CHANGING INSTITUTIONAL BALANCE IN THE EUROPEAN COMMUNITY/EUROPEAN UNION: THE CASE OF COUNCIL OF MINISTERS

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ABSTRACT

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This thesis analyzes the Council of the European Union in a historical context, taking account the changing institutional balance within the Community institutions. The Council was established as the principal institution of the European Integration under the Treaty of Rome with its sophisticated structure, executive and legislative functions. Indeed, although the institutional balance has changed over years, the Council has stayed as the main decision- making organ of the Community.

It is also the aim of this thesis to show that the Council itself has changed overtime and has become one of the most crowded and complex institutions of the Community. To make such an analysis on the Council, each Treaty amendment was examined, showing how they have changed the Council. Therefore, the Treaty amendments of the Community are taken as the turning points in dividing the chapters. In each chapter, first the importance of that document and then its implications on the Council are examined. Of all these legal documents, the TEU of 1991 that is analysed in Chapter 4 is accepted

as a milestone in the Council history: Unlike the other Treaty amendments, the TEU marked an important date by making efficient and long-lasting structural and functional changes. Furthermore, the Treaty has also started an important debate on the role of the Council by incorporating the European Council into the pillar system.

It was right after the ratification of the TEU that enlargement has become the most important point on the Community's agenda. Accordingly, institutional reform, necessary for successful enlargements has been too much debated. The Council has always been at the heart of the disscussions with its legislative functions and with its voting rules. Therefore, the study will also seek to show the debates on the Council in each Intergovernmental Conference and Summit on institutional reform. The analysis has also included the recent developments on the debate, namely the Treaty of Amsterdam and the Nice Summit in seperate chapters.

Keywords: Council of Ministers, Institutional Reform, Enlargement.

ÖZ

AVRUPA TOPLULUĞU/AVRUPA BİRLİĞİ KURUMSAL DEĞİŞİM SÜRECİNDE BAKANLAR KONSEYİ

Bayraktaroğlu, Gülüm

Yüksek Lisans, Uluslararası İlişkiler Bölümü

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Bu çalışma Avrupa Birliği Bakanlar Konseyi'ni, Toplulukta değişen kurumsal dengeleri dikkate almak sureti ile, tarihsel bir çerçeve içerisinde incelemiştir. Konsey, kurucu antlaşma olan Roma Antlaşması'nda sahip olduğu yasama ve yürütme yetkileri ve kalabalık ve karmaşık yapısı ile Topluluğun en önemli asli kurumu olarak kurulmuştur. Zaman içerisinde Topluluk kurumları arasındaki dengenin değişmesine rağmen Konsey, Topluluğun karar alma mekanizmasında en önemli yere sahip organ olarak kalmıştır.

Çalışma aynı zamanda, süreç içerisinde Konsey'in kendi yapısı ve işleyişinde de önemli değişikliklerin meydana geldiğini göstermektedir. Bu bağlamda Konsey, her Antlaşma değişikliğiyle kalabalıklaşmış ve daha karmaşık bir yapı haline gelmiştir. Sözkonusu değerlendirmenin yapılabilmesi için çalışmada, Kurucu Antlaşmada değişiklik yapan her metin incelenmiş ve bu değişiklikler birer dönüm noktası kabul edilerek bölümlerin hazırlanmasında esas alınmıştır. Her bölümde öncelikle, sözkonusu metnin Topluluk tarihindeki yeri belirtilmiş ve daha sonra Konsey üzerindeki etkileri tartışılmıştır. Tüm

bu metinler içerisinde Avrupa Birliği Antlaşması, Konsey üzerinde uzun soluklu yapısal ve fonksiyonel değişiklikler meydana getirmesi sebebiyle bir kilometre taşı olarak kabul edilmiştir. Antlaşma, aynı zamanda, Avrupa Konseyini kurmuş ve Konseyin rolüne ilişkin tartışmaları da başlatmıştır.

Avrupa Birliği Antlaşmasının onayı aşamasında Topluluğun genişlemesi, en önemli gündem maddesi olarak yerini almış ve kurumsal reform tartışmalarını da beraberinde getirmiştir. Konsey, yasama yetkileri ve oylama usulleri ile kurumsal refom önerilerinin merkezinini işgal etmiştir. Dolayısıyla çalışmada sözkonusu tartışmaların konu olduğu Hükümetlerarası Konferanslara ve Zirve Toplantılarına da yer verilmiş, son gelişmelerin meydana geldiği Amsterdam Antlaşması ve Nice Zirvesi de ayrı bölümler olarak incelenmiştir.

Anahtar Kelimer: Bakanlar Konseyi, Kurumsal Reform, Genişleme.

Tecrübeleri ile bana her zaman ışık tutan anneme ve babama ve kardeşim Deniz'e

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LIST OF ABBREVIATIONS

Art.	Article
CAP	Common Agricultural Policy
CFSP	Common Foreign and Security Policy (Second Pillar)
COREPER	Committee of Permanent Representatives
CRP	Council's Rules of Procedure
EC	European Community
ECSC	European Coal and Steel Community
EEC	European Economic Community
EFTA	European Free Trade Area
EMU	European Monetary Union
EP	European Parliament
EPC	European Political Cooperation
EU	European Union
Europol	European Police Office
IGC	Intergovernmental Conference
JHA	Justice and Home Affairs (Third Pillar)
QMV	Qualified Majority Voting
Para.	Paragraph
SCA	Special Committee on Agriculture
SEA	Single European Act
troika	group of three successive Council presidencies
TEU	Treaty on European Union

INTRODUCTION

This thesis surveys the roles, functions and processes of the Council and its relationships with other institutions of the EC/EU in the legislative procedure. It seeks to shed light on the Council since its establishment by 1957 Treaty of Rome through a historical perspective. It is the aim of this study to analyze the Council, stating that it is established as the main institution of the EEC and although institutional balance of the EC/EU has changed to an extent over time, it has stayed as such. Each chapter intends to highlight the impact of each Treaty change and its implications on the Council. Accordingly, in explaining how the Council has changed by each Treaty amendment, the expansion in its roles and its structure and changes in the decision-making procedures are analyzed separately. Furthermore, the decision-making procedures are divided into two as the voting rules and the legislative procedures. In Chapter II where such a division was impossible, the examination was made taking the Luxembourg Compromise as a turning point and dividing the period according to its effects on the working of the Council. Before starting the examination of the Council, the main institutions of the EC are also briefly mentioned.

The Council has been established as the most important and the predominant institution of the EC/EU under the EEC Treaty. Indeed, in many respects, it is the main institution of the Community: the main source of the EC/ EU legislation also with executive powers, a negotiating forum and a recurrent international conference of Member State representatives.

However, almost until the 1990s, it was not possible to know exactly what has happened within the Council; thus it has been the least known of the EC institutions. No full record of its business have been published; press releases and briefings by the national officers have been the only resources of information other than the published record in Official

Journal of Council legislative acts. It was the 1991 Treaty on European Union (TEU) that has brought openness and transparency to the political agenda and let the Council reform itself in this respect. The Council introduced quite important reforms, through amendments to its Rules of Procedure, such as allowing for public sittings, access to its internal documents and publication of voting records. Today, the Council has taken long steps on transparency since its establishment, however is still accepted as a semi-transparent institution.

Since it is very difficult to break the secrecy of the Council to provide the necessary documents, there are only few publications about the institution. In the absence of any publications, the Council has been seen as a monolithic institution, working confidentially, restrained by unanimity and blinked by notions of national sovereignty. The truth, as this study tries to demonstrate, is far more complex and far less negative. The Council is not only a form of specialized legislature but also an executive and a negotiating body. As the Chapters show, the Council has developed itself over the years through each Treaty amendment and through amendments to its Rules of Procedure. The Council has become one of the most crowded institutions of the EC/EU by these amendments with its highly technical and complex sub- structure. Moreover, the legislative procedures where the Council is pre-dominant and voting rules which the Council applies have varied over time.

In the first chapter, the establishment of the Council under the EEC Treaty is examined. The Council is usually defined as the intergovernmental element of the EC/ EU that represents the Member States. However, on the other hand it is very difficult to describe the Council itself and to examine its functions and roles since the EU political system is too much different from the political systems of the member states. While in the latter system the distinction between the executive, the legislature and the judiciary institutions are obvious, in the former no distinction is possible. The EC/EU system is mainly composed of four main institutions: the Commission, the Council, the Parliament and the Court of Justice. In this system while the Council and the Commission share executive functions, the Council and the European Parliament (EP) share legislative

functions. The Council therefore acts in both executive and legislative modes. Since the Council represents the states, the interests of them are the major factor in determining the policy of the EC/EU. Thus, in the Council national interests takes priority over the Community interest as demonstrated by the European Commission and the EP.

Under the EEC Treaty, the Council consists of representatives of the Member States. The word suggests a single body, however in reality the Council meets in many different formations, depending on the subject discussed, such as agriculture, energy, transformation or environment. The Council meetings are chaired by the Presidency of the Council that circulates on a six monthly rotation between all of the Member States. The Presidency, apart from chairing the Council meetings, convenes them, leads to discussions in the meetings and directs the Member States to reach compromises. Moreover, the Council receives assistance from its administrative structure which is made up of Committee of Permanent Representatives (COREPER), General Secretariat, various senior committees and working groups. Coreper is the most important senior committee of the Council's sub structure. It discusses the more controversial issues, identifying the matters which the Council itself should settle at a political level. The workings of Coreper and the Council are further facilitated by the working groups and by the committees that meet on a regular or *ad hoc* basis to discuss the proposals at an early stage. The original EEC Treaty has established three senior committees: the Special Committee on Agriculture (SCA), the Monetary Committee and the Article 113 Committee. On the contrary it is not possible to figure out the exact number of the working parties since some are permanent, some temporary and some *ad hoc.* There is no central voting system in the Council; the voting system depends on each case. The EEC Treaty provides three voting procedures: simple majority, qualified majority voting (QMV) and unanimity. Lastly, the earliest legislative procedure in the EC that was introduced by the EEC Treaty was the consultation procedure. This oldest legislative system was applicable to any kind of legislation of the EC, having three components, namely, the Council, the Commission and the Parliament. The Council is the predominant institution in this process which disposes Community acts according to the

Commission proposals. The Parliament, on the other hand is permitted to give non-binding opinions to Commission proposals.

In such a system the Council has been able to work until 1960s. The two decades after the productive years have marked the history of the Council and also the history of the Community. The second chapter underlines the 20 years of an evolving process that starts in 1960s and lasts in the beginning of 1980s. The aim of this chapter is to demonstrate how the stagnant 20 years in the EC have affected the Council. The economic stagnation in Europe in the 1970s coupled with the Luxembourg Crisis in the EC and let to the dark years, known as the years of Euroscleorosis and Europessimism in the Community. Analysis of this period has been based on working of the Council through years. The Luxembourg Crisis marked this period in 1966 and restricted the Council to decide. The following years till the end of the 1980s were under the shadow of the Luxembourg Compromise which ended the Luxembourg Crisis. Actually in practice between 1965 and 1987, there was no voting at all in the Council. Starting in the beginning of the 1970s continued attempts such as the Tindemans, Three Wise Men, the Dooge Committee Reports, the Genscher- Colombo Plan and the European Draft Treaty Establishing the European Union have taken place about policy initiatives and institutional reform. The Council has also been an important part of these attempts on institutional reform, with the replacement of unanimity by QMV and with its Presidency. Although these attempts are important in the EC history, they all failed to find solutions to the institutional problems of the EC at that date. However, these reports have been significant in one respect: they have been the bases for the Single European Act (SEA) which has taken its origins in the 1970s, basically from these reports.

The Single European Act of 1980s represents a break with the past by starting the transformation in the Community with additional commitments to the founding Treaties. It will be analyzed in Chapter III that although the functioning of the Council has been affected with this new Single Market Program, the SEA has been a limited attempt to improve the Council. The innovations of the SEA, namely limited extension of QMV, cooperation and assent procedures will be examined. As regards the new cooperation

procedure it will be argued that the EP, far from being on equal footing with the Council, has only a negative power in the procedure and the Council is the institution that still says the last word.

The shift from the Community to the Union by the Treaty on European Union (TEU) in 1991 that has been detailed in Chapter IV. The TEU has been a very important Treaty amendment and also one of the milestones in the EC history. The aim of this chapter is to lay down the innovations of the new Treaty concerning the Council's roles, structure and its decision- making procedures. It is this impact of the Treaty that makes it also one of the milestones in the Council's history. The Treaty has also started a period of optimism in the EC/EU. It has not only brought important number of innovations but also leaded a period that many reform proposals were made.

In the new pillar structure brought by the TEU the Council is not only a forum for negotiating and bargaining in the first pillar, but also a key institution as regards to second and third pillars. The TEU has extended the number of Council acts by adding the Common Positions, Joint Actions and the negotiation of Conventions to the two intergovernmental pillars. The TEU also reformulated the composition of the Council and extended the Council sub- structure by adding senior committees such as the Political Committee and the K.4 Committee that will be working under the second and third pillars respectively. In this new pillar structure of the "Union", the already existing components of the Council, namely the COREPER, the Presidency, the Secretary General has been empowered. First of all, the Presidency gained new roles in the second and third pillars such as representing the Union in CFSP, implementing common measures, consulting the EP on the main aspects and basic choices of CFSP, convening urgent meetings concerning the area of CFSP and informing and consulting the EP in the JHA. In addition to these, the Presidency is also empowered to chair the European Council, which was legalised also in the TEU. The establishment of the European Council has also started a discussion about the role of the Council. Coreper and the Secretariat General of the Council have also been incorporated in the structure of the

Union. The work of Coreper of coordination and overseeing the work of the many working groups has been extended in all three pillars of the new Treaty.

In addition to these structural changes, the TEU has also been an important step as far as the changes in the decision-making procedures of the Council are concerned. On the one hand the TEU extended the use of QMV and on the other it brought the new co-decision procedure in to the legislative field and extended the assent procedure. Concerning the co- decision procedure most analysts have argued that the EP has gained ground in favour of the Council. By contrast I suggest that since the procedure is applicable to limited number of areas it did neither lessen the power of the Council in favour of the EP nor put the two institutions into an equal footing, on the contrary the Council is still the main decision- maker in the system under an important number of provisions. Lastly in this Chapter, I have included a short analysis and comparison of another very important institution of the EU: the European Council. Since the roles of the Council and the European Council have been debated too much, as the last part of the Chapter IV, I have examined the European Council and its powers in comparison with the Council in the new pillar system.

It is the same period with the ratification of the TEU that the debates on voting weights of Member States in the Council started to be discussed. As mentioned earlier, the voting rules of the Council was subject to too much comment during the 1970s and later both in the discussions of the SEA and the TEU. There has been a strong will among the Member States to lessen the power of veto and extend the use of QMV as many areas as possible. Starting by 1991- 1992 this will of Member States is seconded by another one: reweighing of votes. There have been some important factors for such a debate. First of all, by that date many new countries, most of which are small (Malta being the smallest one) have applied to the EC. This has started "hysteria of microstates" in the Community because of the veto rights. Furthermore the larger states were worried about the fact that great number of smaller states might exercise too much leverage. On the other hand, Germany after unification was a more crowded country in terms of its population, and stronger in terms of its economy. Therefore the German Government has repeatedly

stated the imbalance between Germany and the other large Countries. Later in 1994, these interrelated problems of States have been solved temporarily in a Council meeting in Ioannina (by a declaration known as the "Ioannina Compromise") and in 1996 the IGC started with a loaded agenda including these major problems of the Council among other reform attempts. However both problems have continued to be on the agenda of various Summits until it is solved eventually in the Nice Summit of 2000.

The 1996 IGC has been an important hope for all the Member States with its highly critical agenda. Some of the questions that were debatable in the IGC were mentioned in the provisions of the TEU and more were added during various European Council meetings and in the reports of the Reflection Group. The logic of all the proposals was to reform the institutions of the EC/EU to achieve successful enlargements. The Council was at the heart of the discussions in the IGC with two main problems: its decision-making procedures; including both the voting rules and the legislative procedures and its structure; including the Presidency, Secretariat and composition. In the IGC productive discussions have taken place about each question and these are examined in detail in Chapter V. However the Amsterdam Treaty that was the outcome of the 1996 IGC did not reflect the aspirations of the IGC.

The rest of Chapter V explains the innovations of the Treaty of Amsterdam concerning the Council and their implications. The Amsterdam Treaty of 1997, brought some innovations, however failed to be a success in the EC/EU history. It failed to answer major institutional questions necessary for next enlargements. As regards the Council, the Treaty expanded its role in both of the intergovernmental pillars, however it failed to solve the problems in the decision- making process. As regards the second pillar the Treaty extended the role of the Council Secretary General by giving a special responsibility in the newly established Policy Planning and an Early Warning Unit. Both in the second and the third pillar the Treaty empowered the Council to negotiate and conclude agreements with other states and organizations on the implementation of a common policy. The Treaty also reformulated *troika* to include the Presidency, Secretary General and a member of the Commission. About the extension of QMV, the

Treaty was a limited attempt. It extended QMV in a very limited number of areas under the first pillar and required for unanimity for the areas of the third pillar. Extension of QMV under the second pillar was a controversial issue since it has been argued that the policy of the second pillar has not been successfully applied because of the requirement of unanimity under this pillar. Eventually, three concepts have been inserted to the voting rules of the second pillar: " constructive abstention", "unanimity with declared abstention" and " qualified majority with veto provision". The question of weighing of votes was failed to be solved by the new Treaty and postponed till the new IGC. On the legislative procedures, the Amsterdam Treaty reduced their number and only kept assent, consultation and co- decision procedures, simplifying and extending the latter. Furthermore, the Treaty has provided for a new IGC to be convened in the year 2000 to discuss institutional reform necessary for enlargement, but specifically for the question of weighting of votes, extension of QMV and the co- decision procedure.

The 2000 IGC convened in Nice and produced the Treaty of Nice. It is the last important legal document on the improvement and consolidation of the Council and therefore analysed in the last Chapter. With the amendments of the Treaty of Nice- although the ratification process has not been finalised yet- the Council has become a far more different institution than it was established in 1957. The Treaty of Nice has extended QMV to some areas however the most sensitive areas remained unanimity. It was an outcome of a conflict between the large and small. The overall result was again in favour of the larger States. Extension of QMV was also backed by re- weighing of the votes, in favour of the large ones and by the extension of co-decision procedure.

Thus, the Treaty of Nice was the last point of discussions on institutional reform that has started in the early 1990s. The solutions of this new Treaty for the questions on a more efficient Council seem to be productive and effective for today. It also seems likely that these solutions will lead to a success in the coming enlargement process. However, it is so obvious that next enlargements will need for further reforms.

CHAPTER 1

THE ORIGINS OF THE COUNCIL OF MINISTERS IN THE TREATY OF ROME

1.1 Introduction

In the EEC system, the Council of Ministers (herein after "the Council") is not alone; it is a part of a group of institutions with different powers and responsibilities. While it shares executive functions with the European Commission, it shares legislative functions with the European Parliament. In the latter case the Commission is also involved in the process. Therefore, in fulfilling each king of function the Council interacts with the other institutions of the Community. Thus, while making a case study on the Council, it is important and unavoidable to mention its interaction with other institutions.

Accordingly, in this chapter firstly the institutions of the EEC Treaty will be examined in brief to make it easier to analyse their changing relationship through the history of the Community. After that, the Council will be examined in detail as regards to its functions and responsibilities, its structure and its decision- making procedures under the original EEC Treaty.

1.2 Original Institutional Structure in the Treaty of Rome

The Treaty of Rome (herein after the "EEC Treaty")[1] of 1957 established four main institutions: the Assembly, the Council, the Commission and the Court of Justice. These are broadly similar to the institutions of the European Coal and Steel Community (ECSC), even though the balance of power is somewhat different.

In the EEC Treaty, the Commission is envisaged as the motor of the Community integration. It has some very important tasks within the executive and legislative process of the Community. In most instances, it is the Commission that drafts proposals which will become Community Law after the acceptance of the Council of Ministers. It is also responsible for administration and supervision of the observance of Community Law (Weatherill, 1996: 59). It is composed of nationals of the Member States, nominated by the Member States and appointed by the Parliament, who are expected to show loyalty to the Community, not to the Member States. This is legalized under Article 157 EEC as 'the members of the Commission shall neither seek nor take instructions from any government', being charged with representing the general interests of the Community (Lindberg, 1963: 30). Further, under the same Article, the Member States undertake 'not to influence the members of the Commission in the performance of their tasks'.

The European Parliament (herein after "the EP") - The Assembly until 1962-, like the European Commission, is a Community-minded institution. It is composed of delegates from the national parliaments who represent national interests. These members sit in the Parliament's Chamber not by nationality but by political affiliation. The Parliament has mainly an advisory role in the legislative process under the Treaty of Rome, giving non-binding opinions on the Commission proposals. Other than its legislative functions, it has supervisory powers over the Commission including the right to put questions,

[1] For the full text of the EEC Treaty and for its Turkish version see European Communities, 1987 and see DPT, 1993 respectively.

written or oral. The most important power of the Parliament is budgetary powers, "which is officially designated as jointly forming the budgetary authority with the Council of Ministers" (Leonard, 1988: 41). No agreement can be achieved on budgetary issues without the resignation of the Parliament. The Parliament and the Commission are typically seen as allies in support of the Community interest, "which has often pitted them against the institution in which the national interests of the Member States are expressed, the Council" (Weatherill, 1996: 60).

The Court of Justice is originally set up by the Convention on certain institutions common to the European Communities of March 1957, as the single Court of Justice for the EEC. It consists of judges and advocate- generals, appointed for a term of six years by common accord of the Governments of the Member States. The Court's main role is to interpret and apply the Community Law. It's pre- eminent role in the Community system derives mainly from the fact that "it takes decisions by majority vote and relies solely on its own understanding of law and justice" (Weidenfeld and Wessels, 1997:120). In this sense, it is a truly supranational institution and is not influenced by the interests of the Member States.

In the EEC Treaty, a shift of power was introduced from the European Commission to the Council of Ministers. However, "this shift of power did not transform the EEC into a merely intergovernmental organization, rather it stressed the governmental type of supranationality as against the Community type" (Kahraman, 1996: 89).

In the EEC Treaty, the Commission, unlike its predecessor, the High Authority of ECSC, has no independent area of action, marked out of it. The High Authority was the direct and executive responsible to 'ensure the achievement of the purposes stated in the Treaty'. However, the Commission, shares the legislative responsibility with other institutions of the Community, particularly with the Council. While the High Authority had the power to take binding decisions which shall take effect automatically upon publication, the Commission under the Article 155 EEC, is rather called upon 'to

formulate recommendations and opinions', ' participate in the preparation of acts of the Council and of the Assembly' and 'exercise the competence conferred on it by the Council for the implementation of the rules laid down by the latter'.

The Commission is given an important position as the initiator of all legislation procedure and "watchdog" of the Treaties with some certain decision making powers of its own and as the negotiator of international agreements on behalf of the Community, however, it does not enjoy such supranational character as compared to the ECSC Treaty.

On the contrary, the Council, far from its task in the ECSC Treaty of consultation and harmonizing the activities of the Member States, is the most powerful element of the EEC System. The "power of decision" of the Council of European Economic Community is much more extensive and relates to a great variety of policy matters scattered throughout the Treaty. In the usual legislative procedure of the EEC System, the Council takes decisions on the proposal of the Commission.

1.3 The Council of Ministers

The Council is the principal decision-making organ of the European Community, and the only institution that directly represents the governments of the member states. However, it is more than a classic intergovernmental conference of national diplomats. It is a Community institution, in the sense that, it takes binding decisions in the name and on behalf of the Community.

The Treaty assigns the Council "the task of finding equilibrium among opposed national interests, and of harmonizing them with the interests of the Community as a whole and with the common objectives of the Treaty" (Lindberg, 1963: 73). While doing that,

members of the Council view the subjects debating in the Council with 'national' eyes; however, their objective is not to find the lowest common denominator but to find the highest common ground between the member states and the Community as a whole.

The interaction style of the Council is dominated by negotiation and bargaining among member state representatives. Further, the Commission, which is usually a member of the Council meetings, the government departments and political, bureaucratic and economic elites within and across national boundaries, are parts of the Council interaction network.

1.3.1 Responsibilities and Functions

The tasks of the Council are set out in Article 145 EEC albeit in a rather vague manner: "to ensure the coordination of the Member States, to take decisions and to delegate implementing powers to the Commission". The first two tasks of the Council illustrate the dual role of the Council: to act as the forum for the representatives of the Member States, and to act as the decision-making body of the EC.

The scope of decision-making powers of the Council is wide enough, "ranging from the conclusion of international agreements to revise the objectives of the Community and determining amendments to the Treaties" (Kahraman, 1996: 100). However, it cannot use its power in an unlimited way; it can adopt rules only on the basis of the Commission proposals (Art. 149EEC)[2]. Under the EEC Treaty the Council does not have a constitutional power to initiate or draft proposals itself. Further, in many

[2] This applies for instance to the timing of the reduction of internal tariffs during the third stage of the transitional period (Article 14, para. 2 (c)); to the fixing of the common external tariff during the third period in default of agreement between the governments (Article 20); to various decisions about the elimination of quantitative restrictions (Article 33); to the establishment of the common agricultural policy (Article 43).

instances, before taking a decision, it has to consult the European Parliament and/or the Economic and Social Committee. The Council also has the power to request the Commission to submit to it any appropriate proposals under Article 152 EC. However, many observers think that extensive use of this Article in the EEC legislation is against its intended spirit and in this circumstance; the Commission is often bound to pay close attention to what national ministers say[3].

Further, Article 189 EEC sets out all of the ways in which the Council may act, whether alone or together with the European Parliament within the EC context. It counts and describes the Council acts as such:

"... the European Parliament, acting jointly with the Council, the Council and the Commission shall make regulations and issue directives, take decisions and make recommendations or deliver opinions.

A regulation shall have general application. It shall be binding in its entirety and directly applicable in the Member States.

A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

A decision shall be binding in its entirety upon those to whom it is addressed.

Recommendations and opinions shall have no binding force."

[3]Shaw, 1996:118.

1.3.2 Composition & Presidency

A very important feature of the composition of the Council is that it does not have a permanent or a fixed structure. The composition varies depending on the subject discussed in the meeting.

The General Affairs Council, composed of the foreign ministers of the member states, deals both with the external relations and issues concerning general Community policy. Naturally, the respective national foreign ministers play a leading role and are represented regularly: "the depth of their involvement in the Council's work depends partly on tradition, partly on personal interest, partly even on individual temperament" (Hallstein, 1972: 63). The Economic and Financial Council deals with issues such as the implementation of the program for the completion of the Single Market and the preparation for the economic and monetary union. There are also the Technical Councils dealing with various issues such as Transport, Agriculture, Energy, Health, Education, Industry and Environment. For instance, the National Agricultural Ministers sit in Council where agricultural affairs are on the agenda, Finance Ministers where budgetary questions are debated.

The Council is composed of "representatives of the Member States" and each government shall "delegate to the Council one of its members"(Article 146 EEC). This means, of course, that the representatives are required to be members of the central governments[4] meaning, people holding political office i.e. a minister not a civil servant.

[4] Further in the TEU the wording of the paragraph has changed and emphasize added: 'The Council shall consist of a representative of each Member State *at ministerial level,* authorized to commit the government of that Member State'. Such an amendment had the objective to allow the Member States with federal structure to be represented.

Ministers[5] usually do not attend the Council meetings by themselves but with small national delegations. These delegations are headed by a minister, by the Permanent representative or even by a senior diplomat. In any case care is taken to ensure that national interests are defended. When very confidential matters are being discussed, by a proposal of the President of the Council, the size of the delegations may be reduced, to 'Ministers plus two', 'Ministers plus one' or sometimes 'Ministers and Commission'.

All meetings of the Council are chaired by the representative of the state currently holding the presidency (Article 146 EEC).

The basic operating rules of the Presidency have been set out in the EEC Treaty and in the Council's Rules of Procedure (herein after "CRP"). Previously, the Treaty of Paris, establishing the ECSC, had stated that the office of the President would be held in turn by each member state of the Council for three months, following the alphabetical order of the member states (Article 27 ECSC). The EEC, keeping a similar Article on Presidency, has extended the term to six months. Later in 1965, the Merger Treaty has established the period of six months for all three European Communities.

The Presidency, besides taking chair in the Council meetings; convenes them (Article 1(1) CRP), sets out the provisional agenda which is circulated to other members of the Council at least a fortnight in advance, contains the indication of the items on which a vote may be taken (Article 2(1) and (2) CRP), leads discussion in the meetings and pilots the Member States towards compromises. Besides this legal framework, as Perry (1994: 18) notes, it has become the practice for the member state that holds the presidency to try and establish a particular style of work and to single out certain issues

[5] The national representatives of the Council of Ministers meetings differ in terms of their status and/or policy responsibilities. Normally the ministers of a similar standing attend to the meetings however in some circumstances, delegations may be headed at different levels of seniority. For instance a relevant minister may have a pressing domestic business or he may not wish to attend an unwanted or a politically awkward meeting. Whatever the reason, a reduction in the status and political weight of a delegation may make it difficult for binding decisions to be agreed (Nugent, 1989: 91).

to which it wishes to give priority. This is also important in political terms that the Member State holding the Presidency enjoys an enhanced role on the world stage, and "small member states in particular are thus given an opportunity to rub shoulders with the major players and make their mark in European politics"(Borchardt, 2000: 40).

