first treaty, there will be no tariff walls between the six nations; under the second, the six will enter the nuclear age together in one big cooperative (Euratom) of nuclear research and production.[38]

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[37] `The Brussels Report on the General Common Market`, Information Service High Authority of the European Community for Coal and Steel, Luxembourg, 1956, pp. 23 – 24 at http://aei.pitt.edu/archive/00000995/01/Spaak_report.pdf

[38] *Time Magazine, Golden Anniversary Issue, 1949 – 1999*, 1999, p.56

Even though both EURATOM and EEC treaties are two separate Rome Treaties, today, the EEC Treaty is most commonly known as the Rome Treaty. In the preamble of the Rome Treaty[39], signatories expressed their determination `to lay the foundations of an ever closer union among the peoples of Europe`. After the signature, Paul Henri Spaak, who had already been called as `Mr. Europe` said with no exaggeration that `if we succeed, today will be one of the most important dates in the European history`.[40]

Creation of a single market with the Treaty of Rome was the first important wide-scale institution building projects at a European level. The purpose of the EEC was laid down as:

> The Community shall have as its task, by establishing a common market and progressively approximating the economic policies of Member States, to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the States belonging to it (Article 2).

Today's Europe is largely developed on the basis of this Treaty. Fifteen out of the twenty policy domains were created in Rome Treaty.[41] Therefore, not only the primary objectives of today's European Union (EU) were defined in the Rome Treaty, but also this Treaty drew the `master frame` of the EU institutions and all other discussions have been connected with that frame.

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[39] Hereinafter, the Treaty Establishing the EEC will be referred as Rome Treaty

[40] *Time Magazine, op.cit*

[41] These are; General, Financial and Institutional Matters; Customs Union and Free Movement of Goods; Agriculture; Fisheries; Freedom of Workers and Social Policy; Right of Establishment and Freedom to Provide Services; Transport Policy; Competition Policy; External Relations; Industrial Policy and Internal Market; Economic and Monetary Policy and Free Movement of Capital; Taxation; Energy; Regional Policy and Coordination of Structural Instruments; Science, Information, Education and Culture.

2.6 Institutional Structure of the Rome Treaty[42]

As indicated above, the European Union has three main political institutions; namely the European Commission, the Council of Ministers and the European Parliament, all of which find their foundations in the EEC Treaty. The successive institutional reforms did not radically amend this structure. Many issues regarding the democratic deficit of the Union have persisted since the first steps towards EEC in 1957. They include the power and roles of the European institutions and inter-institutional relationships. Therefore, in order to clearly understand the roots of the today's so-called democratic deficit, one has to clearly understand this formation period.

2.6.1 The European Commission under the Rome Treaty

The 1957 EEC Treaty established the current structure of the Commission. The Commission was still the equivalent of the High Authority, but the scope of its powers was downgraded. Article 155 of the Treaty of Rome defines the powers of the Commission. According to this provision, the Commission shall:

> Ensure that the provisions of this Treaty and the measures taken by the institution hereto are applied;
> Formulate recommendations or deliver opinions on matters dealt with in this Treaty, if it expressly so provides or if the Commission considers it necessary;
> Have its own power of decision and participate in the shaping of measures taken by the Council and by the European Parliament in the manner provided for in this Treaty;
> Exercise the powers conferred on it by the Council for the implementation of the rules laid down by the latter.

Accordingly, the Commission in the EEC has three main functions. The first function of the Commission is to initiate policy and legislation. It

[42] For more information regarding the institutional structure of the European Union and its historical evlotion explained in different parts of this dissertation, see Wallace, H. and Wallace, W. (eds.), *Policy Making in the European Union*, Oxford: Oxford University Press, 2000; Warleigh, A. (ed.), *Understanding European Union Institutions*, London: Routledge, 2002; Peterson, J. and Shackleton, M. (eds.), *The Institutions of the European Union*, Oxford: Oxford University Press, 2002 and Mc Cormick, J. and Nugent, N. (eds.), *Understanding the European Union*, Basingstoke: The Macmillan Press Ltd., 1999.

develops and promotes many of the policy initiatives that are launched at the EC level. In that context, the Commission has legislative function. It plays a crucial in the creation of the EU legislation. It has exclusive right to create legislative proposals in most policy areas. The Commission alone is represented at all stages of legislative creation in the Parliament and the Council and it can contribute to both. Secondly, the Commission is the guardian of the founding treaties. Commission exercises this function in collaboration with the ECJ. This function places the Commission in the role of the watchdog. Thus, it is responsible for ensuring that the Treaties constituting the EU are respected and duly implemented. Thirdly, the Commission is the executive organ, which implements Community policy and legislation.

2.6.2 The Council of Ministers under the Rome Treaty

The Council of Ministers is a forum in which ministers of national governments meet to discuss the EC policies reach consensus and make decisions regarding EC law and policy. Up until the 1965 Merger Treaty, there were three Councils and their consolidation is known as the Council of Ministers. With the establishment of the EEC, The Council of Ministers was re-structured, based on the idea of defending national interests while maintaining supranational functioning, a step further with the creation of a weighted voting system. The main intent of it was to strike a balance between the policy desires of large countries with those of smaller ones. Accordingly, the Council had six members but there were seventeen votes (France, Germany and Ital had four each, the Netherlands and Belgium had two each and the Luxembourg had one)[43] and to take any decision 11 of them were required.

[43] *ibid.*

2.6.3 The European Parliament under the Rome Treaty

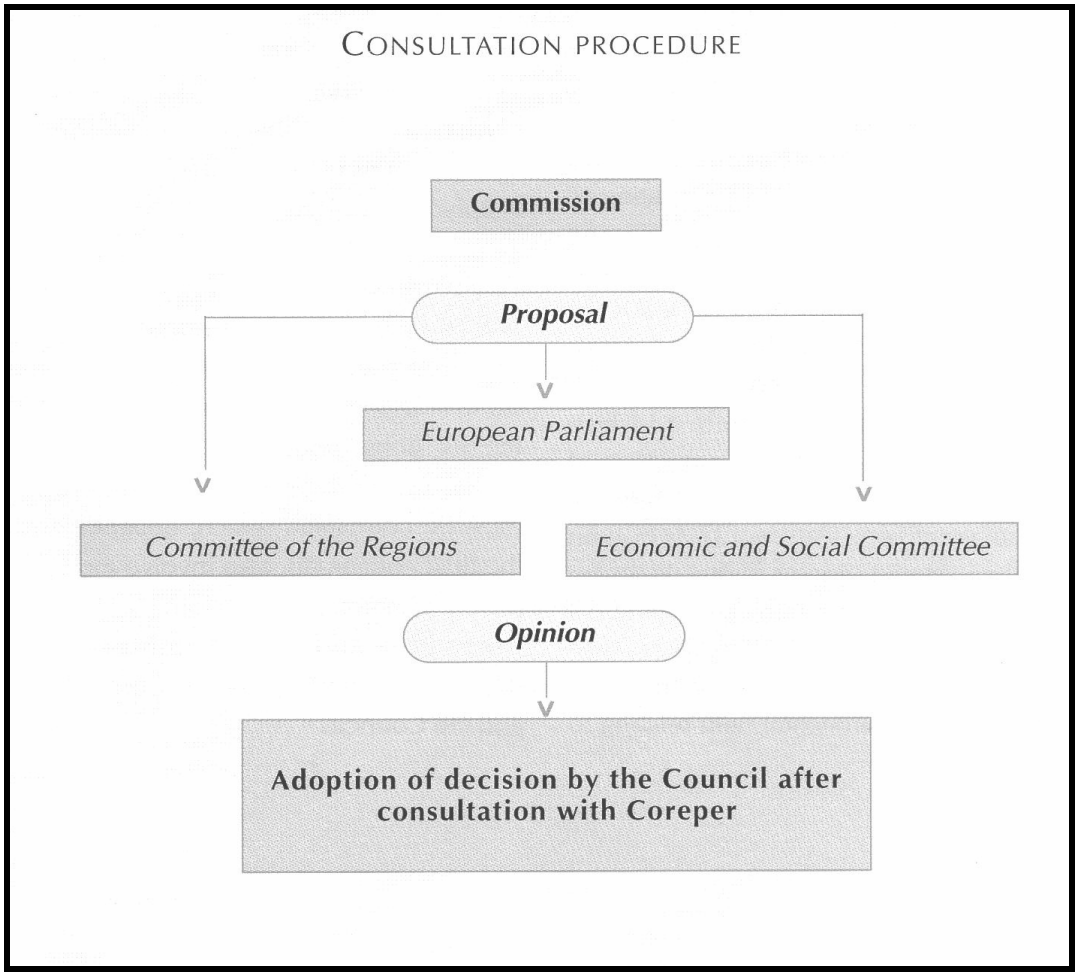
The EEC Treaty at least rhetorically speaking, strengthened the EP since it placed the Parliament in the first rank of the institutions, where it had been listed in the second rank after the High Authority in ECSC Treaty. However, it did not bring any important amendments to the role and responsibilities of the EP. Article 137 of the EEC Treaty reads, `the Assembly (EP), which shall consist of representatives of the peoples of the states brought together in the Community, shall exercise the advisory and supervisory powers which are conferred upon by this Treaty`. Therefore, the Parliament was granted no legislative powers as such.

2.7 The Decision Making Mechanism of the Initial Stage: The Consultation Procedure in the EC Treaty

The Commission and the Council were two important institutions in the decision-making mechanism in this stage. To put it simply, Commission proposes and Council adopts. This is a sign that the rein of the Member State governments' bureaucrats bridled the supranational desires of the technocrats. The demands of the European people were, on the other hand, disregarded to a large extent. The EP was only granted the power of consultation in the decision-making mechanism. The consultation was the earliest legislative procedure within the Community, which gave the EP some relative powers in the legislative process.[44] Under this procedure, the Commission submits its proposal to the Council to decide on it. Before Council reaches a decision, however, it should consult with the EP (and later the Economic and Social Committee and the Committee of the Regions) if necessary. However, the Council is not bound by the position of these institutions but only by the obligation to consult it.

[44] Borchardt, K. D., *The ABC of Community Law*, Luxembourg: Office for Official Publications of the European Communities, 2000, p.72

Table 1 – Consultation Procedure[45]



2.8 The Institutional Structure in Practice: Luxembourg Compromise

Luxembourg Compromise was a loose arrangement, which was never recognized by the Commission or the ECJ and it was never incorporated into the founding Treaties. `Empty chair crisis` was its genesis, when France boycotted the Council meetings for the last six months of 1965 in protest of the bureaucratic supranationalism of the Commission and the advent of the QMV.

[45] Taken from Borchardt, K. D., *The ABC of Community Law*, Luxembourg: Office for Official Publications of the European Communities, 2000

Completion of the common market for agricultural products was one of the areas, where the Member States saw as vital for the development of European Community. The creation of a system of Community's own resources and the extension of the EP's budgetary powers in the light of the decline of national parliament's budgetary power were accepted as a necessary corollary of this. Following the Council's request, the Commission presented proposals regarding the creation of a system of Community's own resources to the Council in March and April 1965.[46] However, when the Council met to discuss the Commission's proposals in June, no agreement was found and in 1 July 1965, French representative left the negotiating table that resulted in the well-known `empty-chair` crisis.

In order to overcome this crisis, Member States reached a compromise in Luxembourg in 1966. Accordingly, any decision that affected `a very important national interest` would be deferred until unanimously acceptable solution could be found. The text of the Compromise reads as:

> Where in the case of decisions, which may be taken by a majority vote on a proposal from the Commission, very important interests of one or more partners are at stake, the Members of the Council will endeavour, with a reasonable time, to reach solutions which can be adopted by all the Members of the Council, while respecting their national interests and those of the Community in accordance with Article 2 of the Treaty.[47]

This resulted in the tendency to seek unanimity in the decisions and considerably slowed-down the decision-making mechanism.

2.9 Evaluation: Democratic Deficit and the Initial Stage of the European Integration

The democratic credentials of the Community institutions were very weak after the signature of the Rome Treaty and this resulted in democratic

[46] European Parliament Fact Sheets: Developments up to the Single European Act, at http://www.europarl.eu.int/factsheets/1_1_2_en.htm

[47] Le Compromis de Luxembourg at http://www.ellopos.net/politics/luxembourg.htm

deficit. Helen and William Wallace puts it as `(t)he European Union (EU) was not designed as democracy, but more as a "benign technocracy"`.[48]

The major problems of the Commission were related with its legitimacy and working method. The legitimacy of the Commission was very indirect, as its appointed members relied on the national electorates of each elected representative of the Council of Ministers to grant it legitimacy. It was also secretive in nature and insufficiently transparent in its working methods. Especially during the legislative process, it initiated the procedure without consulting the Parliament, the only representative institution of the European peoples, and defended itself by arguing to seek the highest interests of the Community.

The Council of Ministers became the main legislative institutions of the Community in EEC Treaty. However, its decisions were left out of any effective parliamentary control.

The establishment of the EEC did not result any radical change in the structure of the Parliament. Although it was aimed to represent the peoples of Europe, the members of the EP were still elected by the national parliaments of the Member States but not directly elected by the European peoples. However, ensuring the legitimacy of the EP was not as simple as securing the universal suffrage in the EP elections. The Parliament was still left out from the decision-making process and the Community and the Council only consulted it. Put very briefly, the Commission proposes and the Council disposes. Likewise, the Parliament had no role in the controlling of the preparation and spending of the Community budget. Last, but not the least, it had inadequate control over the acts and actions of the Commission and had no control over that of the Council.

In this initial stage, the European edifice was constructed in an undemocratic way. This was a natural result of the Monnet Method, which

[48] Wallace, H., Wallace, W., *Policy Making in the EU*, Oxford: Oxford University Press, 1996, p.44

underlined that a unification of Europe could be achieved by the establishment of the elitist bureaucratic structure, where the decisions were taken by a small number of well-educated technocrats and close to public scrutiny and the demands of the people were disregarded for the sake of the high interests of the Community. In the next Chapter, successive reforms and Treaty amendments are going to be evaluated to make this structure more democratic and effective.

CHAPTER 3

INSTITUTIONAL REFORMS AND EFFORTS TO REMEDY THE DEMOCRATIC DEFICIT

As the European Community increased its competences and developed policies that directly affect the lives of the European Peoples, its democratic credentials were questioned and several institutional reforms were carried out to remedy the democratic deficit problem. The main target of these reforms was to ensure more legitimacy and public participation to the Community issues by providing direct legitimacy to the EP, enhancing its role in decision-making process and increasing Parliamentary scrutiny over the actions and decisions of the Commission and the Council. In this chapter, these institutional reforms are explained from a historical perspective and an analysis is provided on whether or not they achieve their goals.

3.1 From 1957 Rome Treaty to the 1986 Single European Act (SEA)

One of the most assertive targets of the Treaty of Rome was the full-fledged establishment of the Common Market. Considering the different economic development level among the Member States, drafters of the Treaty estimated a 12-year transitional period for this and stated in the Article 8 of the Treaty. This article provided for a completion of common market in three stages over a period of 12 years. These three stages were;

- abolishing internal customs and adopting a common external tariff,
- completing the `Green Europe`[49] project and,

[49] Regulations on Common Agricultural Policy (CAP) and establishment of the European Agricultural Guidance and Guarantee Fund (EAGGF).

- removing all the obstacles on the four freedoms of movement.

The first two stages were completed in due time without any difficulty. In 1962 first regulations on CAP were adopted and European Agricultural Guidance and Guarantee Fund (EAGGF) was established. Furthermore, all internal customs were abolished and common external tariff against the third countries were introduced as of 1 July 1968. Even so, at the end of the transitional period, in 1 July 1969, there were still major obstacles on the freedom of movement. Meantime, the first institutional change was realized after the Treaty of Rome and on April 8, 1965, a single Council and Commission were set up for the three European Communities (ECSC, EEC and EAEC) with the Merger Treaty, which will enter into force in 1967.[50]

Immediately after de Gaulle's resignation in the summer of 1969, France launched a new initiative to achieve a financial settlement for the CAP. On the other hand, at their meeting in The Hague in December 1969, the heads of governments of the six Community member states agreed on the creation of a system of new own resources (According to the Article 201 of EEC Treaty) and on a novel reform of the budgetary procedure (Article 203 of EEC Treaty). As soon as the discussion about the creation of Community's own resources surfaced, calls for an extension of the EP's budgetary powers came to the forefront. The Commission, the EP and most of the national governments advocated for a link to be established between the creation of a Community system of own resources and the empowerment of the EP in the budgetary sphere. The Council Decision of 21 April 1970 entrusted Community with its own resources substituting the financial contributions of the Member States. In accordance with this development, Treaty of Luxembourg granted certain budgetary powers to EP on 22 April 1970 and eventually with the Treaty of Brussels of July 22, 1975, the Parliament obtained the right to reject the Community budget as a whole, which has been

[50] European Parliament and European Court of Justice had been merged in the Annexed Protocol of the Rome Treaties.

exercised three times in 1979, 1982 and 1984.[51] The Parliament was also granted rights to control the spending of the Community budget. The Community budget is composed of `compulsory` and `non-compulsory` expenditures. It is in the latter one, which covers mostly the structural funds; the European Parliament has greater say. However, this achievement should not be exaggerated since the non-compulsory expenditures cover only 4 – 5 % of the total Community budget. These budgetary reforms were the first important gains of the European Parliament on the long way of increasing its powers.

While the Parliament increased its competences over the budgetary matters with these Treaties, it was the first universal suffrage held on 1979 that granted direct legitimacy to the European Parliament.

