

AN ANALYSIS OF LEGISLATIVE INSTRUMENTS IN THE EUROPEAN UNION
FROM THE LIBERAL INTERGOVERNMENTALIST PERSPECTIVE

by
MERYEM KÖSEHASANOĞULLARI

Submitted to the Graduate School of Arts and Social Sciences
in partial fulfillment of
the requirements for the degree of
Master of Science

Sabancı University
Fall 2008

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APPROVED BY:

Prof. Dr. Meltem Müftüler-Baç
(Dissertation Supervisor)

.....

Prof. Dr. Bahri Yılmaz

.....

Asst. Prof. Dr. Yaprak Gürsoy

.....

DATE OF APPROVAL:

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Sevgili Anneme ve Babama...

ACKNOWLEDGEMENTS

First of all, I am deeply grateful to my thesis advisor Prof. Dr. Meltem Müftüler-Baç, for trusting and encouraging me throughout this thesis' writing process. I don't know how I could complete this thesis without her confidence in me. Her endless enlightening influence leads me to an active and effective role in both of my daily life and career. I would like to truly thank her again for her endless support and confidence.

My dear friends; I am also thankful to my friends, who were understanding and supportive until the end of this process.

Finally, I am truly grateful to my parents. All through this tough writing process, I got strength from their faith in me. Without their support and patience, I would never be able to write these sentences.

ABSTRACT

AN ANALYSIS OF LEGISLATIVE INSTRUMENTS IN THE EUROPEAN UNION FROM THE LIBERAL INTERGOVERNMENTALIST PERSPECTIVE

MERYEM KÖSEHASANOĞULLARI

M.A. in European Studies Program, Thesis 2009

Supervisor: Prof. Dr. Meltem Müftüler-Baç

Keywords: Legislation in European Union, Co-decision Procedure, Qualified Majority Voting, Liberal Intergovernmentalism.

Argument of the evolution of the EU integration towards a supranational end and in contrast claim of continuing member states' control on conclusions both handle institutional reforms as means for their interpretation of EU integration. One side asserts that each development through supranationalism leads to the decrease in the member states' autonomy and capabilities, whereas the other approach advocates that these developments would be the consequence of the aim of member states to achieve a higher benefit without compromising more. By depending on their commonality, this thesis focuses on these legislative instruments to clarify the current positions and roles of member states in decision-making process. As a result, lack of such restrictions in legislation of EU verifies the continuing autonomy and competence of national governments and determines the international bargaining and in relation relative power of member states as assisting factors of their ongoing authority, rather than restrictions.

ÖZET

LİBERAL HÜKÜMETLERARASI TEORİ'DEN AVRUPA BİRLİĞİ'NİN YASAMA ARAÇLARI ANALİZİ

MERYEM KÖSEHASANOĞULLARI

Avrupa Çalışmaları Yüksek Lisans Programı, Tez, 2009

Danışman: Prof. Dr. Meltem Müftüleri-Baç

Anahtar Kelimeler: Avrupa Birliği'nde yasama, Ortak karar usulü, Nitelikli Çoğunluk
Oylaması, Liberal Hükümetlerarası Teori

AB entegrasyonunda uluslarüstü sona doğru evrimleşme argümanı ve kararlar üzerinde devam eden üye devlet kontrolünü savunan iddia, AB entegrasyonuna yönelik yaklaşımlarını açıklarken kurumsal reformları bir araç olarak kullanırlar. Bir taraf uluslarüstü gelişmeye doğru ilerleyen üye devletlerin otonomi ve kabiliyetlerinin azalacağını savunurken diğer grup daha yararlı bir sonuca daha fazla ödün vermeden ulaşabilmek için verilmiş bir kararın sonucu olarak görür bu değişimleri. Bu ortak noktayı baz alarak bu tez karar alma mekanizaması içinde üye devletlerin pozisyonları ve rollerini açıklayabilmek amacıyla yasama araçları üzerinde yoğunlaşır. AB yasaması içerisinde bulunduğu iddia edilen engellerin var olmadığı sonucu üye devletlerin devam eden otonomi ve yetkinliklerini doğrular ve uluslararası pazarlık ve bağlı olarak üye devletlerin görece gücünün ve otoritesinin engelleyici değil destekleyici etkenler olduğunu kanıtlar.

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INTRODUCTION

Liberal Intergovernmentalism

Ongoing European integration of member states from both sides of deepening and widening necessitates further explanation from each theory of integration, in which European Union's (EU) institutional reforms are used as means of their interpretations. One of the most criticized integration theory; intergovernmentalism is a state-centric approach of European integration. According to this theory, individual players; states in particular national governments are "the initiators, promoters, mediators, legislators and promulgators of"¹ the present and the future of EU functioning and its integration path. As Moravcsik argues, "the primary source of integration lies in the interests of the states themselves and the relative power each brings to Brussels."² State-centric approach advocates that the preferences, which are reflected on EU law, are the lowest common denominator among member states in particular national governments' positions.³ That represents the common position on the lowest level of benefits that is acceptable for all member states. Therefore, none of the national governments are obliged to accept policies that are vital to their national interest.

Initial approach to the relationship between national and international level was created by Robert Putnam in 1988. As Rosamond elucidates, Putnam builds a bridge between domestic politics and international relations. Putnam's two-level game constitutes national officials, who are willing to improve their stances on both levels. At the national level, they try to congregate domestic groups to form coalitions and at the international level, they bargain to strengthen their domestic position along national preferences stemming from the formed coalition.⁴ This approach becomes the sources of the composition of many other perspectives such as liberal intergovernmentalism.

As the founding father of liberal intergovernmentalism, Andrew Moravcsik formulates a three-level game similar to Putman's. According to Moravcsik, all

¹ Puchala, D.J. (1999). Institutionalism, Intergovernmentalism, European Integration: A Review Article. *Journal of Common Market Studies*, 37(2), p. 319

² Moravcsik, A. (1991). Negotiating the Single European Act. *International Organization*, 45(1), p. 56.

³ Hooghe, L. & Marks, G. (2003). Multi-Level Governance in the European Union. In Nelsen B. & Stubb A. *The European Union* (281-311). Colorado: Reiner. p. 284

⁴ Rosamond, B. (2000). Intergovernmental Europe?. *Theories of European Integration*. p. 136.

member states are rational players, which Moravcsik defines his approach as ‘New Synthesis’ that conjoins theories of political economy, bargaining and international regime all together. Member states follow this path in accordance to Moravcsik’s approach:

- “1. they formulate preferences in response to functional policy interdependence
2. they engage in interstate bargaining to achieve Pareto-improving solutions and resolve distributional conflicts
3. they delegate or pool sovereignty in international institutions to extend, implement, or enforce those bargains.”⁵

First stage constitutes national government’s preference formation in relation to the interdependences among member states. National preferences may be the outcomes of economic, geopolitical or ideological interests of member states. Yet, Moravcsik stresses that the economic interests were the main driving force for member states since 1957, however he adds that there are also several cases that geopolitical and ideological interests may have been dominant, for instance Germany in 1960s.⁶ Second stage refers to the bargaining process among national governments. Bargaining among member states were mostly devolved on relative power of national governments, which varies due to the ‘asymmetric policy interdependence’ among member states. For instance, France would find itself vulnerable on the topic of agriculture, on account of its high employment in agricultural sector; however it does not constitute a crucial place in British interest, due to the opposite situation in UK. Finally, third stage can be seen as the consequence of the extension of co-decision procedure.

Recent debates on institutional reforms in EU as the empowerment of a supranational institution, in particular Parliament by co-decision procedure, lead to tough criticisms on state-centric approaches by arguing weakening of intergovernmental block as Council of Ministers (the Council) and in relation decline of state powers on EU-level. Nevertheless, Moravcsik’s approach to the co-decision procedure is the ‘redistribution of powers already delegated to the Union by the member states in favor of the Parliament and in expense of the Commission’.⁷ EU’s institutional reforms were supported by national government due to the aim to create an

⁵ Moravcsik, A.(2008). European Constitutional Settlement. *The World Economy*,31(1), p.158.

⁶ Ibid. p.161.

⁷ Warleigh, A.(2002). Substantive Democracy and Institutional Change: The Paradox of Codecision. *EUROPUB Conference Paper, 14-15 December 2002.* p.6.

efficient legislative procedure, while preserving the Council's superiority. As Puchala maintains, Moravcsik's perspective of 'delegating or pooling' stems from "the leaders of national governments responding to demands from national constituencies and reacting to imperatives from the global economy."⁸ In order to achieve a greater compromise for their substantive interests, the results of each delegating or pooling of national governments have been assessed in detail as France during CAP debates of 1960's.⁹

The basis of this approach is the limitation of capabilities and autonomy of supranational institutions by national governments, because their duty is to 'serve the ultimate goals of national governments'¹⁰ and operate within the limits determined by national governments' preferences. They do not have any autonomy and power independent from national governments' conclusions.

Nevertheless, institutionalism's basis on the grounds of the following argument: 'Institutions make a difference.' The explanation of the European integration path includes an evolution of supranational institutions. That requires the increase in the autonomy and authority, improvement in the capabilities of supranational institutions, in expense of the national governments. Thus, from institutionalist point of view 'delegating and pooling' are the consequences of "intra-European international relations primarily driven by the influences of supranational agents responding to demands from transnational society."¹¹ Stone Sweet and Sandholtz envisage the future of EU as follows:

"We view intergovernmental bargaining and decision making as embedded in process that are provoked and sustained by the expansion of transnational society, the pro-integrative activities of supranational organizations, and the growing density of supranational rules. ... these processes gradually, but inevitably, reduce the capacity of the member states to control outcomes."¹²

This argument depicts an evolution of a relationship starting from intergovernmental politics towards supranationalist end, thanks to supranational

⁸ Puchala, D.J.(1999). Institutionalism, Intergovernmentalism, European Integration. p. 327.

⁹ Moravcsik, A.(2008). European Constitutional Settlement. p. 167.

¹⁰ Rosamond, B.(2000). Intergovernmental Europe? p. 284

¹¹ Puchala, D.J.(1999). Institutionalism, Intergovernmentalism, European Integration. p. 327.

¹² Sweet, A.&Sandholtz, W.(1997). European Integration and Supranational Governance. *Journal of European Public Policy*, 4(3), p. 299.

institutions. Therefore, from this approach member states are the instruments of institutions, which will become supranationalist policy-maker, governing authorities. Concurrently, national governments' autonomy will be obstructed and its competence will be diminished.¹³

Both perspectives try to clarify the European integration by generally negating each other, especially on institutional reforms and the explanation they provide is the answer to 'why it happened'. If institutionalist framework is accepted, the argument of the international bargaining leads to the creation of restrictions on national governments' autonomy and narrowing competences of national governments should also be considered. National governments are the key actors in decision-making in the Council and the outcomes of this process constitute raw materials for EU institutions to operate. Thus possible restrictions would be the results of EU's periodical institutional reforms and the current legislative instruments of EU would unveil the accuracy of institutional framework. However, this does not mean that the Commission and Parliament are insignificant and neutral factors in the EU legislation. On the contrary, both institutions have specified roles and influences. For instance, the Commission has an agenda setting role since in several decision making procedures it has the power to propose changes. Similarly, the Parliament can help alter or bring in new ideas through its suggested amendments. Yet it is crucial to bear in mind that such roles of the Commission and Parliament do not predominate Council's position in legislation.

Therefore, this thesis' scope is the legislative instruments of EU that are examined to find out their possible influences on member states' autonomy and competences. Instead of looking for the answers of why and how questions, an analysis of the consequences and their impact on member states (what happened) is presented. Along this goal, first chapter introduces legislation mechanism in EU to the reader and second chapter starts this study with the legislative procedures of consent, assent, co-operation and co-decision, in order to clarify national governments' aim in extending co-decision procedure by determining the positions of both Parliament and the Council in legislation. Following an EU-level analysis, next chapter continues with the voting procedures as unanimity, simple majority and qualified majority that are used in

¹³ Puchala, D.J.(1999). Institutionalism, Intergovernmentalism, European Integration. p. 318.

decision-making in the Council' for reflecting the possible positions of member states in accordance with 'asymmetric policy interdependence'. Chapter four as an extension of the previous division questions the significance of voting weights and thresholds for member states' power shares in voting and international bargaining. Finally, fifth chapter assesses vetoes of Spain and Poland on double majority voting in IGC 2003 in the light of the role of 'asymmetric policy interdependence' in international bargaining. It is crucial to emphasize that the outcomes of such analysis of each legislative instrument from 1951 till 2008 designate liberal intergovernmentalist explanation closer than institutionalists' to the present situation.

CHAPTER ONE

Legislation in European Union

In order to assess institutional reforms and their impacts on member states' roles in decision-making, this chapter introduces the factors of legislation in EU. As an end result of this legislation mechanism EU law is formulated and it comprises from two types of legislations, which are primary and secondary legislations.¹⁴ Firstly, Treaties that forms the rules of legislation are issued as primary legislation and then actors, instruments and their correlative relations in legislation process such like Commission, the Council and the Parliament are summarized in the second part of this chapter under the heading of second legislation.

1.1. Primary Legislation

Institutions such as the Council or Parliament and various procedures of decision-making process are determined by the 'primary legislation' of EU, which stems from the Treaties. The Treaties can be differentiated under three categories: First two are Accession Treaties that are signed between the candidate state and the Commission and International Treaties that includes legal documents as trade, cooperation or association agreements signed with third countries and international organizations. Such Treaties do not formulate decision-making in EU, thus are left out of this research, in which aim is to scrutinize Accession Treaty in patches and the third category: Treaties that constitutes functioning of EU as a system. These Treaties specify mechanism of decision-making; however at the same time themselves are the consequences of intergovernmental process of bargaining between member states and each of them has to be ratified by all member states according to the process required at national level. In accordance to Article 48 of TEC, stated bargaining circumstances are created by the meeting called Intergovernmental Conference (IGC).¹⁵ IGC represents series of meetings of the member states' representatives to negotiate crucial changes on EU's institutions, Treaties and major agreements.¹⁶ IGC is concluded with the

¹⁴ European Commission. Sources of EU law.

¹⁵ IKV.Intergovernmental Conference-IGC.

¹⁶ Gilbert, M.(2004). A Fiasco but not a disaster: Europe's search for a constitution. *World Policy*

European Council meeting, in which the Heads of State or Government sign the draft Treaties and start their ratification processes.¹⁷ Thus Treaty preparation period is completely an intergovernmental process.

The Treaty establishing the European Atomic Energy Community (Euratom) and the Treaty establishing the European Economic Community (EEC) are known as the Treaties of Rome (1957). Yet, Treaty of Rome, which was renamed as Treaty establishing the European Community (TEC) is only reference to Treaty establishing the European Economic Community and excluded Treaty of Euratom. Treaty of Euratom was signed to control and coordinate the researches on nuclear energy in member states. Moreover, Belgium, France, Germany, Italy, Luxemburg and Netherlands as founding six member states sign TEC and Treaty enters in to force in 1958. Then in 1967 as an amending Treaty, Treaty of Merger came to effect for the formation of a single Commission and a single Council of the then three European Communities. Another one was signed in 1986 and it embraces provisions on the completion of Single European Market in 1992 was signed also by new members as Denmark, Greece, Spain and Portugal under the name of Single European Act.

Following these two amending Treaties, term of ‘European Union’ was firstly commenced to be used after ratification of Treaty of Maastricht (Treaty on European Union-TEU) in 1993. Treaty changed the name of the European Economic Community into ‘the European Community’ and Leal-Arcas argues that TEU ‘

“introduced new intergovernmental structures to deal with the aspects of common foreign and security policy, as well as police and judicial cooperation. The structure formed by these so-called Three Pillars (Community pillar; foreign and security policy; police and judicial cooperation) is the European Union, whose scope then became more overtly political as well as economic].”¹⁸

Initial small steps on intergovernmental platform were taken on Common Foreign and Security Policy, yet Treaty was signed in 1992 to accomplish the creation of a monetary union as a next step afterwards single market. Furthermore, subsequent the enlargement to Austria, Finland and Sweden in 1997 third amending Treaty; Treaty

Journal, 11(1).

¹⁷ Europa Glossary, Intergovernmental Conference.

¹⁸ Leal-Arcas, R.(2006).Theories of Supranationalism in the EU. *Bepress legal series*.1790.p. 3.

of Amsterdam extended the scope of co-decision procedure together with qualified majority voting after two years delay of its signing in order to simplify the decision-making. Though, a deeper alteration was required due to the largest enlargement of EU of 2004 with ten countries; Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia. Rearranging decision-making and other changes to adapt institutions to the enlargement were legislated by Treaty of Nice in 2001. Qualified majority voting was again expanded and a new notion of ‘enhanced co-operation’ was introduced to enable member states, which are willing to compromise on issues other member states disagree.¹⁹

Right after Treaty of Nice became operational, attempts to prepare a constitutional treaty started, which comprised a crucial threat for liberal intergovernmentalism. The prepared draft of the Constitutional Treaty was signed in 2004 and presented member states for ratification. It was a text that is planned to replace all Treaties and attains a single legal personality to EU under domestic and international law.²⁰ Yet on account of the rejection of France and Netherlands, its ratification was not completed.²¹ In 2005, with 55% of vote against Constitutional Treaty French far left, far right parties and trade unions rejected the EU’s Constitutional Treaty.²² On the other hand, in Netherlands opposition had 61% of total votes, which comprised “Right-wing Pim Fortuyn party, Socialist Party, ChristienUnie and SGP, Christian parties” in 2005 referendum.²³

The Constitutional Treaty included the following changes;

- inclusion in the text of the Treaty of the Charter of Fundamental Rights,
- a new definition of the European Union to replace the current ‘European Community’ and ‘European Union’
- a clearer presentation of the distribution of powers between the Union and the Member States,
- a revised institutional framework, clarifying the respective roles of the European Parliament, the Council and the Commission,
- more effective decision-making procedures²⁴

¹⁹ Ibid.

²⁰ Euractiv.(2004). Constitutional Treaty.

²¹ Euractiv.(2006). Constitutional Treaty: ‘the reflection period’.

²² BBC News.(2007).EU Constition:Where member states stand.

²³ BBC News.(2005).Various reasons behind Dutch ‘No’.

²⁴ Eur-Lex, Process and Players.

After Constitutional Treaty's failure, its content was rewritten as a Treaty, which amends founding Treaties, under the name of Treaty of Lisbon (Reform Treaty). It was signed in 2008. Treaty of Lisbon's ratification process was completed in twenty five member states, but Czech Republic did not ratify yet and Ireland will have a second referendum possible before the end of October 2009²⁵, because of rejecting Treaty of Lisbon in its first referendum.²⁶

Overall, there have been eight IGCs till 2008. Five of them were held after 1985 and the sixth (IGC 1996) concluded with the signing of Treaty of Amsterdam. The next IGC was held in 2000 for Treaty of Nice and in Treaty of Nice envisaged another IGC on 2004 to prepare a Constitutional Treaty. Finally the failure of Constitutional Treaty led to the organization of latest IGC 2007, which was concluded with the Reform Treaty.²⁷ The long history of IGCs shows the existence of member state bargaining on each step of European integration that was sustained by the Treaties.

1.2. Secondary Legislation

Similar to primary legislation, intergovernmental structures are dominant in second legislation. The relationship between primary and secondary legislation depends on the determination of actors, relations between these actors and procedures that are used by these actors in decision-making by the provisions of the Treaties. In general, this mechanism called secondary legislation. Secondary legislation combines three EU institutions: European Commission, the Council and Parliament. According to procedures introduced by the Treaties, these three institutions are endowed to legislate as a group, in which the Council is the core and the Commission and Parliament are the assisting institutions.

First of all, Commission was established as an executive organ of EU that implements adopted EU policies. Execution power and ensuring application of provisions of the Treaties by each member states attribute Commission the necessity to be objective; therefore it was founded as a supranational institution. Commissioners are

²⁵ Vucheva, E. (2008). Ireland promises Lisbon ratification by the end of 2009. EUobserver.

²⁶ Euractiv. (2008). The Treaty of Lisbon.

²⁷ IKV. Intergovernmental Conference-IGC.

nominated by national governments and by the approval of Parliament, the Council appoints. In addition, as Hosli underlines, Commission undertakes the responsibility of initiating legislation, which reinforces privileged power to the Commission.²⁸ Member states do not have direct impact on the Commission for its initiative power or executive duty, yet the proposal can be revised by the Council unanimously. However, Moravcsik reminds that this capability mainly was moved to the European Council, in which member states vote in accordance to unanimity rule.²⁹ Commission constitutes a crucial role in institutionalist framework. Puchala writes that Stone Sweet and Sandholtz believe in the influence of Commission on member states' choices: "Commission initiatives 'had an impact on member state thinking and preference formation', and 'if the interactions and discourses of the EU significantly shape state preferences, then interstate bargains are not what intergovernmentalists assume them to be.'"³⁰ On the other hand, Commission is not capable to determine the conclusion of the act by influencing member states' actions. Commission's source of capabilities can be clarified by this reasoning; "... EU institutions are subtly designed with informal norms that encourage common policies while permitting governments to impede decisions and directives that threaten vital interest."³¹ Thus initiated proposal of Commission offers areas/subject titles that could be agreed on and member states consider the issue along its preferences independent from the any influence of proposal. The conclusion is reached as a result of the bargaining including each member states' interest.

