



***After the *annus horribilis*:***  
**a review of the EU institutions**

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*Edited by Guillaume Durand*

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## FOREWORD

*By Guillaume Durand*

Over the past three years – and especially since the entry into force of the Nice Treaty, the 2004 enlargement, the June 2004 parliamentary elections and the bumpy appointment of the Barroso Commission – the European Union’s political system has undergone radical change. With ratification of the Constitutional Treaty proving increasingly elusive, it also lacks clear perspectives. As a result, the Nice institutional arrangements may well be less transitional than they were expected to be.

In this context, the EPC’s *Political Europe* programme decided to take stock of the evolution of the various EU institutions and the overall inter-institutional balance. While focusing primarily on analysis, the exercise also aimed to provide some useful guidelines for further institutional reform, thus actively contributing to the broader “reflection period” launched at the EU level. The main objective was to identify key trends in the way in which the Union’s political system has been changing as a result of the new institutional design and, arguably, its unintended consequences.

Focusing once again on institutions may be seen as yet more navel-gazing between Brussels-based ‘institutions freaks’, disregarding the real concerns of European citizens as expressed, in particular, during the referendum campaigns in France and the Netherlands – and, ultimately, through the rejection of the Constitutional Treaty in those two countries. But while it is quite clear that the EU institutions are hardly a key concern for the public at large, it is equally beyond doubt that the way they function (or malfunction) has an impact on the way they are perceived overall by European citizens in terms of transparency, accountability and effectiveness.

For that reason, the EPC’s decision to review the functioning of the EU institutions – and their possible evolution in the current legal framework – at such a critical juncture for EU integration is by no means unrelated to the broader ‘crisis of confidence’ between the Union and its citizens signalled by the French and Dutch No votes.

Indeed, the objective was precisely to offer a sober assessment of the situation that may serve as a basis for the ongoing reflection on the future of the Constitutional Treaty and, even beyond that, on the desirable changes in EU politics and policies. It might be said that, until a few months ago, we had a Constitution (almost) without a political debate. Now we are having a political debate (almost) without a Constitution – and this Working Paper aims to be part of that.

If we have been successful in this, as we hope, it is first and foremost thanks to the enlightening and enthusiastic contributions of all those

who participated in the three brainstorming seminars we organised on the European Commission, the European Parliament and the Council of Ministers (see the List of Participants on page 53).

As revealed in the individual seminar reports contained within this Paper, the mix of practitioners and academics, as well as the resulting sum of knowledge and experience, allowed for frank debates about where each of the institutions stands. Such openness was made possible by holding the discussions under Chatham House rules: none of the remarks in these reports can be attributed to individual participants.

Our lively debates benefited immensely from the stimulating introductions given by **John Peterson**, Professor of International Politics at the University of Edinburgh, on the Commission; **Simon Hix**, Professor of European and Comparative Politics at the London School of Economics, on the European Parliament; and **Andreas Maurer**, Head of the Research Unit EU Integration at Stiftung Wissenschaft und Politik (German Institute for International and Security Affairs) in Berlin, on the Council of Ministers. Their views are outlined in their immensely valuable contributions to this Working Paper.

We would also like to express our deep gratitude to **Sabine Weyand**, Head of Development Commissioner Louis Michel's Office, and **Fabien Raynaud**, Legal Counsel at the Permanent Representation of France, who have considerably enriched our debates by providing us with both thoughtful and provocative insiders' views respectively on the Commission and the Council of Ministers.

Our stocktaking exercise suggests that there is no simple way out of the current constitutional crisis, but that each institution can contribute to its own redefinition with a view to making itself more relevant, more visible and more familiar to European citizens. Although there was overall (if not unanimous) agreement that the Constitutional Treaty would reshape EU institutions in a more democratic way, much can already be done on the basis of the current Treaties.

As **John Peterson** explains in his article, the *European Commission* is undoubtedly the institution with the least room for self-definition: it "does not make its own luck". Yet this does not mean that it is condemned to irrelevance. Irrespective of its eventual role in the Union's political system, the historic trend remains in favour of a more powerful 'hub' for the EU in the context of globalisation. As was highlighted in the brainstorming seminar, the fact that the Commission is heavily reliant on the existence of a "permissive consensus" among the Member States is a constraint. But to be successful, the Commission should build upon its roles as a deal broker, a catalyst for ideas and a policy initiator to make itself relevant to both pillars of its legitimacy: the citizens and the Member States.

In his contribution on the *European Parliament*, **Simon Hix** underlines the yawning gulf between the Parliament's achievements as a remarkably effective legislator that has been capable of structuring increasingly consistent European political parties against an adverse backdrop, and the almost total invisibility of the Parliament's politics to most European citizens. The discussion that followed his presentation put the emphasis on how to "increase the stakes in the European Parliament and in European elections". While some changes in the Parliament's internal rules could be useful, there was agreement that the personalisation of parliamentary elections and giving voters a better sense of the choice between ideologically-structured 'Euro-parties' would help EU citizens understand and participate more actively in Union politics.

Finally, the article by **Andreas Maurer** highlights the fact that the *Council of Ministers* is still working more or less as it used to before enlargement – and in spite of the complex provisions of the Nice Treaty. Indeed, the Council still operates largely on the basis of consensus, with Qualified Majority Voting (QMV) still functioning mainly as a "sword of Damocles" hanging over Member States' heads. Nevertheless, participants in the seminar agreed that unanimity in an EU of 25 was a recipe for inaction – and indeed for deceiving citizens. They also emphasised the importance of increased transparency in relation to the Council's legislative operations and, even more so, of national governments being genuinely accountable to their parliaments and publics for the decisions they take collectively in the Council.

Overall, dramatisation is not the order of the day: the EU institutions have not been paralysed as a result of either enlargement or the Nice Treaty arrangements. This is not to say that the situation is satisfactory from the point of view of citizens: for each institution, there are lessons to be learnt from the 'constitutional' crisis.

It is in this spirit that **Antonio Vitorino**, Chairman of the EPC's *Political Europe* programme, draws a number of political conclusions from the findings of our seminars – with very practical implications for the institutions. In essence, they should reform themselves to better convey the sense and purpose of what they are doing and to better explain to citizens how they can engage in, and control, the process.

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## I. EUROPEAN COMMISSION

### Where does the Commission stand?

*By John Peterson*

To limber up our minds for thinking about where the European Commission currently stands, we might consider the question: has there ever been a *worse* time to serve as a Commissioner or official?

The Commission is, arguably, the EU institution that thrives most on big, dramatic new initiatives such as the drive to create the single market, the ambitious recent enlargement of the Union, or (even) the urgent demand for more European and international policy cooperation on counterterrorism.

One of the safest of all assumptions about the near-term prospects for European integration is that there will be no ‘big ideas’ for new EU projects unveiled until at least the latter part of the German Presidency in 2007 (that is, after the French Presidential election). This means a fallow period of at least a year and a half from now.

In the meantime, the Commission faces the grim task of trying to stay on track with extremely difficult and unpopular dossiers, including the REACH chemicals and services directives and further enlargement, in a political climate which makes it far easier to put off decisions than to make them.

We might even conclude that the best the Commission can hope for in the next few years is to manage to keep the EU’s past accomplishments from unraveling altogether.

Fresh evidence of deep polarisation in Europe, especially on matters of political economy, along with popular contempt for the EU itself, seems to arrive daily. Consider former German Chancellor Gerhard Schröder’s claim, made as he headed for the political shadows, that “Anglo-Saxon capitalism” held “no lessons for Europe” – an outburst perhaps prompted by the 2005 UK Presidency’s assumption that it held *all* the lessons that Europe needed to learn.

Reflect on the ferocity of attacks on Commission President José Manuel Barroso, particularly from the political left, accusing him of pursuing a “neo-conservative agenda” and privileging a “liberal Atlantic” clique within the Commission.<sup>1</sup> Or contrast French President Jacques Chirac’s claim that “liberalism is as dangerous an ideology as communism”, with (liberal) Single Market Commissioner Charlie McCreevy’s warning that there was “a strong wind of protectionism blowing right across the EU” and that “the Commission has to stand up and say no”.<sup>2</sup>

The question arises as to whether the Commission has the standing to say ‘no’ when, often, all that seems to unite Europe is scorn for the EU. It is sobering, for example, that nearly 70% of British financial directors oppose the Constitutional Treaty. No fewer than 34% of Germans and 41% of French citizens now believe that “the EU is responsible for me living less well”.<sup>3</sup>

It seems far longer than exactly 20 years ago that Europe rallied behind a market liberalisation programme championed by a French Commission President, working closely with a British Commissioner for the internal market, at a time when more than three-quarters of EU citizens pledged support for “efforts towards uniting Europe”.<sup>4</sup>

Perhaps we would serve our cause of getting an analytical grip on the Commission’s position by considering two very broad and essentially timeless observations about the Commission:

### **1) The Commission does not make its own luck**

The Commission’s standing within the EU’s institutional firmament is – and always has been – mostly a product of broad political forces over which the Commission itself has little or no control.

As an analogy, think about a state’s current account (that is, its balance of trade) and what it means in economic terms. Whether a state runs a current account surplus or deficit reflects microeconomic factors that are not entirely insignificant. For example, it gives us clues as to how well a state’s exporters market their products abroad, or what sort of tastes a state’s consumers have: do they prefer high-cost Scottish cashmere or cheaper brands made in China? Generally, however, any state’s current account balance is determined mostly by much ‘bigger’ macroeconomic factors such as exchange or interest rates, or fiscal policy.

In much the same way, the Commission’s institutional strength or weakness is not a totally meaningless indicator of the state of European integration. But it is determined by much bigger ‘macro-political’ factors, including the degree to which Member States (especially the large ones) are committed to policy cooperation and the relative health of the European economy.

To illustrate the point, after the French and Dutch referenda results in late spring 2005, the European Policy Centre’s vastly experienced commentator John Palmer wrote that the Commission was “on the verge of an institutional nervous breakdown”.<sup>5</sup> If it was (or still is), it was not mainly a consequence of anything that the Commission itself had done or not done. Nor did its standing have much to do with the bumpy appointment of the Barroso Commission, and its problems in securing investiture by the European Parliament.

If the Commission's current position is unusually weak – and that claim is, in historical terms, certainly debatable – it is mostly the cumulative effect of a very long period of very low political investment by member governments, especially those of the largest Member States, in the EU generally and its institutions in particular.

It has now been a very long time (going back to the days of former German Chancellor Helmut Kohl) since any government in any large Member State has shown itself willing to take even the slightest domestic political risk to defend the EU generally or Commission specifically. More than any other factor – including the unpopularity of enlargement, the euro, or EU policy on Turkey – this goes a long way to explaining why the French and Dutch voted the way they did.

There is a respectable academic position that says that it makes absolutely no difference who is the President of the Commission. This view holds that the Commission has almost no independent power; it exists purely to enforce the terms of bargains that Member States make with one another.<sup>6</sup>

This view might be dismissed as being oblivious to the reality of power-sharing in Brussels policy debates. For example, how much respect a Commission President commands within the European Council seems to matter a great deal in terms of EU policy outcomes.<sup>7</sup>

Jacques Delors was powerful, perhaps above all, because he was considered a political equal by Kohl, Francois Mitterrand, and even Margaret Thatcher. In contrast, one member of former Commission President Romano Prodi's College lamented that: "The most basic problem with his Commission is its inability to interact with the Member States. We are at the point now where no one cares anymore what the Commission President says."<sup>8</sup> Still, again, it is impossible to deny that the Commission does not really control its own fate.