3.2 First Direct Elections of the EP

When the European Assembly has turned into the European Parliament in the Rome Treaty, this change automatically raised the idea of electoral issues and Members of the EP sought to realize Article 138 of the Rome Treaty. Paragraph 3 of the Article 138 of the Rome Treaty reads as

> The Assembly (European Parliament) shall draw up proposals for elections by direct universal suffrage in accordance with a uniform procedure in all Member States. The Council shall, acting unanimously, lay down the appropriate provisions, which it shall recommend to Member States for adoption in accordance with their respective constitutional requirements.

The first traces of European Parliament proposals for direct elections through a uniform electoral procedure came in 1961 with the Dehousse report, but with little success. Further resolutions on this issue were adopted by the Parliament in 1963 and 1969. However, it was finally in 1976, when the EP made the proposal that would bring about the first direct elections. Instead of asserting the uniform electoral system, which is stated in

[51] Corbett R, Jacobs F. and Shackleton M. (eds.), *The European Parliament*, 4th Edition, London: John Harper, 2000

paragraph 3 of the Article 138, the EP proposed that each member state would be free to determine and implement its own electoral procedure. The Council, this time, accepted the EP's proposal and after some delays, the first direct election for the European Parliament was finally held in June 1979.[52] This was a landmark event in the history of the European integration process since peoples of Europe directly elected their representatives in the EP for the first time. The direct elections had two results. Firstly, it altered the EP's, and in connection to this, EEC's derived legitimacy into a direct one and secondly, it increased the democratic credentials of the Community by providing public participation in decision making procedures, even though EP had only consultative power during this period. However, there were still discussions over whether this direct election reached its goal or something was still missing.[53] Therefore, right after the first direct elections, concerns arose about the nature of the direct elections and its effects on the legitimacy of the EP in particular and the EEC in general.[54] General opinion was that the EP elections were conducted under the shadow of national elections. Because, during the election campaign, European parties mainly focused on domestic interest however, this had no practical value and applicability at Community level.

Certain landmark decision of the ECJ in this period also enhanced the powers of the EP vis-à-vis the Commission and the Council of Ministers, particularly in the decision-making mechanism. One of the most important of these decisions was taken after the Isoglucose Case and elaborated below.

[52] Fitzmaurice, J., *The European Parliament*, London: Saxon House, 1978.

[53] Turnout in the first EP elections in 1979 was 67,2 %. The first Greek election occurred in 1981.

[54] Reif, K. and Schmitt, H., `Nine Second – Order National Elections: A Conceptual Framework for the Analysis of European Election Results`, in European Journal of Political Research, 8(1), 1980, pp., 3 – 45.

3.3 Isoglucose Case and Increase in the Parliament's Power in the Decision Making Mechanism

With the Treaty of Rome, the European Court of Justice's mandate was also extended compared to the ECSC system. In addition to its primary function, to keep the Commission and the Council in check, it was now responsible for filling in the vague parts of the EC law. This was an extremely important development for the history of the EC legislation.[55] European Parliament has also benefited over time from certain decisions of the ECJ and extended its influence and power in the Community's institutional structure. Commission usually supports these decisions of the ECJ since EP increases its power not only to the expense of that of the Commission but also to that of the Council as well, which is the only intergovernmental body in the supranational organization. One of the most important of these decisions was taken at the `Isoglucose` case. In the Isoglucose Case[56], the Council adopted a Regulation, which sets production quotas for Isoglucose producers relying on Article 43. This Article gives power to the Council to implement the Common Agricultural Policy. Accordingly, the Council shall, on a proposal from the Commission and after consulting the European Parliament, acting by a qualified majority, make regulations, issue directives or take decisions, without prejudice to any recommendations it may also make. In accordance with the procedures laid down in Article 43, the Council requested the opinion of the EP on March 19, 1979. However, without waiting for the opinion of the EP, it adopted the Regulation on June 25. Upon this, Roquette Freres challenged the legality of the Regulation and brought the case before the ECJ and opened annulment proceedings. The Court decided that the consultation provided for in Article 43 was the means, which allowed the EP to play an actual part in the legislative process of the Community and such power represented an essential factor in the institutional balance intended by the Treaty. The decision of the Court was that the Regulation was void on the

[55] Warleigh, A. (ed.), *Understanding European Union Institutions*, London: Routledge, 2002, pp. 61 – 77

[56] Case no 138/79: Roquette Freres vs. the Council

basis of infringement of an essential procedural requirement.[57] The ECJ's Isoglucose judgment of 1980 represented a landmark clarification of the EP's power in the consultation procedure. The Court annulled a decision taken by the Council on the ground that it had not waited for the EP's opinion and stated that EP's power to be consulted `represents an essential factor in the institutional balance intended by the Treaty` and that `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`.[58]

This decision of the Court literally ensured the Parliament to block the decision-making mechanism of the Community since the Council could not take a decision anymore without hearing the opinion of the Parliament. Therefore, Commission took notice of cooperating with the Parliament in the decision-making process. In the next Treaty amendment, the Parliament was entrusted with new powers in the decision-making processes.

3.4 1986 SEA: Introduction of `Assent` and `Co-operation` Procedures

In spite of all these developments since 1957, Member States and European Parliament increasingly gave voice to various reactions in the beginning of 1980s. Although the Community enlarged, the Common Market could not established in a full-fledged fashion yet due to the restrictions on free movement. Also, after its first direct election, the EP entered into a serious row with the Council over the 1980 Budget preparation. In 1981, in order to deal with the existing problems, the Parliament and the Council began to act independently from each other. In July, an institutional affairs committee was established within the EP in order to develop a plan for the

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[57] European Parliament Fact Sheets, at http://www.europarl.eu.int/factsheets/1_3_2_en.htm and Baykal, S., `Institutional Law of the European Union Lecture Notes`, METU, 2001.

[58] Case 138/79: Roquette Freres vs. the Council, at http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=61979J0138

amendment of the existing Treaties. In 1984, the `draft treaty` on the establishment of the European Union (known also as the `Spinelli Draft`) was passed by the European Parliament by a large majority. The treaty dealt with the new economic, monetary, social, and foreign policies of the Union. There would be a two-chamber parliament with democratically elected members and a Union Council for representatives of the national governments, which ensured a kind of balance on legislative power between the Parliament and the Council. The treaty also had another function; it speeded up the member nations' treatment of the Union issue. In the same year, after the Fontainebleau meeting, the European Council also decided to set up an ad-hoc committee to prepare a report on improving the functioning of the Community system (known also as Dooge Report)[59]. Not satisfied with this report, the Council, in Milan in 1985, decided to convene an intergovernmental conference on the powers of the Community institutions, extension of Community activities to new areas and completion of a genuine common market. The IGC that resulted in Single European Act (SEA) was opened in Luxembourg in 1985. Apart from the issues on the competence of the community, completion of a common market etc., institutional structures and reform proposals were also discussed in the IGC since completion of internal market required a better functioning and more democratic institutional structure. At the end of the IGC, the text of the SEA was submitted to the European Council meeting. The Treaty was ratified by the Member States during 1986 and came into force on 1 July 1987.[60]

SEA was the first major modification of the founding treaties of the European Communities, that is to say, Treaty of Paris in 1951 and the Treaties of Rome in 1957. The `Single European Act` is mainly concerned with widening the Community's scope for action by developing common policies. Jacques Delors, president of the European Commission, summarized the main objectives of the SEA in the following way:

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[59] James Dooge was a former Irish foreign minister. `The Report to the European Commission` is found at http://aei.pitt.edu/archive/00000997/01/Dooge_final_reprt.pdf

[60] Budden, P., `Observations on the Single European Act and "relaunch of Europe": a less "intergovernmental" reading of the 1985 Intergovernmental Conference?`, *Journal of European Public Policy*, Vol. 9, No. 1, 2002, pp. 76 - 97

> The Single Act means, in a few words, the commitment of implementing simultaneously the great market without frontiers, more economic and social cohesion, a European research and technology policy, the strengthening of the European Monetary System, the beginning of a European social area and significant actions in environment[61].

3.5 Institutional Structure in SEA

3.5.1 The European Commission under the SEA

With the SEA, the Commission, as the guardian of the Treaties was entrusted with wider implementing powers. President Jacques Delors's strong and charismatic personality further reinforced the esteem of the Commission. In SEA, it continued to enjoy an exclusive power to initiate legislative procedure and submit proposals on all matters subject to Community legislation.

3.5.2 The Council of Ministers under the SEA

After the Luxembourg Compromise that ended the empty chair crisis, the Council preferred to conduct its business by consensus. This inevitably slowed down the decision- making mechanism. However, the desire to complete the internal market required to take necessary decisions in due time. Therefore, `The Single European Act re-enforced qualified majority voting into the legislative process`.[62] The new cooperation procedure was also altered the relationship between the Council and the Parliament and restricted the room for manoeuvre of the Council during the decision-making process.

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[61] Delors's statement is taken from The Union of European Federalists Web Site at, http://www.constitutional-convention.net/project/archives/construction_of_europe_main_dates.PDF

[62] Warleigh, A. (ed.), *op.cit.,* p.31

3.5.3 The European Parliament under the SEA

Before the SEA, a plea was made for more `efficient` but also for more `democratic` institutions. A majority of Member States representatives wanted the EP to play a more eminent role in the Community legislative process once the Member States opted for the pooling of sovereignty. `For example, the chair of the EC Committee in the German Bundestag, Renate Hellwig (CDU), criticized the executive dominance of Community decision making and concluded that to reduce the `legitimacy deficit` the legislative powers of the EP had to be increased`.[63] Therefore, one of the main objectives cited in the Treaty was to increase the role of the EP in order to rectify the democratic deficit in the Community's decision-making process. SEA introduced two procedures that strengthen the powers of the EP. The first one was called the `assent` procedure. Under the assent procedure, EP's approval was required for the validity of the certain type of Community acts. The second one was called the co-operation procedure. With this procedure, the EP for the first time was included in the decision-making mechanism, with some real and significant powers.

3.6 The Decision Making Mechanism in the SEA: the Assent and the Co-operation Procedure

The `assent` procedure laid down in Article 8 and Article 9 of the Treaty. Article 8 of the Treaty reads as:

> The first paragraph of Article 237 of the EEC Treaty shall be replaced by the following provision:
> Any European State may apply to become a member of the Community. It shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the assent of the European Parliament, which shall act by an absolute majority of its component members.

[63] Rittberger, B., `Removing the Conceptual Blinders: Under What Conditions Does the Democratic Deficit Affect Institutional Design Decisions`, at http://les1.man.ac.uk/conweb

Article 9 of the Treaty reads as:

> The second paragraph of Article 238 of the EEC Treaty shall be replaced by the following provision:
> These agreements shall be concluded by the Council, acting unanimously and after receiving the assent of the European Parliament, which shall act by an absolute majority of its component members.

Thus, the Council, on a specific case, proposed by the Commission, could only act having obtained the assent of the Parliament. SEA draws the scope of these acts as decisions on the application of membership and conclusion of the association agreements. Therefore, with SEA, the EP gained the decisive power on the enlargement of the Community.

The second and more important novelty in the decision making mechanism procedure was the introduction of the `co-operation` procedure. Article 6(1) states that

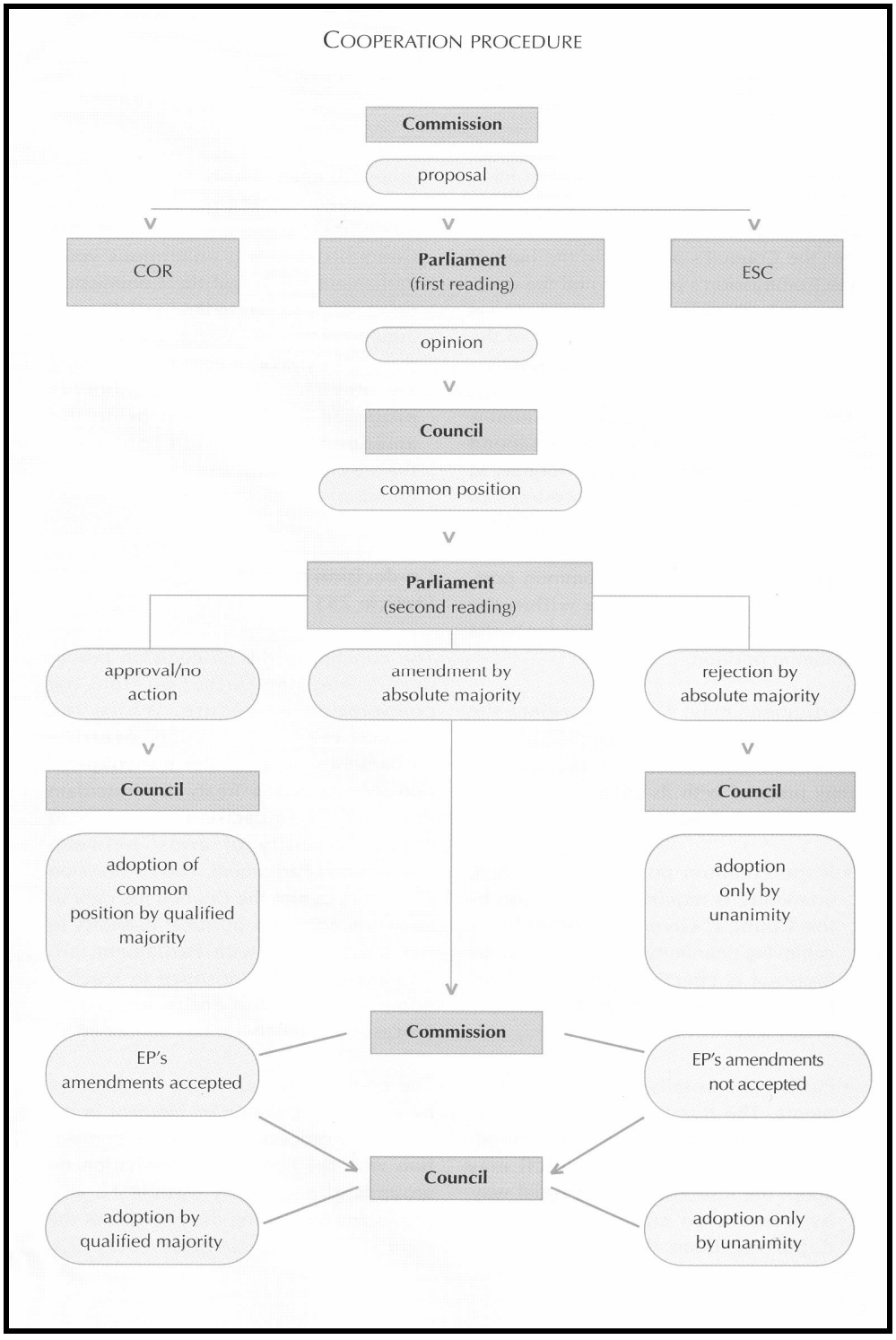
> A co-operation procedure shall be introduced which shall apply to acts based on Articles 7, 49, 54(2), 56(2), second sentence, 57 with the exception of the second sentence of paragraph 2 thereof, 100a, 100b, 118a, 130e and 130q (2) of the EEC Treaty.

In accordance with that paragraph, phrases which stated `after consulting the Assembly` in different Articles in the Rome Treaty were replaced with the phrase `in co-operation with EP`. The co-operation procedure provided EP with some real powers in the decision making process. In a legalistic term, it basically introduced a second reading by the EP and the Council in the law-making process. Article 7 of the SEA explains the co-operation procedure: The process begins with the Commission proposal. This proposal is sent to the Council and EP at the same time. The idea behind sending the document to the EP at the early stage is to give an opportunity to express its opinion on the proposed legislation. After taking the opinion of the Parliament, the Council adopts its `common position` by a qualified majority. So far, the explanations are concerned with the first reading. The `common position` is then subjected to a second reading in the

EP. As soon as EP has received the common position, it has three months during which it may approve, reject or propose amendments to the common position.

If EP approves the common position or give no response within three months, then the Council may adopt its common position by qualified majority in accordance with the common position. If the EP rejects the common position, then the Council may adopt its common position by unanimity. The EP may also propose amendments to the common position by an absolute majority. In this case, these amendments are sent to the Council and to the Commission, which has one month in which to re-examine its proposals. If the Commission accepts the EP's amendment, then the Council may adopt the proposal by qualified majority. If the Council wants to make any further amendments to the proposal, unanimity is required for those further amendments to be adopted. However, if the Commission does not accept the EP's amendments, then the Council can only adopt by unanimity. In cooperation procedure, the Council, in any event, may still exercise its veto power by not taking any decision on the Parliament's amendments or the amended Commission proposals and block the legislation procedure.

Table 2 – Co-operation Procedure[64]



[64] Taken from Borchardt, K. D., *The ABC of Community Law*, Luxembourg: Office for Official Publications of the European Communities, 2000

3.7 Evaluation: Rise of the European Parliament

The assent procedure ensures the EP final say on certain decisions of the Council. The Parliament can give its assent by a majority of the votes except for decisions on the applications for membership, where absolute majority is required. This power, conferred on Parliament, may be regarded as a joint decision-making power that is the practical expression of Parliament's role in defining, implementing and monitoring the Community's foreign policy albeit in a limited area. The cooperation procedure also undoubtedly increased the influence of the EP. In certain areas, it put an end to the old bi-polar legislative procedure between the Commission and the Council, and mark the emergence of a new triangular relationship in which Parliament had real, if limited, legislative powers. It encouraged the hopes that Parliament will gradually become a legislator in its own right. Building on a report on the democratic deficit arising from the institutional imbalance between the Council and itself, the EP stated its intention to exploit the maximum opportunities offered by the SEA.[65] However, the co-operation procedure did not provide a framework for actual joint decision-making between the EP and the Council. In order for Parliament's views to prevail, it must have Commission support. Also, the failure of the EP to obtain a power of legislative initiative, which was still the Commission's exclusive province, was another indicative of the limited consequences flowing from the direct democratic mandate. Therefore, the technocratic elitist institutional structure, the main reason of the democratic deficit problem of the Community, remained mostly intact after the signature of the SEA.