1.3.3 The Structure of the Council

The Council is supported in its work by a substructure, under the ministerial level, consisting of two main bodies under the Treaty of Rome: its Secretariat- General and the Committee of Permanent Representatives- known as COREPER-. There are also the senior committees and working groups within this structure.

1.3.3.1 The Council General Secretariat

The General Secretariat, the main administrative support of the Council's work, was not established in the original EEC Treaty. However it was legalized in 1958 for the three Councils, using Article 17 of the Council's internal rules of procedure. Under this legal base, 'the Council shall be assisted by a General Secretariat under the direction of a Secretary General' with the task of assisting the Council and its preparatory bodies in all their activities.

Under the EEC Treaty, the General Secretariat provides the Council with the general, non- specialized services such as preparation of its sessions, drafting of minutes, issuing of statements, publications, contact with other institutions of the Community, and similar matters. In exercising its responsibilities, the Secretariat works closely with the representatives from the member state in office.

The Secretary General of the Council is appointed by the Council acting unanimously. He is in charge of the General Secretariat and under the Council's authority, takes all necessary steps to ensure its proper functioning. Under Article 25 (1) CRP, the Secretary General, acting on instructions from the Presidency represents the Council before the European Parliament committees and in principle attends all Coreper 2 meetings and all Council meetings prepared by Coreper 2 (Comments on the CRP, 1997: 44). The Secretary General of the Council is also mentioned as the depository of information and documents (Art. 4(3) CRP) or international conventions (Art.24 CRP), or as the forwarder of documents (Art. 15 CRP) or for notification to the member states and the Commission (Art. 18 CRP), or as the signatory, beside the President, of the minutes of the Council meetings (Article 9(1) CRP)) (Comments on the CRP, 1997: 44).

1.3.3.2 Committee of Permanent Representatives (COREPER)

The substance and subject- matter of the Council's work is handled by the highly influential Committee of Permanent Representatives, referred to as Coreper, a contraction of its French title *Comite des representants permanents*.

Although no provision was made for such a body in the ECSC Treaty, national ministers established a coordinating committee of senior officials in 1953, and under the EEC Treaty the Council is permitted to create a similar committee under its Rules of Procedure.

Article 16 of the CRP has described the body that would become COREPER as follows: " A committee composed of representatives of the member states shall be set up in accordance with Article 151, paragraph 2 of the Treaty. This committee shall prepare the work of the Council and shall carry out the tasks that assigned to it by the Council. It

may set up working parties and instruct them to carry out such preparatory work or studies, as it shall define. Unless the Council decides otherwise, the Commission shall be invited to be represented in the meetings of the Committee and of the working parties. The Committee shall be presided over by the delegate of that Member State whose representative is President of the Council. The same shall apply to the working parties, unless the Council shall decide otherwise".

Later in 1965, the Merger Treaty established a single Committee of Permanent Representatives for three Communities, replacing the work of the *Commission de coordination du Conseil des ministers* (COCOR) that worked within the substructure of the Special Council of Ministers of the ECSC.

The Merger Treaty was the first legal document that mentioned the permanent representatives, although by that time the Committee had been working for almost a decade. Article 4 of the Merger Treaty which amended Article 151 of the EEC Treaty incorporated the Committee with permanent representatives into the EEC's institutional framework: 'A committee consisting of the permanent representatives of the member states shall be responsible for preparing the work of the Council and for carrying out the tasks assigned to it by the Council'.

As indicated by its name, Coreper is composed of the Permanent Representatives of the Member States. Unlike most of the preparatory groups under the structure of the Council, all of the members of Coreper are "permanent, in the sense of being resident in Brussels" (Hayes- Renshaw and Wallace, 1997: 73).

In 1962, however, Coreper was divided into two parts, as Coreper I and Coreper II, by the Article 19(3) of the CRP, concerning the chairing of Coreper meetings. The first part is composed of Deputy Permanent Representatives (known as Coreper I) and the second is composed of the Permanent Representatives itself (known as Coreper II).

Coreper I deals with issues such as environment, transport, social affairs, the internal market, labor and social affairs, energy, fisheries, education and prepares the work of the related Council meetings. Coreper II, because of its seniority, is the political part of Coreper. It deals with more sensitive and controversial issues in particular and prepares the work of the Council of Foreign Ministers, Economic and Financial Affairs, Budget and Development meetings.

Under Article 151 EEC, Coreper handles an important deal of preparatory work as assisting the Council in the preparation and the execution of its resolutions. Coreper's main role is to coordinate the work of the various Council meetings and to endeavour to reach agreement at its level to be submitted to the Council for adoption (Council Guide (II), 1996: 39). It prepares the Council discussions and assesses the aspects of the dossiers and defines the options available. It is responsible for the suitable presentation of the dossiers to the Council.

While fulfilling these tasks, as its name suggests, "Coreper guarantees a permanent presence of the member states in the policy-making process at a Community level" (Kahraman, 1996: 134). Each member of Coreper represents his government and works through instructions of his government. However, while doing that, the national interests are tried to be balanced and weighed to prepare solutions for the whole EC States.

In 1966, Coreper gained a fresh influence when it was agreed that "the Commission would work through it to make contact with national governments before deciding on the exact form of any intended proposal" (Perry, 1994: 19). Since then, working through its links with the Commission and the Council, Coreper has had a part in all major stages of Community policy- making from early discussions to the final Council decision-making. Further, it has provided a link between the national bureaucracies and the Commission in the policy formulation. Such a development has also meant that "the Commission initiatives are subjected to the intergovernmental influence at an early stage

in their formulation, thereby detracting from the Commission's role as representing the Community vision" (Kahraman, 1996: 134).

1.3.3.3 Other Senior Committees

The EEC Treaty set up specific committees, which are without prejudice to Coreper's central role, responsible for coordinating activities in a particular field. These committees, namely the Special Committee on Agriculture, the Article 113 Committee and the Monetary Committee, unless the Council decides otherwise, are chaired by a representative of the Member State that holds the Presidency (second sentence of Article 19(3) CRP)[6]. Under the following headings, these three committees established by the EEC Treaty will be analyzed.

1.3.3.3.1 The Special Committee on Agriculture (SCA)

The SCA was not established in the original Treaty of Rome as a part of the Council structure. However, since agricultural policy proved to be too technical and complex for Coreper to be dealt with, it was dictated by administrative necessity. Eventually, the Special Committee for agriculture (also known by its French abbreviation CSA- *Comite special de l'agriculture*) was established by means of a 'Decision of representatives of the governments of the member states of the EEC meeting in Council, concerning the

[6] However, for the preparation of the meetings of Council compositions which meet only once during the first half of a six-month period, the meetings of those committees held during the preceding six months may be chaired by a delegate of the Member State which will hold the Presidency during the following six months (last sentence of Article 19(3) CRP).

Acceleration of the Rhythm of Achievement of the Objectives of the Treaty' in May 1960 (Hayes- Wallace, 1997: 84).

The SCA is responsible for preparing many matters falling within the scope of the Agriculture Council[7]. It deals not only with issues based on the Article 43 of the Treaty of Rome on the creation of a common market in agricultural products but also with proposals based on other articles of the EEC Treaty on the agricultural sector. Thus, it plays the same role in agricultural spheres as Coreper does in the other spheres (Council Guide, 1997: 42): it reports directly to the Council, rather than reporting Coreper as the other senior committees do. The items that have examined by the SCA are directly included in the agendas of the Agriculture Council (Council Guide, 1997: 42).

The members of the SCA are senior officials from the ministries of agriculture of the member states. Some of them are permanent representatives and some others are based in the capitals. They work together with other agricultural experts from the permanent representations and from the capitals. The members of the SCA are generally not specialists, but rather generalists and thus, they leave the political decisions to be taken by the ministers.

Before SCA discusses the issues, sub- specialized working groups prepare the work of it in detail on each Commission proposal. The division in the COREPER Procedure as 'A and B points' to prepare the agenda of the Council is also used in the SCA. Generally, both COREPER and SCA deal with the same issue and present papers to the Council. While the SCA concentrates on the agricultural implications of the issue, COREPER deals with the financial aspects.

[7] However, on the other hand, some issues such as the harmonization of legislation, the financial aspects of agricultural proposals, agricultural trade questions concerning third countries and animal and plant health are debated and prepared by COREPER I that reports them to the Agriculture Council.

1.3.3.3.2 The Article 113 Committee

Unlike COREPER and SCA, the Article 113 Committee was established under the original EEC Treaty, however did not come to existence until the end of the transitional period.

The main responsibility of the Article 113 Committee is to monitor trade and tariff agreements with third countries or organizations. It has the task of assisting the Commission when, having received authorization by the Council and conducting negotiations to conclude an international agreement within the framework of common commercial policy (Council Guide, 1997: 42). Article 113 EEC legalizes the basis of the Committee providing that: ' Where agreements with the third countries need to be negotiated, the Commission shall make recommendations to the Council, which shall authorize the Commission to open the necessary negotiations. The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it'.

Like COREPER, the Article 113 Committee[8] meets at two levels: composing of the full members and the deputies. The full members who are senior civil servants of trade, foreign affairs or economic and foreign affairs deal with the overall policy. Each full member is also assisted by a group of experts, including a deputy, officials from permanent representation in Brussels and advisors. The Commission is also represented in the meetings of the full members by the Director General of External Relations. The level of deputies is composed of officials either from the member states or from the representation in Brussels. They rather deal with the 'leftovers' of the level of full members and do not get into involved in the overall policy.

[8] It should be remembered that the Article 113 Committee includes a permanent working group, the Article 113 Textiles working group and some other ad hoc working groups. However, neither of these working groups was mentioned in the Treaty of Rome and came in to effect in 1970s.

It should also be mentioned that since it is established as an advisory body in the EEC Treaty, no formal voting takes place within its working procedures. However, matters are debated within the Committee till an agreement or an effective majority has been reached. Both the Council and the Parliament are kept informed in every phase of the negotiations in the Committee.

1.3.3.3.3 The Monetary Committee

The establishment of the Monetary Committee lies under the Article 109 of the EEC Treaty. This Committee is responsible to review the monetary and financial situation of the member states and without prejudice to Article 151 EEC, to contribute the preparation of the work of the Council in various fields such as safeguard measures with regard to movement of capital or other aspects and coordination of Member States' economic policies.

The Committee itself from among its members appoints the Chairman of the Committee whose terms of office consists of two years (Council Guide, 1997: 42).

1.3.3.4 The Working Groups

Article 19(2) CRP provides to set up committees or working parties to help in preparing the Council's work by the Coreper's instructions. It is really difficult and may be impossible to figure out the number of the working groups since some are permanent, some temporary and some *ad hoc*. The members of the working groups meet on a weekly or monthly basis or sometimes on a single occasion to discuss and to negotiate

acceptable solutions on Commission proposals. The meetings of these working groups are organized and planned by the Presidency, assisted by the General Secretariat.

Generally speaking, the main task of the working groups is to reduce the number of issues to be dealt with Coreper and the Council. Depending on each case, the working groups may be dealing with the most general issues or sometimes with the technical ones, trying to reach an agreement where possible and leaving the complex and controversial ones to Coreper and the Council (Hayes- Renshaw and Wallace, 1997:99).

The work of this level of the Council hierarchy is important for the final outcome of the negotiations. It is the first opportunity for a member state to discuss a Commission proposal and to reflect its views in the final shape of the legislation. Therefore a member state must ensure that it is represented "by a well- briefed individual in the meeting of the working group"(Hayes- Renshaw and Wallace, 1997:99).

No voting takes place in the working groups. Each representative from the member states declare its opinion on the overall proposal, proposing amendments when necessary, before going into detail on every article. The discussion continues till the chairman judges that an agreement is achieved or that nothing further can be achieved.

The reports of the working groups establish the base for the Coreper meetings. Generally, Coreper accepts the points that has reached consensus in the lower level and discussions are made on the non-agreed points of the working groups report. Coreper then either sends the document back to the working group for further discussion on technical points or refer it to the Council for further discussion or approval.

1.3.4 The Operation of the Council

The hierarchical structure and decision-making procedures are two components of the operation of the Council. Within the decision-making process, while a proposal is converted to a Community act, the order is followed according to the hierarchical structure and decision is taken according to the voting procedures under the EEC Treaty.

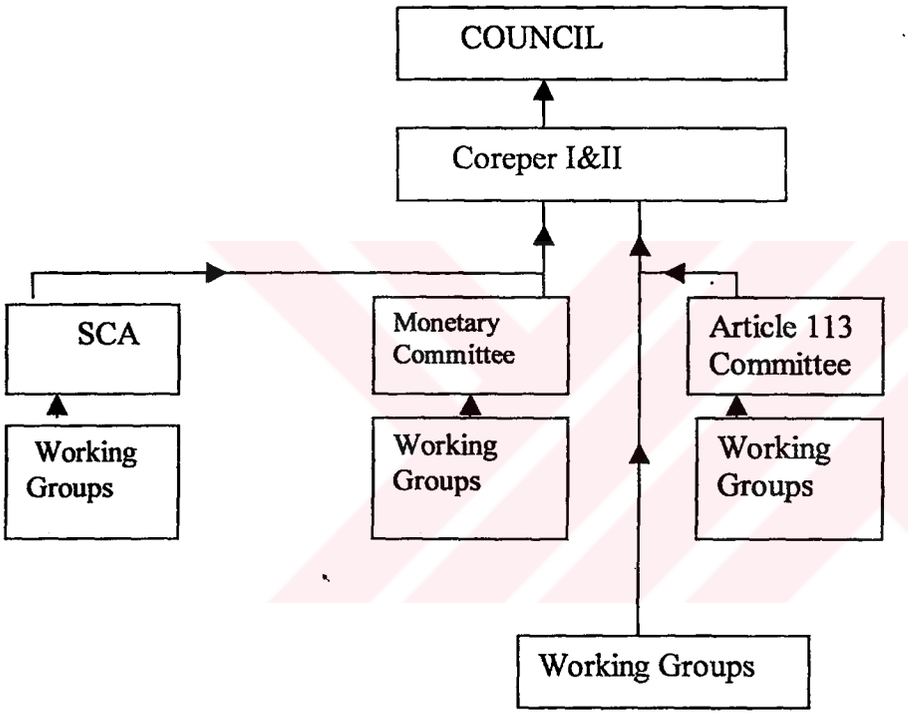


Figure 1.1

Hierarchy of preparatory Groups under the Council structure (EEC Treaty)

1.3.4.1 The Hierarchical Structure

Under the EEC System, there has existed a clear hierarchy in the operation of the Council consisting of COREPER, the other technical working groups and working parties.

At the top of this hierarchy is COREPER, a distinctive body in terms of its composition, scope of activity and status in the system. The middle ground is occupied by senior committees dealing with special issues and the lower ground with the numerous working groups (see figure 1.1).

The hierarchy within the Council is best seen when the Council is dealing a Commission proposal for Council legislation:

The first stage of the process is the examination of the text sent by the Commission. Depending on the complexity of the issue, either one or more working groups start to deal with the proposal article by article. Eventually, a document is produced indicating the points of agreement, disagreement and points of reservations of the member states [9].

In the second stage, the working groups send the proposal to COREPER, or if it is on the agricultural issues to SCA. Most of the work is handled in this stage by the COREPER to make sure that only the most difficult and complex issues are left to ministers to discuss. If a full agreement on the proposal has achieved in the working group, COREPER is likely to confirm the group's opinion and refer the proposal to the ministers. However, if an agreement has not been possible in the working group, COREPER can do one of three things: "try to resolve the issue itself (which its greater political status might permit); refer it back to the working group, perhaps with

[9] Not only in the first stage but also in any stage of the Council process, the member states may enter reservations to proposals.

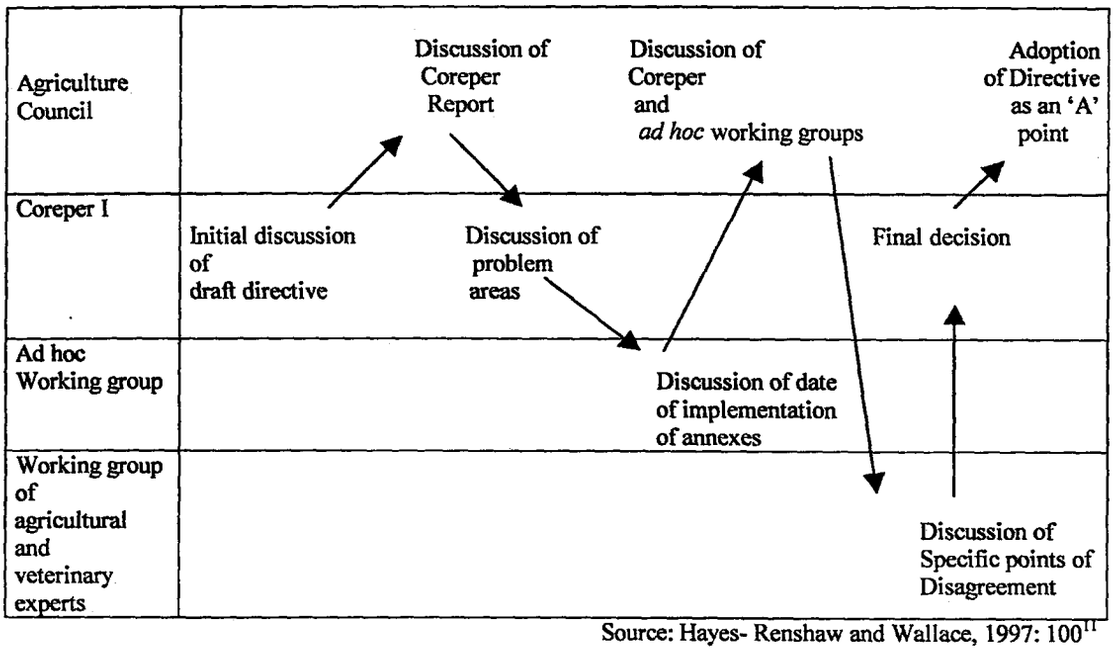
accompanying indications of where an agreement might be found; or pass it upwards to the ministers" (Nugent, 1989: 99).

The meetings of the Council constitute the third stage of the process. Issues on the Council agenda are grouped under two headings. Issues that have been agreed on by the COREPER are listed as 'A points' and the ones that have been discussed but not agreed in the working group or in COREPER, or proposals that have been left by COREPER because of their sensitive political nature are listed as 'B points'[10]. In practical, though not formal, terms of COREPER's approval of a proposal are sufficient guarantee of full Council approval. Thus, generally, the issues under the heading of 'A points' are approved without any debate. However, if any objections are raised by the ministers, then the proposal may be withdrawn and sent back to COREPER. After taking the issues under 'A points', ministers then start to consider issues under 'B points'. All 'B points' are considered in detail by national officers in lower Council levels and new proposals for agreement is prepared for the approval of ministers (see Figure 1.2).

1.3.4.2 Decision-Making Procedures

The working methods or decision-making procedures of the Council are as important as powers given to it by the EEC Treaty. It has two important components; namely the voting rules and the legislative procedures. The voting rules have vital importance with regard to the effectiveness of the Council and the legislative procedure is important for the Council's role within the institutional triangle of Council- Commission and the Parliament with regard to the final outcome of each proposal.

[10] Under article 19(1) of the Council's Rules of Procedure, in the case of emergency, the Council decides unanimously to consider the matter without prior examination or Coreper itself decides to refrains (by a simple majority) from prior examination.



Source: Hayes- Renshaw and Wallace, 1997: 100[11]

Figure 1.2
Movement of a document in the Council hierarchy

1.3.4.2.1 Voting Rules under the EEC Treaty

The original Treaty of Rome displays a full awareness of the need to establish voting rules that allow "the Community to move faster than the pace of the slowest member" (Weatherill, 1996: 63). Accordingly, rules of voting are established to achieve an efficient decision-making while taking the interests of the member states into consideration.

The voting procedure in the Council varies according to the nature of the issue. Three different decision rules are established: unanimity, simple majority and qualified majority voting (herein after "QMV").

[11] Amendment of Council Directive 64/433 EEC on health problems affecting intra-Community trade in fresh meat.

Simple majority is covered as the "default rule" under Article 148 (1) EEC which places all members on an artificial level of equality. The article reads "save as otherwise provided in this Treaty, the Council shall act by a majority of its member states". Nevertheless, since simple majority voting is actually applicable in only six cases in the Treaty, all of which deal either with internal matters or with relatively minor matters where the smaller powers have a special interest and since the Treaty states most precisely the majorities required in particularly all cases, its existence seems to be a great exception (Lindberg, 1963: 32).

On the contrary, most provisions of the original EEC Treaty provided for unanimity[12] that refers to the requirement of the entire Member States meeting in the Council to be in agreement before a proposal can be adopted. Generally speaking, it is required for the areas that are accepted sensitive, for constitutional issues and for systemic agreements with third countries. It is also required for adoption of a new policy, modification or development of an existing policy. The Council also has to decide by unanimity while amending a Commission proposal (Article 149 EEC). In many of these areas a unanimous decision of the Council requires endorsement from either the EP or national Parliaments and sometimes both (Hayes- Wallace, 1997: 42). When unanimity is required, abstentions by Member States do not prevent the adoption of the Council act (Art. 148(3) EEC).

The EEC Treaty has, on the other hand set a timetable according to the moves that would occur away from unanimity voting. It planned transitional periods that would include shift from unanimity to varieties of majority voting. Majority voting has been

[12] For example, the decision to pass from the first to the second stage of the transition period at the end of the fourth or the fifth year (Art.8); the decision to extend or curtail duration of the second and third stages (Art.8); the determination of external tariff levels during the first two stages (Art.20); decisions on the common agricultural policy during the first stages Art. 43); the approval of proposals for the election of the Assembly by direct universal suffrage (Art.138); the decision to enlarge the size of the Commission (Art.157); the appointment of its members (Art.158); the appointment of the judges on the Court (Art. 167); fixing the seat of the institutions of the Community (Art.216).

available in some areas in 1958 but it was planned to increase as the transitional periods expired[13].

Under the EEC Treaty, decisions in the first two stages of the transition period from 1958 to the end of 1965 had to be taken unanimously. Under circumstances when the Council is to operate only on the basis of unanimity-which is the norm in other international organizations-, each member state holds an effective veto which includes a high risk of deadlock in many of the occasions. In such cases because of the "veto culture" the notion of the Community as a supranational entity (to which the Member States have transferred powers) is seriously undermined.

The second sentence of Article 148 EEC provides for QMV procedure which relies on weighing of votes in the Council. Each Member State has a different vote according to its population. (Under the original EEC Treaty the founding six has the following weighted votes in the Council[14].)

Table 1.1

Votes of the member states in the Council under the original EEC Treaty

Belgium	2
Germany	4
France	4
Italy	4
Luxembourg	1
Netherlands	2

[13] Such as the reduction of internal tariffs during the third stage (Article 14, para.2 (c)); fixing the external tariff during the third stage (Art. 20); decision on the common agricultural policy after the second stage (Art.43, para.2); determination of rules regulating international transport after the second stage (Art.75).

[14] After their accession, new member states had the following votes in the Council according to their populations: Denmark 3 votes, Greece 5 votes, Spain 8 votes, Ireland 3 votes, Austria 4 votes, Portugal 5 votes, Finland 3 votes and Sweden 4 votes.

Weighted or QMV, covered by the EEC Treaty is used to accept proposals for the implementation or clarification of an established policy or those that would follow up an agreement of principle.

Under the original EEC Treaty with only six founding members, for the adoption of the acts by qualified majority vote, at least twelve votes in favour are needed. In the case of a vote on a proposal of the Commission, any twelve votes are sufficient, that is to say, those of the three big countries or the votes of the any two of them plus Belgium and Netherlands. In other cases, twelve votes must have included those of at least four members (Art. 148 EEC)[15]. This means that the three big countries can overrule the three small countries if they are approving a proposal that already has the agreement of the Commission, but they cannot overrule them in a matter, which the Council is deciding on its own[16].

The use of majority voting in the Council does have two historical explanations. Firstly it re-emphasises the idea that a difficult large country can be outvoted and bound by a majority vote. Secondly, the voting rules maintain an idea of equality between the Member States in certain aspects. For instance, Luxembourg could walk as tall as France and Germany, resulting in a more favourable representation of the smaller member states in the Council.

Under majority voting system, one member state is not able to block adoption of laws that are binding for all member states. Hence, QMV has constituted a key aspect of

[15] The required number of votes and member states for the adoption of a Council act has been subject to number of changes with each enlargement. With addition of Denmark, Ireland and the United Kingdom in 1973, the number of votes required for adoption of a Council act increased to at least forty one votes in favour when a Commission proposal is required and in other cases to at least forty one votes in favour cast by at least six members. After accession of Greece in 1981 and, Spain and Portugal in 1986, number of votes required for qualified majority increased to at least fifty-four votes in favour when Commission proposal is required and in other cases at least fifty-four votes in favour cast by at least eight member states. Further, after the third enlargement of the Communities in 1995 with accession of Austria, Finland and Sweden the number of votes required for a Council act increased to sixty-two votes in favour when a Commission proposal is required and in other cases to at least sixty-two votes in favour cast by at least ten member states.

[16] Robertson, 1958: 160.

governmental type of supranationality under the EEC system. It also let the Community develop beyond more traditional type of international organizations, which preserve veto powers for each participant.

1.3.4.2.2 The Legislative Process: The Consultation Procedure

Article 145 EEC declares simply that the Council shall "have power to take decisions". The way in which those decisions have to be taken, together with the role or involvement of the other institutions of the EEC are laid down in various Articles of the Treaty[17].

The earliest and the simplest legislative procedure within the Community is the consultation procedure. The work in this procedure is shared between the Commission and the Council, which can simply be explained with the old axiom that " the Commission proposes and the Council disposes". Before any decision is taken by the Council, however, various stages must be completed which, depending on the field concerned, also involve the European Parliament, the Economic and Social Committee and the Committee of the Regions in addition to the Commission and the Council (Bochardt, 2000: 72).

In this legislative process much greater powers have been retained in the hands of the Council and correspondingly less has been granted to the Commission, with the result that the executive power of the Community has been divided between the Commission and the Council. The Council, however, has been the most powerful element in the consultation procedure. In limited circumstances, the Commission has enjoyed legislative powers that are based on enabling the Council's approval. The task given to the Commission is to make proposals to the Council, which will have to be accepted by

[17] Today, it is argued that there are more than twenty basic procedures plus variants and permutations.

the latter before they become Community Law. Article 149 of the EEC Treaty has set the legal basis of the consultation procedure: "Where, in pursuance of this Treaty, the Council acts on a proposal from the Commission, unanimity shall be required for an act constituting an amendment to that proposal. As long as the Council has not acted, the Commission may alter its original proposal, in particular where the Assembly has been consulted on that proposal".

In the consultation procedure, the legislative process starts with the proposals being made by the Commission[18]. The Commission is the only institution that can make proposals for initiating Community legislation. While drawing up proposals, the Commission consults with the representatives of the member states, the European Parliament and with relevant interest groups. Thus, as Kahraman (1996:96) stresses Commission proposals represent the culmination of an extensive process of consultation with the leading representatives of Euro-level interest groups, national experts, civil servants and politicians.

The proposals are then sent to the Council by the Commission, which would either accept or reject them. When the Council acts on a Commission proposal, it can only make amendments to that proposal by unanimous vote. However, on the other hand, the Commission may amend its own proposal anytime in the legislative process.

Under the consultation procedure, while making a decision on a proposal, the Council is obliged to seek the opinion of the European Parliament, however it is not bound by this position[19]. Thus, the Parliament has rather an advisory role than a legislative role in this

[18] However, in some very limited cases, namely with regard to actions either of internal organization (statute of personnel, budgetary questions) or of external relations (admission of new members, association of third states, relations with international organizations), the Council can take decisions without a proposal of the Commission.

[19] See cases 138 and 139/ 79 of October 29, 1980 known as the Isoglucose case, where the Court decided that the Council violated the Treaty of Rome acting without a parliamentary opinion in an area covered by the consultation procedure.

process. It gives non-binding opinions on the Commission proposals and apart from that, has no power in influencing the final outcome.