Likewise, Parliament was established as a supranational institution; however its members are directly elected by each member states and become one of the 785 representatives to serve for five years. From Moravcsik's perspective, Parliament is institutionally weaker than other two institutions.³² Parliament's elections are decentralized, in which turnout is low. For instance, latest Parliament election of 2004 was concluded with overall 45.6% turnout and as *Table 1*. indicates a decline in participation percentages of nine member states, which vary between 1.3% and 12.5%, in 1999 and 2004 elections. In the contrary, six member states' participations were increased around 9% depending on the popularity of election campaigns held by

²⁸ Hosli, M.(1995).The balance between small and large. *International Studies Quarterly*, 39, p.352.

²⁹ Moravcsik, A.(2008). European Constitutional Settlement. p. 167.

³⁰ Puchala, (1999). Institutionalism, Intergovernmentalism, European Integration. p. 321.

³¹ Moravcsik, A.(2008). European Constitutional Settlement. p. 167.

³² Ibid. p.172.

national governments. 2009 election will determine the latest direction of turnout, especially in cases of the ten new member states, in which participation in their first election varied between 16% and 82%.³³

Table 1. Decline in voter turnout in European Parliament Elections

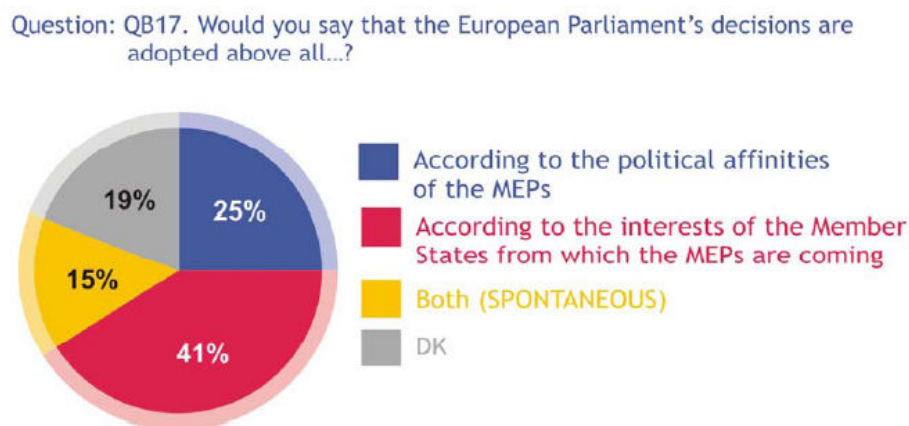
Country	1979	1984	1989	1994 (95: SE, AT, FI)	1999	2004	Trend
Austria				67.7	49.4	41.8	Downward
Belgium	91.4	92.2	90.7	90.7	91.0	90.8	Downward (mandatory voting)
Denmark	47.8	52.2	47.4	52.9	50.5	47.8	Downward
Finland				57.6	31.4	41.1	Upward
France	60.7	56.7	48.8	52.7	46.8	43.1	Downward
Germany	65.7	56.8	62.3	60.0	45.2	43	Downward
Greece	78.6	77.2	80.1	80.4	75.3	62.8	Downward (mandatory voting)
Ireland	63.6	47.6	68.3	44.0	50.2	59.7	Upward
Italy	84.9	83.4	81.4	74.8	70.8	73.1	Upward
Luxembourg	88.9	87.0	96.2	88.5	87.3	90	Upward (mandatory voting)
Netherlands	58.1	50.6	47.5	35.6	30.0	39.1	Upward
Portugal		72.4	51.2	35.5	40	38.7	Downward
Spain		68.9	54.7	59.1	63	45.9	Downward
Sweden				41.6	38.8	37.2	Downward
United Kingdom	32.2	31.8	36.6	36.4	24.0	38.9	Upward
*	*	*	*	*	*	*	*
Cyprus						71.19	
Czech Republic						27.9	
Estonia						26.89	
Hungary						38.47	
Latvia						41.23	
Lithuania						48.2	
Malta						82.4	
Poland						20.4	
Slovakia						16.7	
Slovenia						28.3	

Source: Euractive. European Elections: Outlook for 2009.

³³ Euractive. European Elections: Outlook 2009. For detailed information on each member states' turnout from 1979 election till 2004.

In addition, the ones, who attended Parliamentary elections, voted in accordance to their domestic issues, in stead of EU concerns.³⁴ This conclusion is also apparent on one of the Eurobarometer's survey question's responses:

Figure 1. Source of Parliament's decisions



Source: European Parliament March 2008 Report.³⁵

41% percent of EU citizens think that the national preferences are advocated in Parliament by Ministers of European Parliament (MEPs), whereas 25% believes in the dominance of political standpoints' of MEPs. Under such circumstances that lack knowledge on Parliament's competences among EU citizens, Parliament maintains its existence among intergovernmental institutions. Its legislative role and competences change in accordance with procedure specified in Treaties. Concerns arisen on this issue as whether or not these procedures grant Parliament power to undermine Council's role in legislation, yet what is the Council and what are its competences?

The Council comprises national ministers, officials and diplomats, who act according to instructions from national governments.³⁶ Council's responsibilities are set under the categories of decision-making and co-ordination. In the scope of decision-making, Council members are empowered to enact proposals with or without Parliament's contribution. For this reason, Council meetings are held with respect to the issue under discussion and member states are represented by ministers responsible for

³⁴ Moravcsik, A.(2008). European Constitutional Settlement. p. 172.

³⁵ European Parliament March 2008 Report. p. 21.

³⁶ Moravcsik, A.(2008). European Constitutional Settlement. p. 175.

that subject as agriculture, foreign affairs, and social affairs. Co-ordination duty provides Council the ability to organize joint-actions between member states. In general, coordination committees and the Council Secretariat's duties are to enable efficient bargaining among member states.³⁷ As an intergovernmental institution, overall the Council holds a wide autonomy to arrange bargaining among member states and benefits from the services of execution and legitimization provided by the Commission and Parliament.

Consisting of two supranational and one intergovernmental actors pave the way to a complicated decision-making process. If a proposal is followed from the beginning, the path will be as such:

Proposal's formulization completed in the Commission and it is delivered firstly to General Secretariat of the Council. Furthermore, General Secretariat forwards the primary proposal to the Committee of Permanent Representatives (Coreper) of the Council. Coreper's tasks are to organize and determine issues that will be debated in Council meetings.³⁸ It consists of two groups: Coreper I and II. Deputy of the ambassadors to EU form Coreper I and Coreper II as a more important committee is constituted from ambassadors. Another distinction between these committees is issues they are dealing. Coreper I responsible from general matters such as environment, social affairs, internal market, transport, fisheries, consumer protection, education, culture³⁹ and Coreper II handles topics in the scope of Councils for General Affairs and External Relations, Economic and Financial Affairs and Justice and Home Affairs.⁴⁰ Only for agricultural issues, another committee called 'Special Committee on Agriculture' prepares agenda for Council.⁴¹

Coreper designates the relevant working group to send the proposal, whose task is to examine the proposal and to reach a proposition that can be agreed in The Council. Working groups under Coreper are comprised representatives of national governments such as officials from central administrations and also officials from the Commission join them in the meetings. As an outcome of discussions, a report is constructed and is

³⁷ Ibid. p. 163.

³⁸ Treaty of European Union., Article 151.(1992).

³⁹ Lewis, J.(1998).Is the 'Hard Bargaining' Image of the Council Misleading?.*Journal of Common Studies*, 36(4), p. 482

⁴⁰ EU-Oplysning, What is COREPER?

⁴¹ Scadplus, Coreper.

sent back to Coreper to proceed. As a central office handling proposals coming from the Commission, Coreper officials decide as well if the proposal should be presented to the Council for legislation and whether it should be submitted under 'A-point' or 'B-point'. 'A-point' is a group of proposals, which can be resolved without debate in the Council, where 'B-point' proposals require discussions.⁴² In such meetings only member states' in particular national governments' preferences are open to dispute, there is no other factor that influence process in the Council except Parliament's propositions, if it is required by Treaties.

The process consists of the intergovernmental relations and various bargaining platforms. As Moravcsik's reminder, the committees of Coreper ease the bargaining between member states and thus constitute a significant part of the Council. Moreover, details of the process include several legislative procedures that necessitate Parliament's consent, assent or amendment as a result of the Treaties to proceed in legislation. Some of them should be processed by the Council before approval or rejection of the proposal; some are just parts of procedure on thesis. The Council waits for the opinion of the Parliament and at the end; the Council either handles seriously such opinions or neglects.

If the legislative procedure requisites, the process continues as follows after Commission forwards the proposal to the Parliament:

Similar to the working groups under Coreper, the relevant Parliament committee prepares reports on proposals. These committees are:

- Committee on citizens freedoms and rights
- Legal affairs committee
- Committee on women's rights and equal opportunities
- Committee on agriculture
- Committee on fisheries
- Committee on foreign affairs, human rights, and common security
- Committee on regional policy, transport and tourism
- Committee on industry, external trade, research and energy
- Committee on economic and monetary affairs⁴³

⁴² Hosli, M.(1996). Coalition and Power. *Journal of Common Studies*, 34(2), p. 4

⁴³ European Law Monitor, Consultation Procedure.

Report of the committee guides voting among MEPs and if an absolute majority is constituted, Parliament's stance is presented to the Council. The process continues with voting procedure in one of nine the Council' configurations, which are coordinated by Coreper:

- General Affairs and External Relations
- Economic and Financial Affairs
- Cooperation in the fields of Justice and Home Affairs (JHA)
- Employment, Social Policy, Health and Consumer Affairs
- Competitiveness
- Transport, Telecommunications and Energy
- Agriculture and Fisheries
- Environment
- Education, Youth and Culture⁴⁴

The result of the voting leads to the legislation of a new EU law or rejection of the proposal.

Stated process above is presented as an instance to give the reader an overall idea of relationship between three institutions. Each legislative procedure contains its own processes and rules and therefore, roles of intergovernmental and supranational institutions changes from one subject to another. According to Hosli, alteration made on the scope of the legislative procedures gradually reduced power of the intergovernmental block that is represented by the Council, by increasing Parliament's voice in legislation.⁴⁵ In order to make comments on the positions of the Council and Parliament, legislative procedures as consultation, assent, co-operation and co-decision and their scope on the subject matters is going to be analyzed in detail.

⁴⁴ Council of the European Union, Council configurations

⁴⁵ Hosli, M.(1995).The balance between small and large. p. 3.

CHAPTER TWO

Legislative Procedures

As Schulz and König underline the literature EU institutional reform had a remarkable impact on legislative ‘decision making.’ For instance, under consultation procedure they argue that Commission has its highest power, while co-decision procedure diminishes its influence in favor of the Parliament. Similarly, he emphasizes the ongoing discussion among scholars on the changing relative power of the Council as a result of institutional reforms.⁴⁶ In this chapter, changing balance of power between the two EU institutions as the Council and Parliament is analyzed to clarify the consequences of national governments’ decisions under the name of institutional reforms. Legislative procedures’ mechanisms and their scope are determined by the Treaties and thus it is crucial to bear in mind that these are the outcomes of the intergovernmental process of bargaining between member states in IGCs. Respectively each legislative procedure as consultation, assent, co-operation and co-decision and their current scope are examined to point out the Council’s recent position in comparison to Parliament’s.

2.1. Consultation Procedure

Depending on Article 192 of EC Treaty, the Council is obliged to consult Parliament, if the issue is subjected to consultation procedure. Or Commission has right to ask Council to consult Parliament. However, either case does not compel the Council to take account Parliament’s opinion; seeing Parliament’s opinion on thesis would be enough for the Council to proceed on legislation of that act. The process continues as follows; the proposal is sent to Parliament, European Economic and Social Committee and Committee of Regions to get their opinions on the proposal. After receiving these opinions, Council can decide either to approve or reject the Commission proposal. Consultation procedure applies to various articles from these areas:

- agriculture
- competition rules

⁴⁶ Schulz & König. p. 655.

- tax arrangements⁴⁷

As can be seen from these three lines, the scope of the consultation procedure is remarkably limited. In addition, without getting into details of these issues, it is apparent that consultation procedure does not contribute any autonomy or competence to Parliament. As a procedure, Council is hold responsible to request Parliament's consent with consultation procedure. Hence in practice, narrowing or expanding the scope of consultation procedure do not have any impact on roles of both Council and Parliament in decision making, rather it extends the process.

2.2. Assent Procedure

Assent procedure is introduced by Single European Act in 1986 and such issues are defined under assent procedure: Conclusion of association agreements and the analysis of the applications of candidate countries wish to be members of EC.⁴⁸ Assent procedure was extended to several additional issues that require unanimity in the Council by TEU in 1992. However, Treaty of Amsterdam narrowed its scope to Structural Funds and Cohesion Fund.⁴⁹ Assent procedure allows Parliament to point out its negative or positive approach on a discussed issue in the Council and in some cases, Council cannot approve a proposal without Parliament's assent. The procedure operates accordingly: Council sends the proposal coming from Commission to the Parliament. If Parliament presents its assent by the absolute majority, which was required by Article 192 of the EC Treaty, then the Council can approve that act. On the other hand, if Parliament does not approve or absolute majority cannot be constituted, measure cannot be adopted. From conspectus, this process seems like it provides a veto power to Parliament, yet maybe in order to hinder this probability, assent procedure includes an exit for the Council. If a positive outcome is needed, an interim report including recommendations on the proposal can be requested from Parliament by the Council and further debates with the Council can be issued. In addition, in this process Parliament does not hold a right to amend on a proposal should either approve or reject.

In present assent procedure is effective on the following issues:

⁴⁷ Europa, Decision Making in EU

⁴⁸ Eur-Lex, Process and Players

⁴⁹ EP website, Assent Procedure

- enhanced cooperation (Article 11(2))
- specific tasks of the European Central Bank (Article 105(6))
- amending the Statute of the European System of Central Banks (Article 107(5))
- Structural Funds and the Cohesion Fund (Article 161)
- uniform procedure for elections (Article 190(4))
- certain international agreements (Article 300(3))
- violation of human rights (Article 7 TEU)
- accession of new Member States (Article 49 TEU)⁵⁰

Articles that are put under the assent procedure are not related to crucial conclusions, yet decisions cover a small part of community pillar as enhanced cooperation of several member states. As a result, independent from its scope assent procedure comprises limited influence for Parliament. On account of not being able to amend the proposal, but possessing a veto right, which can be resolved by further attempts of the Council, situates the position of Parliament under assent procedure. Attention given to consultation and assent procedure declines gradually and consequently, both procedures is proposed to be put together under the name ‘special legislative procedure’ in Treaty of Lisbon.⁵¹

2.3. Co-operation Procedure

As assent procedure, co-operation procedure is entered into force by Single European Act with Article 252 of EC Treaty. Co-operation procedure is more complex than previous procedures as can be seen in *Figure 2.:*

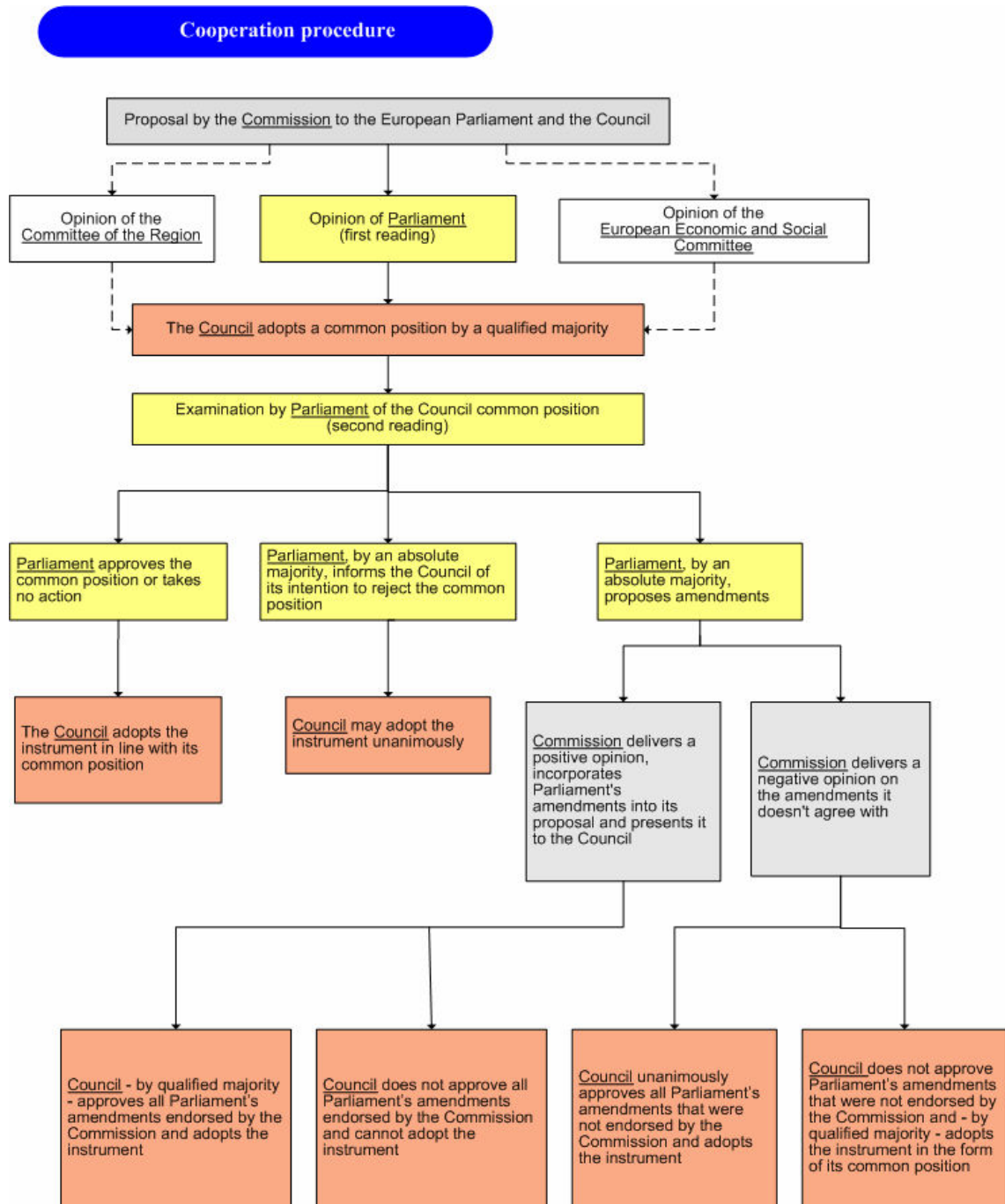
Parliament after receiving Commission’s proposal, sends its opinion to the Council as first reading. Council reads all opinions coming from Parliament, Committee of Region and European Economic and Social Committee on the same proposal and reaches a common position. Later, Parliament analyses received common position as second reading. If Parliament approves the latest proposal or sends nothing back, Council is able to conclude the procedure with its common position. However, if Parliament rejects the common position with absolute majority, Council is obliged to adopt its common position by unanimity. On the other hand, if Parliament recommends amendments by absolute majority to Commission, Commission may agree with Parliament and include Parliament’s amendments to the initial proposal or may reject

⁵⁰ Eur-Lex, Assent Procedure.

⁵¹ Treaty of Lisbon, Article 249 A.

the amendments. If Commission agrees with Parliament, the renewed proposal is sent to the Council to get its approval to adopt the act or Council may reject the final proposal and fails the process. Nevertheless, if Commission does not accept the amendments, it still has to send the proposal to the Council. It may approve all of the Parliament amendments and adopt proposal by unanimity or without accepting Parliament's amendments, it may adopt its common position by qualified majority.⁵²

Figure 2. Co-operation Procedure



⁵² Eur-Lex. Co-operation procedure. *Process and Players*.

Currently few articles were left under the co-operation procedure as stated below, yet the rests were replaced by co-decision procedure by Treaty of Amsterdam:

- rules for the multilateral surveillance procedure (Article 99(5))
- prohibition on privileged access to financial institutions (Article 102(2)),
- prohibition on assuming liability for Member States' commitments (Article 103(2))
- measures to harmonize the circulation of coins (Article 106(2))⁵³

As a result, Parliament has two readings in this procedure by which it can amend both the Commission proposal and common position of the Council. However, the scope of the co-operation procedure does not provide Parliament a wide and significant area to reflect its existence. Parliament's position is seemingly reinforced by co-operation procedure, yet the remarkably limited scope of co-operation procedure neutralizes this influence on Parliament's role without narrowing Council's capabilities.