3.8 From SEA to the European Union (EU): 1992 Maastricht Treaty and Introduction of the `Co-decision` Procedure

Shortly after the signature of the SEA in 1987, the European leaders decided to convene two other IGCs to draft a new treaty (the Maastricht Treaty) in the beginning of the 1990s. In order to understand the reasons that are behind the Maastricht Treaty (known also as the Treaty of the European

[65] European Parliament Fact Sheets, *op.cit*.

Union – TEU), one has to look at the external and internal developments that occurred in the second half of the 1980s.

The most important external development of the time was certainly the dissolution of the Soviet Union and the collapse of the communist bloc. After the collapse of the communist bloc, huge power vacuums both in terms of politics and economics appeared in the Eastern Europe. The leaders of the Western European States thought that in order to respond to this power vacuum and the needs of Eastern European Countries, the European Community should be more active. Closely connected with this, another development, which had both internal and external effects, was the reunification of Germany on October 3, 1990. The German reunification changed the balance of power within the Community that had been preserved for the last 40 years and the centre of the Community shifted to the East.[66] This unification awakened the old fears, especially in France, and the best way to cope with it was reinforcing the Community. The central concern should not be a `Germanised` Europe, which had been attempted twice, but a `Europeanised` Germany.

Internally speaking, the demand for the completion of a monetary union was the first reason behind the Maastricht Treaty. After the two oil shocks in 1973-74 and 1979-80, the Community had been experiencing economic stability and prosperity and had reached a high level of economic integration among its members. However, towards the end of the 1980s, some European economies fell into recession and unemployment rate started to rise. This increased concerns about the region's long-term economic progress. It was widely believed that in order to overcome these difficulties, establishment of the economic and monetary union must be completed by introducing the common currency.

The second internal reason behind the Treaty was the desire of the Member State governments, which resulted in the Community wide

[66] Palmer, R.R. and Colton, J. (eds.), *op.cit*., pp. 867 – 886

emergence of political pressures for further integration.[67] In culmination of these and for the purpose of strengthening the democratic credentials of the Community and invigorating the coherence on economic, political and security matters, French President Francois Mitterand and German Chancellor Helmult Kohl, leaders of the two driving forces of the Community, initiated a process in 1990. Upon their initiative, it was decided to convene two IGCs in Rome Summit in December 1990 for further integration on economic and political matters. The IGC on economic matters was aimed at completing the Economic and Monetary Union by introducing the single currency, setting up of a European Central Bank and the transfer of the economic and monetary competences of the Member States to the Community. The IGC on political matters was aimed at increasing the competences and strengthening the democratic credentials of the Community, establishing closer links between the Member States' citizen and Community, developing a common foreign and security policy and developing an integration on judicial and police cooperation.[68]

The ratification process of the Maastricht Treaty came near to a disaster. It was ratified in France and United Kingdom with hair's breath majority and rejected in Denmark in the first round in 1992. In order to persuade the Danish people, the Treaty was amended and opt-out clauses were introduced. Technically speaking opt-out is a potentially permanent exemption from a specific Treaty provision. These exemptions were attached in the protocols to the Maastricht Treaty. In these protocols, Denmark opted-out from single currency and EU measures on defence and United Kingdom opted-out also from single currency and social chapter.[69] As a result, the

[67] Dinan, D., *op.cit*.

[68] Turnbull, P., `Understanding the 1991 Intergovernmental Conference and Its Legacy: "New Institutions" and the Flaws of the Third Pillar`, The University of Manchester, European Policy Research Unit Working Paper, 5/98, 1998.

[69] In the annexed Protocols of the Maastricht Treaty, Denmark opt-outs from single currency and EU measures affecting defence, and United Kingdom opt-outs from single currency and Social Chapter of the Treaty.

ratification process was completed and the Maastricht Treaty came into force on 2 November 1993.

The Maastricht Treaty changed the official denomination of the European integration process. Henceforth, it was to be known as the European Union (EU).[70] The term EU was indicated at the very beginning of the Treaty to make it clear as regards the advancement in the integration process. In this way, Article 1(1) of the Maastricht Treaty reads as `By this Treaty, the HIGH CONTRACTING PARTIES establish among themselves a EUROPEAN UNION, hereinafter called "the Union"`. The Treaty developed also the three-pillar structure. These are `the EC pillar`, `common foreign and security pillar` (CFSP) and `co-operation in justice and home affairs pillar` (JHA). Among them, the first pillar has a supranational character whereas; the second and third pillars have intergovernmental characters. Thus, the Union has two operation methods: the community method in the EC pillar and intergovernmental method in the CFSP and JHA pillars. In Maastricht, a Committee of Regions (Article 198) was also established as an advisory body to assist the European Parliament, the Council of Ministers and the Commission and to provide a forum for the regional and social administrations.

3.9 Institutional Structure in the Maastricht Treaty

In the preparatory stage of the Treaty, one of the most important challenges for the IGC on political matters was to reduce the democratic deficit of the Union. From this perspective, the institutional reform was perceived as an effective cure for the problem. There was a consensus on the idea that in the existing institutional structure, the EP represents the peoples, the Council represents the Member States and the Commission represents the European interests. Thus, the EP's power and status needed to be reinforced vis-à-vis the Council and the Commission.

[70] It must be noted that the EEC and EURATOM are still in force as a separate Treaties.

3.9.1 The European Commission under the Maastricht Treaty

The Maastricht Treaty conferred new powers of investigation and initiative in new policy areas as EMU and social policy to the Commission and strengthened its position vis-à-vis the Member States. It also introduced a new mode of appointment for the President individually and the Commission as a whole (Article 158). It is called as the `double investiture` carried out both by the Member States and the Parliament. `It provides that member governments shall consult the Parliament about their nomination as president of the Commission`. After consultations, with the nominee of the President, the governments of the Member States, this time, nominate the Members of the Commission. The Commission, as a whole, is subject to a vote of approval by the Parliament. After its approval, the Commission is appointed by common accords of the governments of the Member States. This process also ensures the Commission President's formal, consultative and clear leadership role in selection of the other members of the Commission.

The first paragraph of the same Article also amended the terms of office of the Commission and aligned it to that of the Parliament. Previously, the Commission had been appointed by the common accords of the governments of the Member States for the period of 4 years. With Maastricht, this period is extended to 5 years. With this change, the Commission looked more like a Parliamentary executive. However, it should be underlined that the Parliament was not totally responsible for the appointment of the Commission's President and Commission as a whole.

3.9.2 The Council of Ministers under the Maastricht Treaty

As indicated in the first Chapter, decision-making is the most important function of the Council since it gives the Member States ultimate control over the destiny of the Union. There can be no legislation at the Union level without the approval of the Council. With Maastricht, the unanimity principle was left just for a few numbers of decisions in sensitive

areas such as taxation, enlargement, and industrial policy and was replaced with QMV.

Unlike the European Parliament and the Commission, the Maastricht Treaty did not dwell on the functioning and institutional structure of the Council. The inner-workings of the Council also went unexamined. The Council had secretive working methods and was unlikely to publicize its operations. Thus the Treaty did not bring any important innovations to the Council to remedy the democratic deficit problem of the Union.

3.9.3 The European Parliament under the Maastricht Treaty

The Maastricht Treaty did not only enhance the powers of the EP but also gave great importance to the existence and effective functioning of the Europe wide political parties (Article 138a). In this framework, the scope of the assent procedure, which had been introduced by the Single European Act and required obtaining the Parliament's assent before the Council takes certain important decisions, was broadened to six new areas (Table 4). In addition, the category of international agreements falling under the scope of the assent procedure was increased (Article 138b). With this procedure, it became possible for the EP to paralyse the Community action indefinitely. In Maastricht, the EP was also entrusted with the right to set up inquiry committees to investigate misadministration (Article 138c). This undoubtedly enhanced scrutiny power of the EP. These inquiry committees were to be of temporary character and cease to exist on the submission of their reports. The Treaty also introduced for any European citizen or a group of citizens, who are affected from matter(s) falling under the Union competences, the opportunity to have the right to address a petition to the EP (Article 138d). The Parliament also gained the right to appoint the Ombudsman (Article 138e) and other individuals (appointment of the President and the Board Members of the European Central Bank, appointment of the President of the European Monetary Institute).

In addition to these, the EP was also entrusted with new powers in some other areas as well. One of the most important of these was the involvement on the appointment of the Commission President and approval of the appointment of the Commission as a whole. `These reforms were advocated strongly by the President of the Commission, Jacques Delors, as a means of strengthening further the Commission's accountability`.[71] Parliament's budgetary control power was also strengthened. The Commission was becoming increasingly responsible to the EP for its financial management of the Union's budget. It was to submit a report on the expenditure of the budget upon the request of the EP. However, in the area of monetary and economic policy, the EP was provided with no significant role either over the Community's revenue raising or in discussing the criteria to be applied to the `convergence` requirements.[72]

The most important novelty of the Maastricht Treaty was the introduction of the new decision making mechanism that ensured the Parliament co-legislator position and a veto power on a proposed legislation. This mechanism was called co-decision and it was regulated in the Article 189b of the Treaty. The scope of the co-operation procedure was also extended. After the Maastricht, most areas of legislation in which the Council had acted by qualified majority voting were now governed by co-operation. As for consultation procedure, new requirements to consult the EP were introduced (Table 4). In fact, these changes were the indicators of the beginning of a bi-cameral system where the draft legislation is overviewed by two Union institutions: the Council, whose members examine the text from a national perspective and the Parliament, whose members examine it from a political and / or ideological perspective. The EP could also request the Commission to initiate a legislative process on certain issues, where the Commission was unwilling to act by itself or unaware of the importance of the legislation. As a result of these developments, `The proportion of policy areas where the EP is not at all involved in policy making (legislative

[71] Duff, A., Pinder, J. and Pryce, R. (eds.), *Maastricht and Beyond: Building the EU*, London: Routledge, 1994, p.32.

[72] *ibid.*

exclusion) has declined from 72.09 % in the original EEC to 40 % in the "post-Maastricht" EC`.[73]

As stated above, the Maastricht Treaty also encouraged national parliaments to play a more active role at the Union level. In an annexed declaration on the role of the national parliaments, it was emphasized that it was important to tighten the bonds between the national parliaments and EP and to ensure that the national parliaments received information on Union matters.

3.10 The Decision Making Mechanism in the Maastricht Treaty: The Co-decision Procedure

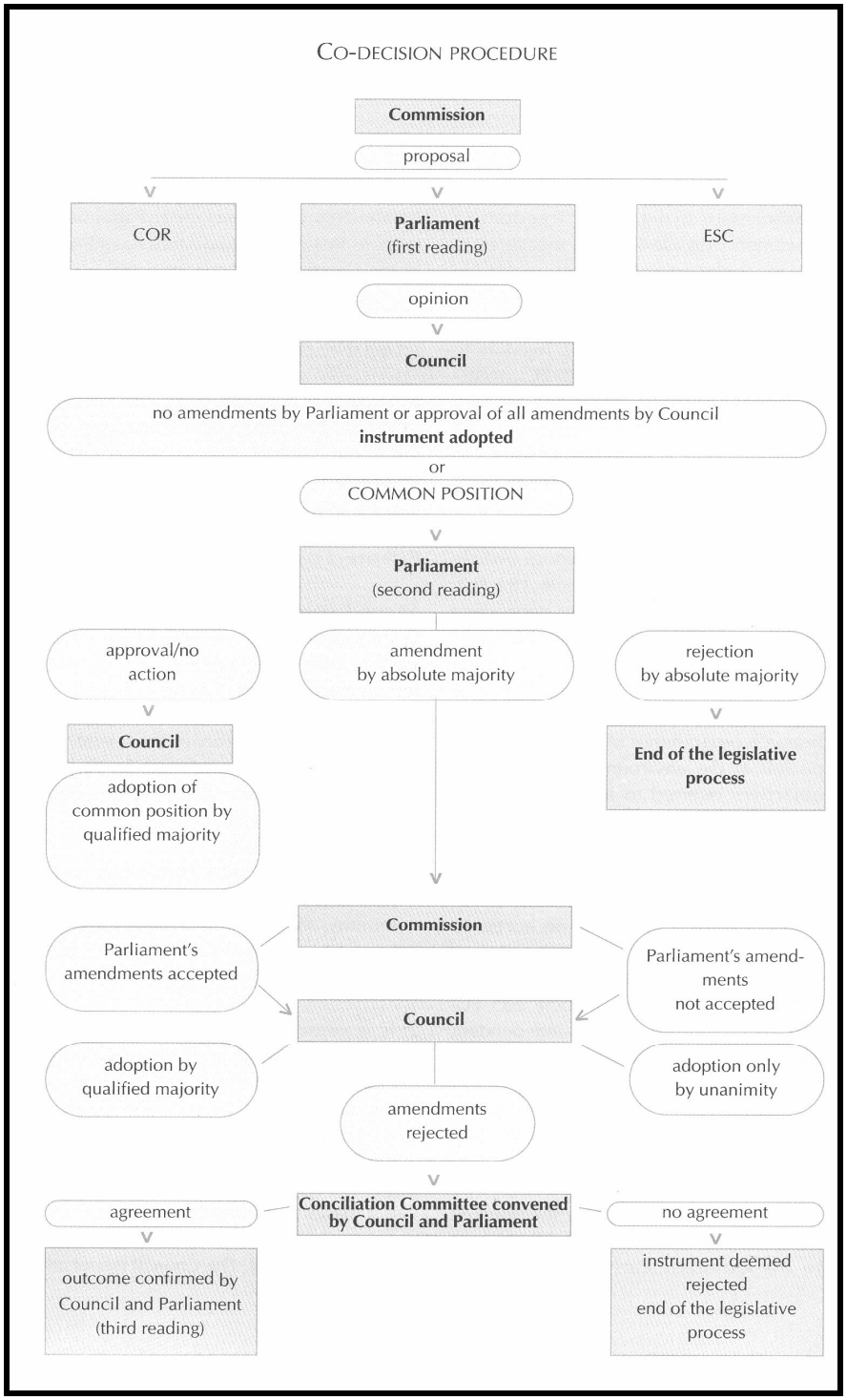
Although the Article itself does not denominate this new legislative procedure as a `co-decision`, one can easily subtract it by reading the Article. In fact, co-decision is just one step further from the cooperation procedure. Accordingly, the starting point of the legislation process is a Commission proposal, which is sent to the Council, the EP and other Committees. In its first reading, the EP, the Economic and Social Committee and the Committee of the Regions send their opinions to the Council. On the basis of these opinions and the Commission's proposal, the Council adopts a common position by a qualified majority and sends it to the Parliament for a second reading. The Parliament has three months to decide on the common position. If the EP accepts it or gives no response within three months, the Council adopts its common position by a qualified majority. If the EP rejects the common position by an absolute majority, the legislative process is at an end. If the EP makes amendment(s) to the common position by an absolute majority, the common position is sent to the Commission. At this stage, the Commission has two options. It may accept the Parliament's amendments or rejects it. If the Commission accepts the Parliament's amendments, the Council adopts the amended common position by a qualified majority. If the

[73] `Co-Governing After Maastricht: The EP's Institutional Performance 1994 – 1998`, EP Directorate-General for Research, Political Series POLI104EN, p.5

Commission does not accept the Parliament's amendments, the Council adopts the amended common position only by unanimity.

However, if the Council does not accept the amendments of the Parliament, then a special `conciliation committee` is convened by an equal number of the Parliament's and the Council's representatives. If the conciliation committee agrees on a joint draft of the legal instrument within six weeks, it must be confirmed within a further six weeks time limit by the Council (qualified majority voting) and by the Parliament (absolute majority of the votes cast). If the conciliation committee does not agree on a joint draft of the legal instrument, then the legislative process is at an end. With the co-decision procedure, the Parliament and the Council gained an equal footing in the legislative process. Thus, the EP could no longer be accused of lacking teeth. Most of the areas previously subjected to the cooperation were now to fall under the co-decision procedure. The co-decision procedure was to be applied in 15 areas (Table 4).

Table – 3 Co-decision Procedure[74]



[74] Taken from Borchardt, K. D., *The ABC of Community Law*, Luxembourg: Office for Official Publications of the European Communities, 2000

3.11 Evaluation: Is Maastricht a Cure for the Democratic Deficit of the Union?

The title of the Maastricht Treaty was so brilliant. It was the Treaty that officially established the `European Union`. It expanded the Union competences into new areas in the first pillar and established second and third pillars. It also re-organized the institutional structure of the Union, internal relationships among the institutions and established new institution (a Committee of Regions) and a mechanism (European Ombudsman). Despite all these developments, the Maastricht Treaty was a real disappointment for those, who had expected radical and fundamental changes to make the Union more democratic and legitimate. There were mainly three reasons for this disappointment.

The first one was the `pillar structure` of the Union. In certain areas falling under the second and third pillars such as internal security, police cooperation and foreign policy; Community institutions, such as the Commission and the Parliament lacked significant powers and particularly the European Parliament had no opportunity to represent the Union citizens due to the intergovernmental character of these pillars.