Let us consider a second broad observation about the Commission:

## **2) The historical trend is towards a more powerful Commission**

The organisers of this project have asked for an assessment of the Commission's ability to balance its political and regulatory roles from Delors to Barroso.

On one hand, we might conclude that the Commission has never managed to regain the position of political leadership within the EU system that it enjoyed (briefly) in the late 1980s. On the other, we easily forget that the Union's regulatory competences are so much broader now than they were in the late 1980s, which by definition means a much more powerful Commission. Moreover, as regards the Commission's 'political role', in historical terms the Santer and Prodi



Commissions were far more ‘normal’ Commissions than was the Delors Commission.

It is still early days for Barroso and his Commission. It is particularly difficult to judge this Commission, and compare it to those of the past, because of the new configuration of one Commissioner per Member State in an EU of 25. More generally and obviously, all the institutions naturally face major adjustments in digesting a 67% increase in the number of EU Member States.

By way of analogy, China’s accession to the World Trade Organization (WTO) in 2001 had dramatic effects, including those that arise from admitting a country of 1.3 billion consumers whose language was not a WTO working language. Yet, in terms of the numbers, the WTO would have to have admitted around 90 new Member States alongside China to stand comparison with what the EU did in 2004.

When we stop to think about it, we might well conclude that enlargement might be the best thing to happen to the Commission in a long time. There is no doubt that the ten new countries have sent top members of their political and diplomatic classes to Brussels to serve in the college of Commissioners. Thus far, recruitment of post-accession state officials to management level posts in the Commission’s services has run well behind targets. Still, there are reasons to think that, over time, the services will end up recruiting officials from the Accession-10 who mostly have good qualifications and linguistic skills, and who are genuinely committed to the European project and the work of the Commission.<sup>9</sup>

Here, we should remind ourselves that the effectiveness of the Commission depends to a great extent on how strong its collective identity is, and that in turn derives from the strength of its sense of collective mission.

On this criterion, the Commission has suffered in recent years in two ways. First, it has lacked strong central direction from its recent Presidents. Second, it has not had clear scope for task expansion (outside of Justice and Home Affairs) – a point that is not at odds with the earlier one about the Commission being more powerful simply because the EU is more powerful – which, in the past, has acted to mobilise the Commission collectively.

After its first year in office, Trade Commissioner Peter Mandelson claimed that the Barroso College was finding its feet, but had found its position eroded by a “pincer movement”: a loss of leadership to the Council and loss of the internal Commission agenda to officials in its own services, which had become more autonomous in the void created by the demise of the Santer Commission.<sup>10</sup>



In the circumstances, Barroso tried to find ways to reinforce the Commission's collectivity. This included designating Margot Wallström, Commissioner for communication strategy and institutional relations, as his 'senior' Vice-President; chairing 'clusters' of Commissioners working on external relations and the Lisbon Agenda himself; and convening open listening sessions with officials in the services.

These initiatives may or may not make a difference. But there is no question that the Commission continues to waste a huge amount of effort and resources on turf wars, with one Director-General or Commissioner working against another, and that it is one of its most serious institutional pathologies. In fact, one of the least happy features of Barroso's first year as Commission President was the inordinate amount of public, internecine bickering between members of his College.

In any event, the Commission needs to reinvent itself in key respects if it is to maximise its ability to help bring the greatest good to the greatest number of Europeans in a radically changed political environment.

Above all, it needs to take advantage of the general blurring of the line in Europe that divides national officials (who formally represent a state) from supranational officials in terms of their identity, purpose and outlook. This blurring is very much a product of 50 years of European integration and a slightly shorter period of what could simply be called globalisation.

More specifically, the Commission needs to become more outward-looking and adjust to the reality that we live in a very different era, in which there are far more other powerful European administrations than there used to be. Consider, for example, the Council Secretariat as well as the European Agencies.

In these circumstances, the Commission has to become more of a manager of networks composed of other administrations – international, European and national – as opposed to an executive whose work is confined to areas where it has its own, independent powers.

Looking ahead, one could argue that most international secretariats stand to become more powerful as a consequence of globalisation<sup>11</sup>, with the Commission at the forefront of this development despite its present weakness.

The most powerful international secretariats may well be those which are the most effective managers of networks of actors who each have a 'slice' of the total universe of power in a particular policy area. A globalised world is one in which, increasingly, 'exclusive competence'

almost becomes a contradiction in terms, whatever the EU's Treaties or national constitutions say in legal terms.

We might even conclude that the Commission is well-placed to take advantage of the more urgent demands for 'focal points' and honest brokering in the policy debates that take place within the new, radically enlarged Union. Such demands are likely to become more, not less, urgent in the EU of the future. A Commission that is readily able to supply them is likely to find itself stronger, not weaker, than it is now.

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#### **Endnotes**

<sup>1</sup> The President of the EP Socialist group, Poul Nyrup Rasmussen and French Socialist MEP, Jean-Louis Bourlanges, quoted (respectively) in *Financial Times*, (2 March 2005): 6 and *EurActiv.com*, (3 September 2003) (available from <http://www.euractiv.com>).

<sup>2</sup> Schröder and McCreevy both quoted (respectively) in *Financial Times*, (17 October 2005): 1 and 21. Chirac quoted in *Financial Times*, (2 November 2005): 21 (both UK editions).

<sup>3</sup> See MORI survey of Financial Directors at <http://www.mori.com/polls/2005/ft050407.shtml> (dated 11 April 2005) and *Le Monde* poll conducted week of 3 October 2005, available at <http://www.lemonde.fr>.

<sup>4</sup> The European Community then consisted (prior to the 1986 accessions of Spain and Portugal) of only 10 member states and the question put to citizens in *Eurobarometer* polls asked for views on 'efforts towards uniting Western Europe'. Still, exactly 77 per cent reported themselves either 'very much for' or 'to some extent for' such efforts in two separate polls in 1985. See '30 years of Eurobarometer' data available at [http://europa.eu.int/comm/public\\_opinion/index\\_en.htm](http://europa.eu.int/comm/public_opinion/index_en.htm).

<sup>5</sup> See John Palmer "The European Union is not in crisis – it is in deep crisis," EPC Commentary, (June 2005) available at: <http://www.theepc.be/en/default.asp?TYP=TEWN&LV=496&PG=TEWN/EN/detail&AI=496>

<sup>6</sup> The leading such work is Andrew Moravcsik *The Choice for Europe: Social Purpose and Power from Messina to Maastricht* (Ithaca NY and London: Cornell University Press and UCL Press), 1998.

<sup>7</sup> See John Peterson "The Prodi Commission: fresh start or free fall?" in G. Dionyssi and G. Dimitrakopoulos (ed.) *The Changing European Commission*, (Manchester and New York: Manchester University Press), 2004; 'The College of Commissioners' in John Peterson and Michael Shackleton (eds) *The Institutions of the European Union* (Oxford and New York: Oxford University Press), 2<sup>nd</sup> edition, 2006;

<sup>8</sup> Interview, Brussels, 29 June 2004.

<sup>9</sup> This argument is developed at greater length in John Peterson, 'The 'Enlarged' European Commission', (Paris: Notre Europe) 24 February 2005 (available from <http://www.notre-europe.asso.fr/>).

<sup>10</sup> Peter Mandelson, "The Idea of Europe: Can We Make it Live Again?" UACES-EPC Future of Europe lecture, Brussels, (20 July 2005) (available from: <http://www.uaces.org>).

<sup>11</sup> This point is persuasively made by Michael Barnett and Martha Finnemore *Rules for the World: International Organizations in Global Politics* (Ithaca NY: Cornell University Press), 2004.

## **Report on the brainstorming on the European Commission (15 September 2005)**

The purpose of this first brainstorming seminar was to take a snapshot of where the European Commission as an institution stands after enlargement, the entry into force of the Nice Treaty, and the stalemate over the EU's Constitutional Treaty. While inevitably involving a tentative assessment of how the Barroso Commission has fared until now, this stocktaking exercise was primarily intended to analyse the overall political environment in which it operates and to highlight trends in the institution's evolution.

### **Unusually weak?**

The Barroso Commission's perceived weakness is sometimes regarded as the continuation of a constant downward trend since the end of the "golden age" of Jacques Delors. However, participants generally felt this to be an overstatement: the real picture is certainly less gloomy for the Commission, in both absolute and relative terms.

First, with EU competences vastly greater today than just 20 years ago, the Commission is correspondingly more powerful. Second, in terms of achievements, the Delors Commission was exceptional compared with its predecessors and successors. It would therefore be unfair to use it as a yardstick, especially given the radical change in context, with two waves of enlargement that have more than doubled the number of Member States in less than ten years. By "average" Commission standards, the Barroso team still has a good chance of doing well.

Participants also stressed that a large part of the relative weakness of the Commission today is not of its own making. It has occurred against the backdrop of a systemic weakening of all national political systems, partly as a result of their (actual or perceived) helplessness in a globalised economy. Within Europe, however, the Member States are undeniably the main culprits. Their leaders have consistently 'under-invested' in Europe, thus directly weakening the institution that was conceived to act as a catalyst for integration. Since former German Chancellor Helmut Kohl, who advocated the single currency despite the scepticism of the German public, no national leader has proved willing to take political risks at home for Europe. This was all too obvious in the referenda campaign in France and the Netherlands.

### **Too early to tell**

It would be premature to pass a definitive judgment on a College of Commissioners that has been in office for less than a year and, while participants disagreed over the extent to which the Commission can

“make its own luck”, it is quite clear that its success or failure depends on macro-factors largely beyond its control.

The Commission started with a political agenda that was mostly inherited, for instance, and it is heavily reliant on its “authorising environment” (i.e. on its “political masters” – the European Council/ Council of Ministers and the European Parliament) to achieve results.

There are many strong and tangible constraints on the current Commission. The “permissive attitude of the Member States” towards the institution has reached an all-time low, creating what is arguably a very serious situation, with the Commission’s traditional supporters (the Benelux countries, which have almost disappeared as a cohesive bloc anyway, Italy and, above all, Germany) wavering or changing their attitudes, while the Franco-German “engine” that used to function in symbiosis with the Commission appears weakened, if not stalled.

The controversy over the way President José Manuel Barroso and his team were appointed has had a lasting impact: there are strong national misgivings about some Commissioners – including the President – and, in any case, the nomination process showed that Member States did not want a strong Commission. However, this does not necessarily weaken the College: Jacques Delors, then a rather colourless bureaucrat, was nominated simply because the then French Foreign Minister Claude Cheysson – France and Germany’s first choice – was unacceptable to the UK.

The Barroso Commission’s relationship with the European Parliament has similarly been marked by their initial confrontation in the “investiture crisis”. The rationale behind the rejection of the initial team was a blurred mix of party politics, national considerations and political correctness, but the Parliament demonstrated its strength and has since become much tougher on the Commission. Its assertive attitude on many important legislative proposals – including software patents, the directive on the authorisation of chemicals (REACH) and the services directive – clearly shows this.

Finally, the Barroso Commission’s margin of manoeuvre is further limited by: a) the emergence of a new centre of influence and initiative around the High Representative for CFSP Javier Solana; b) the shaky state of the EU economy; and, c) the enormous caution and reservation that surrounded the process for ratifying the Constitutional Treaty.

### **Constrained freedom**

While acknowledging such constraints, participants differed over on the degree of freedom enjoyed by the Commission. Some felt the weakness of national politicians and their lukewarm attitude towards European integration in general (and the Commission in particular) did,

in fact, create an opportunity for the Commission, giving it more freedom to set its own agenda. Others pointed out that, historically, the Commission has always needed the backing of the Member States to be effective.