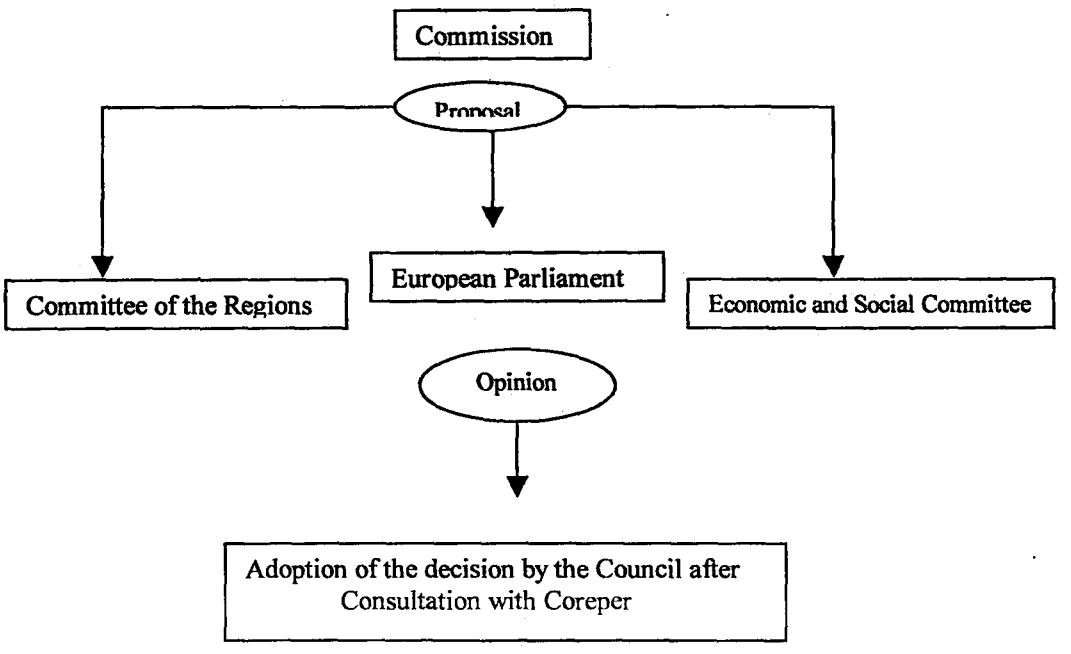
On the other hand, when the Council does not act on a Commission proposal, Commission may amend the proposal in particular "where the Assembly has been consulted on that proposal" (Article 149(2)). Therefore, in such circumstances, the Commission is permitted to take the Parliament's view into consideration.

As regards the consultation procedure it can easily be said that the Council has been established as the key institution in the EEC Treaty. No other institution has been able to act as effectively as the Council has done in the legislative procedure. The Commission has been empowered to initiate proposals and the Parliament has been empowered to give non- binding opinions on the Commission proposals.

1.4 Evaluation

In this chapter we have examined the legal basis of the Council of Ministers in the EEC Treaty. It has been established as the main decision- making organ with its highly crowded hierarchy and different voting procedures. It has had a central role in the consultation procedure, making binding decisions with no Parliamentary input. Thus, it has not had to share its legislative powers with any other EEC institution.

The Council has worked effectively until the mid- 1960s under the provisions of the EEC Treaty. However in the period after 1960s till the Single European Act of 1987 it was unable to make any decisions. Not only the Council but also any other European Institution was unable to work in this period. In the next chapter we will try to examine the reasons that led to such stagnation in the Council and Eurosclerosis in the EC.



Source: Bochardt, 2000:74

Figure 1.3

The Consultation Procedure

CHAPTER 2

STAGNANT YEARS IN THE COUNCIL OF MINISTERS

2.1 Introduction

The picture that has been painted up till now is of EC Council of Ministers as it was established in the EEC Treaty. The two decades from the mid-1960s to mid 1980s has been as a long period of stagnation within the Community.

During the early years of the EEC, the supranational element seemed to be dominant in the Council decision- making by the application of QMV. However, in 1965, intergovernmentalism reasserted itself with a vengeance under the terms of the Luxembourg Compromise. The Compromise blocked the transition to majority voting in the Council, which would have been a major step away from intergovernmentalism. The shift in the Community from the early supranationalism to intergovernmentalism from the time of the Luxembourg Compromise to the Single European Act has always been a subject of much comment. The Council, which was originally established as a Community body, became an intergovernmental institution after the Luxembourg Compromise. The inter-institutional balance also changed after the Compromise, resulting in the decline of the Commission and an ascendacy of the Council.

The period following the Luxembourg Compromise, the 1970s and the early 1980s were increasingly characterized by a lack of progress, a state which came to be termed as 'Eurosclerosis'. After the economic growth of the late 1950s and 1960s, and the expansion of EC membership in 1973, the early and mid-1970s experienced a rather slow economic growth and a halt in progress towards further EC development. In this period there have been continued attempts for reforming the institutions, mainly through changing the voting procedures in the Council. None of the attempts achieved the objective; it would be the Single European Act of 1987 that eventually made a transformation of the political system of the EEC.

2.2 The Transition Period: 1958-1965

From 1957 until 1965 the Council set about the tasks given to it in the Rome Treaty using the procedures laid down in the Treaty. During this first period, the Council was considered to be the most effective power in the institutional system, acting in liaison with the Commission. It has took decisions on the Commission proposals after taking the Parliament's opinion, acting either by unanimous, simple or weighted majority- though in practice before 1966, few votes were taken by simple majority. In some cases, notably with regard to the Common Agricultural Policy (CAP), the Council exercised its right to authorize the Commission to take legislative action on its own accord. In such cases a system of management committees[20] were established so that the Council could supervise and control subsequent Commission action.

The debate on the majority voting in the Council did not begin until General De Gaulle came to power in France in 1958. The General was "known as an opponent of supranationalism", however instead, he "very much supported intergovernmentalism and the close cooperation of independent sovereign nation states" (Tsebelis and Kreppel,

[20] For the changes introduced by the SEA on such committees see Chapter III, title 3.3.1 of this thesis.

1998: 60) or in other words, a confederation of European States. General De Gaulle made several attempts to impose his ideas accepted by his European Partners. The first two, under the name of Fouchet Plan I and II[21], failed while the third, known as the Luxembourg Compromise, was successful.

De Gaulle made his first attempt to prevent majority voting in the Council in 1960 by suggesting regular meetings of the political leaders of the Community's member states to discuss political questions that confronted the Community as a whole. The Council, under the pressure from the General, agreed to establish an intergovernmental committee to explore the possibilities of political cooperation and eventual political union. The outcome of the committee was the first Fouchet Plan which suggested an expanded majority voting in the Council.

However, de Gaulle felt that the French delegation had made too many concessions in the mentioned Plan and took it upon him self to rewrite the plan, "disregarding many of the compromises that had been so meticulously constructed during the previous months" (Tsebelis and Kreppel, 1998: 60). The new plan, known as the Fouchet II was a disappointment for the member states who felt that they had been betrayed by France and in particular by De Gaulle. Therefore it was refused in the Council by the other member state governments who instead prepared a new plan in 1962. However by that time the momentum had been lost and the new plan could not become successful.

The transition period came to an end in 1965 when a French boycott of Community decision- making institutions was eventually resolved in what became known as the Luxembourg Compromise (Allen, 1993: 29). This was also a de facto end to transition into majority voting that was to begin on 1 January 1966 as the third stage of the integration process (Art. 8 EEC) and last until 1987.

[21] See Nicoll and Salmon, 1990; Gerbet, 1987.

2.3 Empty Chair Crisis & The Luxembourg Compromise

The major event that affected the next two decades was the 1965 crisis brought about by the French government that objected to a package of proposals initiated by the Commission to fund the newly agreed Common Agricultural Policy (CAP)[22]. The effect of these proposals would have been to "convert the Commission into an independent, supranational government with a large autonomous financial base, and the EP into a powerful legislature" (Kahraman, 1996: 126). More importantly, other than these supranational objectives was the prospect of the introduction of the majority voting at the end of the transitional period.

This package deal was opposed by France ostensibly on the ground that the Commission had made the details of its proposals known to the European Parliament before the French Government had had an opportunity to consider them. A deadline of 30 June 1965 was fixed by the Council for the settlement of the issue and when no agreement could be reached the French Foreign Minister, General De Gaulle, who was holding the Presidency of the Council, refused to over-run the time limit and despite protests, brought the meeting to an end.

By doing that the French Government also objected to the increased use of majority voting, seeing it as threat to the nation states of the EC and as a move towards the creation of a more federal Europe. When no agreement could be reached on the issue, the French government withdrew both its ministers from the decision-making institutions and the French permanent representatives from Brussels and adopted the "empty chair policy". In effect, France boycotted the Community for seven months, causing a profound crisis which in the end was resolved only through the Luxembourg

[22] The proposals were mainly on the completion of the Common Agricultural policy, change in the basis of the Community income from national contributions to own resources and granting more power on the European Parliament over the use of these resources.

Compromise (or the Luxembourg Accords)[23]. The Compromise, an agreement to disagree, reflected the views of the five member states and the French government respectively[24]:

> -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, within a reasonable time, to reach solutions which can be adopted by all the member states of the council while respecting their mutual interests and those of the Community, in accordance with article 2 of the Treaty.
>
> -With regard to the preceding paragraph, the French delegation considers that where very important interests are at stake the discussion must be continued until unanimous agreement is reached. The six delegations note that there is a divergence of views on what should be done in the event of a failure to reach complete agreement.
>
> -The six delegations nevertheless consider that this divergence does not prevent the Community's work being resumed in accordance with the normal procedure.

In legal terms the validity of the Luxembourg Compromise is highly suspect[25]. First of all, it is not a formal Treaty amendment. While the other legal documents; namely the Merger Treaty, the Treaty of Luxembourg of 1970, the Single European Act of 1986, the TEU and the Treaty of Amsterdam which amended the founding Treaties of the EC according to the amendment procedure laid down in the Article 236 of the EEC Treaty, in the case of Luxembourg Compromise neither this procedure was followed nor it was ratified in accordance with the constitutional processes of the Member States[26].

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[23] For the Luxembourg Crisis see Lasok and Bridge, 1991: 236-242; Goodman, 1996: 85; Weidenfeld and Wessels, 1997: 56-57; Renshaw and Wallace, 1997: 47-49; Allen, 1993: 29; Hallstein, 1972: 68-69; Henig, 1983: 15-16; Nicoll and Salmon, 1990: 57; Duchêne, 1994:332-333.

[24] See Bull. EC 3-1966 , 9.

[25] See also Renshaw and Wallace, 1997: 49 for the validity of the Compromise

[26] See Lasok and Bridge, 1991: 239

Therefore, the Luxembourg Compromise, requiring unanimity in cases where the Treaty requires majority should be regarded as constitutionally invalid.

Although the Compromise had no legal standing in the EC system, it has had an important practical impact on Council decision-making. It not only ended the constitutional crisis of the Community but also had an important effect on the Community's institutional balance. Afterwards, there has been a shift in the balance of power from the Commission to the Council- an indicator of the increasing trend toward intergovernmentalism in the Community policy making. This effect was seconded by another one, the question of the use of QMV in the Council[27]. The point (2) of the communiqué has been interpreted as meaning that any state has the right to exercise a veto on questions which affect its vital national interests and thus, led to the development of a veto culture in the Community.

The rule that the decisions have to be taken only unanimously transformed the Commission to a kind of Secretariat of the Council to decide whether to submit the proposals or not. It also had a weakening impact on the Parliament, which exercises supervisory powers over the Commission. On the other hand the Compromise underlined the importance of COREPER one more time, which had an important role for preparing the agenda for Council meetings and carrying out most of the negotiations between the Commission and the Council on the various proposals. Thus, "the possibility of the Council being overwhelmed by business is averted without any extra power being delegated by the Commission" (George, 1991: 12).

It should be emphasized that the Luxembourg Compromise did not replace a system of majority voting by unanimous voting. By 1966, decisions came to be made by letting issues run until a consensus could be reached. Accordingly, by that date, the norm was

[27] See Craig and de Burca, 1998.

not of unanimous voting but no voting at all[28]. And although majority voting was set as an option in the Treaty of Rome as one of the voting procedures, it did not become efficient until the mid-1980s. Eventually, the Community's decision-making has become very complex, cumbersome and slow[29]. Most decisions, even on the minor issues, were taken "on the basis of the lowest common denominator or by splitting of differences, rather than problem- solving" (Kahraman, 1996: 127).

Accordingly, as Duchêne rightly points out (1994:332) the Compromise has been accepted as one of the prime resources of stagnation and "Europessimism" in the EC which spread insidiously in the 1970s.

2.4 Period of Restoration: 1969-1987

The effects of the Luxembourg Compromise have been long-lasting[30] in spite of the fact that de Gaulle himself remained in power only for an additional two years[31]. Thus, development of the Community from 1969 through 1987 was under the shadow of this Compromise. This period is rightly defined by Tsebelis and Krepper(1998: 63) as a chronicle of repeated attempts to implement the provisions established in the Treaty of Rome and to institute regularized use of majority voting in the Council.

This period had been marked by a lack of decision-making capacity in the Council. The failure to make use of the option of QMV in a number of fields, as offered by the EEC Treaty, the enlargement of the EC in 1973 and the inability of the member states to

[28] However on the opposite, the Commission supports that the compromise has not prevented the Council from taking decisions in accordance with the EC Treaty: see the European Commission 'Glossary: institutions, policies and enlargement of the European Union', Brussels 2000, p. 46
[29] See Lasok and Bridge, 1991: 240
[30] The effects of the Luxembourg Compromise have been long lasting since Britain and Denmark were to become the further advocates of the Compromise in the 1970s.
[31] For comprehensive analysis of this period see Tsebelis and Kreppel, 1998 and Duchêne, 1994: 309- 341

move forward to other common objectives after the completion of the common market, left the Council in a 'decision- making trap' (Weidenfeld and Wessels, 1997: 55). The establishment of the European Council of Heads of State and Government (1974) that institutionalised the earlier ad hoc summit meetings was a step forward to create a supreme political authority that would decrease the work load of the Council and the other institutions by setting clear priorities and guidelines. However, in practice the Council became even less capable of taking decisions once the European Council was created, since it became the practice to leave important decisions to the Heads of State or Government (Weidenfeld and Wessels, 1997: 55). The establishment of the European Council also affected the leadership role of the Commission "which would no longer determined the direction of the EC since the European Council has come to perform the function of the board of directors of a company, making framework decisions on future developments which are then left to the Commission to work up into detailed proposals for the Council"(George, 1991:13).

The beginning of this third stage of transitional period is usually traced back to the 1969 Hague Summit Meeting[32]. However it was the 1974 Paris Summit meeting[33] that called on the then Belgian Prime Minister Leo Tindemans to write a report on European union that "really initiated the slow voyage back to full implementation of the Treaty and majority voting in the Council" (Tsebelis and Kreppel, 1998: 63). The report came to be known as the Tindemans Report[34] of 1976 named after its author.

The Tindemans Report made many proposals for improvements to the Council, such as 'enhanced coherence, recourse to majority voting and strengthening of continuity'(European Commission, 1976) [35]. All of these proposals had the objective of speeding up

[32] See Franck, 1989.
[33] For the detailed information on the Paris Summit see Franck, 1989; Lasok and Bridge, 1991:234.
[34] See Harris, 1999: 45-48; Vandamme, 1989; Nicoll and Salmon, 1990: 42-43; Kahraman, 1996: 154-156; Preston, 1997: 181, Capotorti et al, 1986: 2-7
[35] The Chapter on reforming the Council concluded saying: "In the last resort, the institutional framework will reflect the spirit behind it. It is the political consensus of our states described in the first chapter of this report, which must give new life to the common institutions. The belief that the Union is vital and

the decision-making process and blocking a national veto more than anything else. The Council received the Tindemans Report in 1975, but by then the rapidly worsening economic conditions combined with the British referendum on remaining in the Community had become the Council's focus (Tsebelis and Kreppel, 1998: 63)[36]. Although the report appeared on the agenda of European Council meetings for several years, it was never discussed by the Heads of Government (Preston, 1997: 182)[37]. Some of the reforms became applicable, such as two/multi speed Europe however the major question on majority voting was not directly addressed.

The next report prepared on Community institutional structure was in 1978. After the Brussels summit, "Three Wise Men"[38] Committee was established to question the direction of the political integration. The Report concentrated on the Council and its associated organs. The aim was to make procedural changes rather than major institutional reforms. The Committee proposed reforms on the strengthening of the Commission and lessening of the intergovernmental element of the Council by extending the use of QMV, greater authority for the Council Presidency, wider delegation to the Commission of powers of implementation and more balanced relations between the three major institutions. The Report has shown that the internal problems of the Council which detract from its efficiency and effectiveness as a Community institution remain unsolved. The principle issues were the burden of the business in the

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necessary will enable us to overcome the conflicts of interests and differences of opinion. The resolve to achieve Union will bring us to give necessary powers to the common institutions. Without this political kiss of life the institutions of the Union will always lack substance and force."

[36] The plan was hampered by the continuing effects of the 1973 oil crisis which had experienced the price of crude oil rise by 400 per cent. This has contributed to economic recession, hitting European businesses heavily and causing EC members to look inwards at their own national problems instead of outwards at the EC as a whole (Harris, 1999: 47). The lack of EC progress was further aggravated by the 100 per cent oil price increase of 1979 which contributed the global economic recession of the early 1980s.

[37] Nevertheless, the Tindemans Report, first comprehensive document on EU in the history of the EC- was important in some aspects. Firstly, it showed that although the momentum was slowed, there existed a will for further economic and political union. Secondly, it showed the steps to be taken towards it. Further it argued that for these proposals to be implemented, there was effectively a need for a two- speed EC (Harris, 1999: 47). In such a case, the strongest countries would move faster towards greater integration while the others would follow being in the slow lane. As Harris (1999: 47) argues, in the light of the current debate about a two-speed or even multi-speed European Union, it is interesting that this proposal was surfacing two decades ago.

[38] See Nicoll and Salmon, 1990: 43.

Council and the way in which it is handled. As the Report noted, the key to these matters lies in the Presidency of the Council which "has failed to provide a coherent pattern of work" (Lasok and Bridge, 1991: 235). While the six-month rotating term of office is accepted as having advantages over any other system, the Report advised that the authority and organizational support of the Council be strengthened and that more matters be delegated to the Commission and devoted on the Committee of Permanent Representatives.

The next step in this period to institute effectiveness of the Council came shortly after the first directly elected Parliament started to work. The plan was presented by foreign ministers of the German and Italian Governments, Hans- Dietrich Gencher and Italian Foreign Minister Emiho Colombo (known as "the Genscher- Colombo Plan")[39]. It advocated 'more effective decision-making structures' and 'greater Community involvement in external affairs' (European Commission, 1981:88). Although the main focus of the plan was European cooperation and security issues and not specifically the Council, it definitely tied efficiency to majority voting[40].

The Genscher- Colombo Plan[41] proved to be little more effective than the previous Tindemans Report. Due to its moderate nature, the Plan received only lukewarm receptions both by the European Parliament and the Commission and was rejected by Greece, Denmark and the United Kingdom who objected the restoration of majority voting in the Council (Tsebelis and Kreppel, 1998: 64). However, the Plan was important from the perspective that it became the basis of the Council's Solemn Declaration of 1983[42]. The latter advocated 'greater respect of the Treaties as far as voting was concerned, reaffirming that the application of decision-making procedures laid down in the Treaties of Paris and Rome were of vital importance in order to improve the European Communities' ability to act' (EC Bull. 6/1983, section 2.2.1).

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[39] See Bonvicini, 1987.
[40] Also see Tsebelis and Kreppel, 1998: 63.
[41] See Bonvicini, 1987: 183-184;Moravscik, 1991: 3.
[42] See Bonvicini, 1987.

However this interpretation of the founding Treaties was largely ignored in practice and consequently decision-making through unanimous agreement continued to be the norm. Thus as Franck states (1987: 184), it was more along the line of confirmation and development of current institutional practice.

Next step was taken by the European Parliament in the form of the "European Draft Treaty[43] Establishing the European Union". It was prepared by a committee (known as the Committee on Institutional Questions) led by Altiero Spinelli. The Draft Treaty advocated political, institutional and economic reforms under a single Treaty. From an institutional perspective, the Draft Treaty called for the EC institutions to remain very much the way they were; however added "some additional voting procedures in order to allow for a variety of different decision-making possibilities depending on the particular topic and arena of the debate" (Tsebelis and Kreppel, 1998: 64). Specifically, those areas covered by the EEC Treaty or those more effectively dealt at the Community level were to be decided through majority rule and other areas were to be resolved by unanimous voting. An important concession of the Draft Treaty was that it created a ten-year transition period during which the member states could claim 'vital national interests' as it was the case in the Luxembourg Compromise in 1966. The veto was made more difficult, however, by a provision which forced the country employing the veto to justify itself to the Commission. The Draft Treaty was adopted by the Parliament in February 1984 however failed to be not ratified by the Member States. Nevertheless, it rather served as a draft for the Single European Act which came to effect in 1987.

At the June 1984 European Council meeting in Fontainebleau, the European Council decided to set up two ad hoc committees on European Union, namely the Committee on a People's Europe (the Adonino Committee) and Ad Hoc Committee on Institutional Affairs (known as the Dooge Committee after the name of its president Irish Senator Jim Dooge). While the former explored ways to promote a common European identity, the latter was established to explore ways to ensure a more appropriate institutional

[43] For a detailed analysis of the draft Treaty see Capotorti *et al*, 1986;also Nicoll and Salmon, 1990: 43.

framework for more ambitious goals of the EC (Preston, 1997: 185). The Dooge Committee's report[44] showed the need for greater cohesion and internal efficiency within the Council by criticising the influence of the Member States over the Council. To solve this problem, the Report advised that the authority of Coreper over the working parties should be strengthened to improve the preparation of the Council's decisions and so enable the latter to concentrate on major issues. On the issue of voting, the report called for 'the adoption of the new general principles that decisions must be taken by a qualified or simple majority'[45]. However, this was strictly opposed by the Danish, British and Greek governments who were in favour of the continuation of the unanimity rule.

At last but not least, the proposals of this latter report included suggestions on convening an intergovernmental conference in order to create a draft treaty on European Union, taking account of *acquis communautaire*, the Stuttgart Solemn Declaration, the Dooge Report, and the European Parliament's Draft Treaty[46]. Accordingly, despite the oppositions of Denmark, Greece and the UK an IGC was called by the Milan European Council in June 1985[47].

2.5 Milan Summit & The Luxembourg IGC

The June 1985 Milan Summit[48] was critical in taking forward the development of Community acquis and institutional reform.

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[44] For comprehensive information on these reports see Colcester and Bucham, 1990: 38-42; Moravcsik, 1991: 33; Swann, 1993: 4-25; Nicoll and Salmon, 1990: 36-39 and 42- 45.
[45] See also Report of the Ad Hoc Committee to the European Council, March 1985, part III, section A, point iv, subparagraph (a).
[46] See Schmuck, 1987 for the detailed analysis of the Parliament's Draft Treaty.
[47] See EC Bull. 7/8, 1985: 7-11
[48] For the comprehensive review of the Summit see Preston, 1997: 186.

First of all, the heads of government unanimously approved the White Paper on the liberalization of the Internal Market that was presented by the new UK Commissioner, Lord Cockfield. The Plan to complete the internal market by 1992 proved to be the scheme that formed the basis for the reinvigoration of the Community[49]. There was, however, a disagreement on the necessity of decision-making reform. While the French, German and Italian governments were looking for "a bold initiative that would build on the Dooge Committee's recommendations", the UK Government, "though aware that Internal Market liberalization and enlargement required some procedural reforms, was sceptical as to how far this necessitated Treaty amendments" (Preston, 1997: 186). At this meeting, the European Council also decided, despite objections of Britain, Denmark and Greece, to hold an IGC under the forthcoming Luxembourg Presidency to consider revising the Rome Treaty and drafting a Treaty on Political Cooperation and European Security (Allen, 1993: 26).

In the Luxembourg IGC, one of the most serious discussions that took place centred on the question of majority voting (mainly on voting procedures under Article 100 in relation to the Internal Market liberalisation). Both the Genscher- Colombo Plan and the European Parliament's Draft Treaty called upon the Council to abide by the provisions established in the Rome Treaties, which called for majority voting on a large number of topics under Art. 149 (Tsebelis and Kreppel, 1998: 66). In other words, they called for renunciation of the Luxembourg Compromise. In addition to the previous attempts at institutional reform, however, were added the demands of the national parliaments of Italy and Germany, both of which had passed resolutions calling for nothing less than 'EP/Council co-decision and generalized majority voting' (Tsebelis and Kreppel, 1998: 66). Support of the European Peoples Party (EPP), Socialists and Liberals and the Commission for the extension of QMV was also added.

However, although the majority will for reforming the Council was evident, still, there was no guarantee for the extension of QMV because of the continuing opposition of

[49] For the details of the report see Swann, 1993: 19-24

Britain, Denmark and Greece[50] in the IGC. On the contrary, the Italian representatives threatened to veto any proposal that did not satisfy the European Parliament (Corbett, 1987: 241) and the French and Germans had already demonstrated their desire to move Europe towards further integration (Tsebelis and Kreppel, 1998: 67).

In the end, through various trade- offs, the Heads of Government resolved the final details of the reform package under the name of the Single European Act (herein after "the SEA")[51]. Following ratifications in the Member States and referendums in Denmark(1986) and Ireland(1987), it came into force on 1 January 1987. In this sense, all the member states were positive and supported unanimously the internal market project because of its emphasis on economic regeneration and its avoidance of overt political commitment.

2.6 Evaluation

The period from the 1960s till the SEA of 1987 has been termed as "Eurosclerosis". Although in the first quarter of the period, the institutions, in particular the Council had effectively worked according to the provisions of the EEC Treaty, the rest of the period was marked by the Luxembourg Compromise of 1966 which led to 'no decisions' in the Council. The last quarter of the period until the adoption of the SEA experienced many reform proposals for a shift to QMV and for an efficient working of the Council. Although most of these proposals seemed to have a political support from the Member States, from the institutions of the EC and from the political elites, they all failed to fulfill their objective. The latest attempt was to prepare the EP's Draft Treaty on European Union, by taking the proposals of the Dooge Committee into consideration, which successfully became the basis for the SEA. From an institutional perspective, the

[50] However, it has to be mentioned that, oppositions of these countries were to the removal of the national veto not to the extension of powers of the European Parliament or the Commission.
[51] European Commission, 1986.

SEA marked an important date in the history of European Integration. It included not only amendments to the original EEC Treaty provisions, but also an extension of QMV for the first time (although it was limited within the scope of internal market). Therefore it was the beginning of a more productive period as far as the decision- making procedures are concerned since the stagnant years have already past and a new era by 1987 have started.

CHAPTER 3

THE SINGLE EUROPEAN ACT

3.1 Introduction

By the 1980s since the enlargement of the Community took place and new members with different aspirations from those of the core six joined, the oppressive effect of the veto was more widely and more often felt. This factor was seconded by another one; economic downturn in Europe. The damaging effect of the veto was concealed for a number of years by the largely satisfactory performance of the Community's economy. Accordingly, the Community needed to recapture its flair. Many initiatives at the political level are made as mentioned under the previous heading. However, these initiatives evoked little enthusiasm and some opposition among the Member State Governments[52].

This new era started with the SEA. Although the SEA is composed of both economic and political reforms, the core of it constitutes economic integration with the supportive aims of reforming the institutions.

[52] See Chapter II of this thesis.

Concerning the Council, the SEA did not include too many amendments; its reforms were limited with extension of QMV to a limited number of areas, the new cooperation procedure and assent procedure those of which are very important for the functioning of the Council and its role in the legislative process respectively.

In this chapter we will go into these points in detail. However before examining such implications of the SEA on the role of the Council, we shall mention the significance of the Act and draw its general framework.

3.2 Significance of the Single European Act

After a period of "Europessimism" and "Eurosclerosis" in late 1970s and early 1980s, the period of optimism and institutional momentum started with the Single European Act[53], a document approved by the European Heads of State and Government in 1986[54].

The SEA was not the first document that amended the EEC Treaty. Previously the Treaty was amended by the Merger Treaty, the two Budget treaties and the Treaty on the withdrawal of Greenland[55]. However the SEA was the most ambitious and comprehensive one, being the first major attempt at revising the Treaties since their original enactment.

It is true that the SEA was about both market and governance. However, its originality comes from the synergy between policy reform and institutional reform which were seen

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[53] For the full text of the SEA see European Commission, 1986.
[54] For the history and significance of the SEA see J.W.De Zwaan, 1986; R. Bieber, J.Pantalis and J. Schoo, 1986; Dinan, 1994: 143-152; Weatherill, 1996: 14; Adam- Schwaetzer, 1989; Harris, 1999; Preston, 1997: 186- 191 and from a theoretical perspective see Wallace, 1996: 52-55
[55] See Editorial Comments, 1986:249.

as inextricably linked; that is to say creating a single market with more effective institutions and decision- making procedures (Kahraman, 1996: 184).