The second reason was the still deficient structure and powers of the European Parliament as compared to the national parliaments of the Member States, vis-à-vis other institutions of the Union. It has generally been accepted that the national parliaments have five main roles: legitimation, representation, legislation (decision making), scrutiny and control of the executive and recruitment.[75] If one evaluates the Maastricht Treaty from this perspective, then it is seen that the EP only scored very little in legislation and scrutiny and control of the executive yet it scored almost nothing in other areas. Structurally speaking, Member States of the Union have been unfairly represented in the Parliament. Small states have always been over-represented at the expense of the bigger ones and this was not corrected in

[75] Church, H.C. and Phinnemore D. (eds.), *European Union and European Community*, Prentice Hall, 1994, p.256.

the Maastricht Treaty. Besides, the Members of the European Parliament were elected in non-uniform election procedures with the low turnout rates, which indicated the distance between the EP and the European peoples. Indeed, it is not wrong to argue that in the Union created by the Maastricht, direct representation of the peoples in the EP was still weaker than indirect representation of the peoples in the Council. Especially in the second and third pillars, the domination of the Council was more visible and stronger. Thus, after Maastricht, the EP (European peoples) was not freed from the shadow of the Council (Member States).

In the decision-making mechanism, though the EP's competence was enhanced and a new co-decision mechanism was introduced, it was still far away from the legislative role of the national parliaments. The EP still did not have any power to initiate the legislative procedure. It could only ask the Commission to initiate the legislative procedure in a specific area. The Parliament also could not act independently in the decision-making mechanism. It was involved in the adoption procedure of the four different Community legislations: budgetary procedure, assent procedure, cooperation procedure and co-decision procedure. Among them, the Parliament had to act together and shared competences with the Council in cooperation and co-decision procedures. This inevitably limits the influence of the Parliament in the legislative process. Moreover, in the co-decision procedure, it still was not an equal partner of the Council since the Parliament could only halt the legislative process but could not impose its amendments on the draft legislation against a determined Council.

The control mechanism of the Parliament over the other Union institutions was still very weak after the Maastricht. Though the Commission was increasingly responsible to the EP for its financial management of the Union’s budget and the EP could resort to the motion censure against the Commission, it could not dismiss the Commission President and \ or Commissioners individually. It had also no control over the Council in any way.

Third reason was the absence of developing a genuine executive capacity. The President of the Commission and individual Commissioners were not selected among and by the Members of the European Parliament and thus, the Union did not have a genuine, politically oriented and responsible government. The Treaty did not alter this situation either.

To sum up, the Maastricht Treaty did not provide a cure for the democratic deficit problem of the Union and fallacies of the Monnet Method. There was still a gap between the European Union and its citizens, the Parliament had still deficiencies in its structure, the Commission still held the executive power and the Council was still the secretive body. On the contrary, with broadening the competences of the Union without providing any visible solution to the existing problems, the Treaty exacerbated the democratic deficit problem of the Union.

Table 4 – Legislative Procedures of the EP Resulting from the Maastricht Treaty[76]

The Assent Procedure

* Measure facilitating right of residence and freedom of movement of European citizens
* Definition of tasks, objectives, organization and coordination of the Structural Funds
* Creation of Cohesion Funds
* Uniform procedure for European elections*
* International agreements with certain institutional, budgetary or legislative implications
* Accession of the new member states*
* Amendments to the Protocol of the European System of Central Banks
* Special tasks to be entrusted to the Central Bank
* Parliament's assent to be given by an absolute majority of its members

The Co-decision Procedure

* Free movement of workers
* Right of establishment
* Treatment of foreign nationals
* Mutual recognition of diplomas
* Provisions for the self employed
* Services
* Internal market harmonization
* Internal market mutual recognition
* Education*
* Trans-European network guidelines
* Incentive measures in field of public health
* Incentive measures in field of culture
* Consumer protection
* Multi-annual Framework Programme for Research and Tech.*
* Environment programmes
* In these areas the Council must act unanimously

The Co-operation Procedure

* Rules prohibiting discrimination on grounds of nationality
* Transport
* Social Fund implementing decisions
* Other measures in the filed of vocational training
* Trans-European network (interoperability and finance)
* Regional Fund implementing decisions
* Rules for participation of undertakings, research centres and universities in Common Research and Technological Development
* Rules for dissemination of R&TD programmes
* Supplementary R&TD programmes with only some member states
* Community participation in R&TD programmes of several Member States
* Environment (except fiscal, land use, water and energy)
* Development policy
* Social policy (health and safety at work)
* Social policy pursued by eleven Member States concerning working conditions, information and consultation of workers, equal treatment and integration into labour market
* Rules on multilateral surveillance (EMU)
* Definition of conditions for access to financial institutions by public authorities
* Definition of access to dept with central banks by public authorities
* Denominations and specifications of coins (EMU)

The Consultation Procedure

Common Policies: agriculture, private sector competition, regulations for state aids, certain aspects of EMU, certain social policy matters, coordination of structural funds, specific programmes for research and development policy, the setting-up of joint undertakings, environmental policy (fiscal, land use, water and energy), further measures to attain one of the Community's objectives, abolition of restrictions on the freedom of establishment and on the provision of services, taxation, harmonization of national provisions which affect the common market, determination of which third-country nationals require visas, uniform format visas, international agreements other than those requiring the Parliament's assent (except Article 113(3) agreements), specific supplementary actions on economic and social cohesion, specific measures supporting industrial policy, nuclear energy and radiation.

Institutional Matters: appointment of President and members of the Board of the Central Bank and the President of the European Monetary Institute, framework decision on implementing powers for the Commission, appointment of the President of the Commission, setting-up of the Court of First Instance, amendments to Title III of the Statute of the Court of Justice, appointment of the Members of the Court of Auditors, adoption of the Staff Regulations, calling of an intergovernmental conference to modify the Treaty.

Budgetary Matters: decisions on the Community's own resources and Financial and other Regulations.

Citizen's Rights: voting in the European and local elections and other rights.

[76] The data in the table is taken from Duff, A., Pinder, J. and Pryce, R. (eds.), *op.cit.*, pp. 225 – 229.

3.12 Balancing the Maastricht: 1997 Amsterdam Treaty

Having failed to cure the democratic deficit problem of the Union in the Maastricht Treaty and considering the upcoming enlargement that would almost double the population of the Union, Member States continued their efforts to further amend the institutional structure of the Union in the next Treaty revision. The Maastricht Treaty laid the foundations of its successor. The dynamics of further reform in the Union was articulated in the Article N of the Treaty. `Article N of the Maastricht Treaty stated that an IGC would be held in 1996 to revise a number of areas…`.[77]

In June 1994, only six months after the entering into force of the Maastricht Treaty and one year before the IGC, a high level `reflection group` was set up to make required preparations for the upcoming IGC. In these studies, the need for closer cooperation between the Union and the European peoples, the need for more efficient and more democratic Union and the need for enhanced and more harmonized external action emerged as three major areas, where further progress was required. Moreover, besides Turkey, Malta and Southern Cyprus, application of the ten Eastern European Countries, after the ratification of the Maastricht Treaty, for the full membership of the Union necessitated further deepening for the future enlargement.[78] After a series of debates and Denmark's opt outs, the draft Treaty was finalized and ratified by all Member States on 30 March 1999. With the Amsterdam Treaty, EU's competence was further enhanced in some policies in the first pillar such as consumer protection and public health. In the second and third pillars, broader cooperation among the Member States was envisaged. In addition, some issues in the third pillar as asylum, visa,

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[77] Lynch, P., Neuwahl, N. and Rees, G. (eds.), *Reforming the EU – From Maastricht to Amsterdam*, Essex: Pearson Education Limited, 2000, p.1.

[78] Apart from Turkey, Malta and Southern Cyprus, the rest of the countries applied for full membership after the entering into force of the Maastricht Treaty. Turkey 14.04.1987, Malta 16.07.1990, Southern Cyprus 30.07.1990, Hungary 31.03.1994, Poland 05.04.1994, Romania 22.06.1995, Slovakia 27.06.1995, Latvia 13.10.1995, Estonia 24.11.1995, Lithuania 8.12.1995, Bulgaria 14.12.1995, Czech Republic 17.01.1996 and Slovenia 10.06.1996.

immigration policies etc. and border management were transferred into the Community pillar.

Acceptance of the Union by the European peoples required more openness and comprehensibility. Therefore, transparency, simplification and enhancing the democratic credentials of the Union were one of the most important slogans during the IGC. To ensure more transparency, Article 1(4) of the Amsterdam Treaty amended the Treaty on European Union as follows: `The Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible`. Article 255(1) of the Treaty also granted the right of access to the Parliament, the Council and the Commission's documents to the natural or legal person residing in the Union:

> Any citizen of the Union, and any natural or legal person residing or having its registered office in the Member State, shall have a right of access to European Parliament, Council and Commission documents, subject to the principles and the conditions to be defined in accordance with paragraphs 2 and 3.

The introduction of the transparency and openness in the workings of the Union institutions and right of access to their documents were undoubtedly important steps towards bringing the Union closer to its citizens. However, in the last paragraph of Article 255, the Union institutions were granted the power to define their own procedures regarding access to its documents. This ambiguity undermined the achievements in transparency and openness. Contrary to the intentions in the IGC, the Amsterdam Treaty did not make any significant progress in the simplification and consolidation of the existing Treaties. What is worse, the Treaty itself was considered for many as more incomprehensible than ever for the average citizen: `The Treaty text as signed, although it remains the only authentic legal text, is not at first sight easy to read...` (Noel Dorr - writer of the Government's White Paper on Treaty); `... the complexity is truly mind-bogging. The Maastricht Treaty appears almost simple when put alongside what is proposed in the

draft Treaty of Amsterdam` (Deirdre Curtin - Law Professor of international organization at Utrecht in the Netherlands).[79]

3.13 Institutional Structure in the Amsterdam Treaty

Institutional reform was once again seen as one of the most effective methods to remove the so-called democratic deficit of the Union.

3.13.1 The European Commission under the Amsterdam Treaty

During the IGC of 1996 – 97, the Commission was seemed to be under threat at the start of the negotiations.[80] However when the Amsterdam Treaty was concluded, it enhanced its existing position. Indeed, the Commission was preparing internal management reform due to the accusation of the weak budgetary management and the lack of clear political direction during the 1996 – 97 IGC (The process of internal reform of the Commission practically began with the nomination of the Romano Prodi and on the basis of the Commissions' White Paper on Reform on March 1, 2000)[81]. Thus, internal matters as the choice of the Commissioners' portfolios and administrative and managerial reform of the Commission lied outside the scope of the Treaty discussions.

In the Amsterdam Treaty, the Commissions' effectiveness in the decision-making mechanism was strengthened by virtual disappearance of the cooperation procedure and its replacement by a streamlined co-decision procedure. In the amended Article 189b it was stated that `(t)he Commission

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[79] Mc Kenna, P., *Amsterdam Treaty: The Road To An Undemocratic And Military Superstate,* Daughter Community Publishing Programme, 1998, p.55.

[80] See, for instance, the UNESCO education server DADALOS at http://www.dadalos-europe.org/int/grundkurs3/etappe_5.htm

[81] White Paper on Reform can be found at http://www.europa.eu.int/comm/off/white/reform/part1_en.pdf and http://www.europa.eu.int/comm/off/white/reform/part2_en.pdf

shall take part in the Conciliation Committee's proceedings and shall take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council`. The Commission had always been criticized for its formation and terms of office. Although the Maastricht Treaty aligned its terms of office with that of the Parliament and entrusted the consultation power to the EP for the appointment of the Commission President, `the lack of clearly defined presidential role in the College has long been considered a prime weakness`.[82] In the Amsterdam Treaty, the consultation to the EP was replaced with the approval of the EP, which meant that the Parliament became directly involved in the appointment of the President of the Commission. After his / her appointment, the President of the Commission and the Member States jointly agreed on the appointment of the Commissioners, which was then subjected to a formal vote of investiture in the EP. With the Parliament's direct involvement into the appointment of the Commission, its President undoubtedly increased his / her role in determining the individual Commissioners. This also strengthened the democratic legitimacy of the Commission with enhanced political leadership of the Union to a certain extent.

3.13.2 The Council of Ministers under the Amsterdam Treaty

As it predecessor, the Amsterdam Treaty did not make any significant changes in the structure and functioning of the European Council. In this context, the only significant amendment of the Amsterdam Treaty to the rights and duties of the Council was the extension of the QMV into new areas and the shift from unanimity principle to the QMV. However, this was an extremely limited progress and one of the disappointments of the Treaty.

[82] Lynch, P., Neuwahl, N. and Rees, G. (eds.), *op.cit*., *Reforming the European Union – From Maastricht to Amsterdam,* Essex: Pearson Education Limited, 2000, p.35

3.13.3 The European Parliament under the Amsterdam Treaty

The institutional reform was once again based on the option of increasing the powers and competences of the EP vis-à-vis the Council and the Commission. It is widely agreed that the European Parliament has been a major beneficiary of the Amsterdam Treaty. `The EP has been portrayed as one of the "winners" as a result of the Amsterdam Treaty, and it is undoubtedly true that some of its powers have been extended and its role has been usefully reinforced`.[83] Amsterdam Treaty introduced three innovations to enhance the legitimacy of the EP: transferring more legislative powers to the EP, eliminating procedural imbalances in the decision-making mechanism and increasing its powers vis-à-vis both the Commission and the Council. With the Treaty, the assent procedure was extended to protect the democratic character of the Union:

> The Council, meeting in the composition of the Heads of State or Government and acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the assent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of principles mentioned in the Article 6(1), after inviting the government of the Member State in question to submit its observations (Article 7(1)).

Co-decision procedure was also extended into 23 new areas and reformulated. One of the biggest achievements of the Amsterdam Treaty was the elimination of the procedural imbalances by reformulating the co-decision procedure and de-facto elimination of the cooperation procedure. Accordingly, if the Council and the EP agreed on parallel texts in the first reading, then the proposal could be adopted at the end of this stage. This meant de-facto elimination of the third reading and simplification of the second one. Cooperation procedure was also virtually limited into the economic matters and legislative procedures of the Union were reduced to three (assent, consultation, co-decision). After these legislative amendments, the co-decision procedure became more or less the general rule. With the new

[83] *ibid.,* p.70

co-decision procedure, `the Union is made up, more clearly than before, of two representative bodies, which are equal in principle as the Union of the states and the peoples of Europe`.[84] The EP was also entrusted with more power in the nomination and the investiture procedures of the Commission President. This power and more perfected co-decision procedure strengthened the position of the EP against the Commission and the Council. Apart from these legislative and procedural amendments, in order to strengthen the democratic credentials of the Parliament, the Amsterdam Treaty introduced the possibility of a uniform electoral procedure in the EP elections. Accordingly, the elections need not be identical in all Member States but at least, it should be made in accordance with principles common to all Member States. Article 190(4) regulated this: `The European Parliament shall draw up a proposal for elections direct universal suffrage in accordance with a uniform procedure in all Member State or in accordance with principles common to all Member States`.

The role of the national parliaments in the Union were also increased and formalized by the Amsterdam Treaty. In the annexed `Protocol on the Role of the National Parliaments` the COSAC[85] (Conference des Organes Specialises dans les Affaires Communautaires – European Affairs Committees of the Parliaments of the European Union), which brings together the expert committees of national parliaments, was formally recognized. The Protocol, additionally, entrusted more rights to the National Parliaments in the Union mechanism and stated that all the Commission's consultation documents are to be forwarded promptly to the National Parliaments of the Member States. As a result, the role of the COSAC was definitely strengthened at the political, if not at the legal level.

[84] *ibid.,* p.15

[85] In May 1989, the Presidents of the Parliaments of the Member States agreed at their conference in Madrid to reinforce the role of the National Parliaments in the Community by bringing together the various committees in the National Parliaments, specializing on the European affairs. This was the beginning of the COSAC. In the following November, COSAC convened at Paris and agreed on to intensify the exchange of information and to meet twice a year in the country holding the Presidency of the Council to discuss issues of common concern.

3.14 Evaluation: Further Steps Towards More Democratic Europe?

The Amsterdam Treaty undoubtedly constituted a further step towards more harmonized, more unified and more democratic Europe. The new Treaty provisions on the European citizenship, on the institutions of the Union and on the decision making procedures were prima facie seemed to be a clear victory of the democratic front in the Union. Although the right of access to the Parliament, the Council and the Commission documents, Parliament's direct involvement in the appointment of the Commission President and streamlined co-decision procedure and its extension in new areas were positive developments oriented to the reducing the democratic deficit of the Union, they were not adequate to remove the problem. The streamlined co-decision procedure, enhancing the Union's power in the second and third pillars and extension of the QMV were nothing but an illusion and further weakened the democratic credentials of the Union. The co-decision procedure, by which the Parliament had a certain role in decision making on new legislation, did not apply in all cases where the legislative powers of national parliaments were transferred to the Union. Moreover, in the second and third pillars, extension of the Union's power at the expense of the Member States caused the loss of the parliamentary control over security and foreign affairs. In addition, although the extension of the QMV enhanced the decision-making capacity of the Council, it weakened the indirect legitimacy through the national parliaments since no national government had a veto power in the Council.