This said, the argument that the Commission has almost no political weight of its own – a view widely shared in academic circles – was regarded by all participants as exaggerated. But they stressed that the Commission has to assert itself: internalising and accepting the constraints upon it excessively may eventually lead to political irrelevance. The current Commission's apparent "inferiority complex" in relation to Mr. Solana and some larger Member States needs therefore to be overcome.

Some argued that to exert more weight of its own, the Commission also has to nurture its power base and become much more forthcoming towards – and seek the support of – civil society, including the social partners, business, trade unions and non-governmental organisations. However, others rejected this argument.

It was also widely acknowledged that the Commission has to think more politically and less bureaucratically. Considerations of timing and communication are too often disregarded. The latest enlargement was a good example of this. From a bureaucratic perspective, everything was settled in 2003, when "the chapters were closed" in the accession negotiations. After that, there was almost no reflection on the political job that had to be done to 'sell' enlargement to the public. Hence the lack of information (let alone a communications strategy) about an event that was perceived as a "surprise big bang" by many European citizens.

Finally, the Commission needs a clearer sense of purpose in a decision-making system that is now stretched to its limits. The thousands of parliamentary amendments to the REACH chemicals directive and the services directive, or the stalemate over software patents, have shown that co-decision increasingly results in deadlock. Whenever the process of trying to incorporate everyone's concerns produces vague, contradictory or arcane legislation, the Commission should have the courage to withdraw it and restart the process from scratch, in an effort to overcome a damaging legislative vacuum and avoid unmanageably complex legislation.

### **Whither collegiality?**

Until now, the Commission has devoted too few resources to collective strategic thinking. This is, at least in part, a logical consequence of the composition of President Barroso's team. Commissioners first have to get to grips with a portfolio they often know very little about, and with their own services. Many of them, especially in this Commission, were

national political heavyweights before moving to Brussels and continue to rely, initially at least, on their existing (thus mainly national) personal and political networks while getting acquainted with “the Brussels way” of doing business.

Moreover, the decision to move all the Commissioners’ Cabinets back into the refurbished Berlaymont building, putting them all under one roof, has yet to produce any noticeable effect in terms of fostering closer cooperation between Commissioners and between their aides, according to insiders.

However, the much-feared nationalisation of the Commission (“Coreperisation”) – whereby Commissioners would primarily become representatives of their countries instead of championing the ‘common European good’ – has not occurred, in spite of the ‘one Commissioner per Member State’ rule introduced by the Nice Treaty.

In the previous College, it was often the “second Commissioners” from large Member States (traditionally chosen from the ranks of the domestic political opposition) who seemed to enjoy more freedom and independence from their capitals. Some participants noted that, in President Barroso’s team, it is the Commissioners from smaller Member States who are more independent of the country “they know best”. This might be because larger Member States tend to put even more pressure than in the past on the one Commissioner they are left with.

As for the concrete implications of collegiality, one view was that it “exists when the President says it does”. In other words, the President plays a pivotal role, by both organising the internal debate and arbitrating whatever conflicts arise.

Establishing some sort of hierarchy between the now-25 Commissioners was (rightly) deemed impossible immediately after enlargement, but this makes real political dialogue aimed at building consensus in the College vital – through, for example, more effective groupings of Commissioners and more frequent and deeper policy debates in the College. Such consensus is even more important if, as many participants expect, the Commission is *de facto* going to remain – at least insofar as it is a European “government” – a permanent “Grand Coalition”.

### **New priorities – new role?**

The Lisbon Agenda was inherited from the Prodi Commission under a (constantly renewed) mandate from the European Council. But the Barroso Commission has largely appropriated and refocused it by concentrating on growth, liberalisation, deregulation and ‘better

regulation'. In this sense, it has done what everyone urged it to do; i.e. set priorities.

However, making 1) deregulation, 2) axing legislation, and 3) the open method of cooperation (benchmarking, best practice and peer pressure) central elements of the Commission programme – and in areas where the Union has little or no competence at all – is a big gamble. Indeed, the success of the Lisbon process is dependent on the goodwill of Member States; its failure, however, risks being attributed to the Commission.

Another big risk lies in the implied sea-change in the Commission's institutional role and self-perception. As an administration, it has a primarily legislative culture, rooted in its historical mission to advance the European 'general interest'. The new focus will undoubtedly generate strong internal resistance, leading to examples of "the system protecting itself from Commissioners" and questioning their grip on their own services.

The change of focus also has profound implications for the Commission's inter-institutional position. Historically, its influence on other EU institutions results from its 'sole right of (legislative) initiative'. What will happen if the Commission stops "feeding the legislative machinery" of the European Parliament and Council? What will other institutions do to fill the vacuum? Will the Parliament enter (or invest more) in new policy areas? Will it seek to intensify its control over the day-to-day management of the Commission? Or will it concentrate more energy and resources on key pieces of legislation?

Another possibility mentioned was that all institutions would agree to focus more on the (often problematic or incomplete) implementation of existing Community law, rather than on adding to the current stock.

### **The devil of politicisation and its advocates**

There was a consensus among participants that the Commission had to reinvent itself by becoming more outward-looking and stop wasting resources in internal and inter-institutional turf wars. Taking the example of the European Action Service, one participant said the Commission should realise that Member States will never allow it to have exclusive competence in this area. This is a case where the Commission should make concessions over its own (limited) powers "for the greatest good of the greatest number of European citizens".

How the question of how far the Commission's transformation should go remained controversial.

Some participants felt that the consensus-based approach, both within the Commission and between institutions, is a recipe for alienating citizens by



depriving them of the right to *choose*. Commission decisions are political in that they incorporate choices about different, often conflicting, values and interests. This should be acknowledged and presented to the public. Had Barroso been directly elected on the programme he currently champions, the Commission's position would now be clearer vis-à-vis public opinion and stronger vis-à-vis the other institutions.

Conversely, other participants emphasised that the Commission is, and will remain, intrinsically different from national governments. In particular, it can hardly count on a stable majority in a European Parliament that is more diverse than ever after enlargement. Furthermore, the dividing lines within the Council on a given issue are almost never the same as those in the Parliament. All this could change with a Commission politicised and elected along party political lines. This said, some regarded the fact that the Commission is not, as such, subject to re-election, as an advantage, in that it enables it to follow a more consistent line in the medium term.

An “all-out” (i.e. party political) politicisation of the Commission would put into question its regulatory role and, even more so, its quasi-judicial functions in competition policy. It would also restrict its ability to broker deals on cross-party lines, notably in the Parliament. This has already happened to some extent with the Barroso Commission: the perception that it is pursuing a “liberal agenda” has alienated a large part of the Party of European Socialists – and, arguably, most of the French public.

However, politicisation is the only option to address a number of policy areas where the Union, and thus the Commission, is gaining competences that cannot be entirely “depoliticised”: for instance, immigration, trade or economic governance. The challenge, in such cases, may come from the overlap between national and party political dividing lines, each governed by different decision-making procedures.

### **Reaching out to the public?**

A related (and just as disputed) issue is whether – and to what extent – the Commission can and should enter the minefield of national politics. Consultation procedures have improved and strengthened the connection between the Commission and organised civil society. The Commission's ability to become less remote and engage directly with citizens was, however, very much questioned.

Reaching out to the wider public would, in any case, imply a fundamental shift in the role of its representations in the Member States, from little-known information centres to fully-fledged political actors representing the voice of the EU in national debates. Most national politicians, however, still expect the Commission to display

the sort of diplomatic neutrality customary in international organisations – as shown in the referendum campaign in France.

Elements of direct democracy, like the citizens' initiative put forward in the Constitutional Treaty, are an interesting option, with the potential to have a significant positive impact on legitimacy in the medium term. As for consultation, is it politically (and practically) manageable?

The debate on REACH could be seen as evidence that a pan-European debate involving all national representative organisations – rather than only the EU-level ones – adds little to legitimacy and much to confusion. It is at least questionable, it was argued, whether the Commission has the resources and, more fundamentally, the legitimacy to “integrate” such a variety of interests – or whether it is better served by using the “filter” of pan-European organised civil society.

### **Constructively ambiguous?**

“Elite technocracy”, “embryonic government” or “international secretariat/manager of networks”: these are three widespread basic visions of the Commission's role. In practice, it sits oddly in between all of them because everyone – not only in academia, but also within the Commission itself and in the institutions that contribute to shaping it – has a different view of what the Commission *should* be.

Such ambiguity has served the Commission rather well in the past, enabling a constant but flexible expansion of its powers that has proven acceptable to the Member States. This has not come without a cost, however: the Commission's perceived opacity and lack of direct accountability to Europe's citizens convey the impression that there is no democratic control over what happens in Brussels.

It is hard to draw any immediate and direct lesson for the Commission from the negative results of the French and Dutch referenda on the Constitutional Treaty. Yet the resulting deep distrust of European integration should at least trigger some reflection inside the College and its services, notably on the way it behaves (or not) towards citizens.

## II. EUROPEAN PARLIAMENT

### **The European Parliament: stocktake and challenges**

*By Simon Hix*

More than 25 years since the first direct elections to the European Parliament in 1979, and almost 20 years since it first gained significant legislative power (in the Single European Act), it is appropriate to ‘take stock’ of the role it plays in the European Union. I first review where the European Parliament is today before turning to the challenges facing the European Parliament in the next decade.

#### **The European Parliament today: the positives**

Looking at the European Parliament today, there are positives and negatives.

##### *Effective scrutinising body*

On the positive side, the European Parliament has proven that it is extremely effective at scrutinising legislation. Many commentators feared that increasing the Parliament’s legislative power – via the introduction and extension of the ‘co-decision procedure’ – would make the EU legislative process unwieldy and might undermine the efficiency of Union decision-making. This has not happened because the European Parliament works more like the US Congress than national parliaments in Europe.

The European Parliament has an efficient system of scrutinising legislation, via its committee system and the work of the *rapporteurs* and shadow *rapporteurs*. One proof of the effectiveness of the Parliament in this respect is the proportion of substantive (rather than technical) legislative amendments that it has successfully proposed to the European Commission and Council of Ministers<sup>1</sup>.

In fact, one could even argue that the European Parliament is now a more effective legislative scrutiny chamber than most, if not all, the national parliaments in Europe. Unlike these domestic chambers, the European Parliament is not dominated by – or beholden to – the executive branch of government, and so is capable of acting as an independent scrutiniser of the Commission’s legislative proposals and the Council’s amendments.

*Emergence of a genuine party system*

Also on the positive side, and potentially far more profound, is the emergence of a genuine ‘democratic party system’ in the European Parliament.

First, voting in the Parliament is more along transnational and ideological party lines than along national lines, and increasingly so.<sup>2</sup> The main European parties in the Parliament – such as the European People’s Party (EPP), the Party of European Socialists (PES), and the Alliance of Liberals and Democrats for Europe (ALDE) – are now more ‘cohesive’ in their voting behaviour than the Democrats and Republicans in the US Congress.

Second, competition and coalition-formation between the parties in the Parliament is increasingly along left-right lines, with the ‘grand coalition’ between the PES and EPP gradually giving way to shifting centre-left or centre-right majority legislative coalitions.

These developments are quite remarkable when one considers that voting in the other main EU legislative institution (the Council) is primarily along national lines, and that the parties in the European Parliament are not forced by a ‘government’ to ‘back them or sack them’, which is why parties in national parliaments are generally highly cohesive.

Because of these factors, some commentators expected that as the powers of the European Parliament increased, the transnational parties would be weakened. The opposite has in fact happened.

**The European Parliament today: the negatives**

There are some important negatives, however.

*No ‘electoral connection’*

Most significantly, despite the development of a vibrant party system inside the European Parliament, there is almost no ‘electoral connection’ between EU citizens and the behaviour of their MEPs.