2.4. Co-decision Procedure

As the final and most expanded procedure, co-decision procedure went into effect by the TEU and it was extended by the Treaty of Amsterdam and Treaty of Nice. According to Article 251 of EC Treaty, co-decision procedure was determined as the core among the legislative procedures. It seems like the continuation of co-operation procedure, but it includes three readings instead of two.⁵⁴ Procedure in co-decision operates by the following way:

Like in co-operation procedure Committee of Regions, European Economic and Social Committee and as a result of its first reading Parliament send their opinions to the Council. If Council accepts the amendments as a whole or if Parliament approves the proposal, the Council adopts the act. If Council does not agree with Parliament about all of its amendments or Parliament does not accept the proposal, the Council prepares a common position by qualified majority. Then, the common position is conveyed to Parliament for the second reading. If Parliament does not act after the

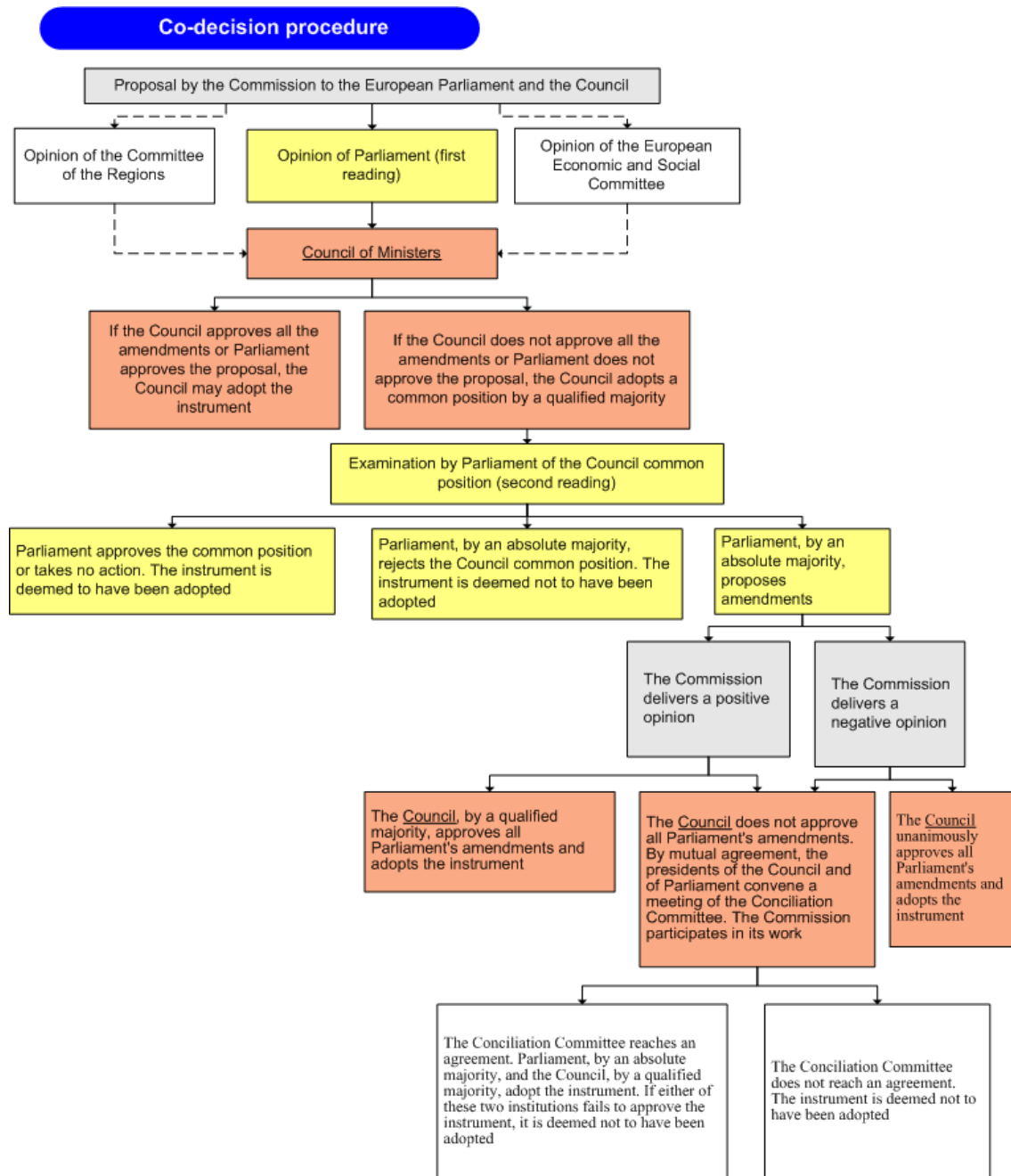
⁵³ Eur-Lex. Co-operation procedure.

⁵⁴ Eur-Lex, Co-decision Procedure.

second reading or approves the common position, the proposal is enacted. However, if Parliament rejects common position by absolute majority without amending, the measure rejected as a whole. On the other hand, if Parliament suggests amendments by absolute majority, Commission either agrees with Parliament or not and forward the final proposal to the Council. If the Council approves all of the Parliament amendments, it adopts the measure. If the Commission does not approve, the Council accepts whole amendment by unanimity to adopt the measure. In either case, if Council did not approve Parliament's amendments, both institutions apply to the 'conciliation committee', in which Commission participates too. If an agreement reached Parliament should approve the result by absolute majority and the Council by qualified majority. Unsuccessful voting in the institutions or nonagreement outcome of conciliation committee leads to the failure of adoption of the measure.⁵⁵

⁵⁵ Eur-Lex. Co-decision procedure. *Process and Players*.

Figure 3. Co-decision Procedure



Source: Eur-Lex. Co-decision procedure. *Procedure and Players*

Co-decision procedure grants Parliament capability to amend proposal, yet most significantly Parliament is reinforced with the veto power on Council's common position, which cannot be overlooked by unanimity voting. Worst case scenario for intergovernmentalists is the possibility of Parliament's rejection without recommending amendments as a result of third reading; however it is unlikely to happen. Because, choosing not to discuss in the 'conciliation committee' and rejecting proposal would harm the credibility of Parliament, which is aimed to strengthen in the eyes of EU

citizens by extending co-decision procedure. Thus Parliament's possibility to reject the proposal without applying to 'conciliation committee' is extremely low. Co-decision procedure requires direct cooperation among the Council and Parliament, whose duty is to enact member states' specified goals with negotiations in an institutionally most optimum way.

As stated before, in order to increase Parliament's credibility there has been a gradual extension in the scope of the co-decision procedure. Firstly, TEU established co-decision procedure on these areas; right of establishment, right of establishment on services, the free movement of workers, the internal market, consumer policy; in the scope of incentive measures; health, education and culture, under the trans-European networks title's guidelines, framework program of research and general action program of environment. In comparison to other procedures, its initial influence area was wider than the others' and such subjects stem from the Community activities, which is described as "daily policy decisions within the broadly accepted goals"⁵⁶. Moreover, issues of social exclusion, public health and the fight against fraud extended the influence area of co-decision procedure by Treaty of Amsterdam.⁵⁷ Aim to designate the co-decision procedure as the standard procedure of decision-making system; it was expanded along the extension of qualified majority by Treaty of Nice. This widening included titles such as combating discrimination, judicial cooperation in civil matters, industry, economic and social cohesion (except Structural Funds), European political parties and visas, asylum and immigration.⁵⁸ For the first time, cooperation on crime or police force related issues are embodied into co-decision procedure, but these inclusions were quite restricted.

Final step in widening of co-decision procedure is proposed in Treaty of Lisbon. According to Treaty of Lisbon, co-decision procedure will be renamed as 'ordinary legislative procedure' without making any other changes on the procedure. Additionally, it broadens application of ordinary legislative procedure with thirty nine articles suchlike nondiscrimination, workers, services, capital and payments, policies on border checks, asylum and immigration, judicial cooperation in civil and criminal

⁵⁶ Moravcsik, A.(2008). The European Constitutional Settlement. p. 167.

⁵⁷ Europa Glossary, Codecision Procedure

⁵⁸ Scadplus, Codecision Procedure

matters, police cooperation, approximation of laws, economic policy, monetary policy, energy, tourism, civil protection, common commercial policy. In total, ordinary legislative procedure will be imposed on over seventy articles.⁵⁹

Currently issues extended to co-decision procedure do not include sensitive subjects for member states as taxation, defence or foreign policy. However, as the most extended legislative procedure, co-decision procedure creates a stronger institutional link between the Council and Parliament, which extends the process.

In addition, co-decision procedure removes Commission right to approve or reject Parliament's amendment before Parliament's communication with Council. As a result, a direct link is created between the Council and Parliament by co-decision procedure and reduced Commission's influence in legislation. Warleigh asserts that Moravcsik considers this result as preservation Council's superiority over Commission in legislation.⁶⁰ Consequently, from this perspective member states did not delegate an additional competence to a supranational institution; they just rearranged positions of supranational institutions in co-decision in favor of the Parliament and in the expense of the Commission. However, it does not sufficiently explain Council intentions to extend Parliament's roles. In addition, it is not the most efficient way of legislation, because as Schulz and König prove the time period of decision-making gets longer in the co-decision procedure in comparison to others.

Eurobarometer's survey results present a possible answer to this question. One of the questions of Eurobarometer survey was "In your view, which of the following institutions should have the greatest decision-making power within the European Union?"⁶¹ *Figure 4.* illustrates that the highest percentage of responses was given in favor of Parliament with a large difference in each member state. The highest percentage of Parliament is 63%, whereas Council's largest share is 18%. Thereby, this response can be considered as demand. Due to the entailment to fulfill domestic demands by national governments, national governments might have perceived this action in favor of them and agreed to approve the extension of co-decision procedure,

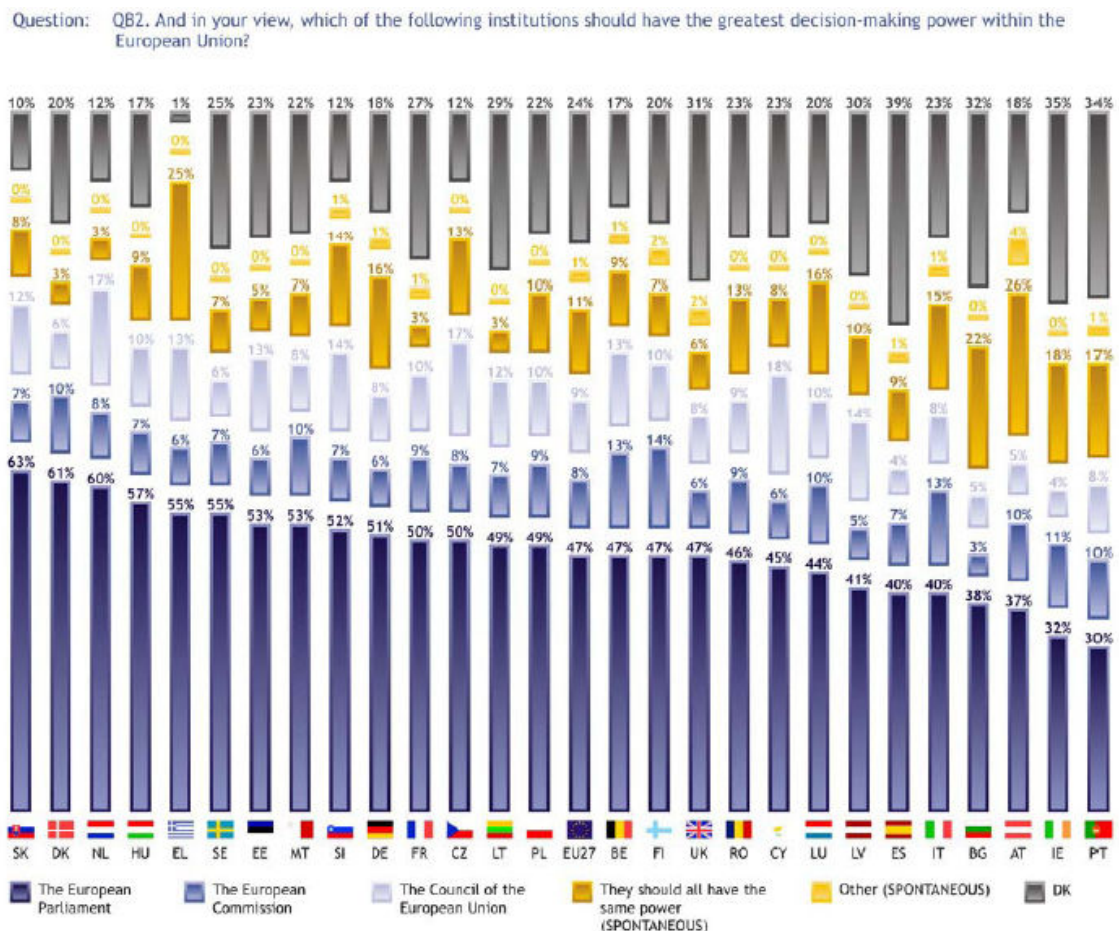
⁵⁹ Robert Shuman Foundation.(2007). The Lisbon Treaty. p. 38-46

⁶⁰ Warleigh, A.(2002). Substantive Democracy and Institutional Change: The Paradox of Codecision. p.6.

⁶¹ European Parliament March 2008 Report. p. 21.

from which their vital interests are protected. Answers of survey question prove this domestic demand and in the meantime contribute Moravcsik's argument of possibility of 'delegating or pooling', if there is a higher benefit to be achieved.

Figure 4. Which institution should have the greatest decision-making power?



Source: European Parliament March 2008 Report.⁶²

Even if co-decision procedure does not require continuing compromise from member states, taking power of Commission and granting it in another shape to the Parliament is in the scope of delegating. Therefore, a different reason in addition to the aim to diminish Commission's role is necessitated like increasing Parliament's credibility in the eyes of the EU citizens for national governments' account.

⁶² European Parliament March 2008 Report. p. 21.

2. Concluding Remarks

Consultation and assent procedures do not contribute Parliament's position, thus both of the Council position are not restricted in accordance to these procedures in decision-making. On the other hand, Parliament is granted amending act by co-operation procedure that does not result in any change on the Council's position either. Argument of Hosli can be refuted in each case of legislative procedures, especially for co-decision procedure, due to the low possibility of Parliament's rejection of the proposal without applying to the conciliation committee for its credibility. In addition, it has the single impact as Schulz's and König's research asserts; Parliament's participation to the procedure increases the time period of decision-making process.⁶³

By acknowledging distinct influence of the Parliament in EU legislation, it is remarkable that there has been no impeding progress in alterations of each legislation procedures to block Council's autonomy or capability independent from member states' conclusions. The parallel path that European integration and extension of co-decision procedure follow, endorses position of the Council as well as member states' as pathfinder that determines institutions, roles of these institutions and instruments, which will be used by such institutions. Increase in the Parliament's voice in decision-making process is a part of a plan that reinforces member states from the domestic perspective. In addition, extension of co-decision procedure does not entail fade of the Council in decision-making process, yet only brighten a little Parliament's face in the eyes of citizens.

⁶³ Schulz, H & König, T. (2000). Institutional reform and decision-making efficiency in the European Union. *American Journal of Political Science*, 44(4), p.665.

CHAPTER THREE

Voting Procedures

Schulz and König approached to the institutional reforms from the perspective of time period of a proposal, which will become a provision. As a result, according to them its speed determines the efficiency of that reform. From this point of view, they stress the impact of voting procedures and instruments of secondary legislation in EU's decision-making speed.⁶⁴ Voting procedures are the consequences of primary legislation as legislative procedures. Not only their content cause bargaining between national governments, also their modifications and scopes are the products of bargaining process. Therefore, voting procedures and their extension are crucial to national governments to cooperate in accordance to their preferences. Intergovernmental platforms, in particular the Council, IGC and European Council cover all bargaining relations and interactions between member states. First of all bargaining in the Council requires national governments to consider their preferences. As Moravcsik aligns first stage of international cooperation is the preference formation and then bargaining comes as a second stage.⁶⁵ This consideration at the first place constitutes the possible legal influence of an act on national law. Whether will it be binding to all member states or not? How will the method to apply the policy affects national law or not? Answers to such questions lie on the outputs of the Council's decision-making that designate the impact area of the proposed policy.

This chapter assesses firstly the instruments of second legislation to underline their meaning for member states. Then voting rules are analyzed in order to scan historically their influences on decision-making process and their scope would complete the examination that clarify whether or not all of these instruments can be define as obstruct for member states autonomy or capabilities.

⁶⁴ Ibid. p.664.

⁶⁵ Moravcsik, A.(2008). European Constitutional Settlement. p. 158.

3.1. Outputs of the Council Decision

Such instruments can be binding for every member states or just for one member state, to which the legislation is directed or non-binding at all depending on its definition: regulation, directive, decision and opinion.

Firstly, a regulation is binding result of decision-making. Each member state is obliged to adapt that provision into its national system within the time period that is specified in that regulation. In addition, distinct from directive and decision, regulation is directly applicable; it does not allow changes that stem from the national differences. It should be applied into the national law as the provision indicates.⁶⁶

On the other hand, a directive is less normative in comparison to regulation. Directive should be addressed to a certain member state, due to the aim to use directive as aligning national laws. Only specified member state is hold responsible to fulfill the requested conditions by directive. Ways to reach that result is not crucial; it can be determined by the national government. However, if measure could not be fulfilled before its deadline as stated in the directive or it goes in effect incomplete, citizens of that nation can apply to national court for the directive's application.⁶⁷

Thirdly, a decision is used to hinder a member state or an individual for performing an action or to grant a member state or an individual a right or compel for a measure. Therefore, decisions are similar to regulations in reasoning; it is binding for that member state or person, yet it should be designated individually, not be obligatory for everyone and does not require national implementation of a legislation.⁶⁸

Furthermore, a 'recommendation' is an instrument that can be used to maintain communication between institutions and member states or with other institutions. Without creating any legal obligation, institutions can present their suggestions to a specified address by recommendations. Similarly, an 'opinion' is close to

⁶⁶ Eur-Lex. Regulation.

⁶⁷ Eur-Lex. Directive.

⁶⁸ Eur-Lex. Decision.

recommendation. It is non-binding instrument to state an institution's idea on a question.⁶⁹

Among these instruments, regulation constitutes great power to the Commission to enforce that specified conclusion. Thus the process to enact a regulation gathers full attention of national governments. On the other hand, a directive only influences one or several member states, which can be define as a threat for those member states. Because of adopting such provisions by bargaining, negotiations are concluded according to the relative power of member states. In addition, influence of decision does not endanger any member states' sovereignty, on account of not necessitating implementation of a provision on national law. Consequently, both recommendation and opinion comprise neutral elements on national governments.

Additional to such instruments, the Council is capable to create a 'joint action'. It is introduced in TEU with the definition of coordinated action of member states that are agreed to use all of their resources to reach a common goal.⁷⁰ The Council may adopt a joint action unanimously and regulate its implementation by qualified majority (if it is decided by unanimity to vote by qualified majority), yet the outcome is binding for all member states. Likewise, 'framework decisions' are stated firstly in TEU on issues of police and judicial cooperation in criminal matters. It works just like a directive; it is binding for all member states and how to achieve that determined objective is left to national governments. Finally, 'common position' is specified by the Council unanimously to present a collective approach of member states to a given proposal or a question.⁷¹

Consequently, such instruments do not constitute any threat for capability and autonomy of member states, because these cannot be one of the Stone Sweet and Sandholtz's 'supranational rules' that impede member states. According to these outputs, as Schulz and König's research present the results of "shorter proposal-decision time lags" of regulation and decision, whereas directive requires longer time

⁶⁹ Eur-Lex, Recommendation and Opinion.

⁷⁰ Europa Glossary, Joint action.

⁷¹ Eur-Lex, Process and Players.

period due to its necessity to change the national law.⁷² Thus, decisions are more significant than other outputs.

In addition, the legal representation of the act determines the initial influence on the approach of a national government, which is concentrated on the ‘distribution of benefits’⁷³. If a member state’s preference fall under the influence area of that specific provision, a second issue comes into the picture; its voting procedure. In the Council, as stated before some proposals are defined by Coreper as B-point to be debated in the Council meetings. Discussions on such proposals and national preferences of each member state on that specific subject form the bargaining circumstances. Bargaining process proceeds with voting in the Council meeting and it is renewed until member states reaches to a common conclusion in accordance to that voting rule. In addition, unlike instruments of secondary legislation, widening the scope of a certain voting procedure such as qualified majority or double majority voting may turn into one of the supranational rules, if it is permitted. Therefore, voting procedures constitutes a stronger impact on member states approach to the issue.

3.2. Rules of Voting Procedures

As it is determined by the Treaties, the Council has currently three different broadly used voting procedures as unanimity, simple majority and qualified majority and one final voting procedure that was proposed in Treaty of Lisbon called double majority. Each procedure’s rule determines the circumstances of bargaining and autonomy of national governments in voting.

All EU member states have one vote under unanimity. In spite of this equality, unanimity is met by the approval of all members, which makes the process harder. Thus one rejection fails the proposal and that confers each member state a kind of a veto power. As a result, it requires each member states’ satisfaction and persuasion to vote in favor to amend an act. It is being used since 1957, Treaty of Rome. Almost all decisions are taken unanimously until 1986, Single European Act. However, unanimity paves the way to problems in Council meeting among members, especially in 1965. In

⁷² Schulz, H & König, T. (2000). Institutional reform and decision-making efficiency in the European Union, p. 664.

⁷³ Moravcsik, A. (2008). European Constitutional Settlement. p. 163.

1965, French protest called ‘empty chair crises’ led to detain decision-making process. Replacement of unanimity role with qualified majority voting in several articles, in particular clauses related to agriculture is one of the trigger reasons of this protest.⁷⁴ Unanimity is the only voting procedure that comprises the circumstances for member states to reflect their preferences as in a mirror on to voting by granting them a veto vote.