In most of the areas of cardinal importance, particularly those directly related with the future enlargement of the Union, such as the future size of the European Commission, the weighting of votes in the Council and the further extension of QMV the Amsterdam Treaty did not resolve the issues, which were deliberately postponed and annexed to the Treaty under the title of `Protocol on the Institutions with the Prospect of the Enlargement of the Union`. The two articles of the Protocol laid down these amendments:

> At the date of entry into force of the first enlargement of the Union … the Commission shall comprise one national of each of the Member States, provided that, by that date, the weighting of the votes in the Council has been modified, whether by re-weighting of the votes or by dual majority, in a manner acceptable to all Member States, taking into account all relevant elements, notably compensating those Member States which give up the possibility of nominating a second member of the Commission (Article 1).
>
> At least one year before the membership of the European Union exceeds twenty; a conference of representatives of the governments of the Member States shall be convened in order to carry out a comprehensive review of the provisions of the Treaties on the composition and functioning of the institutions (Article 2).

Both Articles were formulated in a complex manner and include conditionality. In the first Article, although the Member States agreed to reduce the number of the extra Commissioners at the date of the first enlargement, this was not an automatic process. The condition for this was solving the problem of the weighting of votes in the Council. In the second Article, again there was a condition to realize the required amendment. In order to convene another IGC on the Treaty revision and institutions of the Union, the number of the Member States should have exceeded 20. These conditions were open-ended and imprecise. Thus, as Ludger Kühnhardt rightly says the declaration clearly demonstrates the inability of the Union to introduce reforms in the absence of immediate pressure: `(i)t is tragic that substantial reforms seem to be made in the EU only in a situation of crisis or under external pressure`.[86] The difficulty of reaching a consensus is also reflected in the large number of Protocols and Declarations annexed to the Treaty.[87]

Apart from these postponed reforms, some existing problems regarding the democratic deficit were not handled at all. For instance,

[86] Kühnhardt, L., `Towards Europe 2007 – Identity, Institution Building and the Constitution of Europe`, ZEI Discussion Paper C85, 2001, pp. 11 – 12.

[87] 13 Protocols and 59 Declarations were annexed to the Amsterdam Treaty.

although it had been insisted during the IGC, the Parliament was not entrusted with the right of motion of censure against individual Commissioners. In the budgeting procedure, the Treaty was a total failure. The process was still complicated and the co-decision was not extended to the budgetary matters. In addition, the distinction between the compulsory and non-compulsory expenditures still existed. Thus, after the Amsterdam Treaty, the Parliament still did not enjoy the power of the National Parliaments over the financial management of the Union.

3.15 Dealing with the Leftovers: 2000 Nice Treaty and the Proclamation of the European Charter of Fundamental Rights

As stated above, the EU Members could not reach an agreement on several politically controversial and sensitive issues mainly in the area of the institutional reforms of the Union at Amsterdam in 1997. Thus, they annexed a protocol to the Treaty on the continuation of the discussions on further reform of the EU. In December 1999, the European Council at Helsinki decided to summon another IGC on the basis of this protocol to cope with the upcoming enlargement and the so-called `leftovers` from the Treaty of Amsterdam. These leftovers can be grouped under four headings: the size and composition of the Commission, the weighting of votes in the Council, the scope of the QMV and closer cooperation. It was also agreed on to make preparations for a `European Charter on Fundamental Rights`[88].

In the IGC, Member States did not reach any agreement or consensus on these headings till the last minute. Since the institutional reform was directly related with the upcoming enlargement, the failure to reach an agreement on these headings might have put the enlargement process into a deadlock. In the European Council meeting in Biarritz (France), the last meeting of the head of state and government before the final meeting in Nice, there was a conflict among the member states on almost all issues on the

[88] Andenas, M. and Usher. J. (eds), *The Treaty of Nice: Enlargement and Constitutional Reform*, Oxford: Hart Publishing, 2003.

agenda.[89] Last but not least, German Chancellor Schröder proposed for another intergovernmental conference in 2004 aiming to achieve a clear division of powers among different levels of the government of the EU (union level, national level and regional level). After long and fervent discussions, the agreement was reached on the institutional reforms and on the `European Charter of Fundamental Rights`. The Treaty of Nice was adopted on 12 December 2000 and signed in Nice on 26 February 2001[90]. The Treaty was to come into force after the ratification of 15 Member States. Since the ratification required a constitutional change in Ireland, Irish government had to hold a referendum. The result of the referendum was `no` for the Nice Treaty, just like the Danes voted `no` for the Maastricht Treaty. However, with the pressure from the other Member States and with the help of effective and continuing public campaign[91], the Irish people changed the colour of their vote in the second referendum. The Nice Treaty came into force on 1 February 2003.

3.16 Institutional Structure in the Nice Treaty

The Nice Treaty amends the Amsterdam Treaty provisions on the EU institutions in order to prepare the Union for enlargement. Accordingly, three fundamental institutional changes in the main political institutions of the Union have been made.

3.16.1 The European Commission under the Nice Treaty

The first institutional change was realized in the composition of the Commission. A reform of this issue required reaching a compromise between

[89] See for instance, http://europa.eu.int/comm/archives/igc2000/index_en.htm

[90] Treaty of Nice Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts, Official Journal of the European Communities, 2001/C 80/01, March 10, 2001 and Laursen, F., `Nice and Post-Nice: Explaining Current and Predicting Future Developments in the EU`, at http://www.lib.tku.edu.tw/libeu/eulecture/Nice%20and%20Post-Nice.pdf

[91] During the campaign the common slogans were `It's Better 2 Be Inside` and `Yes To Europe and Yes To Nice`.

the larger states and the smaller states of the Union. That was because the former were unwilling to give up their pre-dominant position in the Commission while the latter feared to loose their influence. After negotiations, it was agreed that the number of Commissioners were not to exceed 27, meaning that large member states were to loose their second commissioner by 2005. If the member states exceeded 27, than a rotation system were to be implemented in order to ensure that all member states were treated fairly.

3.16.2 The Council of Ministers under the Nice Treaty

The second institutional reform was re-weighting of the votes in the Council. In fact, it was mainly the demand of the large member states claiming that they were relatively underrepresented in the old weighting system and that would be worsened in the enlarged union since most of the acceding countries, with the exception of Poland, were relatively small.[92] The Nice Treaty ensured more votes to the big countries, and the size of population were to matter more in the decision making process. Thus, re-weighting of votes was expected to increase the legitimacy of the system. From 1 January 2005 onwards, the weighting of votes in the Council were to be changed as follows:

[92] Germany for instance, has 10 votes in the current system with 80 million populations. Austria, on the other hand has 4 votes with 8 million populations.

Table 5 – Distribution of Votes in the Council after the Treaty of Nice

Member States			Candidates	
	Current	1 January 2005		1 January 2005
Austria	4	10	**Bulgaria**	10
Belgium	5	12	**Cyprus**	4
Denmark	3	7	**Czech Republic**	12
Germany	10	29	**Estonia**	4
Finland	3	7	**Hungary**	12
France	10	29	**Latvia**	4
Greece	5	12	**Lithuania**	7
Ireland	3	7	**Malta**	6
Italy	10	29	**Poland**	27
Luxembourg	2	4	**Romania**	14
Portugal	5	12	**Slovakia**	7
Sweden	4	10	**Slovenia**	4
Spain	8	27		
The Netherlands	5	13		
United Kingdom	10	29		

Treaty of Nice also further extended the application of QMV principle to 23 new areas (leaving the core issues outside these changes) and changed the voting mechanism. Since one member state can veto decisions under unanimity principle, an increased use of QMV principle enhanced the decision-making capacity of the Union. However, the new mechanism, introduced to remedy the democratic deficit and ensure more public participation, complicated the former process rather than expedite it. Accordingly, legislation proposals were to have to ensure `triple majority`; 62% of the Union's total population, at least 15 Member States and at least 55 % of the members of the Council. Enhanced cooperation was also redefined. Nice Treaty made `enhanced cooperation` easier by requiring absolute minimum number of states of eight, where the Amsterdam Treaty required a

majority of the Member States. The so-called `yellow card` procedure was also introduced in Nice to warn or sanction a member state, which risked breaching the fundamental principles of the EU. The Council, acting by 4/5 of its majority could issue recommendations against such country.

3.16.3 The European Parliament under the Nice Treaty

The third institutional change was limiting the number of MEPs to an utmost of 732. From 1 January 2009 onwards, the seats per member state will be changed as follows:

Table 6 – Seats in Parliament after the Treaty of Nice

Member States			Candidates	
	Current	1 January 2005		1 January 2005
Austria	21	17	**Bulgaria**	7
Belgium	25	22	**Cyprus**	6
Denmark	16	13	**Czech Republic**	20
Germany	99	99	**Estonia**	16
Finland	16	13	**Hungary**	20
France	87	72	**Latvia**	8
Greece	25	22	**Lithuania**	12
Ireland	15	12	**Malta**	5
Italy	87	72	**Poland**	50
Luxembourg	6	6	**Romania**	33
Portugal	25	22	**Slovakia**	13
Sweden	22	18	**Slovenia**	7
Spain	64	50		
The Netherlands	31	25		
United Kingdom	87	72		

3.17 Evaluation: We Can't Go On Like This!

The Treaty of Nice is not a grand plan on the EU integration process like the Treaty of Rome, the Single European Act or the Maastricht Treaty. Member States' purpose was just to clear the leftovers from the Amsterdam Treaty and determine a medium-term agenda for re-structuring of the Union institutions. However, the result, achieved in the Nice Treaty, satisfied neither the EU institutions nor the Member States. Thus, the outcome can be described at best as disappointment:

> A few days after the completion of the marathon negotiations in Nice, the predominant emotion felt by most of those involved, in particular those who played a key role in the preparatory work, including Parliament's two representatives, is one of painful disappointment. This disappointment is understandable. All the argument put forward and the options considered had come together in a set of demands for institutional reform which, when taken as a yardstick, clearly reveal the outcome of the Nice summit to be meagre and into many respects inadequate.[93]

Although the Treaty made important institutional changes particularly in the composition of the Union institutions, the democratic deficit problem of the Union, stemming from the Monnet Method and the earliest structure of the institutions, remained. The Commission still had a privilege to initiate the legislation process, the Council's decisions were still closed to any effective parliamentary scrutiny and the Parliament still suffered from the lack of competence as compare to the national parliaments and lack of public interest and support. Indeed, in the post-Nice fatigue, many politicians and Eruocrats shared the view of Tony Blair: `we can't go on like this`.[94]

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[93] Dimitris Tsatsos (EP Parliament Representative to the 2000 Intergovernmental Conference), `The Treaty of Nice: A Failure Which can Only be Remedied by Means of an Effective and Properly Implemented Post-Nice Process`, EP Official Document, PE294.739

[94] Heather Grabbe, `What Comes After Nice?`, at http://www.cer.org.uk/pdf/policybrief_nicetreaty.pdf

CHAPTER 4

NEW APPROACHES TO THE DEMOCRATIC DEFICIT AND THE CONSTITUTIONALIZATION OF THE EU

From the second half of the 1950s to the late 1990s, several institutional reforms were carried out to remove the negative aspects of Monnet's legacy in the institutional structure of the Union. In this context, the competences of the Parliament have been enhanced vis-à-vis the Council and the Commission; the legitimacy of the Commission has been strengthened by introducing new election mechanism and ensuring more Parliamentary scrutiny over the acts and actions of the Community and the decision-making mechanisms of the Council have been streamlined and accelerated by generalizing the QMV. Furthermore, the importance of the democratic participation of the European peoples and national parliaments to the Union policies and issues has occasionally been underlined. However, all these reforms failed because they did not address directly to the legacy of the Monnet but to the outcomes if it in the sense that the technocratic elitist structure of the Union, forged by Monnet's himself, and disregards the needs and expectations of the European people, still remained. In this framework, the upcoming enlargement put extra strain on the need for an institutional reform, since in the enlarged Union, the existence of the strong democratic credentials and duly functioning of the Union institutions was more important than ever.

In this chapter, the latest developments in the Union regarding the efforts to remove the democratic deficit problem are explored in a historical context, starting from the proclamation of the European Charter of Fundamental Rights. In addition to this, the Commission's efforts to re-establish its monopoly over the Union affairs, and constitutionalisation

process of the Union are elaborated, and solution proposals for the democratic deficit problem are developed.

4.1 The European Charter of Fundamental Rights

In the Nice IGC, the European Parliament, the Council of Ministers and the European Commission proclaimed the `European Charter of Fundamental Rights` in December 2000. The Charter was prepared by a convention, under the chairmanship of Roman Herzog, the former German President. The convention was composed of 62 members (a chairman, 15 members from head of states and governments, 16 members from EP and 30 members from National Parliaments). Besides, ECJ, ECHR and Council of Europe had participated to the convention with an observer status.[95] Although the first reference to the fundamental rights was made in the preamble of the SEA, the Maastricht and the Amsterdam Treaties, did not lay them down in detail. Therefore, the primary purpose of the convention was to strengthen the protection of fundamental rights in the EU. The Charter contained a comprehensive list of rights; including civil, political, social and economic, listed in 54 Articles to ensure the dignity of the individuals and equality among them, to safeguard essential freedoms, to foster solidarity and to provide justice for the European citizens:

> Conscious of its spiritual and moral heritage, the Union is founded on the invisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and rule of law. It places the individual in the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.[96]

Just like the `Bill of Rights` in the United States of America, the Charter of Fundamental Rights aims to found the EU on a set of fundamental rights. There is no doubt that this effort is part of the constitutionalization

[95] Further information regarding the Charter can be found at http://www.europarl.eu.int/charter/default_en.htm

[96] Charter of Fundamental Rights of the European Union, Official Journal of the European Communities, C364/1

process in the EU. Nevertheless, in spite of the goodwill and sincerity of its authors, the Charter is criticized from several points of view. For instance, the Charter itself restricts its applicability and reliability: `Horizontal clauses in the Charter greatly restrict its scope of application, hence raising the doubts as to whether it will apply to all those areas of life that are vital to the ensuring of democratic deficit`.[97] Furthermore, formal status of the Charter also creates discontentment among the EU member states: `(M)any of those opposed a binding charter... In formal terms, the Charter is a political declaration, not a legally binding document. However, the Charter has already become an indispensable part of the legal interpretation of rights in the EU`.[98] Even so, it must be underlined that the works of the IGC and preparation of the Charter was completely different from the previous IGCs. Previous IGC processes were closed and secretive; whereas, the Charter process was remarkably open, which were to serve as a basis for the future Treaty amendments.

4.2 Laeken Declaration: Convention on the Future of Europe[99]

In Nice Summit, the heads of states and governments of the EU agreed to open further debate on the future of the EU on a wider platform, based on the Chancellor Schröder's proposal at European Council Meeting in Biarritz. In Nice Declaration, Member States committed themselves to wider and deeper debate on the future of the European Union, particularly by addressing the following questions:

> How to establish and monitor a more precise delimitation of powers between the European Union and the Member States, reflecting the principle of subsidiarity;

[97] Eriksen, E.O. and Fossum, J.E. `Europe In Search Of Its Legitimacy`, ARENA Working Paper, August 2002, p.18

[98] *ibid.*

[99] For more information on the `Future of European Union`, see http://european-convention.eu.int and http://europa.eu.int/futurum

> The status of the Charter of Fundamental Rights of the European Union, proclaimed in Nice, in accordance with the conclusions of the European Council in Cologne;
> A simplification of the Treaties with a view to making them clearer and better understood without changing their meaning;
> The role of national parliaments in the European architecture.[100]

A year later, in the Laeken European Council on 14th – 15th of December 2001, a declaration was adopted. The so-called `Laeken Declaration` is only 8 pages in length and briefly assessed the current situation under three main headings: the democratic challenge facing Europe, Europe's new role in a globalized world and the expectations of the citizens of Europe. In assessing the democratic challenge and the expectations of citizens, Laeken Declaration persistently touched on the problems stemming from the institutional structuring of EU and its founding treaties and a broad range of `Acquis Communautaire`:

> Within the Union, the European institutions must be brought closer to its citizens. Citizens undoubtedly support the Union's broad aims, but they do not always see a connection between those goals and the Union's everyday action. They want the European institutions to be less unwieldy and rigid, and, above all, more efficient and open... More importantly, however, they feel that deals are all too often cut out their sight and they want better democratic scrutiny.[101]

Successive amendments to the Treaty have on each occasion resulted in a proliferation of instruments, and directives have gradually evolved towards more and more detailed legislation. The key question is therefore whether the Union's various instruments should not be better defined and whether their number should not be reduced.[102]

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[100] Nice European Council Meeting Presidency Conclusions, at http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/00400-r1.%20ann.en0.htm

[101] Laeken Declaration, p.1 at http://europe.eu.int/futurum/documents/offtext/doc151201_en.htm

[102] *ibid, p.4*

`The European Union currently has four Treaties. The objectives, powers and policy instruments of the Union are currently spread across those Treaties. If we are to have greater transparency, simplification is essential`.[103] Therefore, in the last part of the Declaration, the Council stated its decision to convene a convention on the future of Europe, which was also to function as a preparatory forum for the 2004 IGC. The Convention was expected to find ways to close the gap between the EU and the peoples of Europe and to get rid of its bureaucratic and irreconcilable image.