MEPs and the parties in the European Parliament are not punished or rewarded as a result of their positions and actions, because European elections are essentially mid-term contests in the battle for national government office, and are hence fought on national government performance, national party positions and national personalities.<sup>3</sup>

Because European elections are thought of as ‘less important’ by voters, there is considerably lower turn-out in these elections than in national elections. But more significant for the connection between

voters and their MEPs is the fact that voting behaviour in European elections has virtually nothing to do with ‘Europe’. Because European elections are ‘national protest elections’, parties in government across Europe do badly in these elections, while parties in opposition do well.

For example, the average ‘swing’ in the share of the votes from governing parties to opposition parties in the 2004 European elections was more than 12%. This cannot be explained by the attitudes of governing or opposition parties towards Europe, as governing parties lost and opposition parties won regardless of their pro- or anti-European positions.

As a result, after six rounds of elections to the European Parliament, these contests have patently failed to provide any sort of democratic mandate for MEPs or parties in the European Parliament.

#### *Lack of public awareness*

A second negative point, which is related to the issue of the ‘failure of European elections’, is the lack of public awareness of day-to-day politics in the European Parliament.

Eurobarometer surveys reveal that greater numbers of EU citizens say that they “trust” the European Parliament and that they have “heard” about it in recent months. However, in no sense do the majority of EU citizens see the European Parliament as being at the centre of democratic politics in Brussels (or Strasbourg). For example, hardly anyone outside Brussels’ European quarter can name the parties in the European Parliament, the leaders of these parties, the Parliament’s President, or even one or more MEPs.

This is at least partly the fault of the political editors of national newspapers and TV news programmes, who refuse to cover politics in the European Parliament, on the misunderstanding that it simply is not interesting or important enough. For a variety of personal and institutional reasons, these key gatekeepers of the national media prefer to focus on national political soap-operas in national parliaments (which, unlike the European Parliament, are nothing more than rubber-stamps for national governments).

#### *Falling support*

Finally, and perhaps most troubling, is that falling public support for the European Parliament has followed falling support for the EU.

As revealed by the Eurobarometer surveys, public support for the Union peaked in 1991-92 in all the Member States. Since then, it has plummeted, so much so that less than 50% of EU citizens now feel that their country’s membership of the Union is “a good thing”.

Support for the European Parliament has followed the same pattern: almost 60% of EU citizens supported “increasing the powers of the European Parliament” in 1991; only 40% do so today. Falling support for more powers for the Parliament might not be a problem by itself. However, many commentators attribute part of the decline in support for the EU to growing concerns about the Union’s ‘democratic deficit’.

If this is true, what is worrying for the European Parliament is that support for giving it more powers – which many feel would (at least partly) reduce the democratic deficit – has declined rather than increased. In other words, citizens clearly do not believe that the European Parliament is central to the issue of making the EU more democratically accountable. If a citizen does not like the Union because it is undemocratic, he or she is also likely to be opposed to the European Parliament.

### **The challenge ... and some possible solutions**

The European Parliament finds itself in a difficult situation. On the one hand, politics inside the Parliament is increasingly ‘democratic’, in that they are competitive, organised and ideologically driven. On the other hand, citizens do not recognise or understand this and so vote in European elections on national rather than European issues. The central challenge for the European Parliament in the next decade, then, is how to link politics inside the Parliament to the preferences and choices of citizens.

Communication between the Parliament and the national media should be improved – for example, through a European Parliament TV channel which would provide images that could easily be used by national news editors. However, an improved communication strategy is unlikely to change anything fundamentally. The incentives for national media editors to cover European Parliament politics, and the incentives for national parties to fight European elections on European rather than national issues, would not be changed.

The only solution, I would contend, is to increase the stakes in the European Parliament and in European elections. The European Parliament will never – and should never – be a ‘Westminster’-style chamber, with a clear government and opposition ‘two sword lengths’ apart. The EU is a consensus-oriented polity, with a separation of powers between the executive (the Commission) and the legislative institutions (the Council and Parliament), and multiple checks and balances in the legislative process. This ensures that policies cannot be adopted without broad political consensus, and is the only way such a geographically, culturally and economically diverse polity can exist.

Nevertheless, with some relatively minor reforms, the stakes inside the European Parliament could be increased. Because there are

so many checks on the majority in the Parliament, this would not have a profound impact on policy outcomes from the EU. However, increasing the stakes would change the incentive structures for MEPs, European parties and national parties, and so force the emergence of a 'European' element in European elections and focus the attention of the media.

In concrete terms, two reforms could be made to the Parliament's internal operation, without changing the Treaties, which would increase the stakes inside the Parliament:

- The current system of allocating committee positions (and rapporteurships) on a purely proportional basis could be replaced with a system where the largest party in the Parliament, or a majority coalition of parties, is guaranteed greater power to set the legislative agenda – for example, by allowing the largest political group to choose the first five committees and then allocating the remaining committees by the existing d'Hondt system.
- The Parliament's President could be elected for its full five-year term rather than for two-and-a-half years, which would get rid of 'horse-trading' over this post between the two biggest groups and encourage majority coalitions to be built to capture this post.

Several other changes would also increase the stakes in European elections:

- The European Parliament electoral system could be reformed to introduce 'open list' voting (where citizens can choose individual candidates rather than parties), which would encourage MEPs to appeal directly to citizens for their votes (as they do in Ireland and Finland) rather than relying on their national parties to do this for them.
- The number of MEPs could be reduced, for example to 500 or even 400, which would increase the significance of winning a seat in the European Parliament and boost the importance of every individual MEP, increasing the likelihood that citizens would know the name of one or more of their MEPs.
- The parties in the European Parliament could encourage a more open contest for the post of Commission President by backing rival candidates before European elections – which would force national government leaders to take sides and encourage national media editors to explain the positions of the rival candidates to their viewers/readers.

## Conclusion

The European Parliament has developed into a highly sophisticated, organised and competitive institution. Measured in legislative-amendment terms, it is now one of the most powerful parliaments in the world – more akin to the US Congress than its weaker cousins at the national level in Europe. However, there is almost no connection between the behaviour of MEPs and parties inside the Parliament and citizens' behaviour in European elections.

The challenge for the European Parliament in the next decade is to establish such a connection. To achieve this, rather than focusing on undertaking fundamental reforms of the Treaties, it should focus on increasing the stakes in European Parliament elections through internal reforms and changes in the way these elections work.

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## Endnotes

<sup>1</sup> cf. A. Kreppel, "Moving Beyond Procedure: An Empirical Analysis of European Parliament Legislative Influence," *Comparative Political Studies* 35 (2002):784-813. And G. Tsebelis, C.B. Jensen, A. Kalandrakis, and A. Kreppel, "Legislative Procedures in the European Union: An Empirical Analysis," *British Journal of Political Science* 31 (2001):573-599.

<sup>2</sup> See S. Hix, A. Noury, and G Roland, "Power to the Parties: Cohesion and Competition in the European Parliament, 1979-2001," *British Journal of Political Science* 35 (2005):209-234. And S. Hix, A. Noury, and G Roland, *Democracy in the European Parliament*, (Cambridge: Cambridge University Press), 2006 (forthcoming).

<sup>3</sup> C. van der Eijk and M. Franklin (eds) *Choosing Europe? The European Electorate and National Politics in the Face of Union*, (Ann Arbor: University of Michigan Press), 1996.

S. Hix and M. Marsh, 'Understanding European Parliament Elections: Punishment or Protest', working paper, London/Dublin: London School of Economics/Trinity College (2005) (see <http://personal.lse.ac.uk/hix/workingpapers.htm>)



## **Report on the brainstorming on the European Parliament (18 October 2005)**

The second brainstorming seminar was devoted to the European Parliament (EP). The impasse over the Constitutional Treaty has, for now, halted the long-term trend towards strengthening the EP's role. It has, nonetheless, become a very influential institution and, arguably, one of the most powerful parliaments in Europe. The discussion was intended to provide an analytical description of the Parliament's internal functioning and its inter-institutional role.

### **Strong political groups getting stronger**

Since the first direct elections to the Parliament in 1979, one of the most striking developments has been the gradual emergence of a strong party system. This may seem surprising, given the enormous internal ideological diversity of European political parties and EP political groups. However, important instances of MEPs voting along national lines – for instance, when German deputies all voted against the first version of the 'takeovers directive' – have been overemphasised.

Many insiders say they do not feel very close to some of their 'friends' in the same political group in the Parliament. Surveys of political "self-placement" on a left-right scale confirm this, showing, for example, that a significant number of members of the European People's Party (EPP) (notably from countries like Belgium or the Netherlands) see themselves as "centre-left", while some of their colleagues (for example, the UK Conservatives) clearly define themselves as right-wing. However, in spite of these wide internal disparities, a relatively cohesive and highly competitive party system has emerged.

European political parties as such remain embryonic, but EP political groups have managed to establish strong party discipline on votes. What is more, this discipline has increased, rather than decreased, over time, in line with the Parliament's growing legislative role and despite successive enlargements.

Since 1994, the frequency of "grand coalitions" between the EPP and the Party of European Socialists (PES) has declined and the further apart groups are on the left-right axis, the less likely they are to enter into coalitions.

This increasing group coherence is remarkable in two respects. First, it appears to be a self-reinforcing trend: enlargement does increase the internal diversity of political 'families' but, contrary to expectations, the dominant effect of this appears to be a strengthening of leadership and greater efforts to enforce party discipline in a more diverse and larger group. In addition, newcomers tend to either 'toe the party line'

or, if they seek a leadership role, take a consensus-based approach to avoid being sidelined.

Second, the emergence of strong parties is occurring within a system that is not in essence parliamentary. In parliamentary democracies all across the EU's Member States, the high degree of party coherence is directly linked to the majority/opposition cleavage. In the US 'separation of powers' regime, this cleavage is much more fluid and the parties' behaviour much less consistent. Indeed, despite the lack of a direct link between the EP and the EU executive and of a clear majority/opposition divide, party coherence in the EP is much higher than in the US Congress – although lower than in national parliamentary political systems.

MEPs from many Member States (notably, the smaller and new ones) meet together regularly in their national groups. However, seminar participants tended to dismiss the influence such meetings have on the decision-making process, and even to challenge their usefulness. Such national groupings might achieve some success when it comes to passing amendments to resolutions, but they are largely irrelevant in the key battles over legislative texts.

### **Some reservations**

Participants acknowledged that the trend towards more cohesive political groups was a major change, backed by solid academic evidence. However, based on their personal and professional experience, many expressed reservations about the methods used in studies that have found impressively high levels of internal cohesion.

It was pointed out that, by definition, only 'roll call' votes (i.e. those in which individual MEPs' votes are recorded) can be used as basic data, and this can distort the final results significantly. Insiders also signaled that there had been an increased tendency "to decide not to decide" – for example, that they support action on an issue, but cannot agree on what approach to take – especially in recent years.

While this phenomenon is hard to measure, it suggests that caution is necessary when interpreting roll-call votes. Indeed, a decision "not to decide" can be informal and thus not be recorded anywhere (for instance, if political groups decide not to draft a resolution because of disagreements amongst their members about its content); or formal, in which case there will be a high degree of coherence within political groups in the vote despite their internal divisions. This is, for example, what happened on the software patent Directive in July 2005.

Overall, however, it seems that roll-call votes are fairly representative of the overall pattern – not least because, in the EP, it is easy for smaller groups to trigger the procedure. Roll-call votes are three times

as frequent in the EP as in any national parliament<sup>1</sup>, and the reasons for this were discussed in some detail. In some cases, a political group will want to expose divisions within the ranks of a rival group – and, in parallel, underline its own unity. This makes roll-call votes unlikely when all the parties are split on a particular issue. But, in general, roll-call votes take place on the more politically important texts and the purpose may simply be to show what the dividing lines are. Thus, it is difficult to detect a systematic bias either in favour or against group discipline, and roll-call votes can confidently be considered as representative in this respect.