On the other hand, according to simple majority rule each member has equal voting weights and 51% of total votes was determined as threshold to adopt a decision. Simple majority is defined as unweighted majority. As unanimity, this procedure depends only to membership footing in allocation of votes without making any differentiation according to their population. However, simple majority necessitates a coalition formation, in order to defend its national interest; one should be a part of the winning side. It can be either side that approves or rejects, because blocking minority’s threshold is also 51% of the total votes. Therefore, significance of the coalition formation comes forth as future’s tradition. Coalition formation is easier in simple majority rule than other majority procedures, due to the distribution of same vote weights to each member state. Thus simple majority procedure constitutes more choices for coalition formation.

In contrast, qualified majority procedure is more complicated than simple majority both in the formation of a coalition and blocking majority. Unlike simple majority, qualified majority operates on the basis of weighted vote, which has been changed several times by the Treaties. Distribution of votes sometimes favored big states with high population, sometimes small states depending on relative power of national governments in bargaining then. For instance, in 1958 the smallest country Luxemburg had 1 vote and the largest country Germany had 4. These numbers were increased in 1973, 2 as minimum and 10 as maximum amounts. Finally, it reached to the range from 3 to 29 votes.⁷⁵ Additionally, overall the threshold has been roughly two thirds of the votes, if the act is initiated by the Commission proposal. On account of varying voting weights and higher thresholds, coalition formation were getting difficult

⁷⁴ ‘Empty chair crisis’ See page 31.

⁷⁵ Baldwin, R.&Widgren, M.(2004).Winners and losers under various dual-majority voting rules for the EU’s Council of Ministers.*CEPS Policy Brief*. 50. p.7.

and it becomes harder to reflect the national interests on voting especially for small and middle sized states. However, enlargements caused problems in allocation and alteration of qualified majority voting became an issue for a long time.

Nevertheless, the last place on this alignment would belong to double majority procedure. Double majority was introduced firstly by Treaty of Nice in 2001; however it is rejected. The Constitutional Treaty included this proposal, yet it did not ratify and reintroduced with Treaty of Lisbon, which did not enter into force yet. It designates majority depending on two separate conditions; member states' votes and EU population. Thresholds of 55% of member states' votes that is supported by 65% of EU population fulfill the double majority. Inclusion of an additional variable into calculations obstructs coalition formation for small countries, due to their small populations. Double majority voting is either encouraged or rejected, it depends on the territory. Germany's point of view would be strongly in favor of this application, due to its high population rate; however, Luxemburg would not benefit from this procedure, in contrast double majority diminishes its relative power.

Between these procedures, national preferences can be exactly reflected by unanimity as if it is on a mirror. Therefore, the highest level of member state's power can be acquired under unanimity procedure, and then their roles diminish due to the restrictions stemming from voting procedures. Respectively simple majority, qualified majority and double majority could be put on a line of closeness of the measure of reflection of state preferences. However, intergovernmentalism envisaged this decline as the costs of the cooperation among increasing number of member states, which is lower than the benefits that are acquired.⁷⁶ On the other hand, Stone Sweet and Sandholtz may see this as weakening of authority of member states on the conclusions. Because, not all of the national governments are able to defend their national preferences under qualified majority rule and as an evolution member states' will lose their control.

Analysis of the consequences of each alteration on voting procedures and extensions or narrowing on their scope asserts the dominance of member states

⁷⁶ Moravcsik, A.(2008). European Constitutional Settlement. p. 163.

preferences and bargaining between them. When it is moved from unanimity rule towards double majority rule, roles of member states are started to vary from each other, on account of the increasing in details/conditions. Unanimity constitutes individual member states and their preferences; however majority voting rules compel member states to act as a group for cooperation. In accordance, there has been an increase in the number of options offered to national governments. A common role for valid for each voting procedure cannot be defined for member states, due to the various relative powers of member states. Nevertheless, unanimity rule requires each member state to either approve or reject, there is no need for further negotiations to form a coalition. In case of simple majority, choices are either to join the winning coalition or blocking coalition. In addition to these two choices, qualified majority voting presents national governments the capability to create distinct exits from common provisions. The choices of national governments increase, whereas their relative powers changes accordingly. Nevertheless, developments experienced inside EC/EU borders bring changes; enlargements and other circumstances led to the extension of qualified majority voting by narrowing unanimity's scope.

3.3. Allocation of Voting Procedures on Subject Titles

3.3.1. Unanimity and Simple Majority

In 1957, Treaty of Rome announced unanimity as the central voting procedure and till 1965 decisions were taken according to unanimity rule. EC was consisting of six member states during this period and agreement on the basis of unanimity was an obtainable result for a group of six states. In present, conformity among 27 member states on one specific issue is close to impossible; therefore implication of unanimity to all titles would stop decision-making in the Council as it was experienced in 1965 with 'empty chair crisis'.

According to Treaty of Lisbon, only these issues will be subjected to unanimity: anti-discrimination measures, defence, taxation, creation of a European Public Prosecutor, employment law, the multi-annual financial framework, own resources and

treaty revisions.⁷⁷ Furthermore, fifty four decisions are proposed to be moved to the qualified majority voting from unanimity. These articles are related to energy, intellectual property, social security for migrant workers, judicial cooperation in criminal matters, structures of Eurojust and Europol, culture and urgent financial aid to third countries.⁷⁸ However, Treaty of Lisbon did not ratified yet and Treaty of Nice is still valid to keep these clauses under the procedure of unanimity.

On the other hand, simple majority is not operational widely; just several articles are subject to simple majority rule. It would ease the voting procedure, but it stipulates equal votes to all member states, which ignores population differences among member states as between Germany and Malta. For sometime, weighted votes were distributed according to the negotiations between member states, then as a result of ongoing enlargements a fixed formula which is acceptable for all member states, was trying to be formulated. At this point, population rose as a variable in the allocation. However, simple majority does not represent differences among member states in itself. Consequently, it was introduced only on general provisions of EURATOM Treaty and TEC; however today its usage is limited with these four articles:

- determine organization of Council's General Secretariat's by Council (Article 207 EC)
- request for a research on a possible common objective (Article 208 EC)
- determine rules governing the Council committees (Article 209 EC)
- collecting information and controlling performances of tasks (Article 284 EC)⁷⁹

Due to the impossible practical application of unanimity in the Council consisting representatives from 27 member states and the necessity to present member states' differences on votes, unlike simple majority, qualified majority voting arises as a remedy for irregular functioning of decision making in the Council. On account of this reason, qualified majority has been extended by Treaties and unanimity and simple majority were kept as voting procedures respectively on sensitive and insignificant subject matters. Focusing on the qualified majority's broadening releases the choices of member states during each widening period and such choices enlighten whether or not

⁷⁷ The EU Reform Treaty, White Thesis. p.63.

⁷⁸ Ibid. p. 62.

⁷⁹ European Navigator, Simple majority and Consolidated TEC and TFEC

actually there has been a gradual decrease on the control of member states' on conclusions independent from their actions.

3.3.2. Qualified Majority Voting

Qualified majority is the number of votes required to approve a decision in the Council. According to Schulz and König, qualified majority voting declined the legislation's time period, which supports their efficiency theory.⁸⁰ Majority thresholds are determined by votes allocated to member states that are arranged according to weighted votes, which have been changed four times till 2008 and another proposal is waiting on the line for the ratification of Treaty of Lisbon. The scope of qualified majority was extended by each Treaty and the latest proposal offers broadening of qualified majority to forty policy areas.⁸¹ Its widening is crucial to both sides of Moravcsik and Stone Sweet and Sandholtz and presented different approaches explaining the causes, yet the analysis of consequences from the historical path defends Moravcsik's perspective.

3.3.2.1. Treaty of Rome

In the establishment of EEC, unanimity was determined as the central voting procedure; however Treaty of Rome designated some articles to come under the scope qualified majority or determined movement of several articles from unanimity to qualified majority with conditions as application of qualified majority rule after the first stage or second stage of the transitional period or by the completion of the transitional period of internal market. The subject matters were:

- discrimination on grounds of nationality (Article 7)
- free movement of goods (after transitional period) (Articles 28)
- agriculture (after 2nd) (Articles 42, 43)
- free movement of persons, services and capital (after 1st or 2nd stages) (Articles 54(2), 55, 56(2), 57, 63(2), 69, 70(2), 73(1) Original Treaty)
- transport (Articles 75(1) (after 2nd stage), 79)
- common rules on competition, taxation and approximation of laws (Articles 87(1) (after 3 years), 92(3), 94, 98, 101(after 1st))

⁸⁰ Schulz,H&König,T.(2000). Institutional reform and decision-making efficiency in the european union.p.665.

⁸¹ Euractiv.(2007).The 'Treaty of Lisbon'.

- economic and monetary policy (Articles 103, 108(2), 108(3), 109)
- common commercial policy (after 2nd stage or transitional period) (Articles 112(1), 113, 116, 127)
- provisions governing the institutions (Articles 154, 203, 203(3), 203(5), 204, 206, 206(b))⁸²

Initially qualified majority voting was started to be used on areas such as discrimination depending on nationality, economic and monetary policy and rules to administrate Community institutions. Additional clauses were envisaged to enter into force under qualified majority; after the first stage several articles from free movement of persons, services and capital; following the second stage on issues related agriculture and common commercial policy; at the end of the transitional period as free movement of goods. From the number of articles under each heading, it is presumed that during those times member states endeavor for creation of credibility between themselves, which would lessen the cost of cooperation and ease the evolution towards the establishment of internal market. In addition, may be to facilitate the transition to qualified majority voting, it was introduced in Treaty of Rome, yet was planned to put into force gradually on articles related to common market. On the other hand, as a new organization EEC was required to be improved institutionally and on account of not being directly linked to national preferences couple of articles on operation of EEC's institutions was defined under qualified majority rule.

In Treaty of Rome, member states were relatively freer than today to act according to their national interests and thus experienced several tough obstacles in front of them during negotiations, because of having few numbers of members and starting a new relationship/communication among member states, each of which is the rule maker of EEC. During these circumstances, baby steps were also taken on the subjects of agriculture, free movement of goods and transport, which would be widen by succeeding Treaty as a result of twenty nine years long negotiations.

3.3.2.1.1. '1965 Empty Chair Crisis'

All other subjects were introduced under unanimity rule. Six founding member states acted together on the rest of the issues until a brake down in 1965, French protest.

⁸² For detailed information, see Appendix, *Table 2*.

Approaches of member states during 1957 permitted future arrangements to extent qualified majority, but implementation of these provisions were entrusted to the perspectives of member states in 1960s. The election of French President, Charles De’Gaulle in 1958 initiated sharp negotiations in Council meetings. According to Mazey, De’Gaulle wanted to diminish the EEC influence on national governments and challenged the mechanism of the Commission, due to his suspicions about the formation of supranational institutions over nations and future plans of France.⁸³ As a result, he created a kind of an alternative of EEC called ‘Fouchet Plan’ and proposed it to the Commission in 1959. This was a political ‘union of states’ that requires cooperation on foreign policy and defense.⁸⁴ In De’Gaulle’s first draft of proposal, regular meetings of six states’ foreign ministers were proposed, in which political issues would be discussed. However, crucial points for other member states were the positions of France and UK in this plan. France rises as an independent state among America and Russia and as a leader that unites Europe. It excluded UK in order to impede the influence of America on Europe using its relations with UK that had been seen as the ‘Trojan Horse’ of America by De’Gaulle. His first attempt was concluded by the formation of an impermanent consultation mechanism among foreign ministers of member states without determining its scope or aim, due to the constraints stemming from Dutch opposition.⁸⁵ Therefore, between 1960 and 1962 he continued his struggle with an additional draft. De’Gaulle’s new institution operates as follows: Regular summits would be supported by a parliament consists of national officials and by referendum.⁸⁶ Vanke claims that Netherlands rejected this draft due to its concerns about the erasure of statuesque in Europe that was creating in economic arena by EEC and in defence by NATO. In addition, he argues that Netherlands did not want to exclude UK from discussions especially on issues connected to defence and security, which was also the member of both NATO and Western European Union (WEU)⁸⁷.

⁸³ Mazey, S. The development of the European idea. (2) Richardson, J. (Ed). (1996). European Union. p.31.

⁸⁴ Vanke, J.W. (2001). An Impossible Union. *Cold War History*. 2(1), p. 2.

⁸⁵ Ibid.

⁸⁶ Vanke, J.W. (2001). An Impossible Union. p. 3.

⁸⁷ WEU founded by Treaty of Brussels in 1948 as European Security and Defence Organization. WEU was determined as an ‘integral part of the development of the Union’ in Treaty of Amsterdam and this would be provided by the inclusion of one part of the ‘WEU acquis’ called ‘Petersberg Tasks’ into TEU. ‘Peterberg Tasks’ are described as WEU member states’ military forces’ actions, which are categorized as ‘humanitarian and rescue tasks, peace-keeping tasks, and tasks of combat forces in crisis management and peacemaking tasks’. Recently, all of EU member states are members of WEU, but there are three countries, which are associate members of WEU but not EU members; Turkey, Norway and Iceland. For detailed information see, Pagani, F. (1999). A New Gear in the CFSP Machinery.

If Fouchet Plan would have been actualized, foreign ministers of six member states would come together and take decisions in the absence of UK. Among various reactions to Fouchet Plan, Netherlands sustained its opposition. At the same time, De’Gaulle continued his negotiations with all members and agreed to include articles to protect EEC institutions and relations with NATO into Fouchet Plan. However, UK’s first application for EEC membership led to the modification of the Fouchet proposal by De’Gaulle in 1962. In this renewed draft, there was no reference to NATO, inclusion of which was strongly supported by Netherlands.⁸⁸ Netherlands defended its mistrust on France by presenting De’Gaulle’s latest act as a proof and paved the way to the collapse of the Fouchet Plan.⁸⁹

As a result, this tension caused the 1965 ‘empty chair crisis’ which is known as a turning point in EU decision-making. On account of the failure of Fouchet Plan, De’Gaulle maintained his strong opposition to so called supranational formation by using discussions in meetings to canalize French interests in to EEC decisions. For instance, discussions on Common Agricultural Policy (CAP), which came into force in 1962, was one of the means of De’Gaulle.⁹⁰ CAP was planned to erase damages of World War II in agricultural production by increasing productivity, sustaining standards of life for agrarian population, keeping food prices stable in member states’ markets and France was the biggest beneficiary member.⁹¹ Another reason for De’Gaulle’s opposition was the application of qualified majority voting in the Council voting starting from January 1966 on the grounds of third stage of transitional phase.⁹² Teasdale underlines that according to De’Gaulle the qualified majority voting would strengthen the Commission.⁹³ Consequently, in 1965, Walter Hallstein, Commission President between 1958 and 1967, proposed a document that grants Community the right of creating its own budget independent from member states; gives budgetary powers to Parliament (Assembly then). As a result of all these reasons, De’Gaulle did not accept these changes by presenting justification of influences of this proposal on its sovereignty and blamed Hallstein with reaching conclusions on budgetary proposals

⁸⁸ Vanke, J.W.(2001). *An Impossible Union*. p. 12.

⁸⁹ *Ibid.* p.14.

⁹⁰ Moravcsik, A.(1998). *The Choice for Europe*. p. 180.

⁹¹ Boulanger, P.(2005). *The Common Agricultural Policy*. p. 1.

⁹² Teasdale, A.(1993). *The Life and Death of Luxembourg Compromise*. p. 2.

⁹³ *Ibid.*

without sufficiently consulting to national governments' and acting like the President of the Europe.⁹⁴ On the other hand, De'Gaulle could not venture confrontation of other member states about CAP due to qualified majority; because CAP was approved by all members with France's hard work to convince each member state with negotiations.

Especially French Presidency of Council proceeded with disagreements. In June 1965, De'Murville, who was the French Foreign Minister then, ended negotiations on agricultural policy's financial regulations and it was declared that French Permanent Representatives would not attend the meetings until French perspective was acknowledged.⁹⁵ This protest continued till January 1966 and consequently, in those six months decision-making in Council was almost stopped. In January 1966, an agreement was reached, which is known as 'Luxemburg Compromise'. As a political declaration, it did not amend Rome Treaty. During negotiations of Luxemburg Compromise, French opposition to qualified majority voting was broken with the pressure of other five member states and foreseen articles, which were planned to be included to qualified majority after the completion of transitional period in Treaty of Rome, became operationalized. However, the following right was granted to France as all other member states:

"Where, in the case of decisions which may be taken by qualified majority vote on a proposal of the Commission, very important interests of one or more partners are at stake, the Members of the Council will endeavor, within a reasonable time, to reach solutions which can be adopted by all the Members of the Council while respecting their mutual interests and those of the Community"⁹⁶

According to this paragraph, member states were enabled to block the enforcement of a specific provision that stems from a Commission proposals, for a 'reasonable time'; until unanimous agreement is reached. In addition, proposal on creating 'own resources' was postponed until 1970, including Parliament's greater budgetary power by this agreement. Consequently, France could not obtain everything that was requested, yet was granted with a veto power on conclusions approved by qualified majority rule to revoke that proposal according to unanimity rule.

⁹⁴ Mazey, S. The development of the European idea. (2) Richardson, J. (Ed). (1996). European Union. p.31.

⁹⁵ European Navigator, the 'empty chair' policy.

⁹⁶ Luxemburg Compromise Text, Article 2, p. 8

Teasdale underlines that in practice Luxembourg Compromise was not influential on decision-making. Subjects that restricted application of qualified majority voting were ‘technical decisions on the CAP and the adoption of Community’s Budget’.⁹⁷ Nevertheless, no one was able to convince member states to widen the scope of qualified majority voting until 1986, Single European Act. As a result, national preferences continued to block extension of qualified majority voting for twenty years.

3.3.2.2. Single European Act

The Single European Act (SEA) was signed in 1986 and came into force in 1987. In order to abolish tariff barriers and similar restrictions on trade and to create European standards on domestic regulations as it was stated in 1985 EC Commission White Thesis, the first part of SEA covered articles on free movement of goods, persons, services and capital in EEC.⁹⁸ On the other hand, regulations that would ease decision-making in the Council constituted the second part of SEA. Easing instrument was defined as qualified majority voting and its scope was expanded to the clauses primarily related to single market. In addition to single market, new areas under Community actions such as social policy, economic and social cohesion, research and technological development and environment were also introduced to qualified majority rule by SEA.

- internal market (Article 8b)
- free movement of goods (Article 28)
- free movement of persons, services and capital (Articles 57(2), 59(2), 70(1))
- transport (Article 84(2))
- common rules on competition, taxation and approximation of laws (Articles 100a, 100b)
- social policy (Article 118a)
- economic and social cohesion (Article 130e)
- research and technological development (Article 130q(2))
- environment (Article 130)⁹⁹

Overall, five new clauses on economic and social issues entered to ECC mechanism with qualified majority rule and inclusion of total of twelve articles

⁹⁷ Teasdale, A.(1993). The Life and Death of Luxembourg Compromise. p. 2.

⁹⁸ Moravcsik, A.(1991). Negotiating the Single European Act. p. 1

⁹⁹ For detailed information see Appendix, *Table 3*.

eliminated the blockage over the expansion of qualified majority, which would lead to closer cooperation among member states that brought higher benefits.

Experiencing profound French opposition in 1965 that nearly stopped decision-making, revealed the first sparks of the clash between one national interest and so called 'EEC objectives' that were determined by the same member states. Generally, initial five member states defended 'EEC objectives' against French rejections and following Luxemburg Compromise together with the new members; Denmark, Greece, UK, Ireland and Portugal, several articles on single market were moved to qualified majority voting for the first time by SEA. Previous conclusions of the founding member states were maintained by both old and new members under the new circumstances. Another crucial point is that member states took one step further in cooperation by including clauses independent from single market such as research and technological development and environment. Integration on various areas as research and environment, on which cooperation was necessitated due to the reason of not being able to act as an individual state to acquire better results, but rather act as a group.

3.3.2.3. Treaty of Maastricht

The next crucial step for EEC was the signing of Maastricht Treaty, which is known as Treaty of European Union (TEU) after six years, in 1992. TEU came into force in 1993 and had broaden the scope of qualified majority on new subject titles as public health, trans-European networks, consumer protection and development cooperation. In total of thirty articles were either introduced or moved from unanimity to qualified majority voting:

- free movement of persons, services and capital (Articles 73c, 73f, 73g)
- transport (Article 75)
- common rules on competition, taxation and approximation of laws (Article 100c)
- economic and monetary policy (Articles 103(2), 103(4), 103(5), 103a(2), 104a(2), 104b(2), 104c(6-14), 105a(2), 106(5-6), 109(1-4), 109(3), 109c, 109f, 109h, 109i, 109j, 109k)
- education, vocational training and youth (Articles 126, 127)
- public health (Article 129)
- consumer protection (Article 129a)
- trans-European network (Article 129d)
- research and technological development (Article 130i(4))
- environment (Article 130s)

- development cooperation (Articles 130w, 138e)
- institutions of the community (Articles 194, 228(1-2), 228a)¹⁰⁰

The greatest expansion was experienced under the economic and monetary policy titles. Due to the initiation and preparations of European Monetary Union (EMU)¹⁰¹ in EU, the highest number of clauses that were sent under the qualified majority voting was related to operation of the system in EMU. Economic integration was started with TEC and was planned to deepen with establishment of EMU by TEU. On the other hand, another significant development was the transformation from the Economic Community to Union. TEU enacted ‘European Union’ by setting new configurations on EU institutions. In addition, cooperation on the basis of free movement of persons, services and capital were sustained to be widened by the inclusion of additional clauses related to this subject.