The first half of the SEA reform package aimed to create "an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured"[56] and the second half of the reform package consisted of procedural reforms designed to streamline decision-making in the governing body of the EC, the Council of Ministers (Moravcsik, 1991: 20). In particular, it consisted of couple of important reforms from an institutional perspective: the extension of the majority voting in the Council, cooperation procedure (where the Parliament became a co-player of the legislative process) and an assent procedure in the legislative process and strengthening of the executive powers of the Commission[57].

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[56] Article 8A of the 1985 EC Commission White Paper, as amended by the SEA.

[57] The Single European Act, apart from the Preamble, is composed of four Titles dealing respectively with common provisions, provisions amending the Treaties establishing the European Communities, Treaty Provisions on European Co-operation in the sphere of foreign policy and general and final provisions. Annexed to the Act is a final act listing twenty declarations on various subjects. The preamble restates the objective of creating a European union based on the EC Treaties and on the Treaty on foreign policy cooperation. It underlines the member states' commitment to the preservation of human rights and democracy and specifically refers to the indispensability of the European Parliament in this context and relates the extension of common policies and the establishment of new objectives, as well as the proposed reform of the institutions, to a determination to improve the economic and social situation (Allen, 1993: 41). Lastly, the Preamble also consists of the objective of the 'progressive realization of economic and monetary union' and 'notes' both the introduction of the EMS and the fact that the Community and the Central Banks of the member states have taken a number of measures intended to implement monetary cooperation (Allen, 1993: 41). 'Single' recalls that the Act both concerns the revision of the three treaties under Article 236 of the EEC Treaty and corresponding clauses of the other treaties- amending the Paris Treaty of 1951 that created the European Coal and Steel Community (ECSC), the Rome Treaty of 1957 that created the European Atomic Energy Community (EURATOM) and the other Rome Treaty that created the European Economic Community (EEC)-, and contains separate (and for the first time) treaty provisions on political co-operation under European Political Cooperation (EPC)- including the establishment of a small secretariat consisting of officials temporarily seconded from foreign ministers- and on European Monetary System (EMS) (Nicoll & Salmon, 1990: 39).As far as the provisions amending the EEC Treaty are concerned (Chapter II of Title II) institutional provisions are listed in Section I. Section II is composed of the provisions on internal market, decision-making by qualified majority, the monetary capacity, social policy, cohesion, research, technological development and environment. The Articles concerning the internal market were fitted into the existing text of the EEC Treaty after, respectively, Article 8(progressive establishment of the common market) and Article 100(approximation of the laws) and monetary capacity has been brought in as a new Chapter 1 of Part III, Title II (Economic Policy) of the existing treaty text (De Zwaan, 1986: 761). Further, two new articles on social policy were linked to the Article 118 of the existing Treaty on cooperation in the social field. Finally chapters on cohesion, research-technological development and environment were added to Part III (Policy of the Community) of the EEC Treaty, as separate Titles V, VI, VII respectively (De Zwaan, 1986: 761).

In addition to these, a legal base for the European Council[58] was established for the first time, which was acting on the conclusions of the Summit Conference since December 1974 without legal foundation. Further, under Article 3(1), the name of the European Parliament was officially recognized and replaced the 'Assembly' (Art. 3(1) SEA)[59] that used to be contained in the founding Treaties. In addition to these, a new Court of First Instance was established under Articles 4, 11 and 26 of the SEA to work in cooperation with the European Court of Justice and to share its workload.

The provision of a Treaty basis for European Political Cooperation (EPC) in a single text together with Community subject- matter is also an important fact of the SEA. The EPC became a component of the Community activity by the SEA, which represents principally a codification of existing texts and procedures as far as the content of the Act on EPC is concerned.

There have been very different responses to the SEA, some seeing it as a positive step forward for the Community after stagnant years and some criticizing it as being a setback for the progress of European Community. While some treated it as an economic chapter, some others saw the social and environmental policy amendments as a very significant conferral of autonomous Community competence in these fields, and not merely as side- effects of its market integration goals (Craig& De Burca, 1998: 22). This divergence can be an example and a base to the idea that the European Community means different things to different people and provides a forum for competing and conflicting aims and goals.

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[58] The detailed information on the establishment and historical background of the European Council will be written in the Chapter III the Maastrict Treaty since the task and functions assigned to it became more clear in the Maastrict.

[59] However, in a resolution of 30 March 1962 (see J.O. p.1045, 1962 for the resolution) the Parliament had adopted the designation 'European Parliament' and the term 'European Parliament' was used without reservations by the Commission and the Court of Justice since then.

Nevertheless, it should be accepted that completion of the Single European Act in itself is thus a unique event of major political importance. It reflects the readiness of the Member States to develop further and reinforced cooperation between themselves. Further, the objective of adaptation of the Community to the realities of the day within a very short period of time is achieved balancing the desirable and the possible[60].

3.3 Expansion of the role of the Council: Comitology

As mentioned under the previous heading, the SEA brought a couple of important innovations concerning the operation of the Council; namely the extension of QMV and the cooperation procedure. In addition to these, the Act also brought an important innovation on the role of the Council: the comitology procedure.

The SEA added the "comitology" procedure[61] into the Council's role where the Council delegates powers to the Commission subject to certain conditions. The procedure was introduced under Article 10 of the SEA that amends Article 145 of the Treaty of Rome by adding the following provision: "confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down. The Council may impose certain requirements in respect of the exercise of the powers. The Council may also reserve the right, in specific cases, to exercise directly implementing powers itself. The procedures referred to above must be consonant with principles and rules to be laid down in advance by the Council, acting unanimously on a proposal from the Commission and after obtaining the opinion of the European Parliament".

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[60] As the Common Market Law Review editorialized at the time(1986(23):251), "measured against Parliament's draft Treaty, the results [of the IGC] are disappointing meager. They also fall short of the expectations ..... of the Commission and of the member states...But they reflect the limits of what was possible at the turn of the year[1985-1986]"

[61] For the working of the comitology system see Hix, 1999: 42-45; Goodman, 1996:83-84.

In such a system, the Council has designed an elaborate system of committees, known as 'comitology', where 'national experts' issues opinions on the Commission's proposed implementation measures (Hix, 1999: 41).

It is important to mention that before the amendments of the SEA, the Council had the right of delegating powers to the Commission while usually requiring the Commission to consult with a committee representing the interests of the member states. However since a large number of committees with differing regulatory powers have grown up, the SEA amended the related article to provide an overall framework for the delegation of powers. As a result of this amendment, the Commission naturally hoped that this would lead to it being given more rather less discretion but it is not how it worked out. The Council adopted the Comitology Decision in June 1987 where it prescribed three types of Committee that are composed of the representatives of the States and the Commission. These were: advisory committees which could offer opinions on Commission measures but not refer them to the Council; management committees which could refer Commission measures to the Council if a qualified majority disagree with them; and regulatory committees which could refer Commission measures to the Council if there were not a qualified majority in favour of them (Allen, 1993: 45 and Hix, 1999: 41).

The Comitology Decision has on the other hand started a debate between the Council, the Commission and the Parliament. Firstly, the Parliament has opposed to the establishment of the regulatory committees because of the idea that their existence would undermine the Parliament's control over the Commission. Secondly the decision set up a struggle between the Council and the Commission over the delegation of the implementing powers. As Allen points out (1993: 46), in general the Council has been reluctant to grant those powers generously to the Commission. Despite the suggestions of the 1985 IGC on the Council's giving priority to the advisory committee, until the end of 1990 in all internal market proposals the Council has only opted for advisory system

of regulating Commission implementation twelve times out of the thirty-eight proposed by the Commission.

3.4 More efficient decision-making in the Council

Following a number of reports and proposals advocating reform of the Community Institutions, the Act laid down provisions with a view to making the institutional structure more efficient and democratic (Kahraman, 1996:188). To increase the efficiency of decision making- by increasing its speed- and to achieve the goals of the Single Market, the Act extended QMV in the Council to issues relevant to the completion of the single market and the internal market. Extension of QMV in the Council was supported by a second institutional reform, the introduction of the new cooperation procedure[62] (and in a sense the assent procedure) between the Council and the Parliament in some areas of the Community activity. These two institutional reforms are also the most important ones to be found in the SEA, related with the power of decision-making of the Council.

3.4.1 Changes in the Voting Rules of the Council: Extension of QMV

In the SEA, the member states not only committed themselves to achieve a single market by the end of 1992 but also agreed to do so through majority voting in the Council[63].

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[62] These reforms,being limited within the scope of the aim of establishing the internal market has been interpreted as the victory of the minimalists rather than maximalists with a program of broder reform (see Moravscik, 1991: 42).

[63] See also Colchester and Bucham, 1990:35; Hayes- Renshaw& Wallace, 1997: 49- 53; Nugent ,1989: 106-108; Perry, 1994: 18- 19; Allen, 1992: 42; Moravscik, 1991: 42; Weatherill, 1996:68-70; Kahraman, 1996: 189- 190; Corbett, 1992: 289; Nicoll and Salmon, 1990: 38-39; Goodman, 1996:85; Dinan, 1994: 252.

By the early 1980's voting had become more common in the Council and the "Luxembourg Compromise had become more of a last resort and there was a sense of frustration about what sometimes seemed arbitrary blockages of decisions by individual governments" (Hayes- Renshaw& Wallace, 1997: 49). The experiences of first (accession of Denmark, the UK and Ireland) and second (accession of Greece in 1980) enlargements and the prospect of the third (accession of Portugal and Spain in 1986) also supported this perspective. Britain, Denmark and Greece had each in different ways been ready to sit tight on isolated national positions in the Council, enough to frustrate their colleagues and to increase the acceptability of QMV, especially as it turned out to for the French (Hayes- Renshaw& Wallace, 1997: 50).

By the mid 1980's there was an increased tolerance in the Council for voting and more willingness to amend the founding treaties to make the use of QMV more common. As Nugent (1989: 106) points out there has been an increasing recognition, even among the more rigid defenders of national rights and interests, that decision-making by unanimity is a recipe not only for procrastination and delay, but often for no decision at all.

The SEA, the first major formal revision of the original Treaty of Rome, significantly injected a QMV rule for the Council into a number of provisions permitting the Community to legislate.

It extended the QMV to measures necessary for the establishment and functioning of the common market and to secure the efficient decision- making. The amended Article provided that to achieve the objectives set out in Article 8a, the Council would adopt approximating measures in a range of policy areas by qualified majority, where they have "as their object the establishment and functioning of the internal market". This would also speed up the legislative process that was of central importance to the attempt to build a genuine single market.

The provisions on the majority voting are found in the section of the SEA dealing with the internal market. Articles 8A, 8B, 8C, 28, 57(2),59, 70(1) and 83 of the EC Treaty are all amended to replace unanimity with QMV. However, some key areas such as fiscal matters, taxation, free movement of persons, worker's rights, environment, the framework program and overall level of finance for research and development, monetary cooperation, coordination of the structural funds and amendment of the statute of the Court are explicitly excluded and unanimity was required in these areas.

The SEA also inserted a new Article 100a to the Treaty. Under Article 100, which covers the key area of the approximation or harmonization of laws, the Council had to act unanimously and was only allowed to issue directives. This new article 100A in the SEA allowed the Council to act by qualified majority to 'adopt measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market'. This meant that the majority of legislation for the completion of the internal market would be enacted by qualified majority and without such a reform it would be almost impossible to see how the internal market program would ever have gathered any momentum, given early problems in the Community decision-making procedure (Perry, 1994: 13).

Although the SEA extended the use of qualified majority voting, it does not satisfy those states like France, Germany, Italy and Benelux countries that along with the Commission said they would like to have seen the principle more broadly extended (Allen, 1992: 42). On the contrary, the SEA represented a sort of triumph for the minimalists British position in that it gives concessions to the need to reform the decision-making process but then goes on to severely restrict those concessions (Allen, 1992: 42). Not only the exceptions provided in Article 100A(2) but also Article 99 is changed to allow consultation with the European Parliament but unanimity is preserved for the harmonization of the VAT rates, excise duties and other forms of indirect taxation- all of which are politically sensitive for Britain.

However, despite these limitations of the SEA, the reintroduction of the QMV has had the effect of enabling the Council to take decisions. Firstly, in December 1996 the Council made a change in its rules of procedure and to allow any Member State or the Commission itself to call for a formal vote. Previously, only the state, holding the presidency could do this and prevent a decision by refusing to call for a vote. In practice, even before the SEA, the Council started to change its voting habits, suggesting that unanimity was rather a political matter than a legal obligation.

One controversial issue related to the extension of QMV was the present status of the Luxembourg Compromise. As mentioned before, the Community's decision- making system was under the shadow of the Luxembourg Compromise since January 1966. Thus, despite the original Treaty of Rome had provided both unanimity and QMV, this had effectively been halted.

The issue was not discussed in the 1985 Intergovernmental Conference, which culminated the SEA, not being a matter enshrined in the Treaties. Some argued that (Allen, 1992:43) since there was no mention for the Luxembourg Compromise it remained unaffected. However, there is a general agreement that by agreeing on the Act, the member states showed willingness to be bound by a procedural consensus and readiness to 'play the game according to the rules'. And in practical terms the commitment shown to the reinvigoration of the Community by formal acceptance of QMV in the Single Act was sufficient "to push the Luxembourg Compromise to the furthest margins of the Community's operation" (Weatherill, 1996:68). Although theoretically it remained, its pervasive effect was banished.

Eventually, extension of qualified majority voting by the SEA had resulted in the late 1980's in a considerable improvement in Council's decision-making in the areas where majority voting applies. However, by contrast, the areas in which the Treaty required unanimity remained subject to long negotiations and even blocking by individual Member States. It also showed that some issues of the Community policies continued to

be subject to the rule of the lowest common denominator, not least in the fields of environmental protection, many aspects o social policy, harmonization of indirect taxation (allowing the 'tax-haven' countries to dictate policy to the rest), the framework program for research, monetary integration, most aspects of foreign aid, etc. (Corbett, 1992: 289).

Furthermore, as Wallace (1996: 60) states, "extension of QMV under the SEA enlarged the scope for the Commission to devise proposals that can get past the opposition of a few member governments and also enabled groups of governments with a clearly shared policy preference to rally to a particular side of the debate, whether as a propulsive majority or a blocking minority".

Table 3.1

Extension of QMV in the SEA

Internal Market (Article 8A)
Internal Market (Article 8B)
Internal Market (Article 8C)
Common Customs Tariff (Article 28)
Right of establishment (Article 57(2))
Services (Article 59)
Capital and Payments (Article 70(1))
Transport (Article 83)
Approximation of laws (Article 100A)

3.4.2 Changes in the decision- making rules: Cooperation & Assent Procedures

As far as the institutional reforms of the SEA are concerned, a major change in the exercise of the Council's powers has been introduced as a " cooperation procedure".

Although it did not attract much attention in the 1986, it is now clear that "this procedure- in conjunction with majority voting- does give Parliament considerable leverage over the content of Community legislation" (Kahraman, 1996: 191).

Until the SEA, the legislative system of the EEC was based on the Council- Commission dialogue. The Cooperation procedure altered this dialogue and allowed the enhanced participation of the European Parliament in the process.

The participation of the Parliament represents a food in the legislative door for the Parliament, which will be anxious to build upon this in the future. Comparing with the Consultation procedure where the Parliament did have no substantive role, in the co-decision procedure the Parliament was given a more substantive role. The cooperation process enables the EP to enter into negotiations with the Council over the content of some of its legislative acts (Hayes-Renshaw and Wallace, 1997: 200). This new procedure also gives the former an opportunity of second reading, in addition to the system of first reading. In this procedure the Parliament has the power to reject and amend the Commission proposals (where previously the Parliament had the right only to comment on drafts of European Law, without usable sanctions against the Commission and the national governments if it were ignored)[64].

This new role of the European Parliament constituted a step forward than its consultative role, yet "it is still far from satisfying the demands of the European Parliament for full co-decision" (Kahraman, 1996: 186). Thus, it has been argued that despite its new role

[64] see Colchester and Buchan, 1990: 36

in the legislative process, its involvement is either very limited or diminished because of the "exercise of the powers is conditional on the attitude of the Council and the Commission" (Bieber & Pantalis & Schoo, 1986:791 CMLR). The Single European Act fell far short of the European Parliament's objective of major transformation of the Community system. Other than the areas that the Parliament works in cooperation with the Council and the Commission under the provisions of the SEA, it keeps working as a consultative body within the legislative process. And, the Parliament still remained, constitutionally, the 'outsider', dependent essentially upon maximizing its legislative influence through inter-institutional linkages (Earnshaw and Judge, 1999: 109).

The cooperation procedure only relates to legislation enacted under the auspices of the 1992 program, or in other words, legislative measures necessary for the completion of the single market (Archer and Butler, 1992: 41)[65]. The terms 'after consulting the Assembly' in the Article 149 was replaced by 'in cooperation with the European Parliament' (Article 6(2) SEA).

According to Article 6 of the SEA the cooperation procedure is applicable to acts based on Article 7(prohibition of discrimination on grounds of nationality), 49 (freedom of movement of workers), 54(2)(right of establishment), 56(2) second sentence (right of establishment), 57 with the exception of second sentence of paragraph 2 thereof (right of establishment), 100 A (approximation of laws), 100 B (approximation of laws), 118 A (social provisions), 130 E and 130 Q (2) of the EEC Treaty (see Table 3.2).

[65] Therefore, legislation relating to the fiscal barriers to a single market- notably the approximation of VAT rates- and also relating to social and environmental standards of a single economic market remain subject to unanimous voting.

Table 3.2

Areas of application of the co-operation procedure under the SEA

Prohibition of discrimination on grounds of nationality (Article 7 EEC)
Freedom of movement of workers (Article 49 EEC)
Right of establishment (Article 54(2) EEC)
Right of establishment (Article 56(2) second sentence EEC)
Right of establishment (Article 57 with the exception of second sentence of paragraph 2 EEC)
Approximation of laws (Article 100 A and100 B EEC)
Social Provisions (Article 118 A EEC)

The new procedure adds a second reading to the single reading of the legislative proposals. It starts with a Commission proposal that is sent both to the Council and the Parliament (Art. 6 SEA)[66]. At this stage the Economic and Social Committee and the Committee of the Regions may also be consulted. The idea behind Parliament's involvement at this early stage is "to give an opportunity, in the interests of effective participation in the legislative process, to give the Council its views on the Commission proposal before the 'common position' is drawn up" (Borchardt, 2000: 76). The first reading remained almost unchanged in the SEA in comparison with the previous consultation procedure, with the Council consulting to the Parliament on the basis of a Commission proposal. Parliament still retains the *de facto* power of delay, as no time limits were involved at this stage, and adopts amendments and forwards these to the Council (Earnshaw and Judge, 1999: 97).

[66] for analysis of the each stage of the co-operation procedure see Earnshaw and Judge,1999; Wyatt and Dashwood, 1993: 40-41;Nicoll ans Salmon, 1990: 39-41; ; Barnes and Barnes, 1995: 38-39; Arsava, 1988: 20-21; Colcester and Buchan, 1990:66-71; Perry, 1994: 29-34; Lasok and Bridge, 1991: 230- 231; Goodman, 1996: 81-83 and for the mathematical explanation of the procedure see Tsebelis and Kreppel, 1998: 41-71.

On the basis of the opinions submitted, the Council acting by qualified majority, adopts a common position (under the original procedure, the Commission proposal with/ without amendments would go to the Council for decision) (Art. 149 (2)(a) EEC). This sets out the Council's position on the Commission proposal and on the opinions given by the Parliament and the other Committees. The common position of the Council is then sent to the Parliament for its second reading. In the next three months period, the Parliament can do one of these four things; it can accept the Council's position or can do nothing or rejects or amends the common position.

If the Parliament accepts the common position or gives no response within the deadline, the Council then adopts the common position (Art. 149(2)(b), second sub-para. EEC). If the Parliament rejects the common position- accepted as the Parliament's right to veto- the Council, acting unanimously, may adopt it (Art. 149 (2)(b), second sub- para. EEC). However, to reject the Council's common position, the Parliament has to be able to align itself with at least one member state. In this case, since it is difficult to achieve unanimity in the Council, the proposal is effectively blocked. In the third instance, when the Parliament proposes amendments (Art. 149(2)(c) first sub-para. EEC), the proposal is sent to the Commission. The Commission is required, within a month, to re-examine the proposal on the basis of which the common position was adopted, taking as the starting point the amendments proposed by the Parliament (Wyatt and Dashwood, 1993: 41). The Commission has a great deal of political flexibility as to whether it then includes the Parliament's amendments to the final proposal and sends it to the Council, or whether it decides to send the unaltered proposal back to the Council (Archer and Butler, 1992: 40). However, it does not have a choice to introduce complete new amendments.

If the Commission accepts these amendments, the Council may adopt the instrument in the usual way, by a qualified majority or (if it is departing from the Commission's proposal) unanimously (Borchardt, 2000: 78). If the Commission does not accept Parliament's amendments, their adoption by the Council requires a unanimous vote.

Parliament has to get the Commission on its side in order to lend weight to its arguments. In any case, the Council, by not taking a decision on the amendments made by the Parliament or on the amended Commission proposal, can exercise veto therefore can block the legislation in question.

This procedure that adds the second reading to the legislative process in the relevant fields, clearly gave the European Parliament a greater opportunity to influence the Council. However, it is still the Council who has the last word. The Parliament enjoys no legislative powers of its own nor any power of veto of its own. But where it has at least one supporter among the Member States it may block adoption (which can not be accepted as a real right of veto in this sense!). This enhances its influence while leaving it distant from any real legislative role (Weatherill, 1996: 86)[67].

Although it seems as if the powers of the Council declined in favour of the Parliament with this new procedure in the SEA, the Council is still the dominant and most powerful institution in the legislative process. The Parliament's demands on gaining powers on the same footing as the Council, to have control on the decision-making process and to make impossible to Council's blocking a decision in the process could not be achieved under the new procedure of the SEA[68]. The Parliament, far from having equal political weight with the Council in the system, rather obtained limited significance by comparison with the previous system. Despite the amendments of the SEA, it stayed as an institution with no legislative powers of its own. However, it is also argued that, as Colchester and Buchan (1990: 35) states, although the Council still retains the last legislative word, in this new procedure "it has become much harder to predict what that word will be, following the Single Act's shifting of more power to the two federal bodies, the Commission and the Parliament".

[67] for the opposite suggestion see Corbett, 1989: 28-29
[68] Schmuck, 1987: 202.

Although the procedure seems extremely complex, it has worked quite well in practice[69]. Accordingly, the Commission explained the working of the cooperation procedure as such: ' the inclusion of the Parliament in the decision-making process appears to have improved the texts and not disturbed the procedure'. Further, many commentators agreed on the idea that since the SEA the voting frequency has increased quite considerably within and outside those areas directly affected by the SEA: in many fields where, for years, no decision had been possible, a compromise has now been reached within months. Therefore, a co-operative and beneficial working relationship seemed to be developing with amendments proposed by the European Parliament attracting support and often having a significant impact on the final outcome.

Since the SEA came into force up to the end of 1990, 162 proposals were adopted under the cooperation procedure (Commission, 1991: 360). Of the amendments requested by the Parliament on the first reading, 58 per cent were accepted by the Commission and 46 per cent by the Council. On the second reading, seventy common positions of the Council were approved by the Parliament and ninety- two amended; of these 50 per cent were accepted by the Commission and 26 per cent by the Council.

Further between the years 1993 and 1994, 332 proposals were adopted under the cooperation procedure (Kahraman, 1996: 189). Of the amendments requested by the Parliament on the first reading, 54.4 per cent were accepted by the Commission and 43 per cent by the Council. On the second reading, 44.2 per cent of the Parliament's amendments are adopted by the Commission and 23.5 per cent by the Council.

The second innovation introduced by the SEA (Art. 8 SEA) concerning the Community's decision-making system is the ' assent procedure', which involves the

[69] also see the European Commission's Twenty- second and Twenty-third General Reports on the European Communities (1989) and (1990), at pp 32 and 31 respectively.

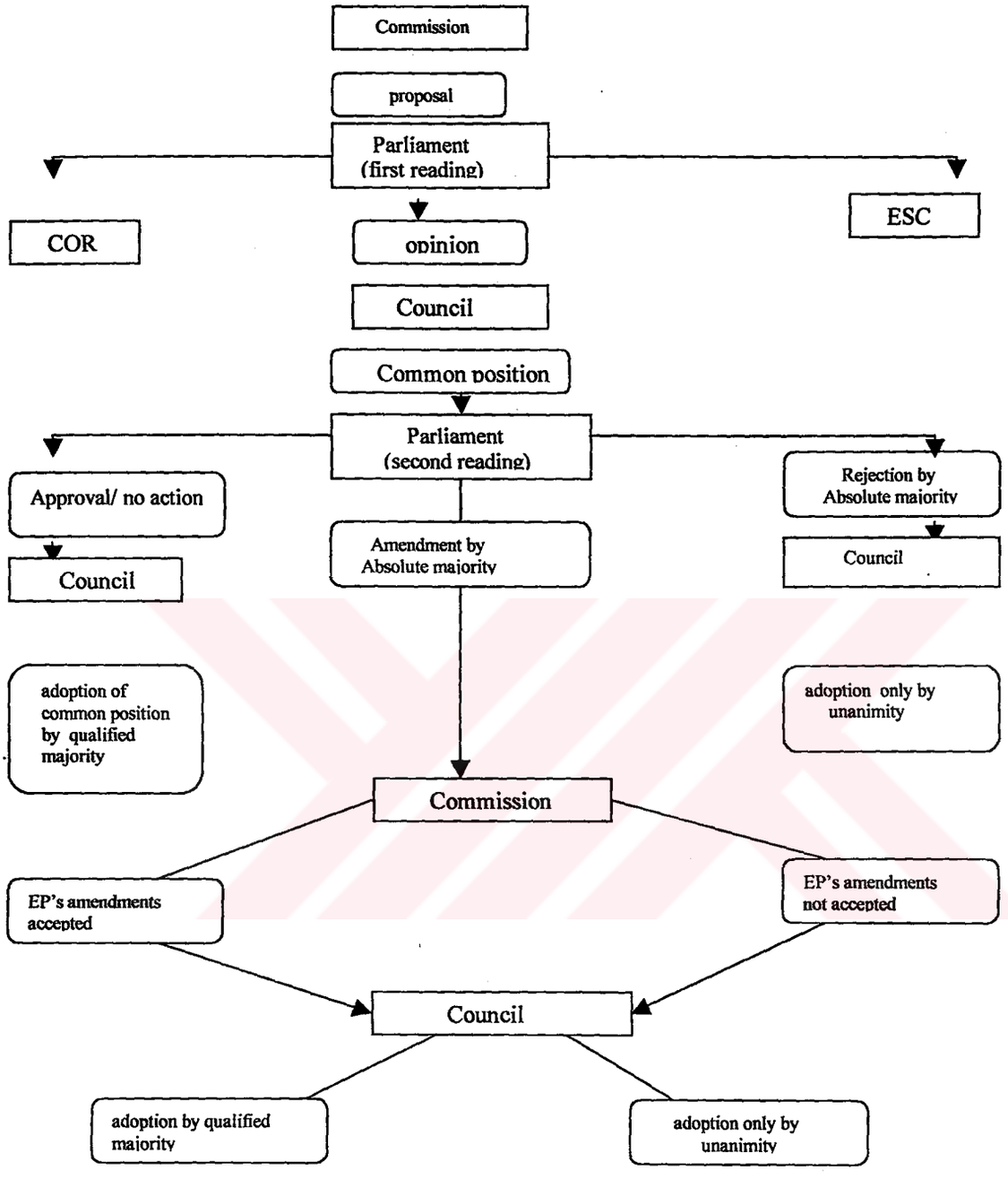
three important European Institutions: the Council, the Commission and the Parliament (European Commission, 2000: 9)[70].

The SEA introduced the assent procedure into the EEC Treaty for decisions under Article 237 on applications for accession of new member states and under Article 238 on the conclusion of association agreements. Under the Article 8 of the SEA that provides for the use of the assent procedure, the Council is required to act by unanimity and the European Parliament gives its assent by an absolute majority of its members.

Under the assent procedure, the Council acts on a proposal by the Commission after obtaining the assent of the Parliament (absolute majority of its members). The simplicity of the procedure belies its political significance: "it is an example of pure co-decision, where the act in question can only be adopted if it is formally approved by both the Council and the Parliament" (Wyatt and Dashwood, 1993: 44 and Corbett, 1989: 29) and the provisions requiring the assent of the Parliament would give it a right to veto.

However, it is a negative power; it gives the Parliament only a chance to accept or reject a package negotiated by the others (mainly by the Commission and the Council); and it concerns events not likely to occur in future years[71]. Therefore, inter institutional balance under the SEA is still in favour of the Council, having the last word in the legislative process since the powers given to the Parliament under the assent procedure is too limited as well.