### **From legislator to “king-maker”? Relations with the European Commission**

After the Homeric battle over the appointment of the Barroso Commission, the EP has clearly become more assertive towards the European Commission. There are many examples of this; most symbolically, when MEPs took a very tough stance during the renegotiation on the “framework agreement” that will govern Commission/Parliament relations until 2009.<sup>2</sup> Some participants argued that, in choosing a more confrontational course, the Parliament was not “picking up the right fight”, questioning whether it was wise to attack the Commission when it was already weak.

The most controversial issue at the seminar in relation to Parliament/Commission relations was the autumn 2004 investiture crisis, with sharp differences over its significance and how it should be interpreted. Some argued that it was a clear and welcome signal that EP elections were gaining in relevance by being given an ‘executive outcome’; i.e. that the results mattered when it came to choosing the President of the Commission.

Indeed, as forcefully demanded by the EPP, which emerged as the strongest political group after the June 2004 elections, the Commission President was eventually chosen from within its ranks. This explanation would be in line with the change to the EU Treaties agreed at Nice that allows the European Council to nominate the President of the Commission by qualified majority voting (QMV) rather than by unanimity.

Other participants, however, regarded this explanation as far-fetched. Pressure from the ‘winning’ EPP group in the EP may have played a role in José Manuel Barroso’s appointment, but the main reason why the former frontrunner for the job, the Belgian Liberal Guy Verhofstadt, was eventually rejected was a *de facto* British veto. Clearly, at the time, the European Council decided not to apply the Nice QMV provisions and instead sought a consensus on a nominee. Hence, ascribing the outcome to a “parliamentarisation” of the EU does not fit the reality as neatly as the advocates of such a trend would like.<sup>3</sup>

The importance of the investiture crisis should, however, not be underestimated, as it will remain a landmark moment in the Parliament's progressive assertion of its authority over the Commission – a process that began with the *de facto* (if not *de jure*) dismissal of the Santer Commission by the Parliament in 1999.

Provided that the relevant players (i.e. European political parties) take the initiative in 2009 by putting forward candidates for Commission President, the 2004 crisis may well have paved the way for his or her election by the Parliament – an innovation that was expressly recognised in the now almost-defunct Constitutional Treaty.

Finally, another open question is likely to have a significant impact on the Parliament/Commission relationship; namely the whole better/less regulation trend that inspires the Barroso Commission. This decision to stop (or drastically reduce) “feeding the machinery” by the only institution that can do so, by virtue of its exclusive right of legislative initiative, is bound to have far-reaching consequences. It is much too early to assess what the consequences of this will be, but it is likely that a “starved” Parliament will increasingly be lured into areas where there is “a gap to be filled” – for instance, civil liberties issues.

### **From “we are Europe” to a normal player – Parliament’s relations with the Council**

Historically, the Parliament's perceived need to ‘stand up’ to the Council of Ministers/Member States has been a powerful incentive to strengthen cross-party cohesion and consensus-based decision-making. The notion that “our enemy is the Council” is still prevalent and broad coalitions are easily found when it comes to defending and extending the Parliament's powers. As one speaker put it, the Parliament has often fallen victim to the “intoxication of increasing power”.

According to this logic, “what is good for Parliament is good for Europe”. Grandstanding and pretensions that it “speaks for Europe” against the supposedly narrow interests of the Council have been a defining feature of the EP's life, contributing to a strong cross-party “pro-European” consensus, with only marginalised anti-European groups challenging this view.

On constitutional, crucial institutional and strategic issues, where decisions are taken by the European Council, there seems to be a growing realisation that the Parliament cannot have a huge impact in the absence of formal powers.

However, many speakers argued that the Parliament should spend less time and effort on constantly challenging the existing institutional set-up, and focus instead on using its already substantial power in

legislative matters. They also cautioned that the Parliament must come to terms with the fact that it is only *one* (powerful) player in a more stable system of checks and balances, where the dual legitimacy of States (represented in the Council) and citizens (represented by Parliament) is fully acknowledged by all stakeholders.

Here again, the logic of the system has often led to broad coalitions designed to “impress” the Council. This is exemplified by the legal need to achieve an absolute majority in second readings (which has now become increasingly difficult). Thus the fine print of the co-decision procedure – notably the absolute majority requirement – has a very significant influence on the degree of internal conflict within the Parliament and its coherence *against* the Council.

### **How relevant for voters?**

The EP is slowly becoming a more mature institution, concerned more with playing its role in the inter-institutional game than with increasing its own powers or grandstanding.

Since it first was directly elected, the EP has portrayed every increase of its powers as a step towards a more democratic Union. While this is obviously true from a formal standpoint, the Parliament’s legitimacy is undermined by its own ‘disconnect’ with the public resulting, among other things, from the ever lower turn-out at EP elections. Some participants even asked whether increasing the Parliament’s powers still further would not, in these circumstances, exacerbate the problem rather than provide a solution.

In this respect, there were mixed views about turnout at EP elections. For some, the continuously declining figure (which fell to below 50% for the first time in June 2004) signaled a total lack of “electoral connection”, to the point where “European elections don’t work”. Others took a more relaxed view, pointing out that declining turnouts are a common feature of many national political systems (in Europe and beyond) and thus cannot be regarded as a specific EU problem. Most participants felt, however, that EP elections were still essentially a collection of “second-order national elections”, usually producing very strong anti-government swings. There is almost no personalisation of the candidates and the basic system of “reward and punishment” is virtually non-existent for MEPs.

More worryingly, in the absence of clear positions and political cleavages, European voters appear to be increasingly sceptical about the institution designed to voice their concerns. Very few members of the public know anything about the real distribution of powers among the EU institutions, which are “lumped together” as “Brussels” and are increasingly regarded as distant and remote. It is undoubtedly highly significant that the ‘No’ votes to the Constitutional Treaty occurred in

the two countries – France and the Netherlands – that have seen the sharpest decline in support for the EU in general, and the EP in particular, in recent years.

Against this background, it seems hard to overestimate the challenge facing the Parliament if it is to become genuinely relevant to citizens.

### **(Re-)connecting: but how?**

Some participants argued that it was vital to politicise the Union's political system fully along the lines of national parliamentary models. This would mean giving voters a sharper sense of choice and clearer political group positions. This trend is already noticeable in the PES, which is increasingly positioning itself as the 'opposition' to the centre-right majorities within the Parliament, Commission and Council of Ministers. Such "all-out" politicisation might, crucially, also imply giving EP elections "an executive outcome" – i.e. making sure that candidates are known before the elections and that the 'winning' party appoints the President of the Commission.

Such a fundamental change, mimicking radically different national parliamentary models, was generally thought by participants to be too drastic and, in any case, implausible. As one speaker said: "Consensus is still very much built in the system."

This consensus-based approach might now be losing ground, but it is still deep-seated, with many MEPs – and, importantly, EP civil servants – instinctively trying to go down the 'grand coalition/greatest possible consensus' road when drafting texts. Nonetheless, there was a general agreement that the EU in general, and the EP in particular, needs "more politics".

A number of fairly low-key proposals could give significant impetus to a form of "soft politicisation" by "increasing the stakes". These could include a "winner takes most" approach to allocating "agenda-setting rights" (i.e. committee chairs) and the election of the EP president for the Parliament's full five-year term instead of the current two and a half years. However, even such limited measures are likely to be opposed by many MEPs – and opposition to other, more radical proposals is likely to be even stronger.

Moving to simple majority votes in all cases where an absolute majority of MEPs is currently required would undoubtedly polarise debates and votes even further while avoiding some (often messy) cross-party compromises. But by making it easier for the Parliament to reach a majority, it would also significantly shift the interinstitutional balance away from the Council and towards the EP – which makes it highly unlikely that Member States will endorse such an approach by making the necessary changes to the Treaties.

Drastically reducing the number of MEPs (to 500 or even 400 from 732 now or 785 after the accession of Bulgaria and Romania) would certainly help to raise their profile, but would also require changes to the Treaties which Member States are unlikely to accept. A more open contest for the Commission Presidency would also entail that Member States should actually apply the rule that the President of the Commission can be nominated by QMV – a legal change agreed in Nice that has not (yet) been applied, given the loss of power it means for individual EU Member States.

Changing the voting system is another promising avenue for building a real connection between voters and their MEPs. Legislation on voting systems is a matter for individual Member States, but common rules could be modelled on the Irish and/or Finnish system, which both combine proportional representation with strong personalisation of the candidates<sup>4</sup> – with the remarkable achievement that these two countries are the only Member States where a majority of citizens know the name of more than one MEP. Again, such a proposal would face resistance, especially as there are few obvious incentives for national governments, national political parties, and indeed MEPs, to agree to this. The current system – where the “electoral connection” is dysfunctional, if not non-existent – is fairly comfortable for most of them.

### **A “normal parliament”?**

The EP is going through a period of transition. The most dynamic period of European integration is now largely over and the question of how the whole machine should function on a daily basis becomes increasingly relevant.

For many observers, national politics remain the reference point, but any comparison is largely irrelevant. Participants in the seminar agreed that, given the point of departure, even a more politicised EP was highly unlikely to resemble Westminster or the French National Assembly any time soon.

Thus the challenge for the Parliament cannot be to transform itself into a body which functions along the same lines as in traditional parliamentary systems – this would run counter to the existing complex logic of institutional checks and balances that characterises a federal type of system. What matters much more for the EP is to develop its own role as an autonomous actor, to move away from seeking a consensus wherever possible, and to convey to citizens a sense of what is really at stake – which is a great deal, given the already very broad powers of Parliament.

In this respect, it will be crucial to establish permanent links between European and national politics. National political parties are almost totally failing to do this, but the progressive emergence of European political parties could help to bridge this gap if the new parties manage to create solid two-way connections between themselves and their national affiliates.

### **Endnotes**

<sup>1</sup> According to the rule 160 of the Rules of Procedure of the European Parliament (16th edition - September 2005): “*vote shall be taken by roll call if so requested in writing by a political group or at least thirty-seven MEPs*”.

<sup>2</sup> After difficult inter-institutional talks and much posturing on both sides, this agreement was eventually signed in April 2005.

<sup>3</sup> For longer developments on this issue, see: Guillaume Durand and Lorenzo Allio *Towards a “Parliamentary Union”? – A note of caution*, EPC Commentary (18 November 2004).

<sup>4</sup> For another solution, based on the German system for general elections and also combining proportional representation and personalisation, see: *A European Parliament really closer to the people*, Idea 5 (December 2004), Guillaume Durand/ Ideas Factory Europe.



### III. THE COUNCIL

#### How does the Council work (or not)?

*By Andreas Maurer*

Different conceptions of the European Union lead to different perceptions of its actors. However, the debates about the Council's system and its reform are undermined by a lack of reciprocal acknowledgement by those on all sides of the argument of each other's concepts and 'readings' of the EU.<sup>1</sup> Hence, each conceptual 'school' focuses only on parts of the system. For this reason, the reforms proposed exclusively suggest remedies for some isolated elements of the Council – for instance the European Council, or its links with the other institutions – instead of taking a more comprehensive approach.

For those who support a liberal intergovernmentalist approach, the EU is a means for national governments to retain influence *vis à vis* other countries. Accordingly, the institutional balance favours the Council and, increasingly, the European Council. The European institutions perform an important agent-role but, without support from strong states, exercise limited influence.