Most significantly TEU contained two new articles introduced to qualified majority as Article J.3(2) and Article K.3(2)b.¹⁰² According to the Treaty, joint actions can be voted by qualified majority rule, only if this is unanimously agreed in Council. Joint actions are categorized under Second and Third pillars of EU; Common Foreign and Security Policy and Justice and Home Affairs. Importance of this enabling lies on the intergovernmental structure of these pillars.

Bargaining was maintained to be the core of the decision-making and national governments negotiated their preferences in IGC 2000 to approve the Treaty of Nice. This bargaining process concluded with the creation of an exiting instrument on specified issues just for addressed member state, in order to complete the legislation process. By this way, UK was granted an ‘opt-out’ from the third stage of EMU, thanks to its relative power. An opt-out provides a special right of not joining to a specific common measure to only addressed member state.¹⁰³ UK did not replace its national currency, pound, with euro as it is required in the third stage of EMU.¹⁰⁴ However, as

¹⁰⁰ For detailed information see Appendix, *Table 4*.

¹⁰¹ As a result of IGC 1991, its creation is approved by TEU. EMU is the system of harmonization of the economic and monetary policies of member states. The end point of EMU is the introduction of a single common currency of euro. It comprise three stages, last of which was materialized in 1999 by replacing national currencies with euro.

¹⁰² Treaty of European Union.(1992).

¹⁰³ Scadplus, Opting out.

¹⁰⁴ Scadplus, United Kingdom:EMU opt-out clause.

stated before bargaining process does not end until the Treaty becomes operational. On account of Danish rejection on TEU in the first referendum in 1992, Denmark sat on the negotiation table again and received an opt-out from EMU. This opposition grants Denmark opt-outs from four common structures of EU, under the name of ‘Edinburgh Agreement’. The titles were EMU, European Security and Defence Policy, Justice and Home Affairs and citizenship of European Union.¹⁰⁵ On account of these opt-outs, in the second Danish referendum in 1993 TEU was ratified. However, Denmark’s opt-out from citizenship of EU became redundant; because of inclusion of a sentence to Treaty of Amsterdam; EU citizenship do not replace national citizenship.¹⁰⁶ Similar to Luxemburg Compromise, the opt-out mechanism provides Council the ability to move on in the case of a tough opposition and member states’ to be able to protect their preferences as possible as its relative power enables. Member states’ preferences continued to reshape presented instruments and created new ones in legislation, thanks to bargaining process.

UK’s opt-out reminds Moravcsik’s concept of ‘asymmetric policy interdependences’. He defines the interdependence as follows; “Patterns of interdependence underlie credible threats to veto, exit and exclude other governments...”¹⁰⁷ From this point of view, it is apparent that UK’s interdependence on the single currency policy is lower than the other member states. Therefore, British national government requested for the opt-out. On the other hand, it is not the case for France. France found itself the most benefiting state from EMU, thus French interdependence was higher than UK.¹⁰⁸ As a result of this differences on approaches to the policies, a member state which does not interested in cooperation on that policy, can force other national governments to provide itself an exit from that policy by using the threat of veto.

As can be seen from Danish cases even if it is assumed that an agreement is reached by signing a Treaty, bargaining may not be completed. Referenda that are required by member states’ national laws may become one of the trump cards of that member state. This trump card is the threat of veto as in the case of ‘asymmetric policy

¹⁰⁵ The Copenhagen Post.(2007). PM promises EU opt-out vote.

¹⁰⁶ Ministry of Foreign Affairs of Denmark.(2006). The Danish opt-outs.

¹⁰⁷ Moravcsik, A.(2008). European Constitutional Settlement. p. 163.

¹⁰⁸ Ibid. p. 165.

interdependences'. By the impact of this veto threat Denmark was granted opt-outs on four policies. TEU was a significant step for member states and they agreed to extent the influence of EEC with new configurations of EU. Overall, the new mechanism in the EU enable flexible integration, thus not all member states compelled to obey all collective measures. Member states are still authoritative on conclusions from both sides of cooperation formation and exit from these compromises.

3.3.2.4. Treaty of Amsterdam

Treaty of Amsterdam granted new exits to UK and Ireland. In 1997, UK negotiated for another opt-out and Ireland followed UK. These two members sat on the table for opt-outs from Schengen agreement, which would erase border controls between member states.¹⁰⁹ UK presented the reason of not being able to stop transnational crimes by using Schengen Information System, in order to be left out on the implementation of Schengen. However, Ireland asked for the opt-out on, due to its agreement with UK called Common Travel Area.¹¹⁰ As a result, two more opt-outs became operational on Schengen agreement addressed to UK and Ireland with Treaty of Amsterdam.

Furthermore, as proving the argument on the creation of exits for member states, Treaty of Amsterdam enclosed a similar instrument called 'emergency brake'. This instrument allows a member state to block implication of a measure in its country without affecting procedure on other member states.¹¹¹ Firstly, that provision should have been approved by qualified majority rule in the Council. Then, the member state may apply European Council and presents its reasons on why this measure includes vital and sensitive implications on its national policy, in order to ask for annulment of this measure just for itself. However, this request is voted in European Council by unanimity, thus it requires eligible reasons and a strong representative to convince other representatives of member states to vote in favor.¹¹²

¹⁰⁹ Scadplus. The Schengen area and cooperation.

¹¹⁰ Éinrí, P. (2002). The implications for Ireland and the UK arising from the development of recent EU policy on migration. Irish Center for Immigration Studies.

¹¹¹ Broin, P & Donoghue, J. (2007). Policy Brief on Lisbon European Council Meeting. p. 7-8.

¹¹² Bretherton, C & Vogler, J. (1999). The European Union as a Global Actor. p. 189-190

From other way around, offering another exit to member states should stem from new regulations on cooperation among member states. As expected, Treaty of Amsterdam came into force in 1999 by broadening qualified majority with twenty four articles. These articles were:

- agriculture (Article 37(4))
- free movement of persons, services and capital (Articles 40, 46, 62)
- economic and monetary policy (Articles 128, 129)
- common commercial policy (Articles 135)
- social policy, education, vocational training and youth (Articles 137(2), 139(2), 141(3))
- public health (Article 152(4))
- research and technological development (Article 166(1), 166(2), 172)
- provisions common to several institutions (Article 255)
- financial provisions (Article 280)
- general and final provisions (Article 285, 286, 299(2))¹¹³

As in Treaty of Rome, agriculture and common commercial policy were widened with additional clauses in the scope of qualified majority vote; other subjects are the same as in the expansion of TEU. In addition, Treaty of Amsterdam renews articles related to joint actions in Common Foreign and Security Policy by Article 23(2) and cooperation on the field of Justice and Home Affairs by Article 34(2). As point of origin, emergency brake is applicable on these articles.

Treaty of Amsterdam's most important role in the extension of qualified majority was introducing emergency brake on several articles. The scope of the extended articles mostly covered Community activities and the significant two on joint actions present member states an exit by emergency brake or negotiations determine opt-outs beforehand.

3.3.2.5. Treaty of Nice

Operational failures in EU institutions became significant problems, on account of the upcoming largest enlargement of EU with ten countries in 2001. Negotiations were continued to find out solutions as to be able to 'absorb' ten new member states in EU institutions. As a result of tough bargaining, Treaty of Nice was completed and

¹¹³ For detailed information see Appendix, *Table 5*.

presented for ratification. However, due to the Irish rejection in their first referendum, Treaty could be operationalized in February 2003.¹¹⁴ Two Mediterranean; Cyprus and Malta and eight Eastern block countries as Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia became members of EU in 2004. In order to maintain decision-making in the Council and preserve superiority of powerful members (i.e. France and Germany)¹¹⁵, voting weights of each member states were rearranged and threshold of qualified majority was changed, in accordance to bargaining in IGC 2000.

Such alterations in Council contained also the expansion in the scope of qualified majority voting and this extension became the largest one in the EU history. Forty six clauses were either introduced or moved to qualified majority:

- provisions on a Common the Foreign and Security Policy (Articles 23(2), 24, 27(c), 27(e))
- provisions on cooperation in the field of Justice and Home Affairs (Article 40(a))
- provisions on the institutions (Article 17 TEU)
- citizenship of the Union (Article 18)
- free movement of persons, services and capital (Articles 63(1)(a), 63(1)(b), 63(1)(c), 63(1)(d), 63(2)(a), 65(a), 65(b), 65(c), 66)
- economic and monetary policy (Articles 100(1),100(2), 123(4))
- common commercial policy (Article 133(5))
- social policy, education, vocational training and youth (Article 137(2))
- industry (Article 157(3))
- economic and social cohesion (Articles 159, 161(1), 161(2), 181a)
- provisions governing institutions (Articles 190(5), 191(2), 207(2), 210, 214, 215, 223(6), 224(5), 225a(5), 247(3), 248(4), 259(1), 263)
- financial provisions (Article 279(1))¹¹⁶

As Treaty of Amsterdam, Treaty of Nice renewed content of the articles related to joint actions on Common Foreign and Security Policy and Justice and Home Affairs and accreted several clauses on joint actions to qualified majority voting. The number of articles under each title emphasizes matters as operations of institutions and free movement of persons, services and capital. Necessity of reconfiguration of institutions was supported by articles under the title of provisions governing institutions. British,

¹¹⁴ Jones,R.(2003). Institutions and enlargement under the Treaty of Nice. p.3.

¹¹⁵ Baldwin, R.&Widgren, M.(2004).Winners and losers under various dual-majority voting rules for the EU's Council of Ministers. p.23.

¹¹⁶ For detailed information see Appendix, *Table 6*.

Danish and Irish opt-outs were still valid and emergency brakes were applicable on joint actions on the grounds of Common Foreign and Security Policy and Justice and Home Affairs.

Treaty of Nice did not make a crucial difference as introducing new subject areas to extension, yet it widened its scope on the present issues. Therefore, there were no significant clauses that could affect national preference to create additional exits.

3.3.2.6. Treaty establishing a Constitution for Europe

Treaty establishing a Constitution for Europe (TCE) diverges from other Treaties, on account of not amending founding Treaties and being created as a constitution. It was signed in 2004 and would have come into force in 2006. However, after ratification of TCE by eighteen member states, France and Netherlands rejected the Treaty by referenda. Because of these two rejections seven member states (UK, Ireland, Portugal, Poland, Sweden, Czech Republic and Denmark) decided to postpone their ratification process.¹¹⁷ As a result, European Council members were invited to negotiations about the future of TCE under the name of ‘period of reflection’.¹¹⁸ In 2007, cancellation of TCE was agreed by member states and preparations for a new treaty draft, which would amend TEU and TEC, was initiated. By the end of the year 2007, this prepared Treaty draft was signed as Reform Treaty or Treaty of Lisbon.

Even if TCE was not ratified, the intentions were to be actualized were carried into Treaty of Lisbon such as ordinary legislative procedure, double majority and expansion of qualified majority rule¹¹⁹.

3.3.2.7. Treaty of Lisbon

Rejection of TCE led to the creation of Treaty of Lisbon and ratification process continued, even though Ireland presented its first rejection to Treaty of Lisbon with its referendum in June 2008. Treaty of Lisbon was signed in December 2007 and would go

¹¹⁷ Euractiv.(2005).Ratification of EU Constitution.

¹¹⁸ Euractiv. (2007).Constitutional Treaty: ‘the reflection period’.

¹¹⁹ For detailed information see Appendix, *Table 7*.

in effect in January 2009. However, Irish rejection postponed this date as in Treaty of Nice.

As it was decided in TCE, Treaty of Lisbon includes alterations on threshold of qualified majority rule. Unanimity will only be valid for sensitive issues such as foreign policy, defense and taxation. Therefore, clauses from almost every title are moved to qualified majority rule in Treaty of Lisbon.

- provisions on the institutions (Articles 15, 16, 18 TEU)
- specific provisions on Common Foreign and Security Policy (Articles 45, 46 TEU)
- non-discrimination and citizenship of the Union (Articles 24 TEU)
- policies on border checks, asylum and immigration (Articles 77, 78, 79 TEU)
- judicial cooperation in civil matters (Article 81 TEU)
- judicial cooperation in criminal matters (Articles 84, 85 TEU)
- police cooperation (Article 88 TEU)
- transport (Article 91 TEU)
- approximation of laws (Article 118 TEU)
- monetary policy (Articles 129, 133 TEU)
- education, vocational training and youth (Article 165 TEU)
- culture (Article 167 TEU)
- research and technological development (Article 189 TEU)
- energy (Article 194 TEU)
- civil protection (Article 196 TEU)
- common commercial policy (Article 207 TEU) ¹²⁰

Treaty of Lisbon's extension comprises articles on various titles as police cooperation, border checks, asylum and immigration or judicial matters by encouraging cooperation. Police cooperation enables member states to share experiences and information on the platform called Europol. Extended article allows member states to determine the general functioning of Europol by embodying just the surface of the subject. Division on policies on border checks, asylum and immigration underlines the cooperation on this subject, from which UK and Denmark have opt-outs. Finally on judicial cooperation, the articles include the Eurojust's functioning as Europol.

Overall, each article provides national governments' higher benefits as a result of the compromises on Community activities such as energy, transport, research and technological development etc. and especially judicial and police cooperation are

¹²⁰ For detailed information see Appendix, *Table 8*.

determined as initial steps of further cooperation, which are envisioned to bring higher benefits than its costs.

3. Concluding Remarks

The list of articles extended to the qualified majority exemplifies the path of the subjects that are envisaged to cooperate around. Articles are on the historical line expanded to firstly economic cooperation, then environment, later security related issues as immigration and free movement of people until this point¹²¹; details of these issues are generally in favor of member states that are powerful in bargaining/relative power is higher. This delineated path is directly determined by the preferences of each member state and their bargaining; if a member state argues that cooperation depending on determined conditions is vital to its national law or social system, thanks to the adequate number of allies negotiations may continue in favor of this member state. Or it could proceed with that specific country's ongoing objection depending on the asymmetric interdependence among member states and the usage of a threat of veto as a trump card lead to the application of exit instruments such as opt-outs or emergency brake. There are many other various conclusions or paths of relationships in bargaining, yet neither of voting procedures or their allocation constitutes any restriction on member states' capabilities or autonomy. If any member state feels an obstruction stemming from the qualified majority voting's expansion, it is able to negotiate in accordance with its preferences without any legal restriction. As a result, extension of qualified majority and other voting procedures becomes both the influencer elements and the outcomes of member states' actions.

Consequently, the qualified majority or other voting procedures are not the legal instruments to restrict member states' control on conclusions. There is a potential of voting procedures to become a supranationalist rule that impede member states, yet analysis on the scope of them does not provide a proof to support this argument. In contrast, member states are maintaining their authority in the system through international bargaining and various differences as asymmetric policy interdependence that lead to the compulsion of the limits of the intergovernmental platforms to be

¹²¹ Tsebelis, G. (2005). *The European Convention and the failure of the Rome IGC*. p. 19.

flexible. Thus international bargaining becomes tougher for national governments and their relative powers increase its significance.

As a trump card for several member states, ‘asymmetric policy interdependences’ becomes one of the decisive factors in relative power. From Moravcsik’s perspective, negotiators search ways to increase their relative power in order to be able to raise their share from the distribution of benefits.¹²² That links the issue to another legal instrument, allocation of voting weights.

¹²² Moravcsik, A.(2008).The European Constitutional Settlement. p. 163.

CHAPTER FOUR

Voting Weights and Thresholds

A fair calculation for all voting weights' was trying to be formulated for a long time, yet the member states' desire to get the most from the distribution of benefits extended this process. Each member state would like to get the highest weight in order to be more influential in Council voting. The historical path follows changing allocation of voting weights and in relation altering thresholds of qualified majority rule reflects bargaining between member states. In order to be able to obstruct member states' control as institutionalism envisages, formulation of a specific calculation would be needed in determination of voting weight and flexibility provided by bargaining should be erased. However, until today debates to create such formula show the ongoing dominance of bargaining, thus member states'. This chapter divides this path into two; 1957-1999 and 2000- periods. Finally, Nice and Constitutional Treaty rules are compared to highlight Spain's and Poland's positions in these discussions as instances of middle-sized member states.

4.1. 1957-1999

Initially, voting weights were determined in 1957 by TEC. On account of the bargaining depending on 'the combination of population, economic power, historical precedent and political reality'¹²³ among six member states, voting weights were distributed as follows: Germany, France and Italy 4, Belgium and Netherlands 2, and Luxemburg 1. Ade underlines that the allocation did not depend on a formula; in fact the four large member states were given equal weights in spite of the wide difference of population up to 20 million.¹²⁴ As a rule qualified majority required 12 votes in total of 19 votes to adopt a decision on a proposal from the Commission, but if it was not the case, these 12 votes should come from at least four member states. When these conditions were considered, Luxemburg did not have any influence or voting power, whereas Germany and France already have eight votes together; to approve a proposal,

¹²³ Zamora,S.(1980).Voting in International economic organization. *American Journal of International Law*.74 p. 583.

¹²⁴ Ade, F.(2005). Decision making in Europe. p. 4.

alliance of Germany, France and Italy would be enough. Therefore, it is apparent that coalition of Germany, France and Italy constituted always the winning side till 1973. However, as Felsenthal and Machover underline qualified majority voting did not envisage to be operationalized until 1966 and till 1972 decisions cannot be voted by qualified majority rule, due to the Luxembourg Compromise.¹²⁵ In addition, following the first enlargement of UK, Denmark and Ireland the reconfiguration on voting weights led to the erasure of the case of great states' ability to fulfill qualified majority threshold. Nevertheless, this enlargement causes deep and long debates between member states beforehand.

In August 1961, UK applied for EC membership, in spite of its decision not to be one of the founding members, because of its doubts on the establishment of supranational institution, which was adopting common enforcements on member states on areas such as, market regulations, trade and agricultural production (CAP).¹²⁶ Denmark, Norway and Ireland joined UK in this application process. As Hosli stresses unanimity was a procedure that favors opposition states, one state's vote is enough to fail the proposal.¹²⁷ Similarly, De'Gaulle used his veto power to hinder the first enlargement attempt depending on the argument of believing that UK would act as a spy of US in EC. Thus UK, Denmark, Norway and Ireland's applications were suspended. In 1967, the second attempt of UK was also rejected by De'Gaulle by putting forward the reason of British lack of political will to form a strong Europe. Within the limits of unanimity rule, France was opposing UK's existence in EC. There was no bargaining process to persuade France to vote in favor, yet according to Moravcsik France had its reasons to decrease its credibility by misuse of its veto power. French oppositions to UK's membership were perceived as the consequence of the aim to preserve its position as a powerful country.¹²⁸ In addition, bringing forward economical reasons was the front side of the curtain for Moravcsik. Behind this seen, he embeds geopolitical interest of De'Gaulle and exerts the superiority of geopolitical benefit over the economic interest with this sentence; "economic integration is not an

¹²⁵ Felsenthal, D.S. & Machover, M. (2001). *The Treaty of Nice and Qualified Majority Voting*. p.2

¹²⁶ Edwards, G. National sovereignty vs integration. (7). Richardson, J. (Ed). (1996). *European Union: Power and Policy Making*. p.130.

¹²⁷ Hosli, M. (1995). *The balance between small and large*. p.352.

¹²⁸ Moravcsik, A. (1998). *The Choice of Europe*. p. 180

end in itself but a means to manipulate ‘high politics’.”¹²⁹ He explains his argument by stating that if only economic preferences support state’s geopolitical interests or ideology, then that economic choice becomes an action.¹³⁰ As a result, De’Gaulle’s ideological and geopolitical approaches to British membership obstructed this enlargement for twelve years. Finally, in 1973 UK, Denmark and Ireland became members of EC, whereas Norway’s application was also accepted, but its membership was rejected in referendum by Norwegians and is still not a member of EU.

Consequently, the first enlargement of 1973 set qualified majority threshold to 41 out of 58 votes, as a result of new distribution of voting weights among member states. Population of member states were determined as the basis of the calculations and states, which fell under the same range, received same voting weights as it is presented in *Table 2.:*

France, Germany, Britain and Italy had 10, Belgium and Netherlands got 5, Denmark and Ireland 3 and Luxemburg was granted 2 votes. Moreover in 1981 without changing initial calculations, Greece was received 5 votes, due to its population of 9,7 mil. Nevertheless, in order to ensure 71% quota out of 63 total votes, the threshold was raised to 45 votes. Southern enlargement of 1986, by which Spain and Portugal became members, total number of votes increased to 76, while 54 of them constituted qualified majority. Spain’s population of 38,4 mil provided itself 8 votes, whereas Portugal with 9,9 mil. population received 5 votes like Greece.