[70] The Assent Procedure extended for citizenship, the specific tasks of the European Central Bank, and amendments to the Statutes of the ESCB and of the ECB, the Structural and Cohesion Funds and the uniform procedure for the elections to the European Parliament under the TEU and following the signing of the Amsterdam Treaty, Parliament's assent extended to the sanctions being impossed on a Member State for a serious and persistent breach of fundamental rights under the new Aritcle 7 of the EU Treaty.
[71] See Corbett, 1987: 262;Arsava, 1988: 21; Anil, 1989:36



Borchardt, 2000: 77.

Figure 3.1
The Cooperation Procedure

Lastly, the Act provided consultation procedure in traditional way in areas where this was previously not formally the case: air and sea transport, taxation (Art. 99), environment, the revision of the structural funds and framework program for research. These areas are subject to Parliament's to hold up decisions by delaying its opinion until it is satisfied with the Commission proposal (Corbett, 1987: 264).

3.6 Evaluation

It can easily be said about the SEA of 1987 that despite the limitations mentioned above, in 1987 the EC put an end to the period of Eurosclerosis and set itself ambitious new targets, began to reform its institutions and reinvigorated an integrative dynamic. This meant that by the start of the 1990s the EC was ready for greater deepening in the form of EMU and political union, and widening with the prospect of enlargements of EFTA and eastern European countries.

The institutional reforms concerning the Council injected by the SEA were the extension of QMV, the new cooperation procedure and the Council's power of Comitology under article 145 Treaty of Rome. The first two of the three are very important ones for the future of the decision-making in the Council. Although extension of the QMV became to be limited, it marked an important point after the stagnant years of decision-making in the Council. Secondly, the establishment of the cooperation procedure seemed as if to divide the decision-making procedure between the three institutions - the Council, the Commission and the Parliament- with equal weight. However, the Parliament's powers were limited and the Commission had no different power than the previous procedure. The Council, as before, was still the dominant institution of all. In this sense the SEA did not change anything in the inter-institutional balance of the EC.

It must also be said that although it was limited in scope, without the stimulus of the 1992 program and the SEA the EC would have been in poor shape to meet the challenges that arise because of the dramatic changes in East- West relations.

CHAPTER 4

A TURNING POINT IN THE COUNCIL HISTORY: THE TREATY ON EUROPEAN UNION

4.1 Introduction

The next Treaty revision after the SEA has taken place in 1991 by agreeing on the Maastrict Treaty (or known as the Treaty on European Union). The Maastrict Treaty has been a very important step in the European history as bringing the pillar structure and establishing the 'European Union'. The Treaty has also been an important step from a Council centred point of view, putting it in the centre of the institutional system of the EC/EU by empowering it in all of the pillars and in the legislative procedure.

Under the following headings, before examining the innovations of the Treaty on the Council, we will first draw the general framework of the Treaty, mentioning its importance, its ratification process and its structure. Afterwards, we will underline the role of the Council in the new pillar system, the innovations on the organization of the Council, on the extension of QMV and on the new co- decision procedure respectively.

4.2 General Framework of the Treaty

Only three years after the entry into force of the SEA, the Member States agreed to embark again on the process of revising the Community Treaties to achieve a higher level of political integration (Corbett, 1992: 271). In convening an intergovernmental conference (IGC) on political union to run parallel to that already agreed on Economic and Monetary Union (EMU), "they embarked on a global assessment of the process of European integration at a time of historic change in the continent of Europe" (Corbett, 1992: 271)[72].

The Maastrict Summit, with over 30 hours of negotiations among heads of government and Foreign Ministers, finally reached a settlement in December 1991, bringing to a close a whole year of negotiations, but at the same time promising to reopen them in a new IGC in 1996[73]. Following necessary tidying-up and drafting work by legal and linguistic experts, the Treaty was formally signed by the Foreign and Finance Ministers of the 12 Member States on 7 February 1992.

The Treaty came into force after it had been ratified in each Member State in accordance with domestic constitutional requirements[74]. There was fierce opposition in Germany, UK and especially in Denmark where an initial 'no' vote in a referendum in 1992[75] was overturned a year later by a narrow positive vote in a second referendum. In late 1993

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[72] See Corbett, 1992 and Corbett, 1993 for the discussions took place in the IGC.
[73] One of the issues that debated after ratification of the Treaty was the provision in Article N.2 (then repealed) and B for a further IGC to be set up in 1996 to consider 'to what extend the policies and forms of cooperation introduced by this Treaty may need to be revised', only after four years since it was signed and three years since it came into force. Indeed on the question of allocation of seats in the EP, negotiations would be opened during 1992.
[74] For the ratification provisions of each member state see König and Hug, 2000: 98-103; Corbett, 1993.
[75] For the Danish referendum see Nugent, 1993: 2-4; Corbett, 1994: 28;Franklin *et al.*, 1994; Worre, 1995; Corbett, 1993: 69- 73; Baydarol, 1992: 31-33

ratification by all Member States was finalised and the Treaty on European Union[76] (herein after "TEU") came into force on 1 November 1993[77].

The Treaty was a compromise that resulted in what was called a pillar system that added two new policy areas, a Common Foreign and Security Policy (herein after "CFSP") and Justice and Home Affairs (herein after "JHA") to the original three Communities- European Coal and Steel Community (ECSC), European Economic Community (EEC) and European Atomic Energy Community (Euratom)-[78]. This three-pillar structure was topped by a common roof, the European Union.

Pillar I consisted of the three European Communities, the ECSC, the EC and the Euratom which were created by the Treaties of Paris 1951 and Rome 1957. The TEU kept the existing three European Communities but made the official dropping of the word "economic" from the European Economic Community. Therefore the EEC was officially accepted as the EC[79]. Pillar II[80] dealt with cooperation between the member state governments in foreign and security policy[81] and Pillar III[82] was concerned with cooperation between the member states in justice and home affairs ranging from immigration and asylum policy to the combating of organized crime, drug trafficking and establishment of a European Police Office (Europol) for cooperation.

In addition to such changes concerning institutional provisions, the TEU also set out a timetable concerning European Monetary Union (EMU) with provisions on a European Monetary Institute and European Central Bank. New areas were added and already

[76] For the full text of the Treaty see Agence Europe, 1992.
[77] Wyatt and Dashwood, 1993: 15
[78] The TEU included seven titles. Title I included the common provisions, which did not amend the previous Treaties but set out the basic objectives of the TEU. Titles II, III and IV amended the EEC, ECSC and Euratom Treaties respectively. Title V constituted the second pillar of Common Foreign and Security Policy (CFSP), Title VI the third pillar of Justice and Home Affairs (JHA) and Title VII the final provisions. After these titles, various protocols and declarations were annexed to the Treaty by the Member States.
[79] See Goodman, 1996: 8; Swann, 1992:268.
[80] Title V TEU.
[81] See Articles J.1-J.11 of the TEU.
[82] Title VI TEU.

existed expanded, the issue of European Citizenship was introduced, the European Ombudsman was legalized, the principle of subsidiarity was maintained and a 'Committee of the Regions' was established. A Social Protocol with an agreement on Social Policy was annexed to the TEU and many other protocols were signed such as the one on the British and Danish opting out of the third and final stage of EMU, involving a single currency.

The TEU made many amendments to the Treaty of Rome in terms of the organization and the role of the Council. When the organization of the Council is concerned, the Treaty made some changes concerning composition, presidency, Coreper and secretary general of the Council. Further, the Treaty extended the role of the Council both in the second and third pillars of the EU and introduced the 'co-decision procedure' as a new legislative procedure, keeping the Council as the "singular" body but giving the European Parliament more say in the legislative process. The existence of the European Council within the Treaty framework for the first time was another innovation concerning the Council.

4.3 Role of the Council in the New Pillar System

The Council, since November 1993 renamed 'The Council of the European Union'[83], was kept as the singular decision-making body in all areas by the TEU. However, in comparison with the previous legal documents, the TEU changed the Council acts completely differently according to the legal basis on its working in the pillar structure with regard to its procedures and its interaction with the other institutions. As mentioned earlier, the EEC Treaty has provided for four types of Council acts, namely regulations, directives, decisions, recommendations and opinions. The Maastrict Treaty brought the

[83] See Dec. 93/591, O.J. 1993 L 281/18.

number of Council acts a little further and extended it by adding "Common Positions", "Joint Actions" and " negotiation of Conventions" to the second and third pillars.

As regards the first pillar, the balance between the Council and the Commission was preserved but the existing balance between the Council and the Parliament changed in favour of the Parliament providing more substantial legislative powers of 'co-decision'[84]. The rotation of the Council Presidency was adapted away from alphabetical order to "one which sought always to have a larger member state in troika" (Renshaw and Wallace, 1996: 12).

The innovation of the second and third pillars was to rely on the Council as the key body, in tandem with the European Council (Renshaw and Wallace, 1996: 12). In neither of the pillars the Council shared powers with the Parliament and its decisions were not subject to interpretation of the Court of Justice. Hence these two pillars are intergovernmental in nature.

With regard to the policy areas of the second pillar, high levels of cooperation had already existed within the framework of European co-operation that was laid down by Article 30 of the SEA. The TEU under the title V brought that activity within a common institutional framework provided for by Article C, first paragraph, and opened up new areas such as security and defence policy (Dashwood, 1994: 125). In such circumstance, the Council became the forum in which the enhanced cooperation envisaged by the TEU would be carried forward. Article J.2 obligated the Member States to inform and consult one another in the Council on any matter of foreign and security policy of general interest to ensure that their combined influence was exerted as effectively as possible by means of concerted and convergent action (Dashwood, 1994: 125)[85]. To this end, the Council was empowered to define the common positions and to decide that some aspects of the CFSP were subject to joint action and in latter cases to lay down the scope and the

[84] The Co-decision procedure will be analysed in detail in p. 76-80 in this chapter.
[85] also see Swann, 1992: 272

general and specific objectives of such action, if necessary its duration, and the means, procedures and conditions for its implementation (Art. J.3 TEU).

Similarly as regards the matters under the third pillar, it was provided under Article K that there would be a duty of mutual information and consultation with the Council. In such cases, the Council was empowered to adopt joint positions and to promote any cooperation contributing to the pursuit of the objectives of the Union. Under this pillar, the Council was also empowered to adopt joint action (Art. K. 3(2)(b) TEU) and to draw up of conventions, to be recommended to the Member States for adoption in accordance with their respective constitutional requirements (Art. K. 3(2)(c) TEU).

4.4 Changes in the organization of the Council

The TEU has also made some important changes concerning the organization of the Council, with regard to its composition, presidency, Coreper and Secretariat General. Furthermore, the Treaty has also provided for some additional committees under the structure of the Council.

4.4.1 Changes in the composition of the Council & Presidency

Under Article G (43) TEU, both the composition and presidency of the Council were reformulated. With regard to the composition, the statement in the Treaty has changed. As mentioned earlier, according to Article 146 of the Treaty of Rome, the Council was composed of "representatives of the Member States" and each government shall have to "delegate to the Council one of its members"(Article 146). This meant that the representatives were required to be members of the central governments. The TEU

changed the wording of the paragraph and added emphasize: 'The Council shall consist of a representative of each Member State *at ministerial level,* authorized to commit the government of that Member State'. Such an amendment had the objective to allow the Member States with federal structure to be represented. It has also clarified that competence belongs not to the central government but to the regional governments: "it will allow such a Member State's seat to be occupied, on relevant points of a Council agenda, by a regional minister duly authorized to commit that state legally" (Dashwood, 1994: 118).

With regard to the Presidency of the Council the TEU brought some innovations and developed the Council Presidency in many respects. First of all, the Presidency gained new roles in the second and third pillars. Under Article J.5 of the TEU the Presidency 'shall represent the Union in CFSP' (Art. J.5 (1)) and 'shall implement common measures' (Art. J. 5 (2)) by the assistance of the previous and next Member States' presidencies. Under Article J.7 the Presidency 'shall consult the EP on the main aspects and basic choices of CFSP' and 'shall convene urgent meetings' concerning the area of CFSP. Under Article K TEU that established the third pillar of the Union, the Presidency gained roles limited in scope such as 'informing and consulting the EP' (K.6 TEU). In addition to these roles in the second and third pillars the TEU developed the presidency: it clarified that the presidency would chair the European Council, it brought the role of the Presidency in convening Council sessions into the Treaty from the ROP, it incorporated the split rotation and it ascribed responsibilities relating to co-decision procedure to the presidency, working with the EP presidency (Renshaw and Wallace, 1997: 136). Further, 'Troika' was first formally recognized in TEU. Other than these, the Presidency's task of convening and chairing meetings of the Council is extended to include not only the General and Sectoral Councils, the European Council and Coreper I and II but also the intergovernmental pillars such as CFSP and JHA[86].

[86] See Shaw, 1996: 124.

4.4.2 Reforming the Coreper and the Secretariat General

The TEU under Article G (46) reformulated both the Coreper and General Secretariat. As Hayes-Renshaw and Wallace (1997: 103) rightly points out, by grouping the two institutions under the same Article the Treaty indicates their dual responsibility for preparing the work of the Council in all its facets.

While Coreper had gained its legal existence under the Merger Treaty, the Secretariat and the Secretary- General of the Council were incorporated in to the structure in 1958, using Article 17 of the Council's internal rules of procedure[87].

The TEU under Article G (46)1, mentioned the legal basis and role of Coreper as such: "A committee consisting of Permanent Representatives of the Member States shall be responsible for preparing the work of the Council and for carrying out the tasks assigned to it by the Council". Under the TEU, Coreper continued to fulfil its functions that were assigned to it by the original Treaty of Rome[88]. In coordinating and overseeing the work of the many working groups its operation was extended under the auspices of all three pillars created by the TEU. It adopts the conclusions of these working groups and discusses those issues on which an agreement could not be achieved at the lower level. Coreper, under the new provisions of the TEU also helps the European Council in preparing its meetings[89].

Article G (46) second sentence provided for the legal basis of the Council Secretariat for the first time and amended the former rules to include the provision that: "The Council shall be assisted by a General Secretariat, under the direction of a Secretary General. The Secretary General shall be appointed by the Council acting unanimously. The Council shall decide on the organization of the General Secretariat".

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[87] See Chapter I, p.8-9
[88] For the composition and functions of Coreper see Chapter I, p.9-11 of this thesis.
[89] For the role of Coreper in the European Council see p. 80 in this chapter.

As a result of the single institutional framework laid down in the TEU, and as a result of the increase in the scope of the action of the Council, the Secretariat had to cover new areas of activity and to provide the back-up for various new levels in the Council hierarchy. Under the TEU, changes to the decision-making process, occasioned by the introduction of the co-decision procedure, and the increased use of majority voting altered the way in which the Council makes decisions and also its relations with the Commission and the Parliament; so the Secretariat had to adapt itself to cope with the changes (Hayes-Renshaw and Wallace,1997: 104)

4.4.3 Additional Committees Under the Council

As mentioned earlier in this thesis[90] the Treaty of Rome set up specific committees under the Council hierarchy, responsible for coordinating activities in particular fields. In 1991, the TEU added two functional committees into this structure: The Political Committee and the Coordinating (K.4) Committee (see Figure 4.1).

4.4.3.1 The Political Committee

The Political Committee was set up by Article J. 8(5) TEU. However, it owed its existence and modes of operation to a decision taken in the 1970's to set up a system of European political cooperation (EPC). The provision of the TEU kept the preparation and treatment of issues falling within its ambit separate from those subject to the competence of the EC, which were prepared by Coreper (Renshaw and Wallace, 1997: 91).

[90] see Chapter I, p.12- 16.

According to the formulation of the TEU, the Political Committee was composed of the Political Directors of Member States' Ministries of Foreign Affairs, assisted by the 'Correspondents' Group' and the specialised working groups.

Its role was described within the second pillar of the new structure of TEU as a body of consultation and conciliation which monitors and analysis the international situation and its development in the areas of CFSP (General Secretariat, 1996: 42)[91]. Therefore it was legalised to be the main responsible for preparing the work of foreign ministers and the heads of state and government on CFSP issues and first permanent body dealing with CFSP matters.

It should be mentioned that in practice, the division of the power and work of Coreper and the Political Committee is not clear and giving rise to problems between the two. Because of the clear emphasis of the TEU, it is accepted that the role of Coreper in CFSP issues is rather limited and the Political Committee is the main responsible on such issues. However, on the other hand, taking account the overall hierarchical structure of the Council, Coreper, being the main responsible for the preparation of the work of the General Affairs Council, shall be able to check on the work of the Political Committee.

The working methods of the Political Committee was formulated somewhat different from the Coreper. Unlike the formal meetings of Coreper, "the meetings of the Political Committee have been described by 'friendly, almost casual', with members addressing one other by their first names during meetings" (Renshaw and Wallace, 1997: 93). The Political Committee could, in theory, follow the lead of Coreper and use the 'A Points Procedure' in its relations with the Foreign Affairs Council, but has tended not to do so, "because of the desire of the ministers to discuss virtually all the issues on the agenda

[91] The role of the Political Committee was described in Article J.8[5] as 'contributing to the definition of policies by delivering opinions to the Council at the request of the Council or on its own initiative'.

themselves"(Renshaw and Wallace, 1997: 93). Further, no voting take place in the Political Committee since the Council discusses everything prepared by the Political Committee and decides unanimously.

4.4.3.2 The Coordinating (K.4) Committee

Before the TEU came into being and established the third pillar on the justice and home affairs, there existed a number of intergovernmental groups[92] on an *ad hoc* basis, having met outside the Treaty and Council frameworks without the presence of the Commission or the preparation of Coreper and with secretarial support being provided either on an unofficial basis by the Council Secretariat or by the presidency-in- office[93].

The activities of these intergovernmental groups were formalised by the TEU which at the same time established a committee that was responsible with the coordination of these existing bodies against activities of drugs- trafficking, money laundering, illegal immigration and asylum. The Coordinating Committee(known as the K.4 Committee) on Justice and Home Affairs was set up under the Article K.4 TEU that is composed of senior officials of the member states responsible for many aspects of internal security from the national ministries responsible for justice and home affairs[94]. Under the same Article the role of the Committee is formulated to ' give opinions for the attention of the Council, either at the Council's request or on its own initiative' and 'to contribute to the preparation of the Council's discussions in the areas referred to in Article K.1 and, in accordance with the conditions, laid down in Article 100d of the Treaty establishing the European Community, in the areas referred to in Article 100c (visas) of the Treaty'.

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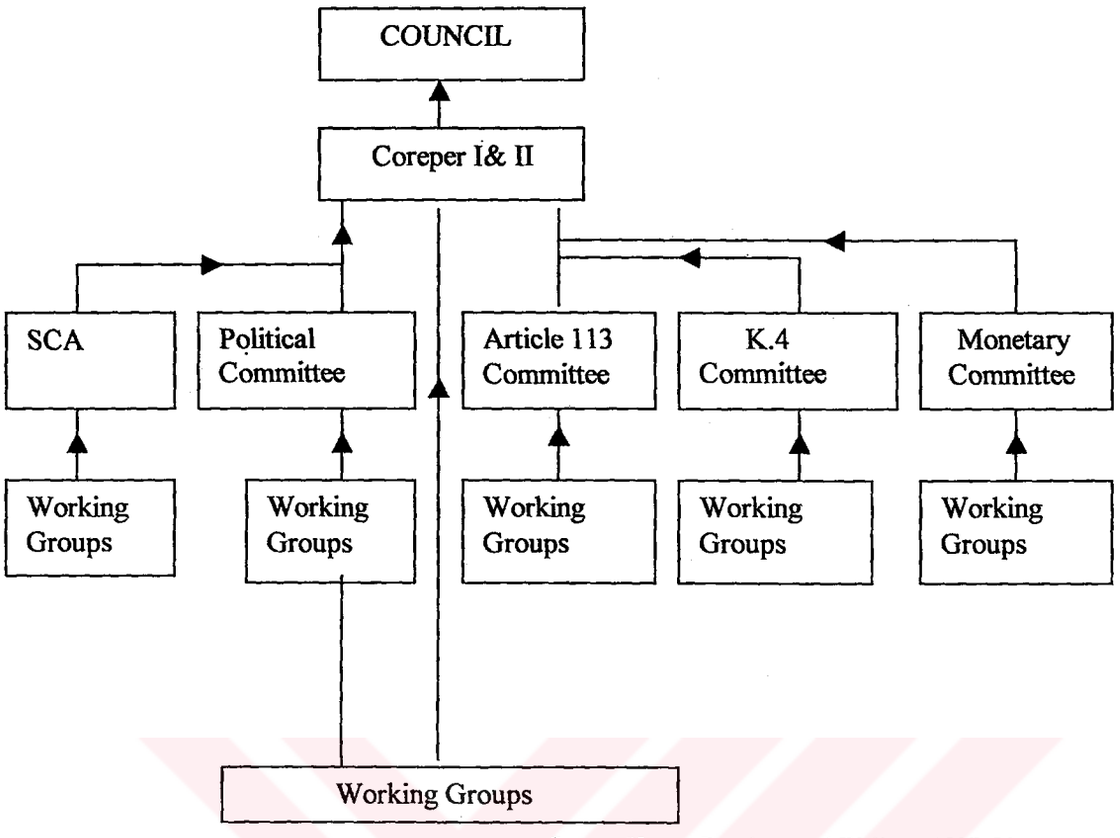
[92] Such as the Trevi Group, the Judicial Cooperation Working Group, the Mutual Assistance Group and the Rhodes Group of Coordinators.
[93] See Renshaw and Wallace, 1997: 94
[94] See Renshaw and Wallace, 1997: 95

The K.4 committee is a part of the hierarchy that prepares the issues of justice and home affairs[95]. Under the K.4 Committee the TEU formulated three steering groups, which supervise the work of various working parties (such as asylum, immigration, visas, external frontiers, drugs, criminal law, europol etc.)[96]. The K.4 Committee not only reviews the work of its steering committees but also of the working parties and reports through Coreper to the Council of the third pillar, known as the Council of Justice and Home Affairs (Renshaw and Wallace, 1997: 95).

It is important to note here that although K.4 Committee operates as a specialised Coreper, its relations with the Commission and the Parliament is limited. The Commission's right of initiative in the area of Justice and Home Affairs is restricted and, there is no obligation to consult the Parliament or involve it in any work undertaken in this area. However, the Council Presidency usually informs the EP about the work done in this area.

[95] For the argument that supports the idea that such a structure is overcrowded see Renshaw and Wallace, 1997:95- 97.

[96] These groups, like the K.4 Committee are composed of one representative from the each of the member states and an observer form the Commission.



Source: Hayes- Renshaw and Wallace, 1997: 73

Figure 4.1

Hierarchy of Preparatory Groups (as extended under TEU)

4.5 Decision-making procedures in TEU

The TEU has brought some important changes with regard to the two components of the decision- making procedures, namely the voting procedure and the legislative procedure. While the new Treaty has extended the application of QMV to a number of important areas under the first pillar, it has also increased the role of the Parliament in the

legislative process with the new co- decision procedure and extended the application of the assent procedure.

4.5.1 Changes in the voting rules: Extension of QMV

The extension of QMV by the SEA and the actual use of the QMV provisions had resulted in the late 1980s in a considerable improvement in Council's decision-making in the areas where majority voting applied. On the contrary, the areas those were subject to unanimity, continued to be subject to lengthy negotiations and even blocking of individual member states. It also meant that "some essential Community policies continued to be subject to the rule of the lowest common denominator, not least in the fields of environmental protection, but many aspects of social policy, harmonization of indirect taxation, the framework programme for research, monetary integration, most aspects of foreign aid, etc" (Corbett, 1992: 289).

Therefore before the IGC the EP proposed to generalise QMV for all matters other than constitutional and the Commission supported Parliament's line with a slight nuance, stating in its opinion that QMV "should apply to all areas of Community competence except constitutional questions, and with possible restrictions in the areas of taxation, social security and the status of non- Community nationals" (Corbett, 1992: 289)[97].During the discussions in the IGC that formalised the TEU, many member states opposed to the extension of QMV, with the UK opposed to any change.

However, the final result in Maastrict was in favour of the increased use on QMV, becoming the norm in the EC legislation. There remained some areas of unanimity

[97] for the discussions and positions of member states on the extension of QMV in the IGC see Corbett, 1992: 289- 290

which are largely core of constitutional importance such as new accessions and the sensitive area of harmonization of taxation (see Table 4.1 on voting under the TEU).

Under the TEU, as regards to the first pillar the use of the qualified majority voting was extended to some aspects of education, development of trans- European networks, transport, consumer affairs, development aid, the implementation of European Regional Development Fund (ERFD) programmes and wider swathe of environmental issues. The social policy measures that were subject to long discussions in Maastrict were partly incorporated in QMV. Measures such as those covered by Article 118a on health and safety, used the new procedure of Article 189c for QMV; others under the Articles 48 and 49 on free movement, used Article 189b; and others covered by Article 118 retained unanimity. The British government in those negotiations tried hard to retain unanimity on all aspects of social issues but the other eleven member states insisted on taking the social chapter under the protocol allowing QMV (Renshaw and Wallace, 1997: 51).

The two new and intergovernmental pillars required unanimity, as the predominant rule, but with some scope for introducing QMV. Under Article J.3 (2) of the TEU the Council was allowed to decide by unanimity on those matters that could be subject to the QMV. According to a further annexed declaration (No.27), even where unanimity was the rule, member states 'would, to the extend of possible, avoid preventing a unanimous decision where a qualified majority exists in favour of that decision" (Renshaw and Wallace, 1997: 52). In practice, some governments that were leaded by the British have been opposed to this possibility to be developed.

As for JHA, unanimity was accepted as the primary rule. Nevertheless, Article K.3.2(b) gave the opportunity to the Council itself to take decisions by QMV to implement agreed 'joint actions'. In particular, there was scope for the common visa regime to QMV, using the new Article 100c of the amended Treaty of Rome (Renshaw and Wallace, 1996: 52). Further, Article K.9 enabled the Council itself to extend the coverage of Article 100c to other areas of cooperation on justice and home affairs, as

specified in Article K.1 TEU. As Renshaw and Wallace stated (1997: 52), these evaluative provisions for the second and third pillars gave the Council flexibility on voting rules that hitherto required treaty amendment.

Another reform of the TEU on voting was on EMU. Under provisions on EMU the rule was QMV. Further, Article 109j (2) allowed the Council by QMV to assess "whether a (simple) majority of member states fulfil the necessary conditions for the adaptation of a single currency" and so recommended to the EP and the European Council; and under Article 109j(3) empowered the European Council by QMV to decide on the recommendation, not later than 31 December 1996 (or on a second bite by 1 July 1998) whether that (simple) majority may proceed to the third stage of EMU (Renshaw and Wallace, 1997: 52). And under Article 109k, the Council may decide by QMV that member states which do not meet the conditions shall be "member states with a derogation" and relieved of various EMU obligations and according to article 109k(5), "the voting rights of the member states with a derogation *shall be suspended* [emphasis added]"for certain Council decisions, for which QMV was to be practiced by those without a derogation and to be 'defined as two thirds of the votes' under the normal weighting. Finally, under Article 109(4) it was provided to fix the exchange rates for particular currencies on the first day of EMU by the Council acting unanimously.

4.5.2 Changes in the Legislative Procedures: The New Co-decision & Extended Assent Procedures

Article 189b of the TEU introduced a new way of involving the Parliament in the Community's legislative procedure "in the form of a Parliamentary right of co-decision in certain Community acts" (Weidenfeld and Wessels, 1996: 62)[98] which is applicable

[98] also see Schneider, 1995: 74; Weatherill, 1996: 87; Wyatt and Dashwood, 1993: 41-43; George, 1996: 29

for fifteen articles of the TEU such as legislation on culture[99], multinational framework programme for research[100], education, public health[101], consumer protection[102], trans-European networks[103], research and technology and environmental protection[104].

Table 4.1
Voting under the TEU

Pillar I	Extension of QMV in the fields of: Education Development of trans- European networks Transport Consumer affairs Development aid European Regional Development Fund (ERFD) programs Environmental issues Social Policy (partly) EMU (with some exceptions)
Pillar II	Retained unanimity with the exceptions under Article J.3(2)
Pillar III	Retained unanimity with the exceptions under Article K.3.2(b) and Article K.9

[99] Art. 128(5) first indent EC, as amended.
[100] Art. 130i(1) EC, as amended.
[101] Art. 129 (4) EC, as amended.
[102] Art. 129a (2) EC, as amended.
[103] Art. 129d EC, as amended.
[104] Art. 130s (3) EC, as amended.