In the federalist camp, meanwhile, there is no agreement about the role of the Council in the EU's institutional set-up. Some predict that it will increasingly be seen as a state-centric relic of the days before the burgeoning supranational order is established. Others reserve a place for it in this order: they argue that the Council should be split into a Governing and Legislative Council, with the latter eventually becoming the EU's second legislative chamber.

For neo-functionalists, democratic legitimacy is of less importance. Integration is fuelled and legitimated by the breakdown of policy areas into functional problems, which are efficiently dealt with by committees of experts, like those in the Committee of Permanent Representatives (Coreper). This depoliticisation of policy-making will render bargaining in Council increasingly superfluous.

Meanwhile, those who conceive of the EU as a network system stress the non-hierarchical nature of decision-making when compared to the nation-state. Related to this, 'fusion' theorists suggest that European policy-making provides channels for pooling resources from many different levels, with the desire to solve commonly defined problems.

#### Where to go from here?

The EU's structures are still based on the logic of the Rome Treaties of 1957 and their six signatory members, which acted in a relatively

limited field of competences and with wide common or shared interests towards third countries and organisations. Since then, the number of Treaty articles dealing with specific competences and decision-making rules has grown considerably: from 86 (EEC Treaty 1957) to 254 (Nice Treaty 2000).

The extension of the Council's administrative substructure also indicates that governmental actors are increasingly using their Brussels networks extensively and intensively. As for the legal opportunities to extend the Council's potential efficiency, the total number of rules decided by both unanimity and qualified majority voting (QMV) has considerably increased over time, with an over-proportional growth in the use of QMV up to the 1997 Amsterdam Treaty.

A majority of Member States have always declared themselves in favour of extending the areas of decision-making by QMV to enable an enlarged Union to function. This reflects an awareness among Member States of the need to renounce national sovereignty permanently in related policy fields to secure the EU's capacity to act and the efficiency of this action.

Experience to date indicates that the extension of QMV has not led to a dramatic increase in decisions taken on the basis of this procedure.<sup>2</sup> In fact, majority decision-making functions more as a sword of Damocles dangling above the Council, increasing the probability of decision-making in the "shadow of voting".<sup>3</sup>

Legal provisions governing the Council's (and the other institutions') decision-making procedure do not determine real voting behaviour. The prospect that QMV rules might be used is often said to be more important than their actual day-to-day application: what matters is that they encourage ministers and civil servants to act prudently.

As regards the effects of EU enlargement, we observe that neither the total number of adopted acts in 2004, nor the voting record, confirm a link between the new Member States and the growing use of voting patterns explicitly desired by those members in the Council. The Council machinery was not, at any rate, put into question by the ten new Member States.

**Votes against and abstentions per Member State on legislative acts  
in the final vote in the Council**

	1994-1999		2000		2001		2002		2003		2004	
	No's	Abstain	No's	Abstain	No's	Abstain	No's	Abstain	No's	Abstain	No's	Abstain
A	10	2	2	0	1	4	1	0	5	2	4	4
B	13	6	1	5	2	1	0	1	0	3	5	5
CY	-	-	-	-	-	-	-	-	-	-	0	0
CZ	-	-	-	-	-	-	-	-	-	-	0	0
DK	35	4	3	2	3	1	2	4	6	2	5	0
EST	-	-	-	-	-	-	-	-	-	-	0	1
SF	6	1	1	1	1	0	2	2	1	0	1	0
F	14	12	1	0	3	3	0	6	3	1	1	1
D	53	23	4	0	3	5	2	3	5	2	2	5
GR	13	3	3	0	1	0	2	0	2	1	0	3
HU	-	-	-	-	-	-	-	-	-	-	0	0
IRE	9	3	0	0	1	0	0	0	3	1	2	0
I	35	13	1	2	2	3	2	0	3	2	2	3
LV	-	-	-	-	-	-	-	-	-	-	0	1
LIT	-	-	-	-	-	-	-	-	-	-	2	1
LUX	8	5	0	0	0	2	1	1	3	1	4	2
M	-	-	-	-	-	-	-	-	-	-	0	0
NL	35	9	2	1	1	1	5	1	0	1	2	0
PL	-	-	-	-	-	-	-	-	-	-	0	2
P	14	14	0	0	0	1	1	3	6	0	2	0
SK	-	-	-	-	-	-	-	-	-	-	0	0
SLO	-	-	-	-	-	-	-	-	-	-	0	0
E	11	19	0	0	3	2	1	1	5	2	3	4
S	48	1	2	0	4	0	6	5	5	3	3	2
UK	33	29	2	1	2	2	1	4	4	5	1	3

Sources: For 1994-1999: Fiona Hayes-Renshaw & Wim van Aken and Helen Wallace, "When and Why the Council of Ministers of the EU Votes Explicitly", EUI-RSCAS Working Papers 25, European University Institute (EUI), Robert Schuman Centre of Advanced Studies; for 2000-2004: Fourth Biannual Report of COSAC on EU procedures and practices, Prepared by the COSAC Secretariat, London, October 2005.

In the case of the few explicit No votes, Germany finds itself way ahead of the field, surpassing even the so-called EU-sceptics – Denmark and the United Kingdom. (The data relativise the voting behaviour of Belgium and Luxembourg in 2004. Although these two countries stuck out because of their common rejection of the "second rail transport package", they usually vote in accordance with the majority of the Council, and remain amongst the more pro-integration Member States.)

The formation of a bloc of new Member States, as measured by reference to the few abstentions and No votes, was not apparent. Clearly, the existing voting modalities and their practice do not point to a trend towards more supranational procedures. Intergovernmental reflexes dominate, but not so much as to reverse former trends – rather to limit their further increase. Governments do not trust the Community institutions and rules enough to give up their final veto. In the shadow

of an uncertain future, they demonstrate a lack of confidence in their own political collectivity.

### **Failing collectively?**

A closer look at the Council's activities reveals that the overall decrease of its legislative work results mainly from 'saturation' in traditional fields.

The Council's system is not an artificial creation, nor shaped by purely accidental factors, nor is it merely a bureaucratic plot to keep (or even extend) the influence of Member States. Although the Member States dominate the creation of EU committees, the concrete business of policy implementation through 'comitology' is clearly shaped by the Commission. However, the EU's committee system is not characterised by a tendency towards replacing the different bodies by pure Community institutions.

Members of the Council's sub-units or those working in the Commission's committee network may feel a sense of "togetherness". But given the Commission's power to dominate the game of implementing measures, on the one hand, and the Council's powers to establish committees, the Member States' powers to nominate their representatives and the European Parliament's powers to scrutinise 'comitology' decisions (at least to an extent), on the other, the image of independent diplomats shaping the preparation and implementation of EU law without the Commission is rather misleading.

Some indicators may suggest neo-functionalism as the most appropriate tool for investigating the Council's system. In particular, the evolution of the Council and Commission's legal output in comparison to the increase in committees suggests that the Council is best conceptualised as a supranational technocracy. However, studies on national administrations and their interaction within the EU do not indicate subsequent shifts of loyalty from the nation state towards the EU committee systems, as neo-functionalism would imply.

The concept of a multi-level mega-bureaucracy would imply growing complexity and a lack of transparency, and hence committee networks that are impossible to control either by the European Parliament or Member States' national parliaments. However, this ignores the fact that the European Parliament's control capacities have been improved. This is not to say that MEPs' demands for the 'comitology' network to be made more accountable have been fulfilled. But especially in relation to post-Maastricht secondary legislation, where the co-decision procedure applies, the European Parliament is able to influence the choice of the 'comitology' procedures to be established.

The growth in the number of meetings of Council working groups, the civil servants involved, and the frequency of and the expenditure on meetings, all indicate a process of institutional and personal mobilisation within a concentric (polyarchical instead of hierarchical) political system, in which national administrations are shifting their attention towards Brussels.<sup>4</sup>

The challenges posed by a Commission providing the operational rules of ‘comitology’, the claims of a Parliament pressing Coreper into ‘pre-conciliation’ meetings for co-decision, and the demands of interest groups bringing ‘transnational’ expertise into the Council, spill back into national administrative systems.

Moreover, Council members are increasingly confronted with different administrative cultures and styles of interaction. Consequently, mobilisation leads to the Europeanisation of institutions and staff, who share common beliefs about their contribution to the establishment of a functioning democracy in the EU system.

One thing is clear though: the ‘Europeanisation’ process has been asymmetrical. It is mainly the national administrative machinery, rather than the overall set-up of the Member States, that has changed.

Overall, the last 50 years reflect a process of European cooperation and integration by Member States’ governments, as well as by EU institutions, through the creation and reform of a variety of instruments and procedures within a triangle between market, state and non-governmental networks. The result is a flexible, incomplete and unstable arena for the mediation of the interests of governments, administrations, supranational institutions and interest groups.

### **A reformed architecture?**

The Council – as the central link between the Member States and the European institutions – is in need of reform. Its fundamental problems can be summarised rather simply:

The multiplicity of authorisations, according to which the Council must decide unanimously, increases the risk of blockages in a Union of 25:

- The loss of coherence on the part of the Council and a significant decrease of the coordination function of the General Affairs Council (GAC) need to be considered;
- The evolving network of parallel structures to the supranational EC, in which the European Council plays a more and more important role, needs to be assessed;
- The philosophy behind the rotating Council Presidency<sup>5</sup> might not work in an EU of 25.

One can thus identify four main areas for reform:

- The scope (rather than the threshold) of qualified majority voting in the Council;
- The system for coordinating the work of separated, specialised Council formations to ensure more efficient policy-making and to establish a transparent separation between the Council's legislative executive functions;
- The visibility and effectiveness of the High Representative of the Council in CFSP/ESDP;
- The capacity of Council and European Council chairs to ensure more consistency and coherency within the Council, and to 'visualise' EU politics.

Any reform of the Council system cannot orient itself only around the criteria of efficiency, democracy and transparency. It must proceed from an explicit acknowledgement that conflicting interests cannot be eliminated simply by adding new institutions.

Therefore, the EU's overall institutional arrangements must always be considered as a product of balancing national interests within the Union with the common interests of the EU. That is why reform of the Council system should be embedded in an overall revision of the EU's existing institutions, procedures and instruments.

It remains to be seen whether (and, if so, how far) this can be achieved in the current political context – and not just because of the 'constitutional' crisis *per se*, but also because of its wider repercussions on the expectations and actions of all the institutions involved.

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### Endnotes

- 1 See: Helen Wallace "The Council: An Institutional Chameleon". In: Governance, Nr. 3/2002; and Hussein Kassim, Anand Menon, Guy Peters and Vincent Wright (eds.) *The National Co-ordination of EU Policy*, OUP, Oxford, 2001.
- 2 See Andreas Maurer and Wolfgang Wessels, "The EU matters: Structuring self-made offers and demands". In: Wolfgang Wessels, Andres Maurer, Jürgen Mittag (eds.), *Fifteen into One? The European Union and its Member States*, MUP, Manchester, 2003.
- 3 See on the concept of the majority vote: Fritz Scharpf, *Games Real Actors Play, Actor-Centred Institutionalism in Policy Research*, Westview, Boulder, 1997, pp. 191-193; Jonathan Golub, "In the Shadow of the Vote?: Decision Making in the European Community". In: *International Organisation*, Vol. 53:4, (1999): 733-64.