¹²⁹ Ibid. p. 27

¹³⁰ Ibid. p. 29

Table 2. Population in thousands and voting weights in the Council

Country	1958–72		1973–80		1981–84		1985–94		1995–	
	Pop	wt	Pop	wt	Pop	wt	Pop	wt	Pop*	wt
France	44,790	4	51,920	10	54,136	10	55,170	10	57,660	10
Germany†	54,290	4	61,970	10	61,660	10	60,970	10	81,410	10
Italy	49,040	4	54,788	10	56,501	10	56,771	10	57,190	10
Belgium	9,050	2	9,740	5	9,853	5	9,857	5	10,050	5
Netherlands	11,190	2	13,401	5	14,213	5	14,492	5	15,280	5
Luxembourg	310	1	353	2	365	2	367	2	400	2
Britain			55,988	10	55,387	10	56,618	10	57,920	10
Denmark			5,007	3	5,121	3	5,114	3	5,165	3
Ireland			3,086	3	3,431	3	3,552	3	3,570	3
Greece					9,701	5	9,934	5	10,430	5
Portugal							9,904	5	9,860	5
Spain							38,474	8	39,140	8
Austria									7,990	4
Finland									5,090	3
Sweden									8,750	4
Total	168,670	17	256,253	58	270,368	63	312,223	76	369,905	87
Quota		12		41		45		54		62

Source: Felsenthal, D.S. & Machover, M. (1997). The weighted voting rule in the EU's Council of Ministers, 1958-1995. p.34.¹³¹

Unhindered superiority of original states was removed in 1973 alterations and qualified majority voting was started to be used more often. France, Germany and Italy's shares in the total of votes presented a steep decrease from 23.53 % (1958-1973) to 13.16 (1986).¹³² Southern enlargement of 1986 raised the threshold to 54 and created 24 votes difference between forty votes of original states. Even inclusion of UK to larger states was not sufficient to meet the threshold of qualified majority. They constituted forty votes in total, thus they needed one additional ally in each voting. furthermore, in the case of none Commission proposal, 41 votes should be composed by six member states out of nine members that requires two allies to form a winning coalition for larger states. Most significantly, Hosli's asserts that enlargement of EC to 12 member states led to the drop on the power indexes of larger states as from 0.238 to 0.129 and middle sized states as Belgium and Netherlands from 0.143 to 0.067.¹³³ As a result, consequences of the enlargements till 1990s on voting shares of large and middle size states comprised parallel results as remarkable decrease.

Such decrease due to the accession of small and medium sized states led to creation of concerns for larger states as loosing influence on voting during TEU's

¹³¹ Felsenthal, D.S. & Machover, M. (1997). The weighted voting rule in the EU's Council of Ministers, 1958-95. *Electoral Studies*, 16(1). p. 34.

¹³² Hosli, M. (1993). Admission of EFTA state to the EC. *International Organization*, 47(4), p. 634

¹³³ *Ibid.* p. 635

negotiations; therefore a proposal that aimed to increase votes of larger states' was prepared. Nevertheless, following the late ratification of TEU, European Council reached to the conclusion of redundancy to renew allocated votes just for couple of new states. Concerns formed a discussion of either to base voting weights to 'one country, one vote' or population principle.¹³⁴ Before the accession of three EFTA members, larger member states maintained stating their concerns as UK and Spain. Both states did not support an increase on the quota of blocking minority. With the accession of three small members, blocking minority threshold became 26 instead of 23. According to Hosli, UK was still concerned about the possible influence on its sovereignty. Felsenthal supports Hosli's approach by arguing that the higher threshold of qualified majority voting would favor UK more than Germany, due to British oppositions on several proposals. Germany has had the same voting powers with UK, yet it enabled UK to obstruct the proposal by voting against.¹³⁵ On the other hand, Spain's worry was related to the richer northern block's accession, which would change exclude preferences of southern block, in particular Spain's. Negotiations on these concerns paved the way to resolution of 1994 called 'Ioannina Compromise'. As Luxemburg Compromise, Ioannina Compromise is described as gentleman's agreement and it was readjusted after Norway's rejection of membership. This agreement grants a right to group of rejecting member states representing votes between 23 and 26 to hold the decision-making process for a specific act, which threatens vital interest of these member states. However, those member states assure to 'do within its power within a reasonable space of time, to reach a satisfactory solution that can be adopted by at least 68 votes out of 87'.¹³⁶ Treaty of Amsterdam enabled the continuation of Ioannina Compromise till the next enlargement and it was abolished by Treaty of Nice. As a result, in 1995 Austria, Finland and Sweden memberships' were approved.

Overall, Felsenthal claims that from 1958 till 1995, larger states as Germany were always granted higher weights; however disproportionate distribution of voting weight was favored small and medium sized states.¹³⁷ Moreover, he emphasizes that the

¹³⁴ Hosli, M.(1995).The balance between small and large. p. 352.

¹³⁵ Felsenthal,D.S.&Machover,M.(1997). The weighted voting rule in the EU's Council of Ministers, 1958-95.p. 36.

¹³⁶ Deutsche Welle, The EU Treaty: Ioannina Compromise explained.

¹³⁷ Felsenthal,D.S.&Machover,M.(1997). The weighted voting rule in the EU's Council of Ministers, 1958-95.p. 33. & Hosli, M.(1993). Admission of EFTA state to the EC. p. 633.

quota of qualified majority voting was kept around 71% from 1958 till 1995.¹³⁸ Consequently, concerns of larger states and debates on the threshold of the blocking minority formed the circumstances of negotiations for IGC 1996. However, during IGC 1996 member states did not come cross to an acceptable system for all and postponed the issue to IGC 2000. IGC 2000 is held under the Presidency of France and systems proposed to resolve the problem of voting weights were not satisfactory to convince all member states. Nevertheless, France presented a last minute proposal and persuaded member states one by one to vote in favor.¹³⁹ As a result, Nice rules adopted without looking into details of the mechanism.

4.2. 2000 -

According to 2001 Treaty of Nice, Nice voting rules would be in effect in November 2004. The rules that determine voting during six months between May 2004 and November 2004 are called Temporary Accession Treaty voting rules.¹⁴⁰ During this period, previous qualified majority rules was maintained without changing any of the thresholds of qualified majority or blocking minority. Approval of a proposal depended on 71% of the total 15 member states' votes (88 of 122 votes), which was 68 out of 87 and blocking minority should be consist of 26 votes. Then in November 2004, the voting mechanism of the triple majority system, which is also known as Nice voting rule went into effect. According to the Treaty, triple voting covers the period between November 2004 and November 2009, during which the Council was going to approve proposals by 74% of the Council votes with the member threshold 50% of members (13 members in EU-25), and the population threshold 62% of the EU population.¹⁴¹ Baldwin and Widgren claim that the EU leaders realized the inefficiency in Nice rules and decreased the threshold of 74% of Council votes to 72.2% (232 of 321 votes) by the Accession Treaty.¹⁴² However, following the Bulgaria and Romania accession in 2007, threshold for the Council votes was planned to be increased to the same level of 74% (255 of 345 cotes of EU-27) and the others conditions would stay the same as

¹³⁸ Felsenthal, D.S. & Machover, M. (1997). The weighted voting rule in the EU's Council of Ministers, 1958-95. p. 46.

¹³⁹ Ade, F. (2005). Decision making in Europe. p. 3.

¹⁴⁰ Kauppi, H. & Widgren, M. (2006). Voting rules and budget allocation in the enlarged EU. *HEER Discussion Thesis No.103*. p. 13.

¹⁴¹ *Ibid.*

¹⁴² Baldwin, R. & Widgren, M. (2004). Council voting in the Constitutional Treaty: Devil in Details. *CEPS Policy Brief*. 53. p. 2.

simple majority of member states (14 members of EU-27) and 62% of EU population by the Draft Council Decision relating to the implementation of Article I-24 in the Accession Treaties.¹⁴³ Apart from determined conditions, Nice rules was set in favor of larger and near-large states such as Spain and Poland by granting them disproportional increase on their voting weights.¹⁴⁴ The Nice distribution of votes is presented in the following *Table 3*:

Table 3: The Distribution of votes and the decision quota in the Council

<i>Member States</i>	<i>1958–72</i>	<i>1973–80</i>	<i>1981–85</i>	<i>1986–94</i>	<i>Since 1995</i>	<i>Treaty of Nice (27 Member States)</i>
Germany	4	10	10	10	10	29
UK	–	10	10	10	10	29
France	4	10	10	10	10	29
Italy	4	10	10	10	10	29
Spain	–	–	–	8	8	27
Poland	–	–	–	–	–	27
Romania	–	–	–	–	–	14
Netherlands	2	5	5	5	5	13
Greece	–	–	5	5	5	12
Czech Rep.	–	–	–	–	–	12
Belgium	2	5	5	5	5	12
Hungary	–	–	–	–	–	12
Portugal	–	–	–	5	5	12
Sweden	–	–	–	–	4	10
Bulgaria	–	–	–	–	–	10
Austria	–	–	–	–	4	10
Slovakia	–	–	–	–	–	7
Denmark	–	3	3	3	3	7
Finland	–	–	–	–	3	7
Ireland	–	3	3	3	3	7
Lithuania	–	–	–	–	–	7
Latvia	–	–	–	–	–	4
Slovenia	–	–	–	–	–	4
Estonia	–	–	–	–	–	4
Cyprus	–	–	–	–	–	4
Luxembourg	1	2	2	2	2	4
Malta	–	–	–	–	–	3
Total	17	58	63	76	87	345
Quota (In % of total no. of votes)	12 (70.6%)	41 (70.7%)	45 (71.4%)	54 (71.1%)	62 (71.3%)	258* (74.8%)

¹⁴³ Kauppi, H. & Widgren, M. (2006). Voting rules and budget allocation in the enlarged EU. p. 13.

¹⁴⁴ Baldwin, R. & Widgren, M. (2004). Council voting in the Constitutional Treaty. p. 2.

Source: Hosli, M.&Machover,M.(2004).The Nice Treaty and Voting Rules in the Council.¹⁴⁵

In June 2004, the Constitutional Treaty was accepted by all member states. According to the Treaty text, weighted vote system of Treaty of Nice was going to be replaced by the double majority voting. The winning coalition under double majority rule should consist of 55% of member state votes and 65% of EU population. In addition, two criteria added at the last minute, if it approved by more than fifteen member states' votes and four member states was required to block a proposal. Kauppi and Widgren prove that the condition of requiring fifteen members for approval made membership quota redundant due to the representation of fifteen members as 55.6% of the total membership.¹⁴⁶ Constitutional Treaty was envisaged to enter into force in November 2009, yet as stated before, signing of a Treaty does not prove that the issue is resolved.¹⁴⁷ Bargaining process may continue and it was experienced with Constitutional Treaty's ratification process as a result of the rejection of France and Netherlands' referendums. Even though the failure of Constitutional Treaty paves the way to the formation of Treaty of Lisbon and as a result of the negotiations double majority rule inserted into the Treaty of Lisbon's text.

Historical path of allocation of voting weights shows the creation of additional differences among member state's voting powers depending on asymmetric policy interdependence. Enlargements compelled national governments to change the calculations, yet this led to a long debate and become a significant problem to resolve. What were the reasons of these tough discussions? What was the role of Nice rules in this debate and what difference Constitutional Treaty's rule create?

4.3. The Nice Treaty vs Constitutional Treaty

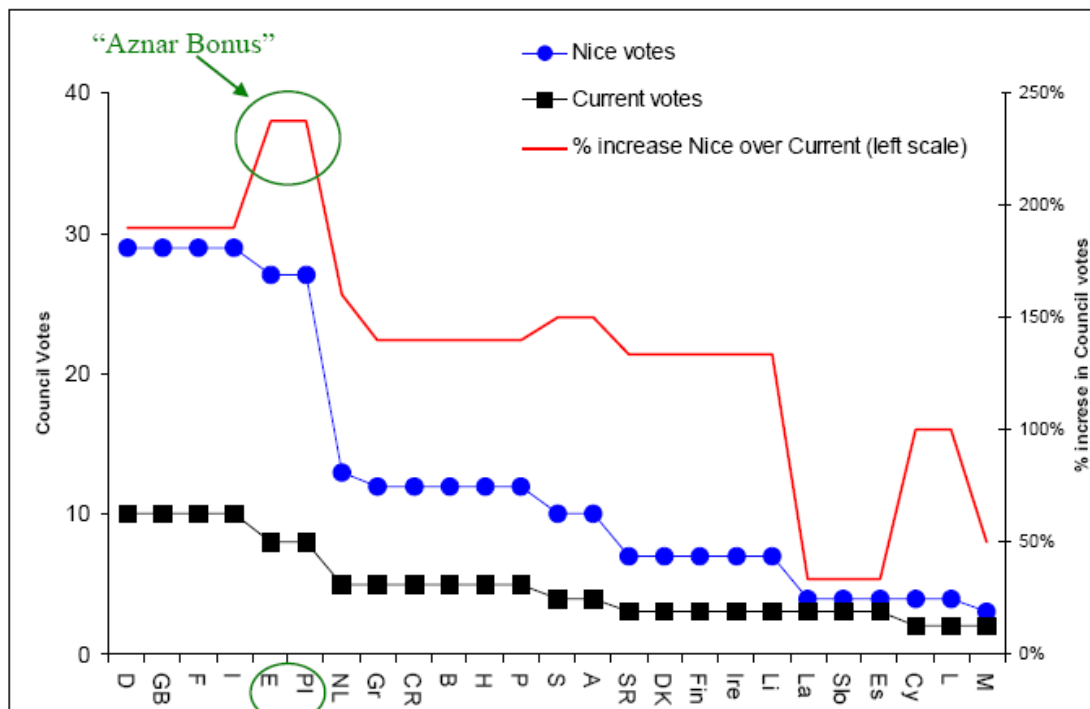
Nice voting rules constituted a rise around 3.5% in total of voting weights of Spain and Poland equal to the increase in four larger states' weights, while small and medium sized states' ratios were decreasing.

¹⁴⁵ Hosli, M.&Machover,M.(2004).The Nice Treaty and Voting Rules in the Council: A reply to Moberg (2002). *JCMS*, 42(3), p. 504.

¹⁴⁶ Kauppi,H.&Widgren, M.(2006).Voting rules and budget allocation in the enlarged EU. p. 14.

¹⁴⁷ Euractive.(2004). Intergovernmental Conference 2003-2004.

Figure 5. Reweighting of Council votes

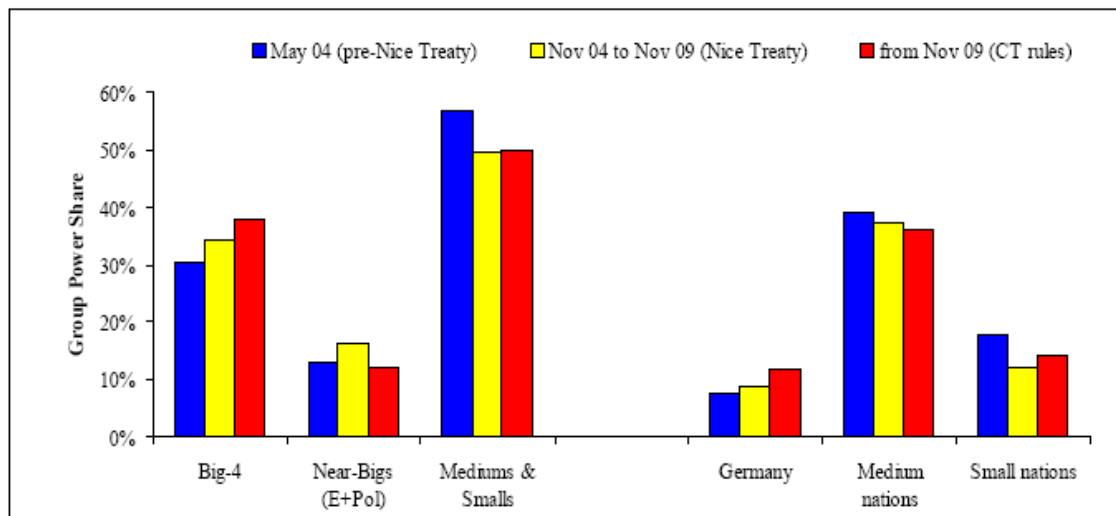


Notes: The squares represent the each member states' Council votes applicable until November 2004 and the circles show the votes determined by Treaty of Nice. The line indicates the percentage increase between the two. D: Germany, GB: Great Britain, F: France, I: Italy, E: Spain, PL: Poland, NL: Netherlands, Gr: Greece, CR: Czech Republic, B: Belgium, H: Hungary, P: Portugal, S: Sweden, A: Austria, SR: Slovak Republic, DK: Denmark, Fin: Finland, Ire: Ireland, Li: Lithuania, La: Latvia, Slo: Slovenia, Es: Estonia, Cy: Cyprus, L: Luxemburg, M: Malta
 Source: Baldwin,R&Widgren,M.(2004).Council voting in the Constitutional Treaty, Devil in Details. p. 3.

Figure 5 shows that increase granted to Spain and Poland by Treaty of Nice comprised the highest percentage. However, largest four states' percentage was also remarkable by around 180%. The greatest losers were three of the small states as Latvia, Slovenia and Estonia, because the smallest three states received 100% increase on their weights. Baldwin and Widgren by underlining manual determination of French Presidency to resolve the voting weights problem in Treaty of Nice argue that Latvia, Slovenia and Estonia was not able to defend their rights with 1 to 2 million people.

Nevertheless, this picture changed remarkably due to the rejected Constitutional rule.

Figure 6. Winners and losers, big versus medium-sized and small member states



Notes: Big-4 = Germany, the UK, France, Italy; medium nations (populations of 25 to 5 million) are Romania, the Netherlands, Greece, the Czech Rep., Belgium, Portugal, Hungary, Sweden, Bulgaria, Austria, Slovak Rep., Denmark and Finland; small nations (populations less than 5 million) are Ireland, Lithuania, Latvia, Slovenia, Estonia, Cyprus, Luxembourg and Malta.

Source: Baldwin, R&Widgren, M. (2004). Council voting in the Constitutional Treaty, Devil in Details. p. 4.

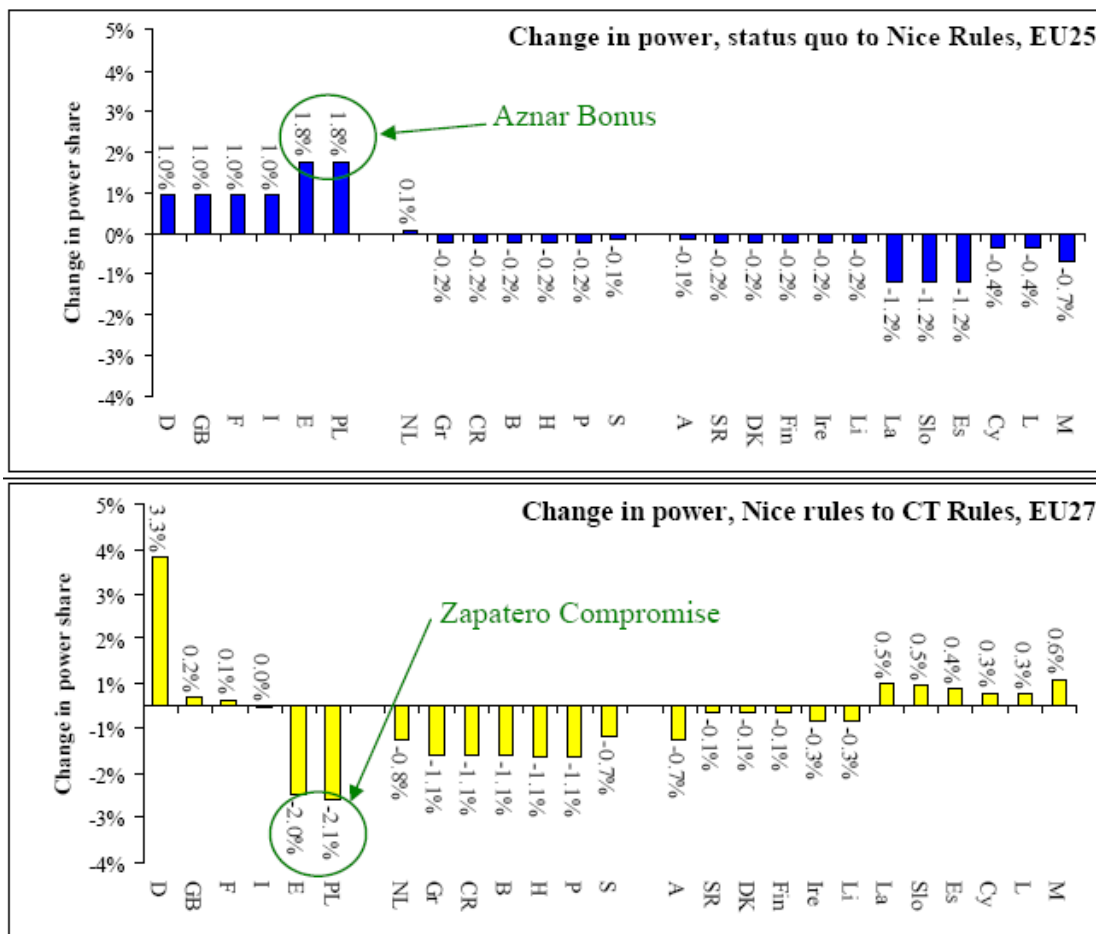
According to Baldwin and Widgren's calculations, larger states' power share as a group raised by 3.5%, when Spain and Poland's share decreased at the similar percentage by Constitutional rule. In the mean time, middle sized states' ratio declined at the same proportion of the rise in the small states' percentage. In particular, boost in the power share of larger four states by Nice rules became loss of middle sized and small states. Next proposed jump in Constitutional rule, in larger four states share stemmed from the decrease on the shares of Spain and Poland. Consequently, in general larger states' slice from the cake was increasing gradually at the expense of middle sized and small states.