Table 4.2
Areas of application of the co-decision procedure

Free movement of workers (Art. 49 EC)
Right of establishment of the self- employed (Art. 54(2))
Coordination of laws for the special treatment for foreign nationals (Art. 56(2))
Mutual recognition of professional diplomas (Art. 57(1))
Conditions of access and right to exercise a profession (Art. 57(2))
Freedom to provide services (Art. 66)
Internal Market (Article 100A)
Mutual recognition of national standards, by reference to Art. 100A (Art. 100 B)
Incentive measures in the educational field (Art. 126(4))
Incentive measures in the cultural field (Art. 128(5))
Incentive measures in the public health field (Art. 129(4))
Consumer protection (Art. 129A (2) EC, as amended)
Trans- European networks (Art. 129D EC, as amended)
Multinational framework programme for research (Art. 130I EC, as amended)
Environmental protection (Art. 130S (3) EC, as amended)

This new "co-decision procedure"[105] was mainly built on the cooperation procedure, but went beyond it in some respects, such as providing for the possibility of a third reading in Parliament. The first stage remained as in the co-operation, with the European Parliament producing an opinion on the Commission's proposal before Council adopted its common position (Earnshaw and Judge, 1999: 109). However, while in the cooperation procedure the Commission sent its proposal to the Council- then the Council asked the opinion of the Parliament-, the TEU introduced a 'legal innovation' in the legislative procedure whereby the Commission sent its proposal directly to the Parliament at the time it sent it to the Council. At the second reading, the Parliament may accept or amend or reject the proposal. In two latter cases, the consequences differed markedly from those under the co-operation procedure.

[105] sometimes called as the negative assent procedure.

If the Parliament declares that it intends to reject the common position of the Council, the Council may convene a Conciliation Committee[106] provided for by Article 189b(4) in order to explain its common position[107]. Following such a meeting (or if none is held), the European Parliament may either confirms its rejection of the common position or propose amendments to it. If the Parliament rejects the proposal, it will be deemed not to have been adopted, as provided for by Article 189b(2)(c) EC.

If the Parliament proposes amendments to the common position, then the amended text is sent to the Council and the Commission. If the Council approves the Parliament's opinions within three months (if the Commission agrees by QMV, if the Commission does not agree by unanimity) and amends its common position accordingly, then the act is adopted. If the Council does not approve the Parliament's opinion then the Conciliation Committee must be convened as provided for by Art. 189b(3) EC. The Committee tries to reach an agreement on a joint text by a qualified majority on the Council side and by a qualified majority on the Parliament's side (Wyatt and Dashwood, 1993: 43). The Commission is also a participant of this meeting acting as a broker between the two sides (Art. 189b(4) EC as amended). If the Committee succeeds in its task, the European Parliament, by absolute majority and the Council, by qualified majority, will adopt the act in question within six weeks in accordance with the joint text: if any of them fails to do so, the act will be deemed not to be adopted (Art. 189b(5) EC as amended). If on the other hand, no joint text is approved, the act will be deemed not to be approved, unless the Council, within six weeks of the end of the period granted to the Committee, confirms, by a qualified majority, the common position to which it agreed before the conciliation procedure was initiated, possibly incorporating some of the Parliament's amendments (Wyatt and Dashwood, 1993: 43). However, this adoption of the act can be prevented by the Parliament if it rejects the text by an absolute majority within six months (Art. 189b(6) EC as amended).

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[106] The Conciliation Committee brings together the representatives of the Parliament and the Council in a forum in which a mutually satisfactory compromise may be found on the debated issue.
[107] see Weidenfeld and Wessels, 1996: 62; Wyatt and Dashwood, 1999: 42

This new procedure of the TEU is very much different from the cooperation procedure. It produces a common act of the Council and the Parliament, and so, for the first time the European Parliament is a full participant in the EU legislative process and "is no longer dependent simply upon delivering its opinion which the Council, then, in its own right and on its own decides upon" (Earnshaw and Judge, 1999: 110)[108]. It gave a greater opportunity to the Parliament to veto the Commission proposal and to block a Council decision. Therefore it is accepted as a step forward for the Parliament from the co-operation procedure of the SEA where it enjoyed no legislative powers of its own nor had any power of veto. However, since the TEU enhanced the power of the Parliament to a certain extent (limited in 15 articles), its role in the EC legislative process is accepted as extremely modest[109]. Accordingly, the final power of decisions still lies with the Council, as the Union's principal legislator.

Another change introduced by the TEU in the legislative field was the increase in the number of fields in which the assent of the Parliament is required. While the procedure was provided only for association agreements and the accession of new Member States under the SEA, it has extended to legislative fields outside external relations, namely facilitation of the right of free movement for EU citizens (Art. 8A (2)), granting the European Construction Bank tasks relating to the prudential supervision of credit and other financial institutions (Art. 105(6)), amendments to the statute of the ESCB (Art. 106(5)), definition of the tasks, priority objectives and organisation of the structural funds (Art. 130D), uniform electoral procedure for the European Parliament (Art. 138(3)), association agreements, and other international agreements establishing a specific institutional framework, with significant budgetary implications or entailing the adoption of an act failing to be adopted under Article 189B (Art. 228(3)), accession of new Member States (Art. O)) after the TEU. In all cases except Art. 138(3) on the uniform electoral procedure where an absolute majority is required, assent requires a simple majority of members present and voting. On the other hand, it should also be

[108] For the opposite view see Weatherill, 1996: 87.
[109] For the idea that the Parliament could not gain that much power in Maastrict see Tsebelis and Garrett, 2000: 15 and Hosli, 1994:629.

mentioned that the co-operation procedure which was introduced by the SEA, still remained after the TEU came into force. However it no longer applies to many of the Articles which it was applied by the SEA[110]. It now applies to areas of transport, non-discrimination, implementation of Article 101(funds of the European Central Bank or the central banks of the Member States), the Social Fund, vocational training, economic and social cohesion, research, environment, development cooperation, health and safety of workers (Article 138) and the Social Policy Agreement[111]. On the contrary. application of the consultation procedure[112], that was introduced by the Treaty of Rome became limited by the amendments of the TEU and applied to provisions on EMU, though the Parliament was only informed of Council measures concerning capital movements to and from third countries, guidelines for national economic policies, financial assistance to Member State in difficulties, sanctions against a Member State for failure to comply with deficit reduction measures, the adoption, adjustment or abandonment of the ECU central rates and the Composition of Economic and Social Committee[113].

4.6 The Council of Ministers and the European Council

While examining the Council of Ministers, it is also necessary to refer to the European Council[114] since the nature of the relationship between two institutions has always been debatable. Opinions have long been divided as to whether or not the European Council could or should be viewed as an integral part of the Council hierarchy, and described as the Council meeting at a more senior level (Hayes- Renhaw and Wallace, 1997: 159).

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[110] For the application of the cooperation procedure see Chapter III, p. 13- 19 of this thesis.
[111] See Corbett, 1993: 88.
[112] For the application of the consultation procedure see Chapter I, p.22-24 of this thesis.
[113] See Corbett, 1993: 89.
[114] For the history of the European Council see Archer and Butler, 1992: 31-32; Hayes-Rensaw and Wallace,1997: 157-172; Weidenfield and Wessels, 1991: 114- 117; Kahraman, 1996: 136- 141;

From a strictly legal point of view the European Council is not an institution of the EC: following a government agreement reached at the 1974 Paris Summit[115], the European Council was first mentioned in Article 2 of the SEA[116], a legally binding text but not part of the EEC Treaty (Weidenfeld and Wessels, 1997: 114). Later in TEU, it was figured in the 'common provisions' under Article D as a formal institution of the EU, above the European Community, not subject to the checks and balances to which the Community is subject.

As the SEA formulated and the TEU took over the description, "the European Council brings together the Heads of State or Government of the Member States and the President of the Commission, who are assisted by Ministers of Foreign Affairs and by a Member of the Commission". Further, Article D of the TEU added to the description that meetings are to be chaired by the Heads of State or Government of the Member State holding the Presidency of the Council. The rhythm of meetings was fixed by the SEA as at least twice a year and this is maintained by the TEU. As Hayes- Renshaw and Wallace (1997: 116) states, as mentioning the European Council in the section of the TEU containing the Common Provisions, rather than as an amendment to the Treaties of Paris and Rome, the member states agreed to keep the European Council outside the EU institutional framework and all the procedural formality which that involves. Therefore in practice, the European Council is not bound to operate in accordance with the decision-making rules of the Council and is not subject to the jurisdiction of the ECJ.

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[115] At the Paris Summit of December 1974, it was decided that the meetings should be held three times a year and the institution was described as the 'European Council'. Although the *communiqué* that was issued at the end of the Paris Summit of 1974 set up the European Council, it did not mention its functions, but suggested that the new body would be part of and separate from the Council hierarchy: "The Heads of Government have therefore decided to meet accompanied by the Ministers of Foreign Affairs, three times a year and, whenever necessary, in the Council of the Communities and in the context of political cooperation".

[116] In 1987, the Single European Act (under Article 2) gave formal recognition to the European Council (which was not however incorporated into the Community treaties). Its composition was also legalized for the first time but there was no mention of what it was supposed to do within the EC system. Article 2 of the SEA laid down that " The European Council shall bring together the Heads of State or of Government of the Member States and the President of the Commission of the European Communities. They shall be assisted by the Ministers for Foreign Affairs and by a Member of the Commission. The European Council shall meet twice a year".

The European Council takes a central political role, guiding the work of the lower meetings of the Council and the Commission, and setting the medium- term objectives of the EU (Hix, 1999: 29). This is emphasised by Article D of the TEU as to "provide the Union with necessary impetus of its development" and to "define the general political guide-lines of the European Union". According to Article J8 TEU the European Council shall "define the principles of and general guide-lines for the common foreign and security policy". Its mentioned functions increased over the years and supplemented with other ones like laying down general guidelines on matters of economic and social policy, issuing statements on foreign policy and acting as an arbitrator in international disputes[117]. The European Council now occupies a position at the apex of the EU's institutional system, overseeing the work of the three pillars and the specialised sectoral Councils that operates within the structure. It monitors their work, sets frameworkprinciples to guide their future deliberations, takes or clears major political decisions, and frequently engages in trouble shooting, which can involve in political leaders in extremely detailed discussions (Hayes- Renshaw and Wallace, 1997: 163).

In legal terms, the Council of Ministers is not obliged to refer any matter to the European Council. However, in practice, other than highly technical matters, all issues that have political impact or are of major domestic interest to a number of member states are dealt by the European Council. This is particularly true for matters relating to political integration, treaty reform and enlargement. The fact that all the major issues are dealt by the European Council brings the argument whether the Council's legal and political power has declined in favour of the former. This argument may be true for the policy areas where the European Council has an active interest and where the role of the sectoral Councils is reduced to prepare the discussions of the heads of state and government and to carry out the instructions and to act in accordance with the guidelines

[117] For the increased power of the European Council over the years see Weidenfeld and Wessels, 1997: 114- 115

prepared by them. However other Councils still retain their autonomy in their areas of responsibility, only applying to the European Council for political guidance.

In any case, the input of the European Council, which takes the form of a political decision, only has legal force once it has been adopted by the Council according to the relevant legislative procedures (Hayes- Renshaw and Wallace, 1997: 164). Therefore it should be accepted that the relationship of the two institutions is one of interdependence and without the preparatory and executive functions of the Council, the European Council would be unable to function. This interdependence also lies on the fact that the European Council is engaged in close relations with the Council Presidency, the Council Secretariat, Coreper and the other preparatory groups. The Council Presidency is the chief organ responsible for organising meetings and coordinating the work of the European Council by the assistance of the Council Secretariat and the troika partners. Therefore, for the six months term of the Presidency, the member state in office is the main link between the ministerial and the European Councils, overseeing the movement of dossiers between the two levels, setting out the agenda, organising the preparation of the meetings of the heads of state and government and preparing the Presidency Conclusions as only official outcomes of these meetings[118]. In time the practice has showed that "organising a 'good presidency' has become a point of pride among the member states, so hosting of a 'good' European Council can restore, enhance or harm the reputation and European credentials of a member state"(Hayes- Renshaw and Wallace, 1997: 164). Therefore it won't be an exaggeration to say that it is the only criterion by which presidencies are judged at the moment.

The Coreper, on the other hand, being the chief preparatory body, responsible for the preparation of the treaty based and non- treaty based issues, constitutes a link between the ministerial and European Councils (Hayes- Renshaw and Wallace, 1997: 164). Any issue that is discussed by the European Council has already been discussed by Coreper.

[118] For the details of the relation between the Council Presidency and the European Council see Hayes-Renshaw and Wallace, 1997: 166-167

Since Coreper oversees the work done by the preparatory groups within the structure of the Council, the preparatory groups are also indirectly in relation with the European Council. Coreper, on the other hand is also responsible for the preparation of the agenda of the Council of Foreign Ministers which is responsible for the preparation of the agenda of the meetings of the European Council. The individual members of Coreper are involved in the preparation of the national positions on the issues on the agenda and are participants of the European Council meetings as valued advisors. Further in some occasions, Coreper is required to meet to add the details of the issue being discussed in the meeting of the European Council which will be included in the Conclusions of the Presidency.

The Council Secretariat, working closely with the Council Presidency has been involved in the preparation of more than 60 meetings of the European Council since it was established in 1974. In helping the preparation of the European Council meetings, the role of the Council Secretariat has been logistical, substantive or even political (Renhaw-Hayes and Wallace, 1997: 170). Secretariat officials assist the members of the European Council on the administrative support required for the meeting and help on the complicated logistics. The Secretary General of the Council attend to the European Council meetings with a number of officials of the Secretariat who notes the minutes of the meeting and provides for legal and procedural advice when needed. The Secretary General is also responsible for drafting the Conclusions of the Presidency and later "ensuring that the issues discussed at the European Council are placed on the agendas of the relevant subsequent meetings of the Council" (Renhaw- Hayes and Wallace, 1997: 170).

In summary, the European Council has been a unique institution within the EU structure that influenced the Union in the 1970s, 1980s and 1990s. It has had a more political role than a legal one that spans the three pillars of the EU. It has indicated the political consensus between the member states at the highest level for the process of European integration.

This unique position of the European Council has been strategic in the post- Maastrict era and the need for such an institution is even more in the increasing politically sensitive areas within the two intergovernmental pillars of the TEU. As it before, in the post- Amsterdam era the European Council takes political rather than legal decisions (leaving the latter to the Council of Ministers) and continues to provide the necessary political leadership to steer the EU through the forthcoming challenging phases of its development. However, while doing that it is in close relations with the Council of Ministers and with other institutions in the Council hierarchy.

4.7 Conclusion: Prospect for a new IGC

The TEU has been one of the milestones of the history of European Integration and the Council. It has brought a new Union structure, reformed the decision- making procedures, extended QMV, introduced European Citizenship, legalized the European Ombudsman and the European Council and set out a timetable concerning European Monetary Union (EMU).

Particularly concerning the Council, the Treaty has extended its role within this new pillar system giving it important roles in all three pillars. The Treaty has also incorporated the Coreper and the General Secretariat into the EU structure. It has further established two additional committees within the Council hierarchy, namely the Political Committee and the K.4 Committee empowered to function under the second and the third pillars respectively. The new legislative procedure, namely the co-decision procedure with the extension of the assent procedure, has been regarded as the most important innovation with the extension of QMV in terms of the inter- institutional balance between the Council and the Parliament. For some, this new procedure has been an important step for the latter empowering it and on the contrary lessening the power of the former. However, on the other hand it has to be taken into account that the co-

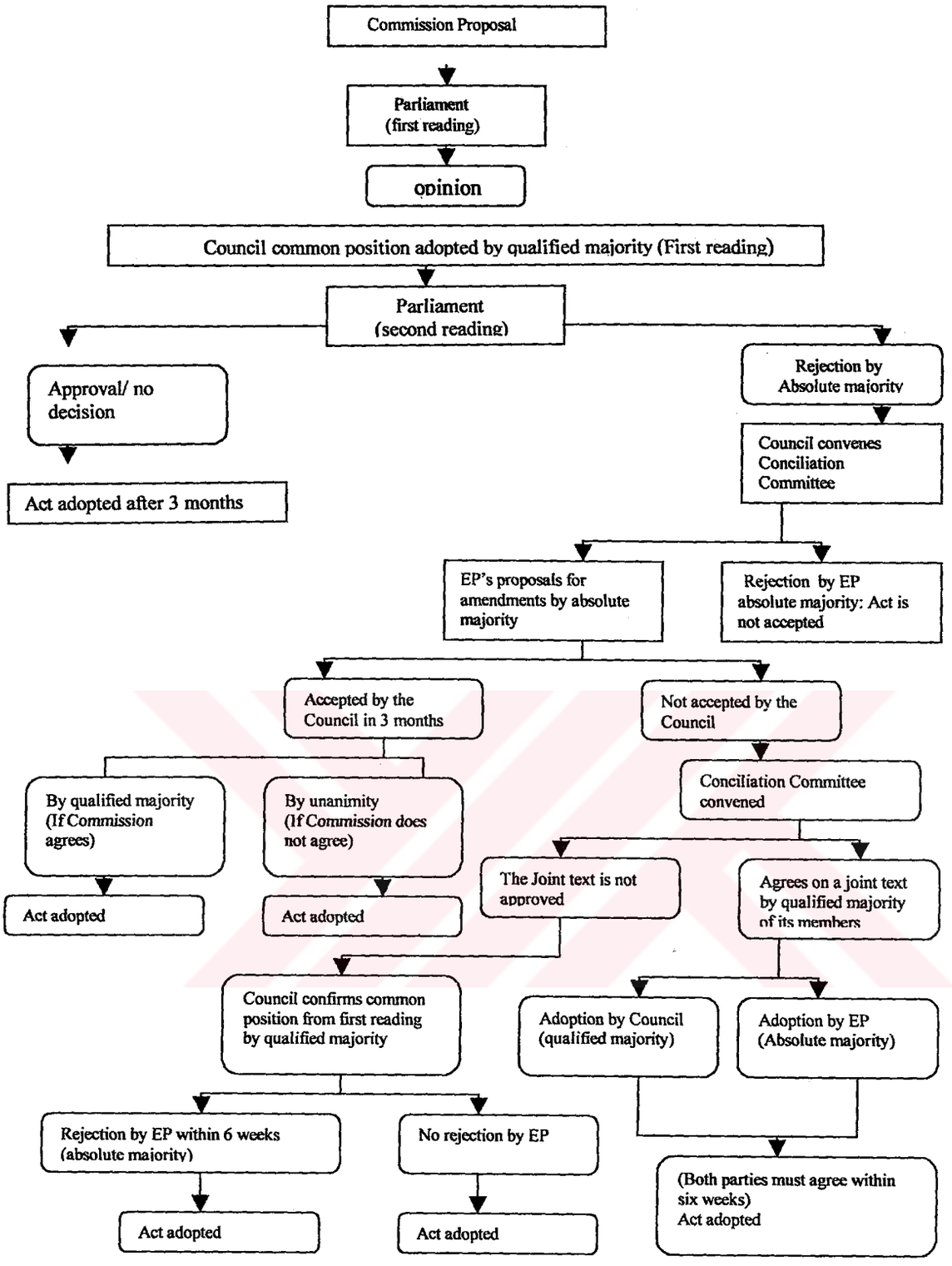
decision procedure has been applied to limited number of provisions under the TEU. Thus, the Council has still been kept as the main decision- making body under an important number of provisions, sharing the legislative power in the very limited areas of action with the Parliament.

Furthermore, the extension of QMV has been successfully achieved under the first pillar, however failed to do the same under the second and third pillars where the national vetoes of the member states have kept their importance. Therefore, although with regard to the first pillar efficient decision-making could be achieved through application of QMV, there has been still a need for more QMV for an efficient decision- making concerning the areas within the scope of the second and third pillars.

Apart from these innovations mentioned above, the Treaty has also provided for the establishment of a new IGC to review the policies and provisions that it had brought. The legal basis for the IGC was Articles N (2), B that has mentioned the IGC to be convened '...in 1996 to examine those provisions of this Treaty for which revision is provided...'. In particular, the Treaty has provided for revision on the extension of co-decision procedure (Article 189b), on the CFSP (Article J.10 and J. 4(6)), on the introduction of energy, tourism and civil protection as new titles (Declaration 1) and on the introduction of a hierarchy of Community acts (Declaration 16). As regards to the Council, the revision of the first two areas has been important concerns. Extension of co-decision procedure in the next IGC will be an important debate in terms of the Council's weight in the legislative procedure. Therefore it will be seen that the Council will either share its power with the European Parliament or will continue to act as the singular body in the legislative process. As regards to the revision of the second pillar, the Council will surely be affected since it has been already empowered within this pillar under the provisions of TEU.

It has also to be mentioned that in the period from Maastrict to Amsterdam, these areas that are subject to revision on the working of the Council has been extended in the

various European Council Summits and supported by the new ones such as the extension of QMV and re- weighing of the votes.



Source: Weidenfeld and Wessels, 1996: 65

Figure 4. 2

The co- decision procedure under the TEU

CHAPTER 5

1996 IGC AND TREATY OF AMSTERDAM

5.1 Introduction

As mentioned in the previous chapter, the TEU, apart from bringing innovations to the institutional structure and to the organization and the functioning of the Council in particular, also provided for an IGC. This IGC started in 1996 and centred on not only the issues mentioned in the Treaty but also on the ones provided in the conclusions of the various Council meetings. The IGC was finalised by the Amsterdam Summit which has resulted with the Treaty of Amsterdam.

After the TEU, the Treaty of Amsterdam has been another important treaty revision in the EC/EU history. It has provided some innovations concerning the functioning of the Council, including the extension of QMV and the co-decision procedure. However the Treaty failed to solve the central question on the Council, the re- weighting of the votes, which has been the most debatable issue in the agenda of 1996 IGC.

In this chapter we will start examination with the 1996 IGC since it has been the first IGC that was mentioned in a Treaty text. In this respect, we will mention the proposals submitted to the Conference on the Council and negotiations that have taken place on these proposals. Later, we will go into the detail on the innovations and shortcomings of

the Treaty of Amsterdam concerning the Council. Lastly, we will conclude with the perspective of establishing a new IGC to solve the remaining questions, as provided in the Treaty.

5.2 1996 Intergovernmental Conference

Unlike the TEU which was born in dynamism of the 1980s with high hopes and plans, the Amsterdam (or 1996) intergovernmental conference was set "in a mood more cautious, lessons have been learned from the degree of popular opposition to Maastrict and in particular from the difficult ratification process" (Craig and De Burca, 1997: 32). The aims of the 1996 IGC were modestly stated and accordingly it started for consolidation rather than extension of Community Powers and for improving processes and enhancing effectiveness rather than expanding competence.

The TEU has provided for an intergovernmental conference in 1996 in order to revise a series of provisions and to examine certain institutional questions[119]. The provisions included reforms reappraisal of the three-pillar structure, size of the Commission, the widening of the co-decision procedure, voting in the Council and the classification of Community legislative acts to establish an 'appropriate hierarchy' among them. The review agenda has extended to include proposals from the Member States and a list of reforms compiled by the European Council at its meetings in Brussels (December 10-11 1993), Ioannina (March 1994)[120], Corfu (June 24-25, 1994) and Turin[121]. Another factor

[119] The legal basis for the IGC was Articles N (2),B, indent 5 of the EU Treaty, 189b of the EC Treaty (on the extension of co-decision procedure), J.10 and J.4(6)(on the revision of the CFSP) of the TEU relating to revision and Declarations 1(on the introduction of energy, tourism and civil protection as new titles) and 16(on the introduction of a hierarchy of Community acts) annexed to the TEU.

[120] During their informal meeting in Ioannina, the foreign affairs ministers 'agreed that the question of the reform of the institutions, including the weighing of votes in the Council and the threshold of the qualified majority in the Council, should be examined in the Conference'.

[121] For the conclusions of the European Council Meetings on the 1996 IGC see European Parliament, 1996: 2-4.

to convene the Intergovernmental Conference was the next enlargement of the Union that has to be supported by a deepening of the integration process.

The European Council of Corfu set up a 'Group of Reflection' in June 1995 that would work in the second half of 1995 to prepare for the IGC by considering measures 'deemed necessary to facilitate the work of institutions and guarantee their effective operation in the perspective of enlargement' (Federal Trust, 1995: 4)[122]. The Reflection group prepared a report and set out the options for the reform of the EU Treaty where it has identified two fundamental targets, namely; improvement of the functioning of the Union on the one hand, and on the other, creating the conditions to enable it to cope successfully with the internal and external challenges facing it and notably with the next enlargement[123]. This report was followed by the reports of the Council[124] and Commission[125] and by the resolutions of the European Parliament[126]on the operation of the EU Treaty.

Later in March 1996, after consulting the Commission and the European Parliament, the Turin European Council formally opened the negotiations[127]. Those centred mainly on a number of ambitious goals centred on a Citizens' Europe, the role of the European Union on the international stage, improvements in the working of the institutions and the prospect of enlargement (European Commission, 1999: 5).

Within the institutions, the Council was at the very heart of the discussions for successful enlargements. The main subjects related to reform in the Council centred on two main headings: the decision-making procedure, especially with respect to the legislative procedures, voting system and the weighting arrangements; and the

[122] The Reflection Group was formed of representatives of the Ministers of Foreign Affairs of the 15 Member States and the President of the Commission.
[123] See Reflection Group, 1996, Reflection Group 1996a and European Parliament, 1996a: 25-26.
[124] See European Parliament, 1996: 23.
[125] See European Parliament, 1996a: 21-23 and European Commission, 1996.
[126] See European Parliament, 1996a: 19-21 and see European Parliament, 1996b and European Parliament, 1996c.
[127] For a comprehensive analysis of the context, preparation and issues of the 1996 see Lipsius, 1995.

organization of the work of the Council: its presidency, composition and secretariat (European Parliament, 1996:1)[128].

On the voting system there was a consensus that unanimous voting should have been replaced by QMV. Some member states, wished to extend QMV to the CFSP and even to the third pillar. However, many others took the view that 'on a number of subjects (including second and third pillar decisions, cultural matters, taxation, own resources, the language regime, new accessions, revisions of the Treaties, European citizenship, finance, social security and welfare in general) unanimous voting should be retained, or else replaced by an 'extended qualified majority' arrangement' (European Parliament, 1996:1)[129]. On the blocking minority/majority the consensus was against retaining the Ioannina Compromise whether in its existing form or in a slightly amended version[130]. On the weighing of the votes, the large Member States were in favour of changing them and obtaining a closer match between the population of the Member States and weight in the Council. They proposed various types of double majority such as votes-population or votes-number of Member States. The smaller Member States on the other hand, opposed to any change in the voting system. With regard to the legislative procedures most member states felt that there has to be a reduction in the number of the procedures, by keeping the co-decision and assent procedures and abolishing the cooperation procedure[131]. It was also proposed that the co-decision procedure should be applied more

[128] For the position of the each member states concerning these issues see European Parliament, 1996a: 27-41, European Parliament, 1996: 4-19, Baun, 2000: 178-179

[129] For the extended qualified majority see also Lipsius, 1995: 258-259

[130] The Ionnina Compromise was a Council decision taken in the European Council in Ionnina, however it did not amend the treaties. It laid down that where members of the Council who together represent 23 to 25 votes state their intention of opposing adoption of a Council decision by a qualified majority, the Council would do all in its power to adopt a satisfactory solution; this was to be adopted with at least 65 votes in favour, within a reasonable period of time and without prejudice to the mandatory time limits specified by the Treaties and derived by law. For some of the member states the Compromise was a necessary device to facilitate the overall agreement; for others it was a damaging deterioration in shared understandings about the rules of the game; and the British and the Spanish presented it as a necessary safeguard.
The Compromise was used for the first time by the British on 24 October 1995 opposing national aids for farmers in other member states.

[131] For the need to revise the decision-making procedures in the 1996 see also Lipsius, 1995: 263-264.

widely and also simpler while the scope of the assent procedure should be amplified and clarified.

On the operation of the Council, there emerged a broad consensus on strengthening the Presidency. The formulas proposed include: 'a long term for the presidency; creating 'presidential teams'; a 'troika'-type presidency, to consist of one large Member State and two medium- sized or small Member States and serve for a minimum period; an 'elective' presidency to serve at least one year; and a presidency which would represent the union to the outside world over a period of several years, with the presidential role being filled by a 'personality', assisted by the President-in- Office of the Council and the Commission President as vice Presidents' (European Parliament, 1996:2)[132].

However, after one and a half years of Intergovernmental Conference and half a year of work of the Reflection Group, it was seen that the Treaty that was the outcome of the IGC was a disappointment in failing to address many of the mentioned problems facing the Union. There has been not only no substantive reform on the debated issues, but 'decisions on this matter were put off for future' (Baun, 2000: 184). From a Council centred point of view, the Treaty could only be able to revise and extend the co-decision procedure where it failed to extend QMV and to finalize the debate on the re- weighing of the votes. Further, the Treaty could also not be able to find substantive solutions for the Presidency, the Secretariat and composition of the Council. Therefore most observers conclude that 'Amsterdam is only a "limited", or a "very limited success" or even a "fiasco"'[133].

[132] For the position of each member state on the subjects discussed in the 1996 IGC see European Parliament, 1996a: 28-41.
[133] Blokker and Heukels, 1998: 39.

5.3 The Treaty of Amsterdam

Though regarded as a disappointment from an institutional perspective, the Amsterdam Treaty nevertheless has brought some important innovations.