- 4 See: Andreas Maurer and Wolfgang Wessels, “Die Ständige Vertretung Deutschlands bei der EU: Scharnier im administrativen Mehrebenensystem”. In: Michèle Knodt and Beate Kohler-Koch (eds.), *Deutschland zwischen Europäisierung und Selbstbehauptung*, Campus, Frankfurt am Main, pp. 293-324, 2000; and Jan Beyers, *Multiple Embeddedness and Sozialisation in Europe: The Case of Council Officials*, ARENA Working Paper No. WP 02/33, Oslo, (10 October 2002).
- 5 See David Metcalfe, “Leadership in European Union negotiations: The Presidency of the Council”. In: *International Negotiation*, No. 3, pp. 413-434 1998; and Jonas Tallberg, “The Agenda-Shaping Powers of the EU Council Presidency”. In: *Journal of European Public Policy*, No. 1 (2003) <http://www.dse.ruc.dk/tallberg.pdf>.

## **Report on the brainstorming on the Council of Ministers (23 November 2005)**

The Council of Ministers, as the embodiment of the legitimacy of the Member States, is a central institution in the EU system. And yet, with its many formations at ministerial level, its complex machinery stretching the “chain of command” from technical groups to the European Council, and its role in both executive and legislative matters, it is difficult to comprehend. This brainstorming session was therefore intended to examine the broad trends and main problems characterising this complex institution in the post-enlargement context and in the absence of the Constitutional Treaty.

### **The enlarged Council**

The main message from participants was that “*eppur si muove*”: still it moves. They stressed that, contrary to some expectations, the Council is still working with 25 Member States. In this respect, internal reforms – notably those that followed the Trumpf-Piris report (1999) and the Seville European Council decision (2002) to reduce the number of Council formations from 22 to nine – have proved useful. The extension of qualified majority voting (QMV) in the Nice Treaty has also helped to relieve the pressure on the Council system. Although fairly limited in scope, this made EU involvement in new policy areas (such as judicial cooperation in civil matters with cross-border implications – Article 65 TEC) much easier.

It was also felt that the Council as an “integration machine” (*machine à intégrer*) still functions well. It is *the* place of socialisation for national and EU political and administrative elites, and the new Member States have followed this traditional pattern of integration: there is no across-the-board cleavage between the old and new members, although there have been a few, very visible, exceptions to this (e.g. the divisions over the Services Directive).

This is not, however, tantamount to saying that enlargement has not changed *how* the Council machinery operates. There was agreement that it has had profound consequences in at least two crucial respects:

- *Practically*: Complete “*tours de table*”, where every Member State’s representative speaks, were the rule only a few years ago but are now very rare – especially at the technical level (the change is less visible at the political/ministerial level). This favours the most active national delegations – i.e. “those who have something to say” – either because they have particular technical knowledge, a strong interest to defend, or an original approach on the issue at stake. This move away from the diplomatic habit of listening to each and every national position tends to make debates more political and dividing lines more visible.



- *Politically*: There was agreement that enlargement had made the ‘game’ much more open in the Council. This in turn makes for deeper and more “exciting” discussions. It also strengthens the role of traditional and institutional “deal brokers” – i.e. the Presidency and the Commission – although it also makes it more difficult for them to assess the situation and see where negotiations are going. With less clear battle lines, a more open game also tends to shift debates (even) more into the corridors and outside the formal sessions, and to encourage the formation of small, issue-based *ad hoc* groups of Member States.

With networks and smaller groups of countries becoming more important, an arguably more worrying phenomenon is the emergence of informal groups of (or led by) larger Member States, possibly paving the way for the much-feared “*directoire*”. While this might be a rather positive development in relation to Common Foreign and Security Policy (CFSP) issues, there are signs that larger Member States could increasingly get together to block, rather than push, common decisions – including on core internal market issues.

The most alarming trend identified by participants was not so much the emergence of semi-permanent informal groups of countries, but the fact that the Commission was routinely excluded from these meetings. It was felt essential that the Commission, as the guardian of the Community interest and the rights of all Member States, should “force the door” at such meetings and assert its political relevance and credibility as an irreplaceable actor in the EU system.

### **Nice QMV**

QMV’s role as a political deterrent to obstructive behaviour – rather than its formal role as a way of taking decisions in the Council – has not changed since the last enlargement. While votes have become more frequent in some policy areas (agriculture and some aspects of the single market), most decisions are still taken by consensus “in the shadow of a vote”.

The latest available data (for 2004) shows that enlargement has not significantly altered the pattern of Council decision-making. Almost 90% of the decisions for which QMV was formally applicable were, in fact, taken without any abstentions or No votes recorded. It is also worth noting that the new Member States vote No or abstain only very rarely, while old (and, in particular, large) Member States seem to be using their power more confidently.

Germany, for instance, often appears to be happy to be shown in the outvoted minority – often for domestic reasons. However, there are signs that some new Member States might have taken the QMV rule

too seriously, using their “calculators” very early in the process – i.e. at working group level – to try to build majorities or blocking minorities. The real logic of QMV needs to be permanently explained by Brussels “agents” to their national “principals”, who either still think in terms of national vetoes or accept being outvoted too easily, without trying to extract concessions.

It is too early for definitive and consistent evidence to emerge on the impact of enlargement on Council decision-making: Nice has been in force only since February 2003, and the new Member States only joined the EU in May 2004. It seems, however, that building a blocking minority is not that easy even under the Nice rules.

Indeed, since Nice’s entry into force, only one piece of legislation has been definitively rejected, namely the Directive on computer-implemented inventions. However, it was the European Parliament that killed it, because of substantial differences with the Council and the Commission – neither enlargement nor the Nice definition of QMV had an impact. By contrast, there are examples of decisions reached thanks to enlargement, for instance on the Statute for MEPs, where the previous blocking minority became too small after enlargement: all the new Member States were in favour of the proposed legislation and the text was passed after years of stalemate in the Council.

### **Consensus forever?**

It remains to be seen whether, and how, the logic of consensus-building (one could say of a “permanent Grand Coalition”) – which is still the basis for the real functioning of the Council – will survive in the context of diverging discernible trends within the European Parliament and the Commission. If the Constitutional Treaty ever enters into force, the new definition of QMV (double majority) is also likely to produce changes in behaviour, but it is still difficult to speculate on what these changes will be and, indeed, whether they will happen at all.

In this context, participants also pointed out that the double majority laid down in the Constitutional Treaty did not, in fact, drastically lower the QMV threshold (although it did strengthen the relative power of the larger Member States). Expressing their satisfaction with the Constitutional Treaty compromise on this point, a number of participants argued that lowering the QMV threshold too drastically could have eventually dealt a deadly blow to the legitimacy of Council decisions.

Others disagreed and advocated an easing of QMV which would go well beyond the provisions of the Constitutional Treaty, citing the increasing role of national parliaments as a reason for doing so. Indeed, if the scrutiny by national parliaments of the Member States’ European policy is getting tighter (which is, in itself, a desirable trend), this also

increases the likelihood of parliaments passing resolutions that bind their governments and thus the chances of Member States eventually voting No or abstaining. This is even more likely to happen given the type of parliamentary control systems that have been chosen by the new Member States.

The complex definition of QMV laid down in the Nice Treaty was widely regarded as regrettable, in particular compared with the double majority proposed in the Constitutional Treaty. But participants agreed that unanimity, not QMV definitions and thresholds, was the main problem with decision-making in the Council.

Quite obviously, very few significant steps forward can be made in policy areas where unanimity applies. Moreover, when it was eventually possible to take a decision, it was often a bad compromise of questionable added value. Although there is nothing new in this, it shows that maintaining unanimity in an EU of 25 makes the Union ineffective in those policy areas. Given the importance of changing the rules, it was suggested that the next Accession Treaty (with Croatia?) could be used to extend QMV as far as possible.

### **The challenge of coordination across policies**

The Council already functions to a large extent on the basis of separate pillars, with weak coordination mechanisms. This is a serious concern, as it undermines attempts to ensure consistency and continuity in EU policies.

Participants felt that, as a rule, vertical mechanisms (the “chain of command”) function fairly well, while horizontal instruments are somewhat dysfunctional. The Committee of Permanent Representatives (Coreper), in particular, has been weakened by the emergence of other “top committees” (such as the Economic and Financial Committee) which formally come under its authority, but tend in practice to have their pre-decisions rubber-stamped by it. This, in turn, undermines the authority of the General Affairs Council (GAC) vis-à-vis other Council formations, and disrupts traditional coordination mechanisms.

One idea for strengthening coordination was mentioned, namely the separation of the GAC and the CFSP Council. This could be implemented at any time. However, since these two formations often involve the same group of people (the Ministers of Foreign Affairs), there is a risk that this change could be just cosmetic. Nor are the real gains all that obvious if this separation is not combined with the (very unlikely) emergence of strong national Ministers for Europe, independent from the Foreign Ministries and in charge of the overall coordination of national representation in the EU.

Indeed, there was a general agreement that most coordination problems lie within the Member States – although this does not mean that they are strictly national problems, since they do have an impact on the collective decision-making system. Coordination seems to be working fairly well in most countries – in particular the most centralised ones (France, the Netherlands) – while it is much more difficult in others (Germany was singled out in this respect). A paradox was also highlighted: if coordination works well at national level, the need for establishing stronger coordination bodies at EU level (by, for instance, strengthening the GAC and separating it from the CFSP Council) is limited. By the same token, a formally stronger GAC will not achieve much if its members are not able to represent the unified position of their governments.

Finally, while better planning of the Council’s legislative work might seem desirable *per se*, this needs to be looked at in the broader inter-institutional context. In particular, this streamlining process should not undermine the Commission’s agenda-setting powers. Trying to transform the Commission into a “Council Secretariat *bis*”, as some already appear intent on doing, is potentially counter-productive. An initiative such as the Tampere programme for Justice and Home Affairs has shown how desirable Commission leadership can be – even for Member States.

### **Politicising the Council**

Part of the Council machinery is technocratic by nature, so it was felt that the real challenge was to give a political content to the decisions taken, in particular at ministerial level.

Indeed, the general impression was that the Council works well at the lower levels of specialised groups or Coreper. This paradoxically means that work done by ministers becomes boring and, in any case, less political and less visible. The Council system is not geared towards leaving politically relevant issues to the highest (i.e. political) level, but towards reaching agreement at the lowest possible level. The risk is that ministers lose interest and commitment because they are often left to decide, if anything, on mere technicalities – and indeed, this is already happening.

After enlargement, the growing uncertainty over the outcome of Council deliberations has opened an avenue for more political, more visible debates. In terms of transparency, what matters is not opening the whole Council machinery just for the sake of it – this is certainly not desirable in relation to the Council’s non-legislative activity and is highly unlikely to happen anyway. For legislative matters, however, participants said it was crucial to allow accountability to work – i.e. for citizens to know how their national government eventually voted. This would strengthen all forms of democratic control on the behaviour of

national governments at the EU level: by the media and the general public, but also by the parliamentary majority or opposition.

As far as the Council groups working on legislation below the ministerial level are concerned, participants questioned the usefulness of opening them to the public. They agreed that neither total secrecy (as is, to a large extent, currently the case), nor full transparency (which could paradoxically make the Council even more opaque) are easy to defend from a principled or practical standpoint.

The notion that transparency would drive the “real debates” out of the meeting room and to the corridors was widely judged irrelevant. First, in parliaments (including the European Parliament) deals are not struck in plenary meetings; what matters is that everyone knows who voted for what and why. Second, transparency is likely to act as a shock on the system, triggering a chain reaction.

One of the possible reforms to achieve increased transparency could be the creation of a purely “legislative Council” – a real federal “second chamber”. However, most participants remained either ambivalent or sceptical about this. Indeed, they felt “parliamentarisation” would be difficult to organise because of the huge differences in the ways Member States organise their representation at EU level. It would also be odd for citizens to see unknown and unelected bureaucrats representing their country.