One exception was experienced on the Spanish and Polish shares as a result of the bargaining power of Spain then. Spanish President Aznar's rejection to the voting weights allocation in Treaty of Nice reopened negotiation with French President. Aznar did not accept determined low increase on Spanish share, while four big states' voting powers were raised by 3.5%. Negotiations were concluded by the victory of Aznar and 3.5% rise was granted to both Spain and Poland. Because of this reason, Baldwin and Widgren define this increase as Aznar Bonus.¹⁴⁸ The greatest benefiting country from these negotiations was Poland, because Poland was not even a member of EU, its

¹⁴⁸ Baldwin, R&Widgren, M. (2004). Council voting in the Constitutional Treaty. p. 2.

accession date was May 2004, yet due to its close population number to Spain, Poland benefited from this bargaining. Nevertheless, Constitutional rule diminished Spanish and Polish total weight even lower than the pre-nice period. This is explained as ‘Zapatero Compromise’.¹⁴⁹ Zapatero was the successor of Spanish President Aznar, his acceptance of this decrease on its voting weight, directly influenced Poland’s weight and both of their shares was proposed to be reduced.

Figure 7. Winners and losers by member: Nice rules and Lisbon rules



Note: Change in percentage points.

D: Germany, GB: Great Britain, F: France, I: Italy, E: Spain, PL: Poland, NL: Netherlands, Gr: Greece, CR: Czech Republic, B: Belgium, H: Hungary, P: Portugal, S: Sweden, A: Austria, SR: Slovak Republic, DK: Denmark, Fin: Finland, Ire: Ireland, Li: Lithuania, La: Latvia, Slo: Slovenia, Es: Estonia, Cy: Cyprus, L: Luxemburg, M: Malta
Source: Baldwin, R&Widgren,M.(2004).Council voting in the Constitutional Treaty, Devil in Details. p. 5.

Final, circumstances is successfully represented in Figure 7. Proposed distribution of voting weight in Treaty of Lisbon will provide a significant percentage of increase to Germany; nevertheless gains of the other three large states as UK, France and Italy are slightly lower than the small states’ account. All of the other member

¹⁴⁹ Ibid. p. 4.

states' share will face a fluctuating decline, some of which will be close to -1.1% as in Greece, Czech Republic, Belgium, Hungary and Poland. However, the greatest loser from in this picture will be Spain and Poland by -2.0% and -2.1% of decreases.

If these two phases are put together, the greatest winner becomes Germany with 4.3% increase and the unluckiest states are Spain and Poland with shares that fall down from positive to negative side. On the other hand, middle sized states' shares increases in negative numbers, only three smallest states' shares are equalized at the -0.1%.

4. Concluding Remarks

The dominance of larger states over middle sized and small states in voting weights negotiations, may be maintained due to the coherence between the criteria of voting weight allocation and larger states peculiarities as higher population. However, it is crucial to bear in mind that these allocations are both raw materials and the outcomes of bargaining processes. Pollak asserts that "The position of the member states is not dependent on their size, but largely influenced by their ability to form alliances and forge compromises."¹⁵⁰ and 'Aznar Bonus' is a clear instance of this argument. Capability to form coalitions using its relative power constitutes the heart of the navigator that situates the position of that member state in negotiations. Yet, size may become a crucial instrument of bargaining in competent hands as in the Germany case. Nevertheless, 'Aznar Bonus' and 'Zapatero Compromise' present the changing positions of different two member states in bargaining process. Size of a member state should be seen as an instrument that can create favorable circumstances for each member state.

Currently, there is no acceptable calculations that benefit all to replace Nice rules, yet it is being tried that to resolve through negotiations and the usage of 'asymmetric policy interdependence' as instruments. This attempt was accomplished in the case of Zapatero, yet there are other opposition member states as Poland. Next chapter issues vetoes of Spain and Poland on double majority voting, in order to show how the circumstances can change perceptions and preferences of member states,

¹⁵⁰ Pollak, J.(2004). Democracy and the European Constitutiton: Majority Voting and Small Member States. *ConWEB*, 4. p. 16.

which leads to the impotence of institutionalist idea of diminishment of the member states' control.

CHAPTER FIVE

Vetoes of Spain and Poland in IGC 2003

Previous chapter compared Nice and Constitutional rules and clarified consequences of these rules on voting weights of the member states. Nice rules provided Spain and Poland higher voting weights in the expense of middle sized and small member states, whereas larger states' shares were also increased at the same percentage. However, Constitutional Treaty aimed to remove these disproportionalities among member states and rearrange the voting weights on the grounds of population and membership. How come this conclusion became the resolution that was acceptable for all member states, especially when Spanish and Polish power shares were decreasing around the percentage of 2?

In this final chapter, Spain and Poland's crucial positions in the formation of latest voting rule of qualified majority is scrutinized to clarify the issued factors' influences on member states' actions. Constitutional Treaty's bargaining consequences are followed by the possible factors that may have an impact on the positions of Spain and Poland as distinct policy interdependences, qualified majority voting rules and domestic politics.

5.1. Bargaining Constitutional Treaty Rule

Member states realized the harm caused by Nice voting rules on decision-making, in particular by 74% threshold to approve a policy. Therefore, a European Convention was proposed to be held in 2003, which leads to the formation of a draft Constitution to solve the so called 'Nice leftovers'.¹⁵¹ The convention method is used by member states to assure transparency on discussions by including all related institutions such as the Parliament and the Commission, observers from Coreper and the Economic and Social Committee and national government representatives both from members and candidate states into the debates.¹⁵² Consequently, after sixteen

¹⁵¹ Tsebelis, G.(2005). The European Convention and the failure of the Rome IGC. p.12.

¹⁵² Gilbert, M.(2004). A Fiasco but not a disaster: Europe's search for a constitution. *World Policy Journal*. 11.

months discussions among participants the so called draft Constitutional Treaty was prepared and the draft Constitutional Treaty of IGC 2003 was presented representatives of member states.

According to this draft, weighted voting of Nice Treaty is replaced by double majority voting that requires 50% of member states votes, which constitutes 60% of EU population. In addition, blocking minority is expected to be formed by at least four member states. As Baldwin and Widgren underline Germany and two of the six larger countries' votes were sufficient to obstruct the act, yet the proposed condition necessitates one additional ally in a coalition of blocking minority.¹⁵³ Furthermore, the final text of the Constitution was issued on 12-13 December 2003 in the meeting of European Council, yet at the last minute Spanish and Polish rejections failed this draft. Member states were willing to continue their search and in March 2004 Irish proposal of increasing both thresholds to 55% and 65% was considered. The IGC summit of June 2004 succeeded to get the approval of renewed Constitutional Treaty by all member states and presented to the national governments for ratification. What were the reasons of Spain and Poland to reject at the last minute of the IGC 2003? What changed for Spain and Poland to agree the latter Irish proposal?

5.2. Possible Reasons of Vetoes

According to media, underlying reason of these vetoes was the distribution of power.¹⁵⁴ The higher power share would bring both states benefits to defend their preferences as in the distribution of EU funds. Ade emphasizes that Spain and Poland had 'lots of at stake' about the allocation of EU funds. Spain was the largest beneficiary before the May 2004 enlargement and was willing to preserve the status quo. However, Poland as an accessing state that would become the poorest member state, which would receive a large share from EU funds. In order to impede the legislation, which would be in favor of Poland, Spain would try to make process harder to legislate, yet Poland would behave in the contrary.¹⁵⁵ If the status quo could be preserved Spain might have formed a strong blocking minority, whereas Poland would be a tough competitor.

¹⁵³ Baldwin, R & Widgren, M. (2004). Council voting in the Constitutional Treaty, Devil in Details. p. 2

¹⁵⁴ Ade, F. (2005). Decision making in Europe. p. 15.

¹⁵⁵ Ibid.

Consequently, for both member states losing the advantage of Nice Treaty would harm their positions on voting.

On the other hand, under the convention rules formation of blocking minority is getting harder due to the population threshold of 60%. Therefore, following the rejections of Spain and Poland in IGC 2003, the negotiations were continued around this issue.¹⁵⁶ Increase in the population threshold was also agreed by Germany and France, yet the maximum was 62% for them. However, Spain and Poland proposed the percentage of 66 that grants them capability to block the policies with the alliance of two larger states as in the Nice rules. In the meantime, Ireland prepared a proposal during its Presidency of Council. According to this schema, 55% of the member states' votes (should consist of fifteen member states), which represents 65% of EU population comprise the double majority. The conclusion on the population percentages was in favor of Spain and Poland, it was not the percentage expected.

Nevertheless both Ade and Tsebelis do not find these reasons sufficient to veto the Constitutional Treaty. By underlining the political situation in Spain and Poland, both argue that the national governments used veto card as the reflection of the weaknesses in domestic politics. According to Ade, Spanish President Aznar was coping with problems as "its support of a war in Iraq that was opposed by a majority of the population, struggling about welfare state reforms, discontent with the involvement of the government in Spanish media, problems in the educational sector and finally governments' poor handling of an environmental catastrophe." These are not vital problems, yet for the coming elections in March 2004 Aznar were willing to refresh its strong position, especially on the domestic platform.¹⁵⁷ In addition to financial losses stemming from Germany, France and Italy's actions, Aznar maintained his opposition to Constitutional Treaty.¹⁵⁸ However, the election result was not as expected. Unlike Aznar, the new Spanish government under the leadership of Zapatero followed more flexible politics on EU relations, especially after 3/11 disaster¹⁵⁹. After this terrorist

¹⁵⁶ Castle, S. (2003). Deaflock over voting as France sticks by Germany. *The Independent*.

¹⁵⁷ Ade, F. (2005). Decision making in Europe. p. 22.

¹⁵⁸ Gilbert, M. (2004). A Fiasco but not a disaster: Europe's search for a constitution. *World Policy Journal*. 11. Retrieved from <http://www.worldpolicy.org/journal/articles/wpj04-1/gilbert.htm>

¹⁵⁹ 3/11 represents 11 March train bombing in Madrid. Three days before Spanish general elections, there were coordinated suicide bombings in train in the morning of 11 March 2004. 191 people died and 1,755 people injured. BBC News. (2004). Madrid Train Attacks.

attack, Zapatero declared his positive approach to cooperation on EU-level and Constitutional Treaty by stating that “We have a treaty which isn't ideal, but it is a treaty which will allow us to develop further.”¹⁶⁰ Consequently, Spain left its ally alone before the end of the IGC 2004.

In the case of Poland, Prime Minister Miller’s position was vulnerable than Aznar’s in domestic politics, on account of ‘high unemployment, high budget deficit and political scandals’. In addition, Poland’s agricultural sector was pushed too far for reforms of EU, which led to the aversion on Polish citizens.¹⁶¹ Therefore, Ade claims that Miller tried to draw a strong image of Poland in the eyes of its citizens by vetoing policies on EU-level, if it requires additional concessions.¹⁶² However, at the end in May 2004 Prime Minister Miller resigned. Afterwards, President Kaczynski continued Poland’s opposition till the next IGC 2007 and as Baldwin asserts he was able to get what Poland wants.

Consequently, Treaty of Lisbon includes double majority voting with concessions for Poland. The thresholds kept as the same; 55% of member states votes and 65% of EU population. Blocking minority should be consisting of at least four member states, which is in favor of both Spain and Poland by enabling them to form blocking minorities. Most significantly, double majority system will be operational in 2014 in decision-making; however until 2017 member states are capable of requesting qualified majority voting on the articles that are subject to double majority. As Baldwin claims member states will prefer to use Nice rules in stead of double majority until 2017, thanks to the extention.¹⁶³ Finally, Poland was able to add Ioannina Compromise to a Protocol that enables national governments, which cannot form a blocking minority, to postpone the measure ‘for a reasonable time’.¹⁶⁴

Before determination of most of these concessions, Spain completed its ratification process for Treaty of Lisbon. However, Poland negotiated till the last minute and still does not finalized Treaty of Lisbon’s ratification. The parliamentary

¹⁶⁰ M&C.(2007). Spain’s Zapatero urges Polish to say ‘yes’ to EU Treaty.

¹⁶¹ Ade, F.(2005). Decision making in Europe.p. 21.

¹⁶² Ibid. p. 22.

¹⁶³ Baldwin,R.(2007).Stranger than fiction. p. 2.

¹⁶⁴ Euractiv. The ‘Treaty of Lisbon’.

and governmental processes were already completed, but President Kaczynski did not approve the ratification since April 2008.¹⁶⁵ He is being compelled to sign from both domestic and international representatives.

5. Concluding Remarks

According to Zapatero, collaboration on EU-level, especially on the issues of security and police cooperation, would bring higher benefits to Spain in the expense of its relative power in decision-making. On the other hand, in Poland that had the same voting share with Spain, the concept of cooperation did not perceived as a sufficient consequence to compromise on its relative power. That brings back the concept of asymmetric policy interdependence. Spanish deeper interdependence on cooperation led to sacrifice its voting share as a compromise, whereas Poland used the interdependence of other member states in favor of itself and turn this advantage to a veto power. Consequently, Poland pays back Spanish favor of Aznar bonus by concessions in Treaty of Lisbon, if it is operationalized.

¹⁶⁵ Euractiv. Ratifying Treaty of Lisbon.

CONCLUSION

Stone Sweet and Sandholtz argued an evolution of EU integration towards a supranational end; in contrast Moravcsik advocates continuing member states' dominance in EU future. Both perspectives handle institutional reforms as the instruments for their explanation. For instance, extension of co-decision procedure leads to the decrease in member states' autonomy and capabilities for Stone Sweet and Sandholtz, whereas Moravcsik consider this expansion as the consequence of the aim to achieve a higher benefit without compromising more. Due to this commonality, this thesis focused on these legislative instruments to clarify the current positions and roles of member states in decision-making process without despising supranational institutions' roles. Commission and Parliament have specified roles; however, as the starting point of this thesis neither Commission nor Parliament is superior to the Council in EU legislation. Consequently, findings of this thesis are supported by Schulz and König's research on efficiency in decision-making brought by institutional reforms:

- “(1) participation of the Parliament increases the duration of the decisionmaking Process;
- (2) the use of qualified majority rule decreases the proposal-decision time lag...”

Among all legislative procedures with the recent proposal to extend co-decision procedure, it is determined as a crucial indication of a movement towards a supranational European system together with the decline in member states' control. However, if co-decision procedure's restricted scope is left aside, competences that are granted Parliament do not assure diminishment of Council's role in legislation. Firstly, Council and Parliament's approaches to proposals do not always have to be contradicting each other. Secondly, Parliament's tendency to prove itself as a stronger institution leads to the consideration of citizens perspectives, who are most of the time supporting Parliament against other institutions. Parliament's decision to reject the proposal after the second reading may pave the way to decline in its credibility, on account of ignoring conciliation committee's existence. As a result, continuation of the co-decision procedure with conciliation committee, if there is disagreement between two institutions would not be the at the expense of the Council. It still has its control over conclusions, even in the co-decision procedure. Thus co-decision procedure

increases Parliament's voice, yet does not devalue Council's role in legislation. Therefore, broadening co-decision procedure's scope cannot be defined as an outcome of a perception that will gradually restrict member states' autonomy and capabilities; rather it represents member states' authority over legislation procedure as 'pathfinders'.

Furthermore, Schulz and König define qualified majority rule as the an efficient instrument to use in decision-making. Extension of qualified majority voting's influence area is argued to be the consequence of the specified supranational tendency. However, if the past of the voting procedures are considered, each voting results constitute both losers and winners, due to the asymmetric policy interdependence. Yet, none of the cases distributed equal benefits/losses to all member states. Therefore, a mechanism to organize these differences would be useful to minimize the total loss and maximize the benefits. After some time, qualified majority voting determined as that mechanism. As a result of adjusting certain thresholds and rules, international bargaining turned into a crucial part of this mechanism. Therefore, fundamentally there has been no change in the voting process in accordance to the differentiation of losers and winners. There are still winners and losers. Thus extension of the scope of qualified majority voting becomes insignificant; on the other hand bargaining and in relation member states' relative power come into prominence. In addition, even though if it is admitted that the extension of qualified majority does not make any change between the past and the present, member states' still scrutinize the issues proposed to be moved into qualified majority. Therefore, the vital subjects are kept under unanimity, whereas clauses about Community issues are continued to be extended. Hence, there is no alteration in member states' roles; they are still determining actors.

Moreover, increasing role of the bargaining between member states caused tough negotiations on distributions of variables of relative power as voting weights. If a member state could obtain higher voting weights, its capabilities to form both coalition and blocking minority increases at the same percentages. Therefore, experienced vetoes and clashes during the latest IGCs were mostly the consequences of this bargaining. Approval of proposed calculations at the first place by all members was not an obtainable result, thus negotiations were intensified and trump cards were put on the table. The ones, which show the right card at the right time, become the winners of that bargaining as Poland. However, member states' are not bargaining in a bell jar, they are

affecting from external factors too as in the case of Spain's 3/11. That is able to change the perception of the member state and lead to renew its cost and benefit analysis. Therefore, Spain changed its side and left Poland alone in its fight. Poland was lucky in the IGC 2003-2004 and IGC 2007. Spain provided Poland higher voting weights with Treaty of Nice and now it is Poland's turn. Continuing negotiations and Poland's veto power in its hand pave the way to 'Poland's victory'¹⁶⁶.

Consequently, Stone Sweet and Sandholtz and Hosli's approaches to legislative instruments do not present the current circumstances, rather these stand closer to Moravcsik's perspective of member states', which determine actors, instruments that will be used by these actors, their competences and relations between to create an efficient decision-making process in order to achieve higher benefits as individual member states.

¹⁶⁶ Baldwin, R. (2007). *Stranger than fiction*. p. 2.

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APPENDIX

Table 2. Treaty of Rome: Extension of Qualified Majority Voting¹⁶⁷

Title as in the Treaty	Content of the Article	Number of the Article
Principles	rules to prevent discrimination on the grounds of nationality	Article 7
Free Movement of Goods	autonomous alteration or suspension of common customs tariff duties etc. not exceeding 20 per cent of the rate.	Article 28 (after trns. per.)
Agriculture	application of competition rules to agriculture	Article 42 (after 2 nd)
	implementing the common agricultural policy	Article 43(2) (after 2 nd)
	establishment of common agricultural market organizations	Article 43(3) (after 2 nd)
Free Movement of Persons, Services and Capital	freedom of establishment	Article 54(2) (after 1 st)
	exclusion of certain activities from freedom of establishment	Article 55
	co-ordination of certain national provisions concerning special treatment of foreign nationals	Article 56(2) (after 2 nd)
	mutual recognition of diplomas	Article 57(1) (after 1 st)
	taking up and pursuit of activities by certain self-employed persons	Article 57(2) (after 1 st)
	liberalization of services	Article 63(2) (after 1 st)
	free movement of capital	Article 69 (after 2 nd)
	amendment of national measures restricting free movement of capital	Article 70(2)
	revocation of Commission authorization of a member state's protective measures in field of capital movements	Article 73(1)
	inland transport policy	Article 75(1) (after 2 nd)

¹⁶⁷ Miller, V.(2004). The Extension of Qualified Majority Voting from the Treaty of Rome to the European Constitution. House of Commons Library, *Research Paper 04/54*.p.10.

Transport		
	elimination of discrimination between carriers	Article 79(3)
Common Rules on Competition, Taxation and Approximation of Laws	competition rules	Article 87(1) (after 3 years)
	additional categories of state aids considered compatible with the common market	Article 92(3)(d)
	state aid rules	Article 94
	special authorization of export refunds or countervailing charges on imports	Article 98
	directives to remove distortions or competition caused by differences between national laws	Article 101 (after 1 st)
Economic and Monetary Policy	directives to implement conjunctural policy measures adopted under article 103(2)	Article 103
	grant of mutual assistance to meet balance of payments difficulties	Article 108(2)
	revocation or amendment of Commission authorization of a member state's protective measures to meet balance of payments difficulties	Article 108(3)
	amendment of a member state's protective measures to meet a sudden balance of payments crisis	Article 109
Common Commercial Policy	harmonization of export aids	Article 112(1) (after 2 nd)
	common commercial policy	Article 113
	conclusion of certain commercial agreements with third countries	Article 114 (after 2 nd)
	common action in international organizations of an economic character	Article 116 (after trns.per.)
Social Policy, Education, Vocational Training and Youth	stopping certain social fund assistance	Article 126(a) (after t.p.)
	European Social Fund	Article 127
Provisions Governing the Institutions	salaries of EC staff (now found in article 6 of merger treaty)	Article 154
	establishment of a draft budget	Article 203(3)
	decisions on budget amendments and modifications proposed by European Parliament	Article 203(5)

	altering maximum rate of increase in budget (with agreement of EP)	Article 203
	authorizing expenditure in excess of provisional twelfths at beginning of financial year	Article 204
	remuneration of members of the Court of Auditors	Article 206
	recommendation to Parliament that Commission be given discharge in respect of implementation of the budget	Article 206(b)

Table 3. Single European Act: Extension of Qualified Majority Voting¹⁶⁸

*New articles subject to qualified majority voting

Title as in the SEA Treaty	Content of the Article	Number of the Article
Internal Market	guidelines and conditions necessary to ensure balanced progress in all the sectors concerned ¹⁶⁹	Article 8b*
Free Movement of Goods	autonomous alteration or suspension of duties in the common customs tariff	Article 28
Free Movement of Persons, Services and Capital	taking up and pursuit of activities by certain self-employed persons ¹⁷⁰	Article 57(2)
	extension of free movement of services to national of a third country	Article 59(2)
	capital movements between member states and third countries	Article 70(1)

¹⁶⁸ Miller, V.(2004). The Extension of Qualified Majority Voting from the Treaty of Rome to the European Constitution. House of Commons Library, *Research Paper 04/54*.p.11.