The Treaty of Amsterdam[134], kept the pillar structure of the TEU, however adopted amendments on four main chapters including freedom, security and justice; the Union and the Citizen; common foreign and security policy and the Union's institutions.

Foremost among these are the changes to the Third Pillar, namely to the justice and home affairs. Much of the EU's third pillar, namely immigration, asylum and visas has been transferred to the Community Pillar and the third pillar kept the 'police and judicial cooperation in criminal matters' within its remit. Further, the Schengen Agreement and an employment chapter were incorporated into the EU Treaties. For matters falling within both the second and the third pillar, the jurisdiction of the European Court of Justice has been accepted but there has still 'no direct citizen access to the Court in these areas while the maintenance of law and order plus internal security are excluded from the Court's remit' (Lynch, Neuwahl, Rees, 2000: 241).

Further, the Treaty has included a new employment chapter and made the objective of 'a high level of employment' a ' matter of common concern' for the Member States. It strengthened the provisions on anti- discrimination and human rights and included new measures on the equal treatment of the men and women. However, it failed to provide important improvements to provisions on citizenship.

The co-decision procedure was extended to a significant number of areas and simplified in favour of the European Parliament. The extension of the QMV in the Council was

[134] For the full text of the Amsterdam Treaty and its Turkish version see European Communities, 1997 and Bolayır, 2000 respectively.

provided in such a limited way and the re-weighting of votes was postponed to the next IGC with the debate on the number of Commissioners.

Within the second pillar a new common unit for foreign policy analysis and planning was created and new responsibilities for representing EU foreign policy to the outside world were given to the Council's secretary general.

Under the following headings such changes concerning the role and operation of the Council will be discussed; namely new role of the Council under the Treaty of Amsterdam, extension of QMV, re-weighting of the votes in the Council, extension and simplification of the co-decision procedure.

5.4 New powers of the Council under the new Treaty

The Treaty of Amsterdam contained relatively few reforms directly affecting the Council. Apart from challenges in the decision-making procedures of the Council, its role is not radically different from what it was under the terms of the Maastrict Treaty.

Some changes took place in the era of the second pillar concerning notably the planning and development of the common policy and the implementation of common measures.

To contribute to the efficiency of the planning and development of the common policy, Declaration 6 annexed to the Treaty of Amsterdam has provided for "a Policy Planning and an Early Warning Unit", composed of officials drawn from Council Secretariat, Member States, the Commission and the WEU, responsible for monitoring and analysing developments, providing assessments of the Union's interest, providing timely assessments of early warning events or significant situations, and produced argued

papers[135]. The Secretary General, apart from being the High Representative for the CFSP, has had a specific responsibility for this newly established unit. This has been a critical and a heavyweight position, 'some commentators likening it to the position of NATO Secretary General' (Westlake, 2000: 14). According to J.16 TEU 1997, the High Representative contributes "to the formulation, preparation and implementation of policy decisions" and "when appropriate and acting on behalf of the Council at the request of the Presidency, through conducting political dialogue with third parties". In order to be able to manage the General Secretariat, it is also provided that the Secretary General will be assisted by a Deputy Secretary General (Art. 151 (2) EC).

In a further new provision, the Council is given power to appoint a 'special representative' with a mandate in relation to particular policy issues (Article J.8 (5) TEU 1997). Such a provision has been accepted as 'codification of appointments' in the literature that has taken place before in some cases (such as the Great Lakes District in Africa and the Middle East) to represent the Union to third authorities[136].

On the other hand, The Political Committee, established in Maastrict to monitor the international situation in the areas covered by the CFSP and to contribute to the definition of policies by delivering reports to the Council, has been revised in the declaration on Article J. 15 TEU 'to meet at any time, in the event of international crisis or other urgent matters, at very short notice at Political Director or Deputy Level' (De Zwaan, 1998: 180).

In a related and significant amendment, Article 24 TEU has conferred power on the Council "to negotiate and conclude agreements with other states and organizations" on the implementation of a common policy (these provisions are also applicable to issues within the context of the third pillar). While concluding an agreement, "the Council, acting unanimously, may authorize the Presidency, assisted by the Commission as

[135] See European Commission, 1999: 132.

[136] De Zwaan, 1998: 182.

appropriate, to open negotiations to that effect" and such agreements will be concluded "by the Council acting unanimously on a recommendation from the Presidency" (Art. J. 14 second sentence TEU 1997). In the case that if the Member States has to comply with the requirements of its own constitutional procedure before they can be bound by an agreement, the agreement, until such a time will bound the other Council members. The significance of this change is that, 'although the Union is not given legal personality or capacity, it appears as though the Union is being represented in the conclusion of the international agreement not by the Member States individually, but by the Council of Ministers' (Craig and De Burca, 1997: 40). Accordingly, the Member States has adopted a Declaration[137] on the interpretation of this provision and clarified that "the provisions of Article J. 14 and K.10 of the TEU and any agreements resulting from them not imply any transfer of competence from the Member State to the European Union". However, in any case, it should be accepted that, here, it is the Council of Ministers, not the individual Member States that is empowered to conclude an international agreement which will bind them all.

In this context, 'troika' was reformulated under Articles 18, 26 and 27 TEU 1997 to include the Presidency of the Council (with the task of representation of the EU in matters falling within the CFSP), Secretary General of the Council (who assists the President and also fulfils the function of 'High Representative') and a member of the Commission. If necessary, it is provided that the next Member State to hold the Presidency will also assist to the Presidency (Article J. 14 TEU 1997).

As regards the third pillar, the Coordinating Committee, established in Maastrict as a senior committee within the Council hierarchy remained as it was before and provisions of the amended CFSP pillar on the representation of the Union has been provided for this pillar as well. Thus, the respective positions of the Council Presidency, Secretary - General and the Commission in the CFSP pillar will also be applied to this pillar.

[137] See European Commission, 1999: 131.

Further the provision of the CFSP, which gives Council power to conclude international agreements negotiated by the Presidency, will also be applied here.

5.5 Decision-making in the Council: Towards More Efficient Policy- Making

As mentioned before, very little was achieved in the Amsterdam Summit resulting the Treaty of Amsterdam, regarding the institutional changes necessary for enlargement. Although reforming the Council was at the centre of the 1996 IGC and the Amsterdam Summit with its decision-making procedure, weighing of votes and legislative role in the co-decision procedure, the Treaty failed to solve these questions. However, under the following titles, not only the relevant Amsterdam Treaty amendments but all issues will be debated not depending on whether they were successfully resulted in the Treaty or not.

5.5.1 More Qualified Majority Voting and the 'Amsterdam Compromise'

One of the biggest disappointments of the Amsterdam Treaty was the very limited extension of QMV in the Council. Although at the beginning of the IGC there seemed to be a widespread agreement on the generalization of majority voting under the label of 'enhancing the efficiency of the decision-making process', by the end of the Conference it was clear that any extension of QMV would be much more limited.

Nevertheless, going in to the Amsterdam Summit, there was considerable support for extending QMV to a number of policies traditionally subject to unanimity (Baun, 2000: 182). The majority of the Member States, namely Belgium, Italy, France, Austria, Finland, Portugal and even the new British government were supporting the significant

extension of QMV. The Dutch Government prepared the Dutch draft Treaty retaining unanimity for decisions on constitutional issues, EU financing, the Structural funds and taxation but extending QMV to many other areas. Interestingly however, the German Government of Chancellor Kohl, under pressure from the governments of Germany's sixteen federal states and facing new elections in September, "did an about- face in Amsterdam, abandoning its traditional integrationalist position and blocking the extension of QMV to many other areas" (Baun, 2000: 182).

Eventually, the Treaty of Amsterdam extended the QMV[138] to a very limited policy areas in the first pillar, including access to official documents, combating fraud, customs cooperation, research and development framework programme and equal pay for and treatment of men and women. By contrast, unanimity was again chosen for a series of new competences, categorized as constitutional in character or as being in the very core of national sovereignty: the implementation of the Schengen acquis, the determination of a breach of the Union's principles, the extension of the competence in the common commercial policy to services and intellectual property, the regulation of the conditions governing the performance of the duties of the MEPs, the suspension of international agreements and the establishment of a Union's international position (Nentwich and Falkner, 1997: 9). In addition, some exceptional issues such as measures against racial discrimination, provision regarding international agreements and industrial policy were also accepted as subject to unanimity without an obvious reason. Issues of controls at external borders, asylum, immigration and judicial cooperation on civil matters that are transferred from the third pillar to the first by the Treaty of Amsterdam are kept subject to unanimity for the next five years. After five years the Council will decide on proposals from the Commission, by unanimity to apply the co-decision procedure and QMV when adopting such measures (Lynch, Neuwahl and Rees, 2000: 241). Issues that are kept under the third pillar in Amsterdam retain subject to unanimity.

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[138] For the adoption of decisions by QMV, at least 62 votes in favour required, cast by at least 10 Council members (Third sub- para. of Art.J.13(2) TEU 1997). Furthermore, a general exception is made for decisions having military and defence implications (Art. J. 13(2) TEU 1997).

One controversial issue concerning the extension of QMV as regards the first pillar was the fact that the QMV was not extended to the many areas where the co-decision procedure now applies, such as freedom of movement and residence for EU citizens, social security for migrant workers, recognition of professional qualifications and cultural policy. Absence of such a provision has made some stages of the co-decision procedure (in particular the conciliation procedure) almost useless since unanimity restrict the Council's room for manoeuvre and thus its capacity to reach a compromise with the European Parliament (Nentwich and Falkner, 1997:10).

As regards the second pillar decisions concerning foreign and security policy, extension of QMV was also an important and a debateable issue. Many evaluations of the functioning of the second pillar agree that this policy has not been very successful since the TEU came in to force and that this lack of success is at least partly due to the requirement of unanimity voting under this pillar[139].

The Treaty of Amsterdam has offered two main solutions to this problem. First, 'by making it easier to take decisions unanimously' and second, 'by allowing for more decisions to be taken by qualified majority' (Blokker and Heukels, 1998: 46). Therefore it can be said 'that amendments of the Treaty of Amsterdam has represented a partial compromise between those calling for more QMV and those arguing for a maintenance of the primarily intergovernmental, consensual approach' (Craig and De Burca, 1997: 41).

As the first solution, Treaty of Amsterdam inserted a new and a highly sophisticated provision on voting known as the 'constructive abstention'. According to Article J. 13(1) TEU 1997, " When abstaining in a vote, any member of the Council may qualify its abstention by making a formal declaration [...] . In that case it shall not be obliged to apply the decision, but shall accept that decision commits the Union. In a spirit of

[139] Blokker and Heukels, 1998: 46.

mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision and the other Member States shall respect its position".

Thus, in such a case, although unanimity is still the rule, decision can be taken without the explicit assent of all members of the Council[140] and accordingly, it will be provided to 'prevent the unanimity rule from blocking action and at the same time not entirely overriding the interests of the Member States' (Craig and De Burca, 1997: 41). In this case the member states are not obliged to apply the decision but at the same time not frustrate it.

The second solution for the unanimity problem in the second pillar is that QMV will be provided for certain implementing measures (Blokker and Heukels, 1998: 47). According to a distinction made between different types of decisions under the second pillar; fundamental, basic decisions are called "principles", "general guidelines" and "common strategies"[141]. In such cases unanimity is still required. Nevertheless, according to Article J.13 (2) TEU, while ' adopting joint actions, common positions or taking any other decision on the basis of a common strategy' and while 'adopting any decision implementing a joint action or a common position' the Council will act by qualified majority. Such provisions seem to be big steps forward comparing previous situations where unanimity retained in the second pillar. However, in addition, the Treaty of Amsterdam also incorporated an ' escape clause' for the Member States where they safeguarded their sovereignty. This was an important innovation of the Treaty provided under Article J. 13(2) second sentence TEU. This provision which reminds the Luxembourg Compromise of 1966 declares that "if a member of the Council declares that 'for important and states reasons of national policy', it intends to oppose the adoption of a qualified majority decision, a vote shall not be taken, but the Council, may,

[140] The abstention of the members is restricted to one third of the Council under the last sentence of Article J 13(1).
[141] Also see Blokker and Heukels, 1998: 47

decide by qualified majority to refer the matter to the European Council for decision by unanimity".

Eventually, under somewhat complex and differentiated provisions of the new Treaty, the opposition of even one member state is protected by the 'unanimity with declared abstention' provision, and important interest of individual Member States are protected by the 'qualified majority with veto provision'. Such amendments reflected once again the different interests of the member states which had to be balanced in the process of negotiating a new Treaty.

5.5.2 Weighting of the Votes

Linked to the debate about the extension of QMV was even the more sensitive discussion about the re-weighting of the votes in the Council. With EU enlargements since 1957, the institutional over- representation of smaller countries had grown progressively more pronounced. Although the qualified majority threshold had been adjusted in each wave of enlargement- so that it continued to represent 70 per cent of the available Council votes-, "there had been no correction of bias in the allocation of votes favouring the small and medium-sized countries, to take into account that most of the new adherents belong to that category" (Dashwood, 1998: 124).

At the extraordinary Summit at Noordwijk, two weeks before Amsterdam, the Dutch Presidency made a strategic step and linked negotiations on re-weighting of Council votes with the composition of the Commission[142]. In particular, it proposed that the larger member states would give up their second Commissioner in exchange with re-

[142] for the details of the proposal see Westlake, 2000: 16.

weighting of votes in the Council (see Table 5.1)[143]. As is shown in the Table 5.1, two proposals for re-weighting of the votes were considered: an increase in the relative weight of the five largest states namely Britain, France, Germany, Italy and Spain and a 'dual majority' voting system where decisions must achieve a fixed percentage of weighted votes in the Council and votes from states representing majority of EU population (Moravcsik and Nicolaidis, 1998: 18)[144].

This attempted compromise failed, however, due to the objections of the Member States. Firstly, the Belgian Government opposed the fact since the Dutch proposal gave a greater voting weight to Netherlands than its own weight. It also insisted on a necessary linkage between re-weighting of votes and extension of QMV, fearing that 'otherwise it would loose a vital bargaining chip in its struggle for a more efficient EU' (Baun, 2000:183). Secondly, France opposed to the dual majority system since it would give Germany greater demographic weight and eliminate an important symbol of formal equality between these two countries[145]. Thirdly, the Spanish government that would loose its second commissioner insisted on equality on weighting of votes in the Council with four large Member States.

The absence of any overall agreement led the Member States to accept Chancellor Kohl's earlier advice and postpone discussions on institutional reform[146]. Indeed, they decided on the 'Protocol on institutions with the prospect of enlargement of the European Union'[147]. The Protocol retained the link between Commission composition and weighing of Council votes saying that "at the date 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

[143] see also Baun, 2000: 183; Lynch, Neuwahl and Rees, 2000: 241; Corbett, 1998:43, Dashwood, 1998: 125; Moravcsik and Nicolaidis, 1998: 18; Petite, 1998: 9; Spence, 2000: 43-44
[144] See also Blokker and Heukels, 1998:42.
[145] See Baun, 2000: 183, Westlake, 2000: 16
[146] See Moravcsik and Nicolaidis, 1998: 18
[147] See Treaty of Amsterdam, 1997: 111.

Member States, taking into account all relevant elements, notably compensating those Member State which give up the possibility of nominating a second member of the Commission". The Protocol also provided that "at least one year before the membership of the European Union exceed twenty", an IGC 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". Moreover, in the Declaration relating to the Protocol on the Institutions with the Prospect of Enlargement of the European Union, attached to the Treaty, the Member States agreed on extension of the Ioannina Compromise of March 1994 until the time of next accessions, thus preserving the current system of QMV.

Table 5.1
The re-weighting of variants considered by the 1996 IGC

A. Dual majority voting
Two variants:
I. The current weighted majority is retained
II. A simple majority of Member States, with each Member State having one vote.
Both of these variants required that majority should represent at least 60 per cent of the total population of the Union.

B. Re- weighting of votes
Votes are re-weighted by allocation of votes to Member State in a decreasing scale subject to population size.
Two variants:
I.12 for Germany, UK, France, Italy; 9 for Spain, Poland; 6 for the Netherlands, Romania; 5 for Greece, Check Rep., Belgium, Hungary, Portugal; 4 for Sweden, Bulgaria, Austria; 3 for Denmark, Finland,Ireland, Slovakia, Lithuania; 2 for Luxembourg, Cyprus, Latvia, Slovenia, Estonia.
II.25 for Germany, UK, France, Italy; 20 for Spain, Poland; 12 for the Netherlands, Romania; 10 for Greece, Check Rep., Belgium, Hungary, Portugal; 8 for Sweden, Bulgaria, Austria; 6 for Denmark, Finland, Ireland, Slovakia, Lithuania; 3 for Luxembourg, Cyprus, Latvia, Slovenia, Estonia.
Both variants have a minimum level of about 60 per cent of the total EU population and would approximately respect the existing threshold of 71.2 per cent.

Source: Westlake, 2000: 17

5.5.3 The New Co-decision Procedure: Towards an Equal Footing

A start is made by the Treaty of Amsterdam on rationalizing and simplifying the legislative process of the EU. Reform in the decision- making procedures in Amsterdam meant as Dashwood (1998: 118) rightly states 'reducing, rather than adding to the main procedures'. The number of legislative procedures is reduced to three, namely co-decision, assent[148] and consultation[149]. Thus, the cooperation procedure, that was introduced by the SEA disappeared, except in few cases concerning EMU. It is replaced by the co-decision procedure which is also extended and simplified.

The Treaty of Amsterdam extended the application of co-decision procedure to 23 new articles[150]. (The following table shows the new areas of application of the co-decision procedure.)

As a result, most EU legislation outside the fields of agriculture, and justice and home affairs became subject to the co-decision procedure. The procedure, on the other hand, has itself changed and simplified by streamlining the first and second readings and by the dropping of the third reading. The Council has been empowered, at first reading, in the case it approves all the amendments in the opinion rendered by the European Parliament or if the Parliament proposes no amendments, to adopt the proposed act (Dashwood, 1998:119). Otherwise the Council adopts a common position which will then be sent to the European Parliament.

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[148] The assent procedure will be required for the issues such as; penalties which the Council may decide to impose on one of its members in the event of serious and persistent violations of fundamental rights, applications for the member ships of the union, certain major international agreements, introduction of a uniform electoral system for members of the European Parliament.

[149] The consultation procedure is also extended to some important measures such as framework decisions, decisions and conventions taken pursuant to Article K11 TEU and proposed flexibility arrangements in the Community domain.

[150] The Co-decision procedure could be further extended in five years' time to many measures taken pursuant to the new Treaty title on the free movement of persons, asylum and immigration.

Table 5.2
New areas of application of the co-decision procedure

Non- discrimination on the grounds of nationality (Article 6)
Freedom of movement and residence (Article 8a(2))
Social security for migrant workers (Article 51)
Right of establishment for foreign nationals (Article 56(2))
Rules governing professionals (Article 57(2))
Implementation of transport policy (Articles 75 and 84)
Certain provisions arising from the social protocol
Incentive measures for combating social exclusion (Article 118(2))
Development cooperation (Article 130w)
Environment (Article 130s(1))
Research (Article 130o)
Equal opportunities and equal treatment (Article 119)
Openness (Article 191a)
Vocational training (Article 127(4))
Public health (Article 129)
Decisions implementing the European Regional Development Fund (Article 130e)
Creation of an advisory body on data protection (Article 213b)
Statistics (Article 213a)
Customs cooperation (Article 116)
Incentive measures for employment (Article 109r)
Measures to counter fraud (Article 209a)
Certain provisions relating to trans- European networks (Article 129d)
Decisions implementing the Social Fund (Article 125)

If the Parliament approves the common position or takes no decision within three months, the act will be deemed to be adopted as set out in the common position. If the Parliament rejects the common position, the legislative procedure is at end and the Council can no more convene the Conciliation Committee. If the Parliament proposes amendments, and these are not all approved by the Council, an attempt must be made to reach agreement on a joint text within the Conciliation Committee; but if the Committee fails in its task, the Council will have no power of last resort to confirm its common

position and the proposed act will simply fall (Dashwood, 1998: 119)[151] (see figure 5.1). Some time limits have also been introduced to the new procedure between the Parliament's second reading and the outcome of the whole procedure which may not be longer than nine and a half months; only the first reading will be without time limits.

The impact of the simplified co-decision procedure on the Council takes place in two ways. Formally, its role at the definitive stage of decision-making remains the same: no piece of legislation can still be adopted without receiving the positive approval of the Council. Nevertheless, it is obvious that extension of co-decision procedure means that there will be an important range of issues where notice has to be taken of the wishes of the European Parliament, if an act is to be adopted. Whether the political interplay between the Council and the Parliament will be much affected by the abolition of the third reading appears doubtful: 'experience suggests there is little practical prospect of the Council's being able to exercise its present unilateral power under Article 189b(6) EC 1997 without attracting a Parliamentary veto' (Dashwood, 1998: 119). Symbolically, however, the co-decision procedure represents a challenge and an opportunity for the Parliament which is for the first time replaced on an equal footing with the Council, as co-legislator[152]. Therefore, the Parliament has been portrayed as one of the 'winners' of the Amsterdam Treaty.

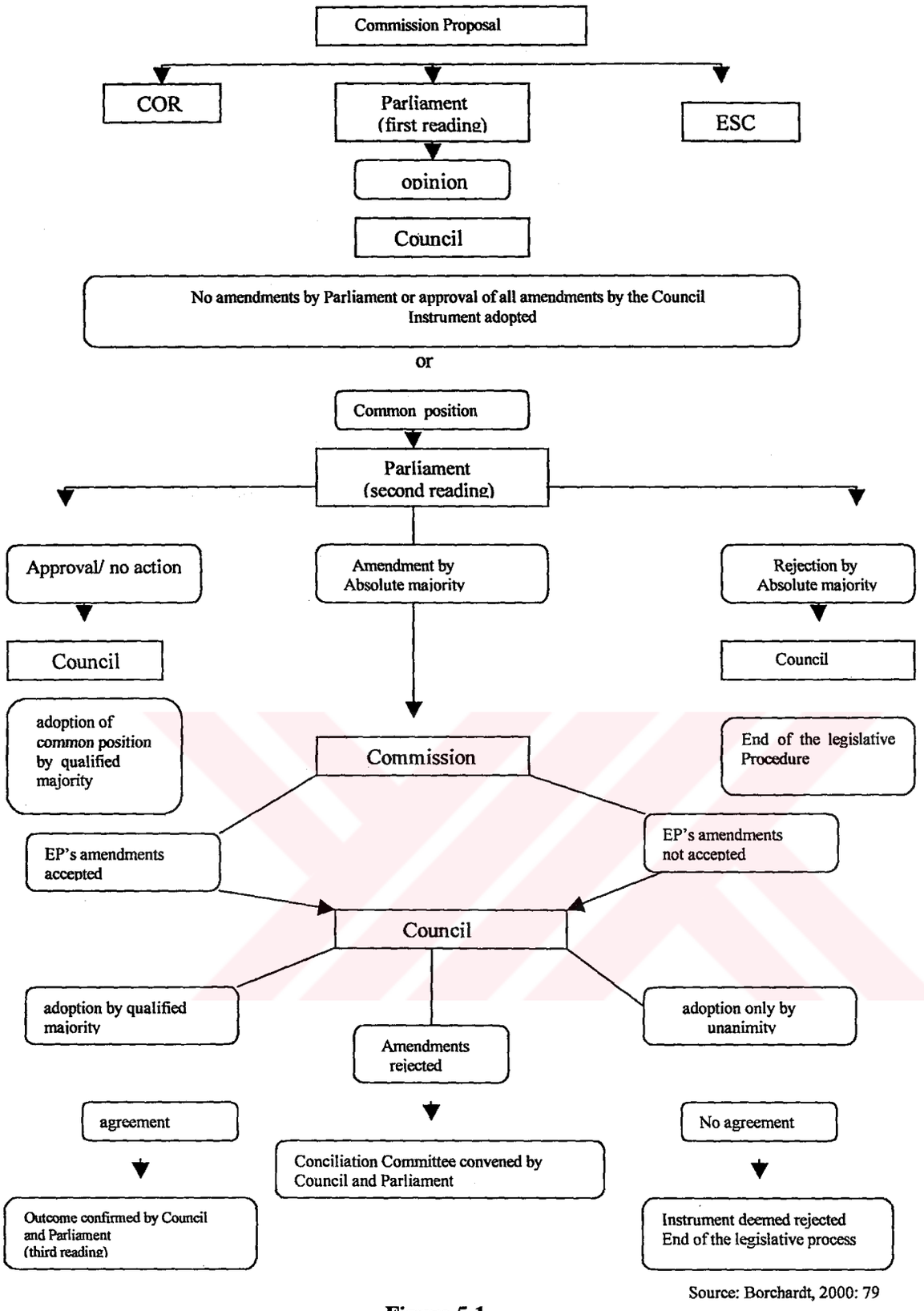
On the other hand, it is interesting to note that the Treaty language did not take into consideration such a change in the inter-institutional balance: "While in the Single European Act, the formula "the Council shall... in cooperation with the European Parliament adopt" was used, the Maastrict Treaty does not mention the Parliament in most cases: "the Council shall, acting in accordance with the procedure referred to in Article 189b..., adopt ..." .Thus, the Amsterdam Treaty did not change the current

[151] However, in the Maastrict system, when the conciliation committee failed to agree on a compromise text, the Council still had the option to confirm its common position and in such a case all Parliament could do was to reject its common position by absolute majority.
[152] See Dashwood, 1998: 119; Nentwich and Falkner, 1997: 2-3; Borchardt, 2000: 81; Jacobs, 2000: 70-71; Corbett, 1998: 40; Dehausse, 1998: 604

institutional imbalance in the Treaty language although the new titles of the legislative acts on the basis of Article 189b TEC already included the European Parliament (Nentwich and Falkner, 1997:3).

5.6 Conclusions: Outlook for a new Intergovernmental Conference

It is questionable whether the Amsterdam Treaty reached its aim on its most important matter intended for IGC agenda which was to prepare the Union for future enlargement eastwards and to consider the major institutional and voting changes for the next enlargements. The Council was at the very centre of the institutional discussions of both the IGC and the Amsterdam Summit with extension of QMV, re-weighting of the votes, the decision- making procedures and with its operation. However, the Amsterdam Treaty proved to be a modest attempt and postponed solving these main obstacles till the next IGC, extending QMV to a limited number of areas and briefly addressing the other issues only in one of the Protocols and a number of declarations to the Treaty. The main innovation of the Treaty can be accepted as the reduction of the legislative acts and the new co-decision procedure. However, on the other hand it left the more controversial issue of the combination of co-decision with unanimity aside. Therefore, whether these changes will bring about a significantly improved decision-making efficiency in the Council has remained to be seen in the next IGC.



Source: Borchardt, 2000: 79

Figure 5.1
The co- decision procedure under the Treaty of Amsterdam

CHAPTER 6

2000 INTERGOVERNMENTAL CONFERENCE & NICE TREATY

6.1 Introduction

As mentioned in the previous chapter, the Treaty of Amsterdam has been a modest attempt as far as its reforms on the Council are concerned. It could be able to extend and revise the co- decision procedure, however it failed to solve the most important problems such as re-weighing of the votes and extension of the QMV, postponing the solution of such problems to the next IGC[153].

The next IGC took place in the year 2000 and resulted with the Treaty of Nice. However in the period between the ratification of the Treaty of Amsterdam and the 2000 IGC, the momentum on institutional reform has been lost. Before mentioning the results of this IGC and provisions of the Treaty concerning the Council, in this chapter first the period from the Amsterdam Summit until the 2000 IGC will be analysed then the debatable issues in the IGC concerning the Council will be mentioned. Under the last heading the provisions in the Treaty of Nice on the Council will be examined.

[153] It is important to mention that since the 2000 IGC was finalised at the end of 2000, while writing this thesis there is neither an article nor a book about the subject. Therefore for this chapter, only the newspapers and Internet could have been used as primary sources.

6.2 From the Amsterdam Summit to 2000 IGC

The debate on institutional reform and establishment of a new IGC has lost its dynamism after the formal signing of the Amsterdam Treaty in October 1997, as EU attention shifted to the beginning of accession negotiations and "Agenda 2000" reforms (Baun, 2000: 186). Further debate has not come to the stage until the final ratification of the Treaty of Amsterdam which would take more than one year. In December 1997 in the Luxembourg Summit, where the accession negotiations was decided to begin with the ten Central and Eastern European Countries (CEEC) and Cyprus, the European Council declared that 'as a prerequisite for enlargement of the Union, the operation of the institutions must be strengthened and improved in keeping with the institutional provisions of the Amsterdam Treaty' (European Council, 1997, para.3).

It was right before the Cardiff Summit that the British EU Presidency "sought to relaunch the discussion of institutional reform"(Baun, 2000: 186) when it proposed to convene a constitutional conference in early 1999 under the German Presidency to negotiate the "unfinished business" of the Treaty of Amsterdam. The British government also proposed to create a group of experts, made up of personal representatives of the Member State governments, to study the future shape of the EU.