The *sui generis* nature of the Council, however, lies precisely in its politico-administrative nature and the US Senate and the German *Bundesrat* show that it is not so unusual for “second chambers” in a federal structure to have executive or quasi-executive prerogatives. A less visible, but more easily workable, alternative, would be to separate legislative and non-legislative issues clearly within individual formations, with all legislative meetings being held in public – including the currently far-too-opaque conciliation procedure.

### **And what about the European Council ?**

It was widely felt that the importance of the European Council needs to be acknowledged. National political systems are now heavily personalised, and it is hard to see how the Union could work well without the involvement of national leaders.

Given the sheer political relevance of decisions taken at EU level, reducing the involvement of Prime Ministers (and, in the case of France or Poland, Presidents) would undoubtedly deepen the crisis of accountability. The public needs a visible Union body, and the European Council is clearly the most legitimate EU institution in this respect.

Participants were of two minds about the permanent European Council Chair proposed by the Constitutional Treaty: this, they felt, would make the system more complex but, at the same time, the Chair could play a useful role in “selling” the final compromises, which are currently presented to the public through national lenses only.

Nevertheless, it was generally felt that the European Council had somehow “lost its way”. Whenever unanimity is the rule, the fact that issues are “brought up” to the European Council is largely unproblematic – indeed, part of its role is to act as a deal broker. In that sense, the consensus rule has some advantages. It is different when QMV is the formal rule. For any Member State, being outvoted on a domestically sensitive issue represents a considerable “political violence”. Dramatising the impact of controversial legislative decisions by having them discussed by the European Council might well be counter-productive and drive European leaders away from the “big picture” they are meant to keep in mind (and at the forefront) for the EU.

### **External representation**

The respective roles of the High Representative and the rotating Presidency, and the relationships between both and the Commission will remain contentious, especially as long as the Constitutional Treaty has not entered into force.

There was discussion on whether the difficulties involved in establishing a European External Action Service (EEAS) and a double-hatted EU Foreign Minister are mainly political or legal as well. But there was general agreement that it is unlikely that all Member States – or indeed the Commission and the European Parliament – would agree to sign an ambitious inter-institutional agreement in the absence of new Treaty provisions.

There was criticism from some that any move to set up the EEAS or the Foreign Minister without the Constitutional Treaty would amount to “introducing the Constitutional Treaty through the backdoor”. But others argued that improvements on the foreign policy front are widely supported by the public in virtually all Member States, and that this is therefore politically “sellable”.

## CONCLUSION

### **Political Europe – it's not just about institutions**

*By Antonio Vitorino*

The debate on Political Europe cannot be confined to the functioning of the European Union institutions. All too often, this debate has been hostage to the power play among institutions and therefore limited to a number of stakeholders. One has to recognise that no matter how important institutions are – and indeed they are important – European citizens are not fond of institutional debates.

The EU is going through a difficult political crisis, mainly because of the deadlock over the Constitutional Treaty following the French and the Dutch referenda. However, as the EPC's brainstorming debates have shown, the EU institutions – however imperfect – are working on the basis of the Nice Treaty, and I believe that the typical "Brussels-based" debate on institutions did not play a significant role in the rejection of the Constitutional Treaty in two of the Union's founding Member States.

The reports and the discussions we have held in these last six months highlight several structural problems that, in one way or another, affect all EU institutions today and will continue to do so in the near future:

- The EU institutions are seen by the citizens as remote and rather distant from their daily concerns;
- All institutions have problems in communicating what they are doing in a crystal-clear manner, explaining who does what and how what they do really impacts in citizens' daily lives;
- Generally speaking, the decision-making process lacks transparency, which is a key prerequisite for enhancing accountability;
- The composition of the EU's institutions following enlargement raises serious questions about efficiency and the Union's capacity to take decisions in an appropriate timeframe (especially when a unanimous decision by 25 Member States is required).

Naturally, each of the EU institutions tends to portray and assess these common problems according to its specific vocation and features. To a certain extent, addressing such problems requires procedural solutions (such as a communication and information strategy and new rules on openness at Council meetings). However, at the heart of those problems lie fundamental political questions that need to be answered.

Some of the answers will depend on the political profile of EU institutions in the existing legal framework and cannot wait for an end to the uncertainty over the future of the Constitutional Treaty.

### **The European Commission: the EU's 'honest broker'**

I believe that the Commission continues to be a central and key player in the EU political project. It is, by definition, the honest broker of the overall institutional framework, and I would underline three main tendencies in its evolution that need to be taken into consideration.

Firstly, in recent years, the Commission has been increasingly attracted to enhanced accountability before the European Parliament. In itself, this is positive in terms of democratic behaviour – and this tendency is reflected in the Constitutional Treaty when it deals with the rules concerning the appointment of the President of the Commission. Nevertheless, I believe the Commission must not lose its double legitimacy if it wants to continue to play the role of honest broker in front of both the Parliament and the Council of Ministers.

Even though this is probably one of the most controversial issues, I am one of those who believe that a purely parliamentary system would not reinforce the democratic legitimacy of the Commission. Therefore, to a large extent, this very specific role of the Commission (in terms of co-decision and in broad political terms) will require every effort to ensure that all institutions work harmoniously together and are capable of delivering what the citizens expect from the EU.

Secondly, the Commission is a political body, not just a high-level administration. This means it needs an acute sense of how to define its political profile beyond its exclusive right of legislative initiative, focusing more on key aspects of EU governance.

The fact that some of the key issues on the EU agenda (such as Euro-governance or the Lisbon Agenda) are less focused on legislation means that a change in the Commission's traditional culture is required, with consequences for its relationships both with Parliament and with the Council. This does not mean reducing the role of the Commission to pure administrative tasks but, on the contrary, will require it to play a more substantial political role of coordination and cooperation with the other institutions and the Member States in order to deliver concrete and tangible results for Europe's citizens.

Finally, the Commission is confronted with a challenge to its own collegiality deriving not only from its sheer size in an enlarged Union (25 today), but also from the fact that large Member States now have only one Commissioner (the loss of their second Commissioner – who, in most cases, came from the largest opposition party in those Member States – will have a significant political impact in the way the Commission acts).

I believe a smaller Commission – as envisaged by the Nice Treaty – will be more workable. However, to a large extent, overcoming these



challenges will also depend on the leadership of the Commission and the room for manoeuvre given to its President from the moment he or she chooses a “team”. This does not require legal changes; just a shared political will among the Member States.

### **The European Parliament – the institution with the most to lose**

The Parliament is undoubtedly the institution that has the most to lose if the Constitutional Treaty does not come into force. Meanwhile, it is likely to raise its political profile within the existing legal framework along party lines. Nevertheless some key questions remain to be answered.

It is clear that since the vote on the appointment of the Barroso Commission, party politics have played a key role in the political relationship between the Parliament and the Commission. However, because of the political make-up of the Parliament, such a positive political clarification is in permanent tension with what one could call “the syndrome of the Grand Coalition”. In fact, in my opinion, the Commission’s multi-party composition (which results from the nominations made by the Council of Ministers) and its double legitimacy do not favour a typical “Government/Opposition” relationship between the Commission and the Parliament.

To a certain extent, the extent of this tension will largely depend on the way political parties behave in the Parliament over the next few years and whether they will manage to form stable coalitions or at least stable convergences to support the Commission’s policies.

In parallel, the Parliament’s currently limited ability to play an active role in several key issues on the EU agenda (Euro-governance, the Lisbon Agenda, Common Foreign and Security Policy, and Justice and Home Affairs) will have an impact on the future positioning of the Parliament.

A positive outcome would be to enhance the political profile of the Parliament beyond its legislative powers, but one cannot discount the risk that it will succumb to the temptation to compensate by playing a more micromanagement role that may affect its relationship with the Commission. In certain cases, the use of the “passerelle” clause might be helpful (as in JHA matters), but only the Constitutional Treaty appears to provide an effective framework for the Parliament’s future role.

In our discussions, we have identified more robust party discipline in the Parliament’s political groups. Nevertheless, this is a rather quantitative and asymmetric approach. The real test of the coherence of political groups should focus on a limited number of key issues where real fundamental political choices are at stake and, in parallel, in

those cases where key national interests may be involved in a Parliamentary decision. I believe it is an issue that needs further and more in-depth assessment.

### **The Council: mixed feelings**

The debate on the Council of Ministers and the European Council revealed mixed feelings about its current role.

It is true that Council business has not ground to a halt because of the “revolution of the number” of Member States due to enlargement, as some had predicted. But it is beyond doubt that the decision-making process has become more complex and unanimity more difficult to achieve.

It is, however, still too soon to come to conclusions about the possible watering-down of the content of its decisions, not just because there are now more stakeholders around the table (there is empirical evidence that the new Member States are no more reluctant than old Member States to join the required majorities), but also because a more diverse Union will have an unavoidable impact on the Council’s political profile.

I am one of those who welcome more transparency in the functioning of the Council but, at the same time, fear that this could lead to fatal limitations on its capacity to reach agreements in the course of negotiations between Member States.

Striking the right balance in this respect is a matter of practice and of enhancing the Council’s accountability to the European Parliament and of national governments to their own parliaments, rather than just a purely procedural approach of opening up the Council’s sessions to public gaze when legislation is being adopted.

Finally, it is quite clear that the European Council is an “institution” confronted with a change in its own nature. In this respect, the Constitutional Treaty would have brought some clarity – not least by recognising it as a fully-fledged institution of the EU.

However, in practical terms, no one can deny that Prime Ministers have become quintessential to the Union’s political process. This raises important questions about the internal organisation of national Governments in relation to European affairs, and its impact on the role of the General Affairs Council and its relationship with the European Council and the specific vocation of sectorial Councils.

The fact that the last Intergovernmental Conference rejected the Convention’s proposal to create a Legislative Council says a great deal

about this ongoing ambiguity at the Council level, mainly due to the internal politics of Member States.

### **Other players**

It must be acknowledged that, in our discussions, two relevant institutions were absent: national parliaments and the European Courts. We cannot leave them out of our future discussions.

In fact, national parliaments did play a key role in the Convention which drafted the Constitutional Treaty, and I firmly believe that the subsidiarity protocol is one of the most striking innovations in the new Treaty. But even without the Constitution, we should focus on the fundamental role which national parliaments need to play in the immediate future if we want to guarantee that the European agenda enters into national political debates in a structured way, which, in my opinion, is crucial to bring Europe closer to the citizens.

The European Courts are not usually discussed when we assess the functioning of institutions. However, they play a key role in the EU's overall institutional balance – and even more so if, as it has happened in the past, a period of political uncertainty leaves space for more relevant judicial activism. We will have to come back to this point in the future.

### **Conclusion**

I feel that the excellent quality of the reports and the lively discussions we had over the last six months are a significant and relevant contribution to the ongoing debate on the future of Europe.

I do not hide the fact that I strongly believe the Constitutional Treaty would address, in a positive way, some of the institutional problems we have identified in our discussions. But I am also persuaded that it will take some time before we can revisit the now-blocked treaty and relaunch the reforms needed in an enlarged Europe.

We should also react to this setback by recognising that not all the necessary changes depend on the Constitution. Don't get me wrong – I am not advocating a “cherry-picking” exercise. This would be extremely difficult and runs the risk of being seen as a way of bypassing the necessary political debate on the future of Europe. I am simply saying that a great deal can be done if we are more committed to (and imaginative about) launching the appropriate political dynamics and topics that will make it possible to overcome the current crisis of confidence about the purpose of the European project.

If we are able to bet on a new political impetus, institutions will follow. That will be our task in the EPC's *Political Europe* programme over the coming months.

**Antonio Vitorino, a former European Commissioner for Justice and Home Affairs, is the Chairman of the EPC's Political Europe programme.**

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