4.3 The White Paper on European Governance: the Heroic Commission[104]

The European Commission also got involved in the democratic deficit discussions of the Union and prepared a document entitled `European Governance: A White Paper` (hereinafter called the `White Paper`), in which it enumerated solution proposals to rectify the democratic deficit. Before analysing these proposals, it may be beneficial to look into its historical background and rhetoric. In the Commission's homepage, the `white paper` is defined, as `White Papers are documents, containing proposals for Community action in a specific area`.[105] Historically speaking, the preparation of the White Paper goes back to the resignation of the Santer Commission due to the claims of misuse of authority. It was developed within the context of the Commission's continuing administrative reform agenda. In the White Paper, to wipe out the bad image of the Commission, the importance of the existence of five principles, which are also attributed to the peculiarities of `good governance`, are strongly underlined as following: openness, participation, accountability, effectiveness and coherence. By

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[103] *ibid, p.7*

[104] This title is taken from the article of Fritz W. Scharpf, `European Governance: Commission's Concerns vs. The Challenge Of Diversity`, in Joerges, C., Meny, Y. and Weiler, J.H. (eds.), *Mountain or Molehill? A Critical Appraisal of the Commissions` White Paper on Governance*, Jean Monnet Working Paper 6/01

[105] The definition is taken from http://europa.eu.int/comm/off/white/index_en.htm

looking at its rhetoric, it can be argued that the White Paper is difficult to grasp for the ordinary EU citizen and that it was written for an expert of Community law and organization.[106]

The White Paper is composed of four main parts. In the first part, the reasons that lie behind the preparation of the document are enumerated. According to the White Paper, `the Union is often seen as remote and at the same time too intrusive`.[107] Therefore, `the democratic institutions and representatives of the people, at both national and European levels, can and must try to connect Europe with its citizens`.[108] It is understood from this statement that the fundamental problem of the democratic deficit in the Union is lack of legitimacy and effectiveness. `The White Paper on European Governance concerns the way in which the Union uses the powers given by its citizens`.[109] In this part, it is also argued that much can be done to change the way the Union works under the existing Treaties.

In the second part, the White Paper explains the principles of good governance. While explaining it, the White Paper establishes a direct link between good governance and legitimacy problem of the Union. The White Paper defines good governance as `rules, process and behaviour that affect the way in which powers are exercised at European level, particularly as regards openness, participation, accountability, effectiveness and

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[106] Steinberg, P., `Agencies, Co-Regulation and Comitology - and What About Politics? A Critical Appraisal of the Commission's White Paper on European Governance`, in Joerges, C., Meny, Y. and Weiler, J.H. (eds.), *Mountain or Molehill? A Critical Appraisal of the Commissions` White Paper on Governance*, Jean Monnet Working Paper 6/01, pp.163 – 176.

[107] European Governance: A White Paper, Commission of the European Communities, COM(2001)428, Brussels, 2001, p.3

[108] *ibid.*

[109] Eriksen, E. O., `Democratic or Technocratic Governance?`, in Joerges, C., Meny, Y. and Weiler, J.H. (eds.), *Mountain or Molehill? A Critical Appraisal of the Commissions` White Paper on Governance*, Jean Monnet Working Paper 6/01, p. 62

coherence`.[110] Thus, it promotes greater openness, accountability and responsibility for all those involved in the policy-making processes.

In the third part, the White Paper lists the proposals for change. It argues that the better involvement of the EU citizens to the policy-making of the EU should be ensured. For this, `the Commission will establish from 2002 onwards a more systematic dialogue with European and national associations of regional and local government at an early stage of policy making`.[111] Better policies, regulation and delivery mechanism should also be established. The Commission also criticizes the Council and the Parliament for limiting its executive function. `The reluctance of the Council and the European Parliament to leave more room for policy execution to the Commission means that legislation often includes an unnecessary level of detail`.[112] Overall result of this is the lack of flexibility, which damages the effectiveness of the Commission. The Commission also wants to get involved more actively in the open method of coordination[113] and wants to play a coordinating role.[114] It also argues that in the co-decision process, the Council and the EP should attempt to agree on proposals in the first, rather than the second reading with the assistance of the Commission.[115] Commission also underlines the need for refocusing on policies and institutions. In order to

[110] The White Paper, p.8

[111] The White Paper, p.14

[112] The White Paper, p.18

[113] The European Council held in Lisbon on 23 and 24 March 2000 established the open method of coordination. It is a new form of coordination of national policies consisting of the Member States, at their own initiative or at the initiative of the Commission, defining collectively, within the respect of national and regional diversities, objectives and indicators in a specific area, and allowing those Member States, on the basis of national reports, to improve their knowledge, to develop exchanges of information, views, expertise and practices, and to promote, further to agreed objectives, innovative approaches which could possibly lead to guidelines or recommendations.

[114] The White Paper, p.22

[115] The White Paper, p.23

deliver better policies, the Union must revitalize the Community method, which has served the Union well for almost half a century.[116] The White Paper defines the Community method as follows;

> It guarantees both diversity and effectiveness of the Union…The European Commission alone makes legislative and policy proposals. Its independence strengthens its ability to execute policy, act as the guardian of the Treaty and represent the Community in international negotiations… Legislative and budgetary acts are adopted by the Council (representing the Member State) and the Parliament (representing the citizens). The use of qualified majority voting in the Council is an essential element in ensuring the effectiveness of this method. Execution of policy is entrusted to the Commission and national authorities… The European Court of Justice guarantees respect for the rule of law.[117]

In the final part, how the concept of governance and good governance practices will affect in the shaping of Europe are explained.

Despite all those high-valued principles and proposals to remove the democratic deficit of the Union, in fact, the White Paper is nothing but the desire of the Commission to create a kind of tyranny in the European Union.[118] One of the biggest failures in the White Paper is that it downgrades the meaning of legitimacy to the limited concept of governance:

> Commission was taking a short cut and saw the governance debate as the equivalent of the well-known democratic deficit debate. When we speak of governance, we are, in fact,

[116] The White Paper, p.29

[117] The White Paper, p.8

[118] Ironically, the colour of the `white` paper denounced the intention of its writers. During the French Revolution, the white was the colour of Ludwig XVI's personal guard's cockade, the colour of the Restoration, but, at the same time, the colour of the denial of the coming democratic system, which makes political dispute its most important component. This connection, which will become obvious in what follows, reminds one, in fact, of the Commission's viewpoint. The White Paper has an appropriate place among the political colour symbolism. For more detail, see Christoph Möllers, `Policy, Politics or Political Theory` in Joerges, C., Meny, Y. and Weiler, J.H. (eds.), *Mountain or Molehill? A Critical Appraisal of the Commissions` White Paper on Governance*, Jean Monnet Working Paper 6/01

> discussing democracy. European democracy, how it works, why it does not work better and what its prospects are. The puzzling thing is that, the Commission does not address the legitimacy issue in the White Paper. The paper is not about democracy and how to combat with democratic deficit....[119]

This limited approach is not a cure for the legitimacy crisis of the Union. A possible way to alleviate the legitimacy crisis and create a real European discourse could lie in the politicisation of the Union. This means that the technocratic – elitist structure of the Commission should evolve into political one by polarisation on the basis of political discourse in the Commission. Yet, the White Paper fails to achieve it.[120]

The White Paper calls for a fundamental reform of the European governance and wants to bring the Union closer to its citizens. For this purpose, it is full of promises of wider participation and consultation in the decision-making processes. Participation is not only an element of good governance but also an indispensable element of the modern democracy theory. However, when the White Paper is read in detail, it is realized that the proposals of the Commission are out on a lib like a bubble in the air. Although the participation is given great attention, it is a limited form of participation in three senses. Firstly, participation is only limited for certain type of organizational groups. It is only for organized interest groups as NGOs, trade unions, religious units and employment organizations. The individual participation is excluded from the mechanism. Secondly, this participation is only in a consultative form and limited to the pre-decision stage. Therefore, interest groups `have limited power, only in the consultative and pre-decision stage, with no decisive power`.[121] And lastly,

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[119] Wind, M., `Bridging the Gap Between Governed and Governing`, in Joerges, C., Meny, Y. and Weiler, J.H. (eds.), *Mountain or Molehill? A Critical Appraisal of the Commissions` White Paper on Governance*, Jean Monnet Working Paper 6/01, p. 188

[120] Steinberg, P., *op.cit.*

[121] Magnette, P., `European Governance and Civic Participation: Can the European Union be Politicised?`, in Joerges, C., Meny, Y. and Weiler, J.H. (eds.), *Mountain or Molehill? A Critical Appraisal of the Commissions` White Paper on Governance*, Jean Monnet Working Paper 6/01, p. 25

the democratically legitimated European political parties are not included among the lists of the participants, to whom the Commission intends to consult in the preparation of the legislative initiation. Indeed, `by not integrating (European political parties), the White Paper jeopardizes the possibility of addressing the legitimacy problem of the Union.[122] The Commission demands more freedom in the execution of the EU policies and in the White Paper, it tries to get rid of the control of the Council and the Parliament. Particularly, the proposal of limiting (de facto abolition) of the comitology process should be evaluated within this perspective. By doing this, the Commission removes the Council control in the implementation level. It also underlines that the decisions in the co-decision procedure should be taken at the first reading with the assistance of the Commission and says that this may reduce the time needed to adopt legislation by 6 to 9 months.[123] By this proposal, Commission wants to reinforce its role in the decision-making processes. Because, `under the new co-decision procedure… there has been a subtle shift in the weight of inter-institutional decision making in favour of bilateral relationships between the Council and the Parliament, sidelining the Commission`.[124] In order to strengthen its ground, the Commission also proposes variety of measures, as co-regulation and the new method of coordination. Yet, the Commission contradicts itself. On the one hand, it works for more decentralization in implementation to relieve its own workload and resources. On the other hand, it tries to avoid the loss of power. Indeed, the Commission does not have appropriate resources to cope with the ever-increasing number of tasks. It also proposes the re-strengthening of the community method. Commission's proposal, however, drastically limited the role of the Council and Parliament: `they should set the essential features of the policy making, namely the framework legislation,

[122] Steinberg, P., *op.cit.*, p. 165

[123] The White Paper, p.22

[124] Heritier, A., `The White Paper on European Governance: A Response to Shifting Weights in Inter-institutional Decision-making`, in Joerges, C., Meny, Y. and Weiler, J.H. (eds.), *Mountain or Molehill? A Critical Appraisal of the Commissions` White Paper on Governance*, Jean Monnet Working Paper 6/01, p. 73

while the regulation of all details should be left to the Commission`.[125] Therefore, `revitalizing the Community method (as the Commission proposes) proves to be a dead end street because the remedies of the past will not cure the problems of the future`.[126] For these reasons, the White Paper, unfortunately, is away from providing solutions to the democratic deficit problem of the Union and it does not ease the constitutionalization process through accentuating the need for democratic reform.

Therefore, the Commission can be criticized in three aspects: Firstly, the main intention of the White Paper seems not to be remedy the democratic deficit problem of the EU but to strengthen the role of the Commission at the expense of the member states and European peoples. Secondly, Commission also seems to aim at altering the balances among the EU institutions in favour of itself, especially in the policy initiating and decision making stages. And finally, proposals in the White Paper would also deteriorate the current level of democratic legitimacy of the European policies that are delivered by the agreements of democratically elected national governments. Indeed what the Commission has in mind is the creation of a `benevolent dictatorship` of technocrats.

4.4 The Convention on the Future of Europe: A Constitution for Europe?

Based on the Council's intention, stated in Laeken Declaration, to convene a convention on the existing problems of the Union and to prepare the Union for the 2004 IGC, The Convention on the Future of Europe started its working on 1 March 2002 with the participation of all relevant parties; including the candidate countries to give them an opportunity to voice their vision or at least opinion on the future of Europe. Thus, as compared to the IGCs, the Convention was more transparent, more public and more

[125] *ibid.*

[126] Koch, B., `The Commission White Paper and the Improvement of European Governance`, in Joerges, C., Meny, Y. and Weiler, J.H. (eds.), *Mountain or Molehill? A Critical Appraisal of the Commissions` White Paper on Governance*, Jean Monnet Working Paper 6/01, p. 183

democratic. It was composed of 105 members (a chairman, 2 vice-chairmen, 15 representatives of the heads of state or government, 30 members of the national parliaments, 16 members of the European Parliament, 2 Commission representatives, 13 representatives of the heads of state or governments of the candidate countries and 26 representatives of the candidate countries national parliaments). 13 observers from European Economic and Social Committee, Committee of Regions, European Ombudsman and other social partners also participated in the working of the Convention.[127] The former French President Valery Giscard d'Estaing was the Chairman of the Convention. Former Italian Prime Minister Giuliano Amato and former Belgian Prime Minister Jean Luc Dehaene were Vice-Chairmen.

Three main areas, which were laid down at the Laeken Declaration also constituted the formal agenda of the Convention: division of the responsibilities between the EU, regions and Member States; simplification of the increasingly confusing European Treaties, role of the national parliaments in the European integration and the legal status of the European Charter of Fundamental Rights. Six working groups have been established in order to work on these subjects.

[127] In the Convention, M. Oğuz DEMİRALP (replaced Mr. Nihat AKYOL in August 2002) on behalf of the Government and M. İbrahim ÖZAL (replaced Mr. Kürşat ESER in December 2002) and M. Necdet BUDAK (replaced Mr. A. Emre KOCAOĞLU in December 2002) on behalf of the National Parliament represented Turkey.

Table 7 – Organization of the Convention on the Future of European Union [128]

Presidium		**Members**
- Chairman - 2 Vice-Chairmen - 2 Members of the EP - 2 Members of the Commission - 2 Members of the National Parliaments - 3 Representatives of the Presidency of the EU - 1 Guest from the Candidate Countries	→ ← 	- The President and two Vice-Presidents - 28 Representatives of the Heads of State or Government of the Member States and Candidate Countries - 56 Representatives of the Parliaments of the Member States and Candidate Countries - 16 Members of the EP - 2 Representatives of the Commission

Observers
- European Economic and Social Committee - Committee of Regions - European Social Partners - European Ombudsman

Table 8 – Working Groups of the Convention on the Future of European Union

Working Groups
1) Subsidiarity
2) Charter of Fundamental Rights
3) Legal Personality
4) National Parliaments
5) Complementary Competences
6) Economic Governance

[128] European Convention, on the Future of the European Union, p.5, at http://europa.eu.int/futurum/comm/documents/brochure_en.pdf

Strengthening the EP, and restructuring the relationships between the EP and other institutions of the Union on the one hand and EP and national parliaments on the other were important topics on the agenda of the Convention to rectify the democratic deficit problem. All these discussions, however, were the top of the iceberg. It was under the sea level that the real discussions took place on the formulation and formation of a European Constitution. Indeed, the Convention quickly turned into a `constitutional convention` since the simplification of the EU Treaties was one of the most pretentious aims of the Convention members and this is generally shared by the Member States also. A growing number of constitutional drafts have been submitted for debate to the Convention.[129] In one of his speeches, Convention's Chairman Valery Giscard d'Estaing also gave clues about the unseen part of the iceberg: (F)undamental questions on Europe's role; the division of competence in the EU; simplification of the Union's instruments; how the institutions work and their democratic legitimacy; a single role for Europe in international affairs; and finally, a Constitution for European citizens.[130]

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[129] Among them, the European Commission also prepared a draft constitution and sent to the Convention. Historically speaking, although the idea of a `European Constitution` is as old as the idea of the `Unity of Europe` itself, from 1980s onwards, the numbers of the constitutional proposals have been augmented at an increasing rate. Some of them are; **`Draft Treaty Establishing the European Union` (14 February 1984),** Altiero Spinelli; **`The Constitution of the European Union` (1993),** The European Constitutional Group; **`A Constitution for the European Union` (21 September 1996),** European University Institute; **`A Basic Treaty for the European Union` (May 2000),** Bertelsmann Group; **`Draft for a Constitution of the European Union` (26 June 2000),** Union pour la Democratie Française; **`Constitution of the European Union` (28 June 2000),** Alain Juppe; **`A Constitution for the European Union` (26 October 2000),** The Economist; **`A Model Constitution for a Federal Union of Europe` (3 September 2002),** Andrew Duff (MEP); **`A European Constitution` (30 September 2002),** Robert Badinter; **`Constitution of the European Union` (1 October 2002),** Elmar Brok (MEP); **`Draft Constitutional Treaty of the European Union and Related Documents` (16 October 2002),** Alan Dashwood; **`Preliminary Draft Constitutional Treaty` (28 October 2002),** Praesidium of the European Convention; **`Constitution of the European Union` (28 October 2002),** The European Policy Centre – Institut Royal des Relations Internationales (IRRI); **`The Constitution of the European Union (10 November 2002),** European People`s Party; **`A Draft Constitution for the European Union` (19 November 2002),** Elena Paciotti (MEP); **`Contribution to a Preliminary Draft – Constitution of the European Union` (4 December 2002),** The European Commission.

[130] Eriksen, E.O. and Fossum, J.E., *op.cit.,* p.20

The Convention completed its work on 10 July 2003 and submitted the `Draft Treaty Establishing a Constitution for Europe` to the European Council Meeting in Thessaloniki on 20 June 2003. It was quite a historical opportunity to lay down the foundations for a genuinely democratic European Union, able to meet the challenges of today and the opportunities of tomorrow. The Convention clearly indicates that the EU is self-consciously involved in a constitutional process, but there is still a question that must be addressed: What kind of a constitution does the EU need?

4.5 Draft Treaty Establishing the Constitution for Europe

Our Constitution… is called a democracy because power is in the hands not of a minority but of the greatest number.[131]

The idea of having a `European Constitution` is as old as the idea of a Unity of Europe itself. In 1950, when the European movement started its venture on the path of an economic integration it was perceived as an elitist game in the hands of the small groups of economists and `eurocrats`. This economic community was mainly intergovernmental in character and it had a negligible effect on the European citizens' daily life. From 1950s to 1980s this economic integration movement influenced the policies of the Member States and transformed them in line of the common rules and procedures within the framework of several Treaties that also established an economic community among its members. Nevermore, since the mid 1980s and especially with the introduction of the SEA, European integration process has regulated not only the economic relations among the member states but also introduced and developed social policies, which have direct effect on the daily lives of the European citizens.