The Cardiff European Council decided to postpone the decision on "how and when to tackle the issues not resolved at Amsterdam until the ratification of the Amsterdam Treaty" till an informal summit in fall held under the Austrian Presidency. The Cardiff Summit also decided not to create a special group of experts to consider the EU' s future, thinking that they are the experts on this issue.

At the informal summit in Pörtschach in October 1998, there was a general consensus that further discussion on institutional reform should await final ratification of Amsterdam which would take place in the first half of 1999. Accordingly, it was not

until the Cologne European Council meeting in June 2000 that a discussion on the next IGC took place. In the Cologne Summit there was a consensus on convening an intergovernmental conference on institutional reform, while there also remained a considerable debate over the mandate of this conference. While some member states wanted an IGC limited with the Amsterdam "leftovers", some others, the Commission and the Parliament favoured a "broader constitutional conference to consider the EU's long-range institutional future"(Baun, 2000: 187)[154]. There was also the debate over the method of the intergovernmental conference: either prepared by a group of experts, independent of national governments or by a committee of national government representatives.

At the Cologne Summit, the EU leaders decided to convene a new IGC on institutional reform in early 2000, under the French Presidency. The European Council also decided that the IGC would be limited in scope: would only deal with the three "Amsterdam leftovers", namely the "size and composition of the Commission, weighting of votes and possible extension of QMV in the Council" (European Council, 1999)[155].

Later, the Helsinki Summit declared an agenda in accordance with the Cologne Summit decisions and approved a minimalist agenda for the conference. The report of the Finnish Presidency was limited to the three Amsterdam issues "on the ground that a broader IGC would be difficult to conclude before the end of 2000"(Baun, 2000:192)[156]. However, there was a fierce opposition from the governments of the Netherlands, Belgium and Luxembourg as well as the European Commission for a broader agenda to include the issues of treaty organization and flexibility. In the end, it was agreed to begin the IGC with a limited agenda and leave open the possibility of Portuguese Presidency to propose the addition of further agenda items, though these too should be within overall context of the IGC and focused on enlargement and reform[157].

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[154] Also see Baun, 2000: 188-190
[155] See European Council, 1999 for the Cologne European Council Conclusions.
[156] See European Council, 1999a for the Helsinki European Council Conclusions.
[157] Also see the UK Government FCO, 2000:12.

6.3 2000 Intergovernmental Conference & The Nice Summit: Extension of QMV, the Co- decision Procedure and Re-weighting of Votes

The Origins of the 2000 IGC lie in the Protocol on the institutions, annexed to the Amsterdam Treaty, as mentioned above. Since the Treaty of Amsterdam was inefficient to solve all the institutional issues, prerequisite for enlargement, provision was made for convening a new IGC in order to carry out a comprehensive review, before the European Union had more than twenty members, of the provisions of the Treaties relating to the composition and operation of the institutions (Council Presidency, 2000: 5). Accordingly, therefore, unlike the Maastrict or Amsterdam IGCs, the 2000 IGC has not been about increasing powers of the Union but rather making them work better.

In particular, the Council, as it was in the Amsterdam IGC, has been in the very heart of the discussions in the 2000 IGC. Two issues concerning the Council, namely the extension of QMV and the re- weighting of votes have been two important components of the agenda of the Conference that has started in February 2000 with the aim of 'addressing the institutional changes there have been needed'. It is also important to mention that those issues are at the heart of the national sovereignty so therefore dominated the discussions both in the IGC and in the Nice Summit.

6.3.1 Extension of QMV and the Co- decision Procedure

On the extension of QMV (in connection with the co-decision procedure), the task of the IGC has been to distinguish between policy areas where decisions can be taken by QMV and others which cannot be developed without the agreement of every individual Member State. Many proposals had been submitted by the Member States, by the European Commission and by the European Parliament on the issue. The Commission,

leaving aside cases for simple majority, supported the idea that QMV should be the rule and unanimity the exception (European Commission, 2000d: 12). In this respect, it has identified five categories of provisions that have significant importance and should be subjects to unanimity, including; Council decisions which must be adopted by the Member States in accordance with their consultation rules[158], essential institutional decisions and decisions affecting the institutional balance[159], decisions in the fields of tax and social security not related to the proper functioning of the internal market, parallel internal and external decisions and derogation's from Common Treaty Rules. Further, both the Commission and the Parliament have proposed the establishment of the link between QMV and the co-decision procedure for all legislative acts and the elimination of the cooperation procedure[160].

Similar to the Commission's proposal, the Portuguese and the French Presidencies have identified around fifty articles five of which are more sensitive areas where transition to QMV is very important but difficult to be accepted by certain member states. Those were the areas of coordination of social security schemes for cross- border workers (Article 42 EC), minimum requirements in social policy (Article 137 EC), visas, asylum

[158] These are the decisions which enter into force only after ratification by the Parliaments of the Member States such as additional rights for European Citizens (Article 22 EC), uniform procedure for elections to the European Parliament (Article 190 (4) EC), provisions relating to the own resources system (Article 269 EC).

[159] Under this title the Commission mentioned these issues: adapting the provisions relating to the powers of the Court in the area of freedom, security and justice (Article 67(2)EC); measures and Community financial assistance in the event of severe difficulties (Article 100 (1) and part of (2) EC); provisions replacing the Protocol on the excessive deficit procedure (Article 104 (14) EC); amending the Statute of the ESCB (Article 107(5) EC); setting the rate at which the euro is substituted for a national currency (Article 123(5) EC); laying down the principles and rules governing conferring of implementing powers (Article 202 EC), increasing the number of members of the Court of Justice and of Advocates-General(Articles 221 and 222 EC); composition of the Court of First Instance (Article 225(2) EC); determining the classes of action or proceeding to be heard by the Court of First instance (Article 225(2) EC); amending Title III of the Statute of the Court of First Instance (second paragraph , Article 245 EC); approving the Rules of Procedure of the Court of Justice and the Court of First Instance (third paragraph, Article 245 and Article 225(4) EC); the languages of the institutions (Article 290 EC); taking of measures to attain one of the objectives of the Community where the Treaty has not provided the necessary powers(Article 308 EC).

[160] See European Commission, 2000d and European Parliament, 2000.

and immigration (Article 67 EC), taxation (Article 93 EC), common commercial policy (Article 133 EC) and economic and social cohesion policy (Article 161 EC).

The member states, on the other hand, have been in favour of the idea that there have to be a transition to QMV with the exemption that there are also some very sensitive issues that the unanimity must be the rule. However, many of them had serious difficulties in agreeing on which provision should be subject to QMV. While for instance Britain has signalled to block any move to scrap the national veto on tax, social security, borders, defence, treaty changes and EU budgets; Spain would block any attempt to move to majority voting on regional aid. Further, while, France wanted to defend its national sensitivities on trade, culture and educational matters, Germany was "resisting moves to switch to majority voting on asylum and immigration"(Norman, 2000: 2). However, of all, difficulties of agreement have proved to be in the politically sensitive issues of taxation and social policy. A number of delegations have also opposed to any extension of QMV in accordance with any extension of co-decision. In these circumstances it is not surprising that the final compromise has represented the lowest common denominator.

6.3.2 Weighting of Votes

As mentioned before, while the Council is taking decisions by QMV, it has used the system of weighted votes reflecting the populations of the Member States. This system has been adapted taking account of successive enlargements, without changing weight of the Member States as laid down at the outset (European Commission, 2000d: 21). However, when the next enlargement has started to be discussed in which mostly small or average-sized populations are involved in, it has appeared that the relative weight of the small states would increase to the detriment of those with large populations, even though the latter represent much less than half of the EU's total population.

Accordingly, the issue of weighting of the votes has been an important component of the agenda of the Amsterdam Summit. However it failed to solve this problem and postponed its revision to the 2000 IGC.

On the weighting of votes, the discussion in the IGC has centred on three options. The first two options, namely re- weighting of the votes and dual majority system have been mentioned in the Protocol attached to the Amsterdam Treaty[161]. In addition, the Commission, right before the beginning of the IGC recommended a new system of dual majority, as the third option, known as the "simple dual majority", under which the decision by qualified majority deemed to be taken if it has the support of a simple majority of the member states representing majority of the total Union population (European Commission, 2000d: 12). In the IGC, there occurred a division between the member states on the options mentioned above: while the system of dual majority has been backed by the small member states supported by Germany and Italy, the option of re-weighting of the votes has been backed by the three other large member states plus Sweden and the Netherlands.

On the number of votes, Germany has determined a campaign to get more votes vis-à-vis Luxembourg and France demanding a bigger say in the Council with population of 82 million, as being the biggest contributor of the EU. While Tony Blair, the British Prime Minister and Italian premier Giuliano Amato, representing two big nations with equal weighting in Council votes, have indicated in Nice that they have had no objections to recognize Germany's enlarged population and economy[162], particularly France insisted on preserving parity. On the other hand, while the Dutch have claimed more votes than the Belgians and vice versa, the Spanish wanted parity with the British, French, Germans and Italians.

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[161] For these two options see p. 99- 102 of this thesis.
[162] Graham and Groom, 2000:2.

6.4 Reforming the Council: The Nice Summit and the New Treaty

The 2000 IGC and negotiations on the Treaty of Nice[163] have been concluded at the Nice Summit[164]. This summit has been regarded as "one of the most important summits in the EU history after the European Council of December 1991 in Maastrict, which launched the single currency"[165]. The issues that would be negotiated in Nice were determined as issues going to the heart of national sovereignty and the balance of power between the small and large member states. The agreement was reached at the four days summit on a reformed decision-making process where the European Leaders made a modest progress in overcoming national objections of member states to adopt QMV, rather than unanimity, on some sensitive areas and on the expansion of the co- decision procedure where QMV is the rule. However, on the other hand, they have succeeded to solve the problem of weighting of votes although the solution has appeared to be a complex one.

6.4.1 Extension of QMV and the Co-decision procedure

The progress that has been made in this field has been accepted as one of the successes of the IGC despite different positions of the member states. The final outcome on the extension of QMV has shown that the EU leaders have managed to reach an "agreement in principle" on a shorter list of policy areas subject to national vetoes.

While Spain managed to keep its national veto in setting the level of EU cohesion funds for the period till 2007[166], Germany preserved the veto right on most controversial issues

[163] See European Commission, 2000c for the full text of the Treaty of Nice.
[164] At the time this thesis is finalized, the ratification of the Treaty of Nice was in process.
[165] Norman, 2000:2.
[166] Article 161 TEC on cohesion funds reads as such after it was amended in Nice: 'From 1 January 2007, the Council shall act by a qualified majority after obtaining the assent of the European Parliament and after consulting the Economic and Social Committee and Committee of the Regions if, by that date, the

of asylum and immigration policy until 2004. On the other hand, France kept its national veto on trade in audiovisual products, culture, education, health and social services. However; decisions on trade in services and intellectual property, governed by Article 133 EC, shifted to be taken by qualified majority vote despite great French misgivings and reservations. Furthermore, Denmark and Greece kept their national veto on maritime transport.

On the other hand, Britain has been refusing to give any concessions about veto on taxation and social security issues. Finally the IGC has retained unanimity requirement for all treaty provisions relating to taxation (Article 93 EC (current legal basis for indirect taxation), (Article 94 EC (current legal basis for measures in the filed of direct taxation) or Article 175 (2) (a) EC (legal basis for tax measures with an environmental objective)) and did not amend Article 42 TEU concerning the coordination of social security systems[167]. In turn, Germany blocked majority voting on free movement of professionals, which had been strongly supported by the UK.

In the end, QMV has been introduced in only 27 provisions out of 50 initially proposed by the Commission and the 75 cases where the unanimity rule still prevailed in the Treaty. For ten articles relating to Community policies (Articles 13, 18, 65, 100, 123, 133, 157, 159, 279 and the new Article 181a EC), QMV have been introduced. In the case of a further four articles the move to QMV have been accepted for all or part of areas covered by the relevant provisions (Article 67 in conjunction with Articles 62, 63, 66 and Article 161 of the EC Treaty). Six articles, concerning the appointment of the President and Members of the Commission and eight other institutional provisions have all been transferred to QMV.

2007-2013 financial perspective and the inter institutional agreement relating thereto have been adopted; otherwise, the procedure referred to in the first subparagraph shall be apply from the date of their adoption'.

[167] However, the Treaty allows the Council to decide at a later date to introduce QMV in those areas of coordination of social security systems that are still subject to unanimity.

On the other hand it was decided to extend the co- decision procedure only seven provisions (Articles 13, 62, 63, 65, 157, 159, 191) that have shifted from unanimity to QMV (see table 6.2). Further, the Treaty has provided that measures relating to asylum "will be adopted under the co- decision procedure after the Council has adopted Community legislation defining the common rules and main principles in the matter". In addition, on the immigration policy and on the movement of third country nationals, the Member States has agreed on a declaration annexed to the Treaty of Nice that decisions relating these mentioned issues would be adopted under the co-decision procedure form 1 May 2004 onwards. The IGC, however, has been unable to extend the co-decision procedure to legislative measures that have already come under the QMV, like the agriculture or the trade policies.

6.4.2 Weighting of the Votes

As the new weighting would affect the future balance of power in the Council, the issue of weighting of votes has been the thorniest of all in the whole negotiations.

As mentioned, during the negotiations of the IGC, there have been couple of options, some proposed by the Commission, some by the French and the Portuguese Presidencies and some in the Protocol annexed to the Treaty of Amsterdam. However, all of these proposals have been rejected and a compromise have been reached in a kind of "triple majority" in the end: for a decision to be adopted it must have the agreement of the majority of the total number of the Member States, between 71 % and 74 % of weighted votes and if a Member State so requests, 62 % of the total EU population. It was also agreed that after the successive waves of accessions, the requisite percentage of weighted votes will increase to a maximum of 73.4% which means that three large Member States and one small state will be able to oppose a decision that has the support of all the others.

Table 6.1

Extension of QMV under the Treaty of Nice

Anti discrimination measures (Article 13 EC)
The Right of Citizens to move and reside within the territory of the Member States (Article 18)
Justice and Home Affairs, excluding Family Law (Article 65)
Financial Assistance (Article 100EC)
Measures necessary for the rapid introduction of EMU (Article 123)
Common Commercial Policy (Article 133)
Measures supporting the action of Member States in the Industrial Sphere (Article 157)
Specific Actions for Economic and Social Cohesion outside the Structural Funds (Article 159)
Economic, Financial and Technical Cooperation with third countries (Article 181a EC)
Services (Article 62)
Services (Article 63)
Services (Article 66)
Rules applicable to the Structural Funds and to the Cohesion Fund (Article 161 of the EC)
Approval of the Statute for Members of the European Parliament (Article 190(5) EC)
Political Parties at European Level (Article 191 EC)
Appointment of the Secretary- General and the Deputy Secretary General of the Council (Article 207(2) EC)
Nomination of the President of the Commission (Article 214 EC)
Replacement of the President of the Commission (Article 215 EC)
Approval of the Rules of Procedure of the ECJ (Article 223 EC)
Approval of the Rules of Procedure of the Court of First Instance (Article 224 EC)
Approval of the Rules of Procedure of the members of the judicial panels (Article 225a EC)
Appointment of the members of the Court of Auditors (Article 247 EC)
Approval of the Rules of Procedure of the Court of Auditors (Article 248 EC)
Appointment of the members of the Economic and Social Committee (Article 259 (1) EC))
Appointment of the members of the Committee of the Regions (Article 263 EC)
Financial Regulations on financial controllers, authorizing officers and accounting officers (Article 279)

In accordance with these provisions the Treaty has revised the votes of the member states (and the votes of the applicant states after accession). Under Article 3 of the Protocol on the enlargement of the European Union annexed to the Treaty of Nice which

amends Article 205(2) and (4) of the TEC, by 1 January 2005, "where the Council is required to act by qualified majority" weighing of votes of the member states shall be amended (see Table 6.3).

Table 6.2
Extension of co- decision procedure under the Treaty of Nice

Anti discrimination measures (Article 13 TEC)
Services (Article 62)
Services (Article 63)
Justice and Home Affairs, excluding Family Law (Article 65)
Measures supporting the action of Member States in the Industrial Sphere (Article 157)
Specific Actions for Economic and Social Cohesion outside the Structural Funds (Article 159)
Political Parties at European Level (Article 191)

The same Article of the Treaty also has required that "acts of the Council shall require for their adoption at least 170 votes in favour" of at least a majority of member states where " this Treaty requires them to be adopted on a proposal from the Commission". For other cases the article requires that for their adoption, the Council should require at least 170 votes in favour at least from two thirds of the member states."

Further, in the 'Declaration on the enlargement of the European Union to be included in the final act of the Conference' annexed to the Treaty, table of the weighing of the votes after successive enlargements is required as such under table 6.4.

With the accession of these candidate countries the total number of votes will be 345 and according to the declaration, "acts of the Council shall be adopted by at least 258 votes

in favour, cast by a majority of member states, where this Treaty requires them to be adopted on a proposal from the Commission". In other cases or adoption of the Council acts 258 votes plus approval of the two thirds of the members is needed. The same article of the protocol on representation of qualified majority is also applicable here.

Furthermore in accordance with the Dutch proposal on connecting the question of weighting of votes with the number of commissioners have also been solved. The Nice Summit agreed to limit the size of the Commission, with each large country giving up its second commissioner by 2005.

The outcome of the IGC on the weighting of votes meant that Germany had to withdraw from insisting on more votes than France. However, as a reward to this withdrawal, it has got the commitment to set up another intergovernmental conference on the European Union's decision-making structures by 2004.

Table 6.3

Weighting of Votes under the Treaty of Nice

	Population per vote (in millions)	Votes
Germany	2.83	29
UK	2.04	29
France	2.03	29
Italy	1.99	29
Spain	1.46	27
Netherlands	1.21	13
Belgium	0.85	12
Greece	0.88	12
Portugal	0.83	12
Sweden	0.89	10
Austria	0.81	10
Denmark	0.76	7
Finland	0.74	7
Ireland	0.53	7
Luxembourg	0.11	4

6.5 Evaluation

As tried to be analysed, reforms of the Treaty of Nice on the Council have centred on two main issues, namely, the extension of QMV and weighting of the votes. On the extension of QMV, quantitatively, there has been an important move since a high number of areas have been accepted as subjects to QMV. However, qualitatively, the Treaty has been modest, since the most sensitive areas such as taxation, cohesion and social legislation have remained subject to unanimity. The increase in QMV has also

backed by re-weighting of the votes in favour of the larger countries. Further, the new provisions on the weighting of votes and thresholds have proved to be too complex. That it to say, apart from fiddling with voting weights, all the other real decisions have been postponed in Nice.

Taking into account the overall results of the Nice Summit and the Member States in the negotiations, Britain and Spain should be accepted as the biggest winners. While Britain has saved its veto on taxation and social security and gained as many votes as Germany in the Council, Spain did the same on the allocation of the cohesion funds. On the contrary, Germany should be accepted as the main looser in the Summit which failed to gain its full population weight in votes and remained in par with the UK, France and Italy.

The Treaty, although being quite messy and complex as far as its reforms on the Council are concerned, will for sure allow the European Union to move forward to eastern enlargement once it is ratified by the member states according to their respective procedures. However it is for sure that more reform will be needed in the future taking account the number of member states with different aspirations joining to the Union and number of issues dealt in the Union is increasing day by day.

Table 6.4

Weighting of votes under the Treaty of Nice after successive enlargements

	Population per vote (in millions)	Votes
Germany	2.83	29
UK	2.04	29
France	2.03	29
Italy	1.99	29
Spain	1.46	27
Netherlands	1.21	13
Belgium	0.85	12
Greece	0.88	12
Portugal	0.83	12
Sweden	0.89	10
Austria	0.81	10
Denmark	0.76	7
Finland	0.74	7
Ireland	0.53	7
Luxembourg	0.11	4
Poland	1.43	27
Romania	1.61	14
Czech Republic	0.86	12
Hungary	0.84	12
Bulgaria	0.82	10
Slovakia	0.77	7
Lithuania	0.53	7
Latvia	0.61	4
Slovenia	0.49	4
Estonia	0.36	4
Cyprus	0.19	4
Malta	0.12	3
TOTAL		345

CONCLUSION

This study has analyzed the Council of the European Union from a historical perspective, mentioning its establishment in the Treaty of Rome and changes by each Treaty amendment. The Council of Ministers although has very important roles in the executive and legislative processes of the Union is the least analyzed institution of the Community/ Union. It has not been subject to many publications, because of it highly complex structure and because of being a non- transparent institution till the 1990s. However, it has been subject to too much comment being at the heart of the institutional reform debates in the second half of the 1990s. Thus, I suggest it deserves more attention than it has got till today.

The Council of the European Union has been examined by taking the main Treaty amendments and important periods as turning points. Each Treaty amendment and important date (such as the Luxembourg Compromise and the 1996 IGC) has been accepted as the base for dividing the Chapters. Eventually, the study has been composed of six chapters. In each Chapter, as mentioned earlier, either that treaty or the importance of that event is briefly underlined and then their influence and effects on the Council are analyzed. However, it should be mentioned that it was not the aim of this study to examine the Treaties or the turning points of the Community. Each Treaty implications were analyzed in accordance with the Council.

In chapter I the Council has been analyzed according to its establishment under the Procedures of the EEC Treaty. As many observers accept the Council was established in 1957 as the main institution of the EEC with both executive and legislation functions. Its importance also comes from its being the only institution of the Community where the interests of the Member States are represented. The Council had already a crowded and a complex structure in this system. Further, it was the main institution in the legislative

process that converts the Commission proposals to Community acts. No other institution in the legislative process had more significant powers than the Council at that time.

In the second chapter, two decades between the mid 1960s and the mid 1980s are analysed. This period was a long period of stagnation in the Community and also in the Council. One of the most important reasons for this stagnation was the Luxembourg Crisis of 1966. The crisis did not only mark the Community history but also the efficiency of the Council. It was already the 1970s that the Community started to facilitate again by many reform proposals. These reforms were all failure because they did not find solutions to the problems of that date. However they were significant in one respect that they became the bases for the SEA.

The third chapter was on the implications of the SEA on the Council. The SEA did not bring structural innovations to the Council but extended its role by bringing the Comitology procedure, extended the QMV and brought the new cooperation and assent procedures. The Act has been criticized because of its limited extension of QMV. However this innovation is important from one respect: Of all these innovations, the cooperation procedure of the SEA has been subject to much comment. Many analysts have argued that the procedure extended the role of the EP in the legislative process at the expense of the Council. I accept that the EP has gained some powers in comparison with the earlier consultation procedure, however it is not acceptable to argue that the Council has lost power in such a case. Since in this procedure the EP has only had limited powers.

The following chapter was on the implications of The Treaty on European Union on the Council. I suggest that the Treaty was one of the milestones in the Council's history. It has not only made structural changes but also extended the role of the Council in all pillars of the Union. It has also extended QMV to an important number of areas and brought the new co-decision procedure where the EP has more say on the Commission proposals. In comparison with the consultation and co-operation procedures where the EP has no significance, the co- decision procedure has extended the role of the EP by

giving it the right of veto. This procedure gives the EP a great opportunity to veto the Council proposes and therefore to block the Council decisions. However, on the other hand the TEU provided this procedure for a very limited number of areas, therefore the EP has a limited opportunity to produce a common act with the Council. Under an important number of provisions under the TEU where cooperation and consultation procedures are provided for, the Council should be accepted as the Union's principal legislator.

In this chapter, I lastly examined the European Council in comparison with the Council since the nature of the relationship of these two institutions has been subject to much debate. Although the European Council was established in the 1970s and mentioned in the SEA, the reason to include it in this chapter was that the TEU was the first legal document provided the institution. The TEU, apart from these innovations have also provided for an IGC under its various articles to review provisions it had brought and to examine certain institutional questions. This IGC convened in 1996 and resulted with the Treaty of Amsterdam of 1997.

The 1996 IGC and the 1997 Treaty of Amsterdam were discussed in chapter five. The IGC was important for being the first IGC that was provided in a Treaty text. It had a loaded agenda including very important institutional questions. Results of various European Council meetings, reports of the Reflection Group and the Community institutions have formed the agenda of the IGC. The Council was at the heart of the discussions in the IGC with the extension of QMV, weighing of votes, the legislative procedures and its presidency. Of all these subjects weighing of votes has taken more attention mainly because of the issue of enlargement the Community facing at that time. Starting by the 1990s new States with different aspirations have applied for membership. This differentiation of the new applicants laid also different coalitions in the Council (between the richer and poorer, between the southern and northern, between more populated or less populated) and changed the way in which the policy agenda is defined and pursued. Indeed the degrees of trust, cooperation and conflict between the Member States affect the negotiations in the Council. Accordingly voting in the Council has been

an important point of debate for power. These reasons have occurred long discussions on the issue in the IGC. However, the Treaty of Amsterdam of 1997 failed to reflect the productive results of the 1996 IGC.

The Treaty of Amsterdam that was examined as the second part of the same chapter came to be remembered as a disappointment in the EC/EU history since it did not solve the main institutional questions that were debated in the IGC and postponed them till the next IGC. However when its innovations concerning the Council are concerned, I suggest that the picture is not that much dark. Apart from its failure on finding solution on the weighing of votes necessary for enlargement, the new Treaty extended QMV (although in very limited number of areas) and rightly reduced the number of legislative procedures by replacing the co-operation with co- decision. It has also simplified the latter empowering the EP. The extension of the co-decision procedure has had two impacts on the institutional balance of the legislative process. Formally, the legislative power of the Council has remained the same since its positive approval is needed for the adoption of an act. On the contrary, the extension of co-decision also meant that there has been an important range of issues where notice has to be taken of the wishes of the European Parliament, if an act is to be adopted. Therefore by the amendments of the Treaty of Amsterdam the institutional balance in the legislative procedure has changed. Not only the extension of the co-decision procedure but also the reduction of the co-operation procedure has affected the Council to loose power in favour of the EP. While in all of the earlier procedures the Council was the dominant institution and the EP had only limited powers, after the Treaty of Amsterdam the Council has to share its legislative powers with the EP.

The last chapter of our discussion concerning the Council was the last IGC and Treaty amendment of Nice. Although the Treaty has not been ratified yet, once it is ratified it will make important changes on the working of the Council. First of all it should be mentioned that the Nice IGC was convened to discuss particular questions of re-weighing of votes and extension of QMV in accordance with the co-decision procedure. These topics were discussed also in the 1996 IGC however their solutions were

postponed till the next IGC, as mentioned earlier. The Treaty of Nice, unlike its predecessor the Treaty of Amsterdam can be regarded as successive as regards these questions. The Treaty was able to extend QMV in to a very important number of areas and re- weighted the votes in the Council. However on the other hand, extension of QMV in the Council did not include the most important areas of Treaty. The Member States preferred to leave the most sensitive areas such as taxation, cohesion and social legislation aside and let them remain subject to unanimity. Therefore although on the extension of QMV quantitatively the Treaty was an important step, qualitatively it was a modest attempt. As regards the weighing of votes in the Council, the Treaty re-weighted the votes however brought a complex system with new provisions on thresholds.

In this analysis of the Council of the European Union there are some important points that need to be underlined. First of all taking in to account the evolving process of the EC/EU it can easily be said that the Council was established as one of the main institutions of the Community and stayed as such until the 2000s. The importance of the Council did not lessen through Treaty amendments; on the contrary it has increased to a certain extent. In 1991 by the innovations of the Treaty of Maastrict the Council has come to its peak point and became an institution of the Union. Furthermore throughout the evolving process in accordance with the increasing activities of the Community, both the number of ministerial Council's and the committees and the working groups under the Council's structure have increased and the existing ones are empowered.

Secondly within this nearly fifty years of time there has been an important trend as regards extending the areas of QMV in the Council. Starting by the 1970s the QMV has been subject to every institutional reform proposal and agenda of the IGC's. Lastly in the Treaty of Nice comparing with the EEC Treaty there have been an important number of areas subject to QMV. This will of the Member States I suggest has also shown that they would prefer a more supranational Council than an intergovernmental one since QMV has constituted a key aspect of governmental type of supranationality under the EEC system.

Indeed, the legislative procedures have increased in number over time with each Treaty amendment and resulted with the complexity of decision- making system. In this respect the Amsterdam Treaty is an important document reducing and simplifying the procedures. As regards the legislative procedures, the institutional balance in the Community has also changed over time. While in the original EEC Treaty the predominant institution in the decision- making system is the Council, it is not the same in the post- Nice era. In this era the Council has to share its legislative functions with the EP. Therefore it would be an exaggeration to say that the Council is still the predominant EU institution. Accordingly, the relations of the Council with other institutions of the EC have also changed over time. Broadly, the Council has gained ground at the expense of the Commission by the Comitology procedure accepted by the SEA and on the contrary the EP has gained ground from the Council by the amendments of the Treaty of Amsterdam on the legislative role. Further, after the 1970s the European Council has come to the stage and has gained a significant role in the political cooperation among the Member States.

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