¹⁶⁹ Supplemented by Article 14 of SEA

¹⁷⁰ amended by the SEA

Transport	sea and air transport ¹⁷¹	Article 84(2)
Common Rules on Competition, Taxation and Approximation of Laws	approximation of provisions affecting functioning of common market ¹⁷²	Article 100a
	mutual recognition of national measures affecting the functioning of the internal market ¹⁷³	Article 100b
Social Policy	adoption of minimum requirements for health and safety of workers ¹⁷⁴	Article 118a*
Economic and Social Cohesion	implementing decisions relating to European regional development fund	Article 130e*
Research and Technological Development	adoption of certain provisions implementing the framework program on research and technological development	Article 130q(2)*
Environment	decisions on matters relating to the environment in respect of which the Council decides by unanimity that decisions are to be taken by QMV	Article 130s*

Table 4. Treaty of Maastricht (TEU): Extension of Qualified Majority Voting

Title as in the TEU	Content of the Article	Number of the Article
Provisions on a Common Foreign and Security Policy	decisions implementing common foreign and security policy joint actions ¹⁷⁵	Article J.3(2)
Provisions on Cooperation in the field of Justice and Home Affairs	decisions implementing Justice and Home Affairs (JHA) joint actions ¹⁷⁶	Article K.3(2)b
	application of Article 100c of EC Treaty to some aspects of JHA ¹⁷⁷	Article K.9

¹⁷¹ amended by the SEA

¹⁷² supplemented by Article 18 of SEA

¹⁷³ supplemented by Article 19 of SEA

¹⁷⁴ Supplemented by Article 21 of SEA

¹⁷⁵ Only if it is unanimously agreed in Council to vote by qualified majority

¹⁷⁶ Only if it is unanimously agreed in Council to vote by qualified majority

¹⁷⁷ Only if it is unanimously agreed in Council to vote by qualified majority

Free Movement of Persons, Services and Capital	movement of capital to or from third countries	Article 73c(2)
	condition to take safeguard measures	Article 73f
	movement of capital and payments to implement sanctions	Article 73g(1)
	abolishing above sanctions	Article 73g(2)
Transport	transport safety	Article 75
Common Rules on Competition, Taxation and Approximation of Laws	establishing a list of third country nationals who require visas	Article 100c(2-3)
Economic and Monetary Policy	broad economic guidelines	Article 103(2)
	make public recommendations on compliance with economic guidelines	Article 103(4)
	rules for multi-lateral surveillance	Article 103(5)
	bail-out fund in the event of a natural disaster	Article 103a(2)
	definitions for applying prohibition on assuming financial liability	Article 104a(2)
	definition of prohibitions regarding credit institutions	Article 104b(2)
	excessive deficits procedure	Article 104c(6-14)
	harmonizing coins	Article 105a(2)
	ECSB statutes	Article 106(5-6)
	exchange rate agreements	Article 109(1-4)
	decision on the position of the Community at international level as regards issues of particular relevance to EMU	Article 109(3)
	Economic and Financial Committee	Article 109c(3)
	consultation of Economic and Monetary Institute (EMI)	Article 109f(6)
	mutual assistance in the event of balance of payments difficulties	Article 109h(2)
	protective measures (EMU)	Article 109h(3)
	suspending protective measures (EMU)	Article 109i(3)
moving to stage III of EMU	Article 109j(2-3)	
stage III EMU derogations	Article 109k(1)	
Education, Vocational Training and	Education	Article 126

Youth	vocational training (was simple majority under Article 128)	Article 127
Public Health	public health	Article 129
Consumer Protection	consumer protection	Article 129a
Trans-European Networks	guidelines of Trans-European Networks	Article 129d
Research and Technological Development	development co-operation	Article 130i(4)
Environment	certain environmental measures	Article 130s
Development Cooperation	Development	Article 130w
	regulations and conditions for performance of Ombudsman's tasks	Article 138e
Institutions of the Community	allowances of members of Economic and Social Committee	Article 194
	conclusion of international agreements on subjects where internal decision-making is by QMV, codifies existing practice	Article 228(1-2)
	measures to implement sanctions	Article 228a

Table 5. Treaty of Amsterdam: Extension of Qualified Majority Voting

Title as in the Treaty of Amsterdam	Content of the Article	Number of the Article
Common Provisions	suspension of Member State rights (including voting rights) if breach of fundamental principles is established by unanimity, and subsequently variation or revocation of such measures	Article 7 TEU
Provisions on a Common Foreign and Security Policy	adoption of common foreign and security policy (CFSP) joint actions, common positions or any other decision based on a common strategy (subject to an emergency brake, and no QMV for decisions have military or defense implications) and any decision implementing a CFSP joint action or common position (subject to an emergency brake, and no QMV for decisions have military or defense implications)	Article 23(2) TEU

Provisions on Cooperation in the field of Justice and Home Affairs	measures to implement certain Justice and Home Affairs (JHA) decisions 11TEU authorization of closer co-operation to develop the area of freedom, security and justice (subject to an emergency brake)	Article 34(2)(c) TEU
Agriculture	compensatory aid for imports of raw materials	Article 37(4) TEC
Free Movement of Persons, Services and Capital	authorization of closer co-operation in the TEC (subject to emergency brake)	Article 40
	co-ordination of provisions laid down by law, regulation or administrative action for special treatment for foreign nationals (right of establishment)	Article 46(2)
	establishing list of third countries whose nationals who are exempt from visas (only European Parliament (EP) consultation) and a uniform format for visas; procedures and conditions for issuing visas and rules on a uniform visa (five years from entry into force of Amsterdam Treaty)	Article 62
Economic and Monetary Policy	employment guidelines (only EP consultation)	Article 128*
	employment incentive measures	Article 129*
Common Commercial Policy	Customs co-operation	Article 135*
Social Policy, Education, Vocational Training and Youth	social exclusion	Article 137(2)*
	approval of agreements concluded by management and labor	Article 139(2)
	equality of opportunity and treatment of men and women	Article 141(3)*
Public Health	public health	Article 152(4)*
Research and Technological Development	adoption of the Research Framework Program	Article 166(1)
	adopting or supplementing the Research Framework Program	Article 166(2)
	setting up of joint undertakings in Research and Technological development	Article 172
Provisions Common to Several Institutions	transparency (access to documents)	Article 255*
Financial Provisions	combating fraud against the Community's financial interests	Article 280*
General and Final Provisions	Statistics	Article 285*
	establishment of an independent advisory body on data protection	Article 286*
	outermost regions	Article 299(2)*

Table 6. Treaty of Nice: Extension of Qualified Majority Voting

Title as in the Treaty of Nice	Content of the Article	Number of the Article
	determination that there is a clear risk of a serious breach by a member state of fundamental principles (four-fifths majority required)	Article 7.1
Citizenship of the Union	provisions facilitating the exercise of the right of citizens of the Union to move and reside within the territory of the member states—with caveats	Article 18 TEC
Provisions on a Common the Foreign and Security Policy	appointment of common foreign and security policy (CFSP) special representatives with emergency brake	Article 23(2) TEU
	conclusion of international agreements in order to implement a CFSP joint action of common position, or on matters covered by TEU Titles V and VI for which QMV is required for the adoption of internal decisions or measures	Article 24 TEU
	procedure for authorizing enhanced co-operation under TEU Title V, with emergency brake;	Article 27(c) - 44 TEU*
	decision to hold in abeyance a member state's request to participate in a CFSP enhanced co-operation activity	Article 27(e) TEU*
Provisions on Cooperation in the field of Justice and Home Affairs	procedure for establishing enhanced co-operation under TEU Title VI, following referral to the European Council	Article 40(a) TEU*
Free Movement of Persons, Services and Capital	criteria and mechanisms for determining the member state responsible for considering asylum applications, provided that the Council has already unanimously defined common rules and basic principles	Article 63(1)(a) TEC
	minimum standards on reception of asylum seekers, provided that the Council has already unanimously defined common rules and basic principles	Article 63(1)(b) TEC
	minimum standards with respect to the qualification of third country nationals as refugees, provided that the Council has already unanimously defined common rules and basic principles	Article 63(1)(c) TEC
	minimum standards on the procedures in member states for granting or withdrawing refugee status, provided that the Council has already	Article 63(1)(d) TEC

	unanimously defined common rules and basic principles	
	minimum standards for giving temporary protection to displaced persons/refugees, provided that the Council has already unanimously defined common rules and basic principles	Article 63(2)(a) TEC
	measures improving and simplifying co-operation in civil law matters (except family law cases), inc. cross-border service of judicial documents, evidence taking, recognition/enforcement of decisions	Article 65(a) TEC
	measures promoting the compatibility of the rules applicable in member states concerns the conflict of laws and of jurisdictions (except family law cases)	Article 65(b) TEC
	measures eliminating obstacles to the good functioning of civil proceedings (except family law cases)	Article 65(c) TEC
	measures to ensure co-operation between the relevant departments of the administrations of the member states, and between those departments and the Commission, in the areas covered by Title IV (from 1 May 2004)	Article 66 TEC
Economic and Monetary Policy	measures in the event of severe difficulties in the supply of certain products	Article 100(1) TEC
	community financial assistance, under certain conditions, to a member state which is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional circumstances beyond its control	Article 100(2) TEC
	measures necessary for the rapid introduction of the euro in member states without a derogation	Article 123(4) TEC
Common Commercial Policy	negotiation and conclusion of international agreements on trade in services and trade-related aspects of intellectual property (with caveats)	Article 133(5) TEC
Social Policy, Education, Vocational Training and Youth	potentially, measures in some areas of social protection, following agreement by unanimity to move to QMV	Article 137(2) TEC
Industry	measures supporting the action of member states on industry matters	Article 157(3) TEC
Economic and Social Cohesion	specific actions for economic and social cohesion outside the structural funds	Article 159 TEC
	From 1 January 2007 asks, priority objectives, organization and rules	Article 161(1) TEC

	applicable to the structural funds	
	creation of a cohesion fund (delayed deadline)	Article 161(2) TEC
	economic, financial and technical co-operation with third countries	Article 181a TEC*
Provisions Governing the Institutions	approval of the MEPs' statute (except rules or conditions relating to the taxation of MEPs)	Article 190(5) TEC
	laying down regulations governing political parties at European level, inc. funding	Article 191(2) TEC
	appointment of the Secretary-General and Deputy Secretary-General of the Council	Article 207(2) TEC
	extension of the scope of Article 210 to cover the salaries, allowances and pensions of the members and Registrar of the Court of First Instance (CFI)	Article 210 TEC
	nomination and appointment of the President and members of the Commission	Article 214 TEC
	filling a vacancy in the Commission caused by death, compulsory retirement or resignation	Article 215 TEC
	approval of the European Court of Justice's rules of procedure	Article 223(6) TEC
	approval of the CFI's rules of procedure	Article 224(5) TEC
	approval of the Judicial Panels' rules of procedure	Article 225a(5) TEC*
	appointment of the members of the Court of Auditors	Article 247(3) TEC
	approval of the Court of Auditors' rules of procedure	Article 248(4) TEC
	appointment of the Economic and Social Committee members	Article 259(1) TEC
	appointment of the Committee of the Regions members	Article 263 TEC
Financial Provisions	financial Regulations/rules concerning the responsibility of financial controllers, authorizing officers and accounting officers as of 2007	Article 279(1)a-b TEC

Table 7. Constitutional Treaty: Extension of Qualified Majority Voting

Title as in the Constitutional Treaty	Content of the Article	Number of the Article
The Union's Institutions and Bodies	European Council to establish list of Council configurations other than Foreign Affairs Council	Article I-24(4)*
	European Council to set conditions for rotation of Council Presidency	Article I-24(7)
	European Council to appoint Foreign Affairs Minister	Article I-28*
Exercise of Union's Competence	arrangements for control of implementing powers	Article I-37
	approximation of national laws in Part III to achieve area of freedom, security and justice	Article I-42
The Democratic Life of the Union	determining procedures for citizens' initiative, including minimum number of Member States required	Article I-47(4)*
	general principles and limits governing the right of access to Union documents and institutions' rules of procedure on access to documents	Article I-50(3-4)
The Union's Finances	expenditure under Article III-412	Article I-53(3-4)
	establishing budget under III-404	Article I-56
Union Membership	conclusion of agreement with Member State wishing to withdraw from Union and with the Union, with EP consent	Article I-60*
Provisions of General Application	defining principles and conditions, especially economic and financial, on which services of general interest should operate	Article III-122
Free Movement of Person and Services	freedom of movement for migrant workers – social security provisions (2) contains referral clause: if Member State thinks its own social security system would be affected, QMV procedure suspended and matter referred to European Council, which may refer draft back to Council or ask Commission to submit new proposal	Article III-136(1)
	provisions on uniform intellectual property rights protection, for authorization, coordination and supervision of arrangements, except unanimity for sub-paragraph 2 on language arrangements for the above	Article III-176*
Research and Technological	measures for drawing up a European Space Policy	Article III-254*

Development and Space		
Energy	energy measures, except if primarily of a fiscal nature	Article III-256*
Policies on Border Checks, Asylum and Immigration	measures on: uniform status of asylum for third country nationals uniform status of subsidiary protection for third country nationals, common system of temporary protection for displaced persons in the event of a massive inflow; common procedures for granting/withdrawing uniform asylum/subsidiary protection; standards for conditions for reception of asylum applicants; cooperation with third countries to manage inflows	Article III-266
	measures on: conditions of entry/residence, standards for long-term visas/permits, including for family reunion; definition of rights of third country nationals living legally in Union; illegal immigration and residence in Union, including removal and repatriation; combating person trafficking, especially women and children	Article III-267(2)
	incentive and support measures to promote integration of legal third country nationals, excluding harmonization	Article III-267(4)
Judicial Cooperation in Civil Matters	judicial cooperation in civil matters, especially for the proper functioning of the internal market	Article III-269
Judicial Cooperation in Criminal Matters	judicial cooperation in criminal matters, except other aspects of criminal procedure identified by a European decision	Article III-270
	minimum rules on definition of criminal offences and sanctions in the areas of particularly serious crime with cross-border dimensions and (2), minimum rules regarding definition of criminal offences and sanctions in the area concerned, but with referral mechanism to European Council and possible withdrawal	Article III-271*
	measures to support Member States in crime prevention	Article III-272*
Culture	incentive actions to encourage cooperation between Member States in cultural matters, conservation of cultural heritage, exchanges, artistic and literary creation, excluding harmonization	Article III-280
	measures in tourism to complement Member State action without harmonization of laws or regulations	Article III-281*

Civil Protection	measures to encourage cooperation in civil protection, to protect against man-made and natural disasters, excluding harmonization	Article III-284*
Administrative Cooperation	measures to help Member States to implement Union law	Article III-285*
The Common Security and Defense Policy	Council decision on permanent structured cooperation and list of participating Member States after consulting Foreign Affairs Minister	Article III-312(2)*
	Council will confirm participation of Member State fulfilling the criteria for permanent structured cooperation	Article III-312(3)*
	Council may suspend a Member State from a structured cooperation	Article III-312(4)*
Development Cooperation	measures defining framework in which Union's humanitarian operations are implemented	Article III-316*
The Court of Justice of the European Union	establish specialized Court attached to High Court; rules on organization and jurisdiction of Court	Article III-359
The European Investment Bank	amending Articles 4, 11, 12, 18(5) of European Investment Bank Statute	Article III-393
Special Provisions	establish provisions for an open, efficient, independent European administration to support institutions, bodies, offices and agencies of the Union	Article III-398*

Table 8. Treaty of Lisbon: Extension of Qualified Majority Voting¹⁷⁸

Title as in the Treaty of Lisbon	Content of the Article	Number of the Article
Provisions on the Institutions	election of the President of the European Council by the European Council	Article 15 TEU
	adoption of the list of configurations of the Council of Ministers by the European Council	Article 16 TEU
	appointment of the High Representative by the European Council, with the	Article 18 TEU

¹⁷⁸ Robert Schuman Foundation.(2007). The Lisbon Treaty. Retrieved from <http://www.robert-schuman.org/doc/divers/lisbonne/en/10fiches.pdf>

	approval of the President of the Commission	
Specific Provisions on the Common Foreign and Security Policy	decision defining the European Defense Agency's statute, seat and operational rules	Article 45 TEU
	decisions establishing permanent structured cooperation, suspending or accepting new members on the basis of the notification of voluntary Members and after consultation of the High Representative	Article 46 TEU
Final Provisions	conclusion of a withdrawal agreement of a Union Member State after the approval of the European Parliament and on the request of the State concerned	Article 50 TEU
Non-Discrimination and Citizenship of the Union	regulations relating to procedures and conditions required for a citizens' initiative	Article 24 TEU
General Provisions	Evaluation measures of the implementation of the area of freedom, security and justice after simply informing the European Parliament and national parliaments	Article 70 TEU
	Administrative cooperation within the area of freedom, security and justice after consulting the European Parliament	Article 74 TEU
Policies on Border Checks, Asylum and Immigration	Measures concerning border checks	Article 77 TEU
	Measures concerning a common European asylum system Provisional emergency measures in case of a sudden inflow of refugees after consulting the European Parliament	Article 78 TEU
	Measures concerning a common immigration policy Measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally on their territories, excluding any harmonization measure	Article 79 TEU
Judicial Cooperation in Civil Matters	Measures concerning the judicial cooperation in civil matters having a cross-border dimension	Article 81 TEU
Judicial Cooperation in Criminal Matters	Measures to promote and support the action of Member States in the field of crime prevention excluding any harmonization measure	Article 84 TEU
	Regulations concerning Eurojust's structure, operation, field of action and tasks	Article 85 TEU

Police Cooperation	Regulations concerning Europol's structure, operation, field of action and tasks	Article 88 TEU
Transports	Establishment of rules concerning transport after consulting the Social and Economic Committee and the Committee of the Regions	Article 91 TEU
Approximation of Laws	Measures concerning the creation of European intellectual property rights to provide uniform intellectual property rights protection throughout the Union and for the setting up of centralized Union-wide authorization, coordination and supervision arrangements	Article 118 TEU
Monetary Policy	Amendment of some articles of the Statute of the ESCB on a recommendation from the European Central Bank and after consulting the Commission or on a proposal from the Commission and after consulting the European Central Bank	Article 129 TEU
	Measures necessary for use of the euro after consulting the European Central Bank	Article 133 TEU
Education, Vocational Training, Youth and Sport	Incentive measures in the fields of sport after consulting the Economic and Social Committee and the Committee of the Regions	Article 165 TEU
Culture	Incentive measures in the cultural field excluding any harmonisation measure and after consulting the Committee of the Regions	Article 167 TEU
Research and Technological Development and Space	Measures necessary to draw up a European Space Policy that may take the form of a European Space Program	Article 189 TEU
Energy	Measures relating to energy after consulting the Economic and Social Committee and the Committee of the Regions	Article 194 TEU
Civil Protection	Measures necessary for the achievement of objectives relating to cooperation between Member States in order to improve the effectiveness of systems for preventing and protecting against natural and manmade disasters, excluding any harmonization measure	Article 196 TEU
Common Commercial Policy	Measures defining the framework for implementing the common commercial policy Negotiation and conclusion of agreements with one or more third countries or international organizations in the field of commercial policy	Article 207 TEU

Economic, Financial and Technical Cooperation with Third Countries	Urgent financial assistance measures	Article 213 TEU
Solidarity Clause	Implementation of the solidarity clause in the event of a terrorist attack or a disaster (except if the decision has defense implications: unanimity) on a joint proposal of the High Representative and the Commission	Article 222 TEU
The Institutions	Decision taken by the European Council on the Presidency of Council configurations other than that of Foreign Affairs	Article 236 TEU
	Regulations concerning the establishment of specialized courts attached to the General Court to hear and determine at first instance certain classes of action or proceedings brought in specific areas on a proposal from the Commission and after consultation of the Court of Justice or at the request of the Court of Justice and after consultation of the Commission	Article 257 TEU
	Amendment of the provisions of the Court of Justice's Statute with the exception of Title I and article 64 at the request of the Court of Justice and after consultation of the Commission or on a proposal of the Commission and after consultation of the Court of Justice	Article 281 TEU
	Appointment of the president, vice-president and members of the ECB Governing Council by the European Council	Article 283 TEU
The Legal Acts of the Union, Adoption Procedures and other Provisions	Rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers	Article 291 TEU