[131] Thucydides II, p.37, taken from the `Draft Treaty Establishing a Constitution for Europe`, p.5

Box 1 – Preamble of the Draft Treaty Establishing a Constitution for Europe

Conscious that Europe is a continent that has brought forth civilization; that its inhabitants, arriving in successive waves from earliest times, have gradually developed the values underlying humanism: equality of persons, freedom, respect for reason,

Drawing inspiration from the cultural, religious and humanist inheritance of Europe, the values of which, still present in its heritage, have embedded within the life of society the central role of the human person and his or her inviolable and inalienable rights, and respect for law,

Believing that reunited Europe intends to continue along the path of civilizations, progress and prosperity, for the good of all its inhabitants, including the weakest and most deprived; that it wishes to remain a continent open to culture, learning and social progress; and that it wishes to deepen the democratic and transparent nature of its public life, and to strive for peace, justice and solidarity throughout the world,

Convinced that, while remaining proud of their own national identities and history, the peoples of Europe are determined to transcend their ancient divisions and, united ever more closely, to forge a common destiny,

Convinced that, thus "united in its diversity", Europe offers them the best chance of pursuing, with due regard for the rights of each individual and in awareness of their responsibilities towards future generations and the Earth, the great venture which makes of it a special area of human hope,

Grateful to the members of the European Convention for having prepared this Constitution on behalf of the citizens and States of Europe,

[Who, having exchanged their full powers, found in good and due form, have agreed as follows:]

As the European integration developed both horizontally and vertically, the technocratic structure of the EU has also changed. The initial concern on the creation of a common market was eventually transformed into a kind of political unity, especially after the completion of the Economic and Monetary Union (EMU) and introduction of the common currency. Over time, it has also developed a union-wide political system with the well functioning of executive, legislative and judiciary. Its institutions are capable of taking and implementing decisions: `... European law has become the supreme or higher law and strong, durable and authoritative institutions

have been developed to interpret it and enforce it`.[132] Within five decades, European integration process has not only tripled the number of its members but also has evolved into a political entity, which is more developed and integrated than any kind of international organization but less than a state. The Union acquires two divergent characters in itself: supranationalism and intergovernmentalism. Thus, today, the question of legitimacy of the democratic Member State can no longer be seen as separate from the EU. And to achieve further integration, the Union requires a formal constitution, which will further enhance democratic credentials and makes the Union more understandable in the eyes of the European peopes. However, in order to understand the constitutional debates correctly, one has to look at the already existing treaties that constitute basis for such expectations. Since the creation of EEC at 1957, the EU Member States have signed five main Treaties and adopted a Charter.[133] In order to understand whether these Treaties and the Charter have created a constitutional framework for the EU or not, two crucial questions must be addressed.[134]

4.5.1 Do the International Treaties on which the EU is Founded have a Constitutional Character?

This question has already received its answer by the three revolutionary decisions of the ECJ, taken in Van Gend en Loos Case (Case 26/62 Van Gend en Loos v. Nederlandse Administraite der Belastingen [1963] ECR I), Costa vs. ENEL Case (Case 6/64 Costa v. ENEL [1964] ECR 585) and Les Verts Case (Case 294/83 Partie Ecologiste Les Verts v. European Parliament [1987] ECR 1387). With these three decisions, the ECJ underlined that the community legal order is a new legal order, which is

[132] Hine, D., `Constitutional Reform and Treaty Reform in Europe`, in Menon, A. and Wright, V. (eds.), *From the Nation State to Europe*, Oxford: Oxford University Press, 2001

[133] Treaties of Rome (1957), Single European Act (1986), Maastricht Treaty (1991), Amsterdam Treaty (1997) Treaty of Nice (2000) and Charter of Fundamental Rights of the European Union (2000)

[134] These questions are taken from the article of Piris, J.C., `Does the European Union Have a Constitution? Does it Need One?`, Jean Monnet Working Paper, 5/2000

distinct from international legal orders and which has the basic elements of constitutional character such as rule of law, protection of fundamental freedoms and human rights, stated in the Article 6 (1) and Article 6 (2) of the TEU:

> The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States (Article 6(1)).
>
> The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law (Article 6(2)).

In addition, hierarchy of norms, formulation of powers and competences of the Union institutions, fundamental values and Charter of Fundamental Rights strengthen the constitutional character of the existing Treaties. Thus, it is not wrong to argue that the Treaties of Rome in 1957, the Single European Act of 1986, the Treaty of European Union (Maastricht Treaty) on 1991, the Treaty of Amsterdam on 1997 and the Treaty of Nice on 2000 have constitutional character and form a pre-constitutional phase of the EU.[135]

4.5.2 Is the Constitutional Character of the EU Comparable to the Constitution of a State?

Jean Claude Piris[136] provides valuable comparison to answer this question. Although the EU treaties have constitutional character, they also

[135] In fact, the founders of the EC treaties could choose, if they wished, to use the term `constitution` at the designation process of these treaties. For instance, although it is formed as an international organization, even not a supranational one, International Labour Organization (ILO) was created by the adoption of a `constitution` in 1919. Another international organization, International Refugee Organization (IRO), was also formed by the adoption of the constitution in December 15, 1946. The examples can be augmented.

[136] Jean Claude Piris, J.C., *op.cit*.

reflect the fact that the EU lacks some essential characteristics of a modern state in an institutional sense such as human resources, financial resources, administrative and technical capacities and the means of coercion. From the point of legalistic view, although the power of the ECJ has increased considerably from its establishment, the implementation and control of the community law for the most part is still held by national administrations. Community institutions also function with insufficient human resources. Piris, for instance, states that according to the 1999 data, total staff of the all EU institutions is just about 35.000, whereas, that of the city of Paris is about 56.000. [137] EU also lacks of financial resources. Its budget[138] represents only a tiny proportion of the GDP of Member States (1.1% of the combined GNP of the 15 member states) and considerable amount of this budget (more than 75%) is spent by or for the Member States. Due to these reasons, the administrative and technical capacity of the EU is very low. Only 4.4% of the Union budget goes for administrative expenditures. EU also has no means of coercion like the European army or police force.

To sum up, although the EU Treaties have constitutional character, they can not be compared with the constitution of a modern state.

The national constitution is a good starting point on thinking and understanding the European constitution. The article of Joseph Raz provides

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[137] *ibid,* p.17

[138] The budget of the European Union is the act, which each year authorizes the funding of all Community activities and operations. It allocates resources in a manner, which reflects current priorities and policies. Its development in the course of time reflects the way in which the building of Europe has changed. In 1970 the Community budget amounted to ECU 3.6 billion (ECU 19 per inhabitant per year) and consisted almost entirely of agricultural spending linked to the common agricultural policy. Today, the Union budget stands at € 100 billion (€ 250 per inhabitant per year) and covers the entire range of EU policies: agricultural spending, regional development aid, expenditure on research, education and training, international aid and cooperation with the rest of the world, etc. Yet, total spending under the Union budget (payment appropriations) is equivalent to only 1.1 % of the combined gross national products (GNP) of the 15 Member States. Furthermore, only 5 % of the total budget is spent on preparing Community policies, drawing up and implementing the Union budget, monitoring the expenditure approved by Parliament and the Council, enforcing Community law, and administering the Union. For more information, see *The Budget of the European Union: how is your money spent?*, European Commission, Directorate-General for Education and Culture, 2000

ample reflection on the subject. [139] He starts with giving the two different definitions of constitutions in a narrow and a broad sense. In a narrow sense, the constitution is a law that establishes and regulates the main organs of the government. In a broad sense, on the other hand, the constitution is a law, which is written, constitutive (defining the main organs of the government and their respective power), stable, entrenched (it can only be amended by special procedures, different from those governing ordinary legislation), superior (it has precedence over all other laws in case of conflict), justiciable (the compatibility of all other laws and regulations can be tested in judicial procedures) and reflects the common ideology of the society.[140] This detailed definition does not necessitate that a constitution should meet all the requirements listed above, but at least it is logical to expect that a constitution should have some of them.

Bearing this definition in mind, when we shift our attention to the EU, it is seen that the Union has developed an integrated legal order that confers not only rights but also obligations to the individuals as well as the states. The constitutionalization process has been advanced in two phases: the first phase covers between 1962 and 1979.

[139] J. Raz, `On the Authority and Interpretation of Constitution: Some Preliminaries`, in L. Alexander (ed.), *Constitutionalism,* Cambridge: Cambridge University Press, 1998.

[140] *ibid.*, pp. 152 – 154.

Table 9 – Weight of the Administrative Expenditures in the 2000 – 06 Financial Perspectives[141]

(1999 Prices, Commitment Appropriations)

							(million €)
	2000	2001	2002	2003	2004	2005	2006
Agriculture	40.920	42.800	43.900	43.770	42.760	41.930	41.660
Structural measures	32.045	31.455	30.865	30.285	29.595	29.595	29.170
Other internal policies	5.930	6.040	6.150	6.260	6.370	6.480	6.600
External action	4.550	4.560	4.570	4.580	4.590	4.600	4.610
Administration	4.560	4.600	4.700	4.800	4.900	5.000	5.100
Pre-accession aid	3.120	3.120	3.120	3.120	3.120	3.120	3.120
Total (with reserves)	89.600	91.110	98.360	101.590	100.800	101.600	103.840
Accession (in available payment appropriations below the own resources ceiling)	-	-	4.140	6.710	8.890	11.440	14.220

In this phase, the doctrines of direct effect (Van Gend en Loos Case / 1962) and supremacy (Costa vs. ENEL Case / 1964) were introduced by the decisions of the ECJ. The direct effect empowers individuals to sue Member State governments or other public authorities for either not conforming to the obligations stated in the treaties or for not properly transposing EU directives into national law. The supremacy, on the other hand, prohibits the public authorities from relying on national law to justify their failure to comply with EU law and requires from the national judges to resolve conflicts between national law and EU law in favour of the latter. The second phase covers between 1984 and 1991. In this phase, the doctrines of indirect effect (Van Colson Case / 1984) and governmental liability (Francovich Case / 1991) were introduced by the ECJ. Indirect effect means that the national judges must interpret the national laws in conformity with the European law. Governmental liability, on the other hand, means that the national courts can

[141] *The Budget of the European Union: how is your money spent?*, European Commission, Directorate-General for Education and Culture, 2000, p.5

hold a Member State liable for the damages to the individuals due to the improper or insufficient implementation of the EU legislation by that Member State.[142]

Despite all these legal developments as regards constitutionalization, from 1990s onwards, the successful treaty reforms and deepening process increased not only the need but also the expectations for a single, solid, simple and understandable document and constitutionalization debate turned into a political one. After the Maastricht and Amsterdam IGCs, the question of a European constitution became more pressing than ever and since the Nice Summit, such a constitutional debate has already been underway:

> Till recently, the efforts of the Union were concentrated on the creation of a monetary and economic union... But today, we need a broader perspective if Europe is not to decay into a mere market, sodden by globalisation. For Europe is much more than a market. It stands for a model of society that has grown historically.[143]

Two speeches, made by the German Foreign Minister Joschka Fischer, one at EP on 12 January 1999 and the famous `Quo Vadis Europe?` at Humboldt University on 12 May 2000 also boosted the popular interest on a single written European constitution. Especially in the later speech, Fischer formed conjectures about the `finalite politique` of the EU. He stated that there were two main items on the future agenda of the Union: enlargement and the Europe's capacity to act. Particularly after the introduction of a single currency, the political integration was the last stone to be put on the foundation of the European integration. He pertinaciously underlined that having a single constitution was of cardinal importance to accomplish the political integration:

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[142] *Selected Instruments Relating to the Organization, Jurisdiction and Procedure of the Court / Court of Justice of the European Communities*, Luxembourg: Office for Official Publications of the European Communities, 2001

[143] Habermas, J., `Why Europe Needs a Constitution`, New Left Review 11, September – October 2001, p.5

> The transition from a union of states to full parliamentarization as a European federation, something Robert Schumann demanded 50 years ago. And that means nothing less than a European Parliament and a European government, which really do exercise legislative and executive power within the Federation. This Federation will have to be based on a constituent Treaty... These three reforms – the solution of the democracy problem and the need for fundamental reordering of competences both horizontally, i.e. among the European institutions and vertically, i.e. between Europe, the nation-state and regions – will only be succeeded if Europe is established anew with a constitution... The main axis for such a European constitution will be the relationship between the Federation and the nation state.[144]

Having a single constitution has many advantages and benefits for the EU. Among them, the most important one is to have a simple and clear document. The current ambiguity in the decision making procedures at the European level cause mutual distrust between the EU citizens and Union institutions and lower the interest of the citizens to the EU issues. Thus, such a simple and clear document would definitely increase the public participation to the EU affairs. In addition, a single document is also perceived as a necessity to easily surmount difficulties of the upcoming enlargement, which would make the Union more divergent and complex. It will also facilitate reaching a consensus on other low-level issues by strengthening the institutional control to cope with the potential deadlock in the implementation of the EU level policies. A single constitution increases the civic virtue among the European peoples and last but not the least; it ensures one strong voice against the outside world. Indeed, the development of a single European constitution does not a sine-qua-non element for the European legal sphere. As it is indicated above, with a series of landmark decision, ECJ constitutionalized the existing Treaties to some extend. However, from the point of federalism and European federalists, particularly after the completion of the monetary union and establishment of the common foreign and security policy with the Maastricht Treaty; single, solid and well-structured written constitution is the last and the most important

[144] Fischer, J., `From Confederacy to Federation – Thoughts on the Finality of European Integration`, May 2000, at http://www.dgap.org/english/tip/tip4/fischer/20500-p.htm

missing edifice to be put in the foundation of the so-called `United States of Europe`.

Although the Union has the draft Constitution since 20 June 2003, it is argued that this is not a genuine one because in terms of preparation, inuring and amendment procedures, it is an international treaty. In addition, it lacks the cardinal element of constitutions: `the demos`. This argument brings us to one of the crucial problems of the democratic deficit of the EU; `no demos thesis`.[145] According to no demos thesis, the unification of states is not sufficient for the well functioning of the Union and development of a European Constitution. There is also a need for a genuine European `Volk` (peoplehood) at the Union level to make European Constitution meaningful. Thus, without `demos` one cannot talk about a real European democracy. For instance, Kirchhof encapsulates that as long as there is not a European people, who is sufficiently homogenous to for a democratic will, there should not be a European constitution at all. However, the `no-demos thesis` is an open-ended discussion and it is argued here that as long as the EU has no desire to become a super-state like the USA, the genuine European demos is not required. At this point, one must not confuse a nation of citizens with a common destiny, shaped by common language, culture and history, which can let us talk about a `European public sphere`. Therefore, the missing `demos` is not a prerequisite for the European constitution but might be an ideal product of it and successful integration: `Instead of no European democracy without a European "demos", we have no European "demos" without a European democracy`.[146]

Turning back to the Draft Constitution for Europe, it is seen that the Union's institutions and their roles and responsibilities are listed under Title IV (Articles 18 – 31). Accordingly, the European Parliament has four main functions, two of which are enjoyed in cooperation with the Council of

[145] The Constitutional Judge Paul Kirchhof first used this expression at Karlsruhe ruling of the German Constitutional Court.

[146] Hix, S., `The Study of the European Union II: the "new governance" agenda and its rival`, *Journal of European Public Policy, 5,1*, 1998, p.42.

Ministers. These are enacting the legislation and exercising the budgetary function. Additionally, the Parliament ensures the political control and consultation and elects the President of the Commission.

In the CFSP pillar, the Parliament has no role in policy coordination and implementation. In this framework, `The European Parliament shall be regularly consulted on the main aspects and basic choices of the common foreign and security policy, and shall be kept informed how it evolves`.

The Council of Ministers, apart from the above-mentioned functions, carries out the policy making and coordination functions. While Legislative Council works in collaboration with the Parliament in executing legislative function, General Affairs Council works in collaboration with the Commission.

The Legislative and General Affairs Council shall ensure consistency in the work of the Council of Ministers. When it acts in general affairs function, it shall, in liaison with the Commission, prepare, and ensure follow-up to, meetings of the European Council. When it acts in its legislative function, the Council of Ministers shall consider and, jointly with the European Parliament, enact European laws and European framework laws, in accordance with the provisions of the Constitution... (Article 23(1))

Foreign Affairs Council, on the other hand, implements the Union's external policies in accordance with the guidelines, determined by the European Council.

Unlike otherwise stated, (a) qualified majority shall be defined as at least 55 % of the members of the Council, comprising at least fifteen of them and representing Member States comprising at least 65 % of the population of the Union. A blocking majority must include at least four Council members, failing which the qualified majority shall be deemed attained... When the Council is not acting on a proposal from the Commission or from the Union Minister for Foreign Affairs, the qualified majority shall be defined

as 72 % of the Members of the Council, representing Member States comprising at least 65 % of the population of the Union (Article 24) This new procedure will be in force by November 1, 2009.

The Commission, like in the existing Treaties, is responsible for the execution of the Union policies and budget. The ECJ's monitoring and control over the Commission action is ensured. The Commission also represents the Union in external relations, with the exception of the CFSP. In addition to these, the legislative initiative is still vested to the Commission (Article 25). The first Commission appointed under the provisions of the Constitution shall consist of one national of each Member State, including its President and the Union Minister for Foreign Affairs who shall be one of its Vice-Presidents. As from the end of the term of office of the Commission…the Commission shall consist of a number of Members, including its President and the Union Minister for Foreign Affairs, corresponding two thirds of the number of Member States, unless the European Council, acting unanimously, decides to alter this figure (Article 25(5-6)). The President of the Commission is nominated by the European Council to the approval of the Parliament (Article 26(1)).

The Draft Constitution also establishes the Union Minister for Foreign Affairs. The European Council, acting by QMV, with the agreement of the President of the Commission appoints the Union Minister for Foreign Affairs, who has responsibility to conduct the Union's common foreign and security policy. He / she is one of the vice-presidents of the Commission and during his / her terms of office bound by the Commission's working procedures. In this framework, the European Parliament is regularly consulted on the main aspects and basic choices of the CFSP, and is informed on how it evolves.

The Draft Constitution devotes separate title for the democratic life of the Union (Title VI). Under this title, it is stated that the Union is founded on the principle of representative democracy. European Parliament represents the citizens and European Council and Council of Ministers represent the Member States. Decisions at Union level is taken as openly as and as closely

as possible to the citizens (Article 45). Furthermore, it is stated that more than one million people coming from the significant number of Member States may invite the Commission to submit a legislative proposal (Article 46). Transparency of the Union is also enhanced in the draft constitution. Parliament's meeting is open to the public, as that of the Council while examining and adopting the legislation. Citizens, natural and legal persons residing in the Union are also right to access the Union's documents.

The Draft Constitution can be criticized from four aspects. Firstly, rather than establishing an original structure for the roles and responsibilities of the institutions of Europe, it encapsulates the current situation in the existing Treaties, with the exceptions of establishment of the Union Minister for Foreign Affairs, amendments in the exercise of the Presidency of the Council of Ministers, new qualified majority principle, amendments in the appointment and composition of the Commission, new Protocols on the Role of National Parliaments and Application of the Principles of Subsidiarity and Proportionality. Secondly, the Parliament is not entrusted with the power to initiate legislation and the Commission is still the only competent institution to initiate the legislative procedure. Although the European people can invite the Commission to submit legislation proposal, the required number is extremely high and the statement of `significant number of Member States` adds further ambiguity. In the draft constitution, the Parliament has also no policy coordination and implementation role in the second pillar. It is generally informed or at best consulted by the European Council and Council of Ministers. Thirdly, the Commission's investiture procedure is still undemocratic. Particularly, the President of the Commission is not elected directly by the Parliament but nominated by the European Council and appointed by the Parliament, which undermines the Commission's legitimacy and politicisation of the Union. Lastly, although the Draft Constitution provides citizens to access the Union documents, the relevant Union institutions are the only authority to determine the rules of procedure of the process, which undermines the uniform applicability. Therefore, I argue that the draft constitution, also, will

not be cure for the legacy of the Monnet Method and the so-called democratic deficit problem of the European Union.

Indeed, today, like all complex systems, the Union has difficulty in ensuring harmony among its various institutions and fields of activity. In order to solve this problem and to remove the existing democratic deficit, the Union has to realize a momentous and a large scale institutional reform, as a result of which, the European Parliament transforms into a real legislative body with the Council of Ministers as a second chamber and the European Commission transforms into a real executive body, totally responsible from its action(s) to the Parliament. This new institutional structure should be supported with the effective involvement of the national parliaments of the Member State into the EU affairs and a well-formulated constitution.

It may be argued that the Parliament is the institution that has most benefited from the institutional amendments of the last century of integration and still this does not cure to the existing problem. However, it should be remembered that the EP had been established almost as a symbolic unit at the beginning and despite all these institutional amendments, it is not as powerful as the national parliaments of the Member States. Furthermore, the reason of persistent democratic deficit is not solely due to the power of the Parliament. The legitimacy is another factor that must be taken into account. Today, the EP has great powers with low public participation. It constitutes a different kind of parliamentary politics from that of the national parliaments, due to which, it fails to register as a genuine parliament in the eyes of many European citizens.[147] In addition, the EP is not also a real source of government, since the Commission is not constituted by and from the Parliament and Europeanization of political parties is still low. Therefore, in institutional reform, besides its power, its legitimacy should be strengthened. The Council should also be integrated to this new Parliament and become its second chamber. The German Foreign Minister Fischer has already given an answer for what should be the function of this Parliament:

[147] Warleigh, A., *Democracy in the European Union,* London: SAGE Publications, 2003, pp. 77 – 92.

> A European Parliament must represent two things: a Europe of the nation states and a Europe of citizens. This will only be possible if this European Parliament actually brings together the different national political elites and then the different national publics.[148]

Among the trio, the Council obviously requires the highest degree of reforms since in each Treaty revisions, it have been deliberately left out from the revision process. As a result, successive enlargement waves reduced the effectiveness of the Council, because its agenda has been crowded with many technical subjects. Thus, the General Affairs Council composed of Foreign Affairs Ministers of the Member States faced with difficulties in coordinating the activities of the special technical Councils. After the institutional reform, European Council should be re-structured and `one` European Council should replace all other Councils, including the General Affairs Council. This is also an expression that the policy-making within the Union is no longer a matter of foreign affairs of the Member States but it becomes the domestic affairs of the Union. Though it is the EU's most important decision-making body, the Council has no collective accountability for its actions. Only individual members are accountable to their national parliaments. Since they have no accountability, no sanctions can be imposed on the Council if it fails to reach its target or its decision(s) cause undesirable results. Therefore, the control of national parliaments over their individual members should be more effective. For these reasons, openness and transparency of its work and democratic participation of all national parliaments to the Council affairs is needed to make the Council more legitimate.

In this two-chamber Parliament, the co-decision procedure should be extended on all legislative areas and the legislative capacity should be enjoyed both by the first and second chambers on an equal footing. The members of the second chamber should be appointed by the Member States' governments for the term of five years, aligned with that of the first chamber. The members, then, elect their own president among themselves. All decisions in the second chamber should be taken by QMV to ensure the effective functioning and more transparency in the decision-making procedures.

[148] Fischer, J., *op.cit.*, p.5

`(T)he Council should legislate with open doors. Policy coordination as well as other activities should also be carried out with open doors as much as possible. Clear reasons should be given when closed sessions were deemed necessary`.[149] The COREPER should assist the Council in its daily workload and it should evolve into more technical and specialized body on the European affairs.

Today, `the Commission has often been portrayed as a hybrid and unique organization due to its mixture of political and administrative tasks`.[150] However, it should only perform the executive function in the re-structured Union and transfer legislative function to the EP, including the right to initiate the legislative procedures. Different alternatives can be chosen in the formation of the Commission. For instance, each member state can be represented with one Commissioner or the Commission might be composed of a limited number of Commissioners. Among different alternatives, this later option undoubtedly increases the effectiveness of the Commission. The Commissioners should be elected on the basis of the political affiliation in the EP not based on the nationality, which prevents conflict of interests between small states and big states. This would inevitably politicise the Commission, which is one of the most effective ways to remove Jean Monnet's `community method` and would unquestionably enhance its power by strengthening its legitimacy. Over the past decades, the Commission's functions have increased enormously as the Union deepened and expanded its competences over new areas; yet, its authority has progressively been weakened at the expanse of the EP. Thus, a kind of direct link should be established between the Commission and the EU electorate. The Commission should be formed as follows: each European party group selects its candidate for the Commission Presidency. The European electorates vote not only for the MEPs but also for the Commission President in the European elections. Then, the selected Commission President

[149] `Final Report of Working Group IV of the Role of National Parliaments (CONV 353/02)`, The European Convention Working Group IV, Brussels 2002, p.3

[150] Egeberg, M., `The European Commission - The Evolving EU Executive`, *Arena Working Papers, WP02/30*, 2002, p.2

nominates the individual Commissioners among the members of the political party groups in the EP. This Commission should get vote of confidence both in the first (based on the simple majority) and in the second (based on the qualified majority) chambers of the Parliament. If in a given period it did not get vote of confidence, then the EP elections should be repeated. The elected Commission as a whole and Commissioners individually should be responsible to the Parliament. A fully responsible Commission would also have to accept that its own decisions could be overruled by a Parliament.

As it is stated in the draft constitution, the Commission should be composed of 15 members. This includes two vice-presidents and three Commissioners without portfolio. One vice-president coordinates the Union's foreign affairs (Union Minister for Foreign Affairs) and the other one ensures the internal functioning of the Union (Union Minister for Internal Affairs). Ministers without portfolios represent the Commission and the Union as a whole in world and closely work with the vice-president coordinating the foreign affairs. With each enlargement, some portfolios become more important then others and it becomes more and more difficult to create meaningful portfolios for the Commissioners. Thus, in the re-structured Commission, some of the existing portfolios should be combined and number of them limited to nine. In the past decade, the Commission was accused for fraud, nepotism and corruption rumours. Therefore, it has to reform itself to ensure better usage of the limited administrative resources, effective financial control procedures and more training to its staff, oriented to their duties. This new Commission should be more rigorous and transparent in upholding the EU law and increase its records at enforcing the EU rules. Currently, the implementation of the existing rules is too slow and cumbersome. For instance, `(j)ust one member state, Greece, has ever had to pay a fine for failing the implement EU laws – and that case took 14 years to wind through the European Courts`.[151] In the end, the Commission should evolves into a real European government.

[151] Murray, A., `Reforming the Commission`, CER Bulletin, Issue 25, August / September 2003, p.13

In this new institutional structure, the role of the national parliaments should also be re-defined and strengthened. Though some argue that the elections of the national parliaments and the European Parliament should be made at the same time and the members of the EP should be selected from the national party's election lists, it has two main difficulties. The first difficulty is a procedural one. Considering the EU-25, it is simply impossible to hold national elections at the same time in all Member States. The second one is related with the policies. The problems at the Union level are generally different and more complex from that of the national level. Different policies should be implemented to deal with these problems at Union and national level. Thus, an electorate from Germany, for instance, prefers to vote for Social Democrat Party at Union elections but Green's Party at national one. Therefore, the two elections should be hold separately. However, since the national parliaments represent the European peoples like the EP, their involvement into the Union affairs should be strengthened.

(The) issue was not one of the competition between national parliaments on the one hand and the European Parliament on the other. Each had its distinct role but both shared the common objective of bringing the EU closer to citizens and thus contributing to enhancing the democratic legitimacy of the Union.[152]

In order to ensure the better exchange of information, the COSAC should also be reinforced and a permanent body should be established to carry out its secretariat. The COSAC will not only serves as an advisory body but also provides a suitable environment for more systematic exchange of information between national parliaments. It could also play an essential role in increasing knowledge and awareness of the European affairs and thus improve further the efficiency of national parliamentary scrutiny. In case it is required, special ad hoc committees could be established between the EP and the national parliaments.

[152] `Final Report of Working Group IV of the Role of National Parliaments (CONV 353/02)`, The European Convention Working Group IV, Brussels 2002, p.2

Having a single constitution is another constitutive brick for the future of the Union. Though the Union has a draft constitutional treaty, it should further be amended and divided into two parts as the three vise-men committee has suggested. [153] Accordingly, the first part of the constitution should only include aims, principles, fundamental values, European Charter of Fundamental Rights and general institutional framework, as it is stated in the Constitution for Europe. 2/3 majorities in the first chamber and unanimity in the second chamber of the Parliament could only amend these articles; and they require the ratification of each member states. The second part of the constitution could be composed of separate texts, declarations, protocols, union policies and present treaties. The articles in this part can be repealed or amended in the normal legislative procedures in the European Parliament. This structure would greatly decrease the constant modifications of the basic European norms and values, which also ensures that the basic institutional structure is more readable, stable and understandable by the average EU citizens. Furthermore, such European constitution will determine the responsibilities of the vertical and horizontal actors at the EU level as between the organs of the EU, between the EU organs and Member States and at various levels of the Union. Last but not the least, it also precisely defines the role of the national parliaments in the European Union.

[153] Von Weizsacker, R., Dehaone, J.L., Simon, D., `The Institutional Implications of Enlargement`, Report to the European Commission, Brussels, 18 October 1999, at http://www.europa.eu.int/igc2000/repoct99_en.pdf

CHAPTER 5

CONCLUSION

Change is in the essence of all political entities. They change and adapt themselves to their environment in accordance with time and space. The European Union is no exception to this. From the very beginning, it evolves both horizontally and vertically and adopts itself to the new circumstances. As the Union evolves from an economic market to the social and political entity and involves to the daily life of the European citizen at an increasing rate, its democratic credentials are questioned. In this dissertation, it is argued that the Union suffers from the so-called `democratic deficit` stemming from the technocratic and elitist institutional structure, the heritage of the Monnet Method; and to remove this democratic deficit, the institutions of the Union should be re-structured.

The Union has three main political institutions. The main driving force of the Union policies is the European Commission. The Commission has no real democratic legitimacy, since it is composed of appointed experts, who have no liability to the European citizen for their acts and actions. When initiating the legislative procedure, the Commission does not ask for an opinion of the European Parliament, the only representative of the European peoples at the Union level, and the Council of Ministers, representative of the Member States' Governments, and defends itself by arguing that it acts for the high interests of the Union. The Council of Ministers is the main decision-making institution of the Union. Without the approval of the Council, there can be no legislation. The Council has derived legitimacy since it is composed of the Ministers of the Member States' Governments. The working method of the Council is secretive and behind the closed doors. The public is not informed about the discussions that take place during the decision-making process. The European Parliament is the only democratically legitimate

institution of the Union since its members are elected in the Union-wide direct election since 1979. The Parliament has control power over the actions of the Commission and participates to the decision-making mechanisms. Although its power has been growing steadily since the establishment of the ECSC, when compare to the national parliaments, it is still weak and ineffective.

In 1960 – 2000, to remove the democratic deficit problem of the Union, several institutional reforms have been realized. In order to rectify the democratic deficit, the authority and responsibility of the Union institutions have been amended in each successive Treaty reform. These amendments empower the Parliament at the expense of the Commission and the Council. In the course of time, the Parliament gains control power on the actions of the Commission and in the preparation of the Union budget, and it becomes a part of the legislative procedure, on an equal footing with the Council. The Commission also becomes more legitimate with the introduction of the new appointment procedure. In addition, in order to enhance democratic credentials of the Union and to make it more legitimate, European Charter of Fundamental Rights has been proclaimed.

However, all these institutional reforms do not cure the democratic deficit problem of the Union. In the beginning of the new millennium, new approaches have been developed within the framework of the next enlargement and the Constitutionalisation process of the Union. In this framework, political institutions of the Union have also conducted studies to cure the democratic deficit problem, as the Commission's White Paper on European Governance. However, these studies generally foresee to strengthen the position of these institutions rather than provide solution proposals to rectify the problem. Since 2001 Laeken Declaration, upcoming enlargement and the need for democratically functioning Union institutions have dominated the agenda of the Union. Although the Draft Constitution further amends the main political institutions and underlines the importance of the democratic life in the Union, the democratic credentials of the Union institutions are still weak. Furthermore, the Eurobarometer results show that

the European citizens do not understand what is going on at the Union level and feel alienated from the Union policies.

In this dissertation, it is argued that one of the most effective ways to remove the democratic deficit of the Union is institutional reform. It may be argued that in each Treaty amendment, the institutional structure of the Union is revised, and yet they fail to reach their goals. The reason that lies behind this failure is that these Treaty amendments do not radically change the roles, structure, functioning and responsibilities of the main political institutions of the Union, which are established in accordance with the idea of the Jean Monnet, but make some minor amendments and developments in the existing institutional structure, mainly in favor of the European Parliament. However, in order to remove the democratic deficit of the Union, further institutional reforms should not revise but re-structure the roles, responsibilities and internal relationships of the main political institutions. Accordingly, the Parliament should be re-structured and provided with full legislative power like the national parliaments of the Member States; the Council should evolve as the second chamber of the Parliament and the Commission should evolve into the real executive unit of the Union, completely responsible to the Parliament for its actions and decisions. In this process, the roles of the national parliaments of the Member States should also be re-defined. They should get involved more to the issues at the Union level and by doing so ensure more legitimacy. These newly structured political institutions also require well-written, open and transparent code of conduct, which may be ensured by a single constitution. The Draft Treaty Establishing A Constitution for Europe is a good starting point to have such founding document.

As it can be seen, in this purely institutionalist approach, a liberal-democratic nation state, based on federalist ideas, is inevitably the only appropriate solution to remove the so-called democratic deficit problem of the Union. Since other approaches may come with different solutions, this also indicates the restraint of the approach, discussed in this dissertation. In addition, re-structuring of the main political institutions, all at once, in line

with `institutional approach` is difficult task. Such action most probably draws reaction of many Member States, including big brothers i.e. France, since these Member States perceive the Union as an entity that helps to maximize their national interests. At present, this difficult task can only be achieved, if there will be adequate support and demand from European citizen and European civil society. However, as it is indicated in previous chapters, European citizens feel themselves alienated from the Union affairs and there is not any well-organized civil society entities. In order to have these entities, European Union should develop positive elements, that is to say commonalities, in defining its identity. Therefore Turkey's acceptance as a full member to the Union will certainly internalize negative elements of the definition of European identity and will contribute to the development of well-organized civil society entities.

In this context, constitutionalisation process and The Draft Treaty Establishing A Constitution for Europe is great achievement since it devotes separate chapter on democratic life of the European Union, that might boost consciousness of European citizen and European Civil Society about enjoying democratic rights at Union level. Therefore, it is more logical to expect this re-structuring not all at once but incremental process, which has its own risk as well. Because too much incrementalism can deviates the Union from its final objective. Thus, the Union has its paradox on methodology and procedure of the required institutional restructuring.

In the enlarged Union of 25 – and later 28 and more – the existence of functioning democracy is more important than ever. Peoples from different cultures, different political and social structures must believe that the decisions at the Union level are taken by a government structure of the people, by the people and for the people. Such an outcome can only be ensured by re-structuring of the Commission, the Council and the Parliament in accordance with the values of a liberal-democratic nation state.

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