4. Institutional Representation in the European Union

The idea of engaging interests on the European level is central to European integration. Against this backdrop, it is the assumption of this study that the representation of interests is crucial for the European Union's endurance and performance, inasmuch as it ensures the system's legitimacy. For the purpose of my analysis I have adopted a pluralist perspective according to which the legitimate common good results from the interplay of interests. Legitimacy is defined here as the support of European citizens for European integration and their continued acceptance of European rule. The purpose of the applied part of this study is to understand the workings of European interest representation and eventually to assess whether they are suited to enabling the European Union to effectively tackle the challenges of deepened integration and widened membership. Here it should be borne in mind that there is no genuine European concept of representation comparable to concepts such as modern, corporate, or symbolical representation. Rather European interest representation is based on concepts that have been evolving since the Middle Ages. Hence, the analysis of European interest representation will draw on the theoretical concepts that have been described in chapters two and three.

This chapter deals with the patterns of *institutional* interest representation while non-institutionalised representation of organised interests will be discussed in the next chapter. The principle question in this chapter is whether, and how, the representational schemes of European institutions meet the *theoretical* conditions to function properly under the present and future conditions of European integration. It is, therefore, not the purpose of this chapter to explain why institutions work in reality. An institution's 'success' or 'failure' may be the result of many different factors - representational, historical, circumstantial... Rather, it is my concern to apply criteria according to which the European Union's institutions can be said to be endowed, in theory, with a

representational scheme that works well. The *criteria* I use in this chapter are that the different components of a representational scheme have to be in accordance whilst fitting the overall context. This shall apply to the level of each individual institution as well as to the overall institutional architecture of the European Union. I assume that if the different components of a representational scheme are inconsistent and/or the representational scheme does not fit the overall context, the representational scheme is deficient. This in turn hampers the legitimacy generating function of representation. Inversely, if the different components of a representational scheme are consistent and the representational scheme fits the overall context, the basic requirements are met for the citizens' support for, and acceptance of, European rule through the workings of representation.

For the purpose of this chapter I define an institution's *representational scheme* to consist of five components. First, the institution's mission, or function which, in specific cases, becomes clearer by additionally looking at the mandate. Second, the institution's powers. Third, the creation modus of representatives, such as appointment or election. Fourth, the composition of the representative body. As will be described throughout the chapter all Community institutions under investigation are based on a mix of the principles of equal representation and representation proportional to population. The principle of equal representation is derived from international law. The rule of 'one state, one vote' is based on the idea that sovereign states consider each other as equal members of the international system regardless of their respective size or power. Consequently, the principle of equal representation expresses the international character of the European Union's institutions. Inversely, the principle of proportional representation gives expression to the idea of modern national representation (see 2.5.). Here the leading idea is that those subjected to the rule have to be regarded as its author. The basis of representation is the entire body politic which is imagined as being composed of equal individuals. Accordingly, proportional representation is suited to stressing the supranational character of the European Union's institutions. Finally, the

fifth component of a representational scheme is derived from the idea that a representative body works in two directions. In its external environment it creates the entity to be represented whilst, internally, representative action integrates the representatives into a single body. The internal workings of a representative body (in the case of representative assemblies: the group affiliations) provide an insight into the degree, and kind of, its coherence and its capacity to act in a representative way. Thus, in addition to an institution's mission, powers, creation modus and composition, its internal workings will be analysed.

As regards the context in which the representational scheme is placed one has to distinguish two distinct kinds of context. On the one hand, European representational schemes should fit the broader context of ideas of representation which are entrenched in European societies and derived from their history. For example, according to the theory of representation the members of a parliamentary assembly can be appointed or delegated. Yet this would not fit the idea common to today's European societies that members of parliament should be elected. Further, in theory, parliamentary representatives could be elected on the basis of a three-class franchise. For some time this was regarded as properly reflecting the hierarchy within society. Today, however, a parliament elected on the basis of three-class franchise would very likely no longer be regarded as representative because there is a commonly shared understanding that the electoral procedure should be based on universal suffrage. Thus, if the representational scheme of a parliamentary assembly is to be in accordance with the actual societal context, it would have to be elected by universal suffrage. On the other hand, European representational schemes should fit the actual context of European integration. This is particularly important because European integration is premised on the idea of evolution. The Union is a political entity which is deemed to fulfil its function if integration is furthered and strengthened, in other words: if the Union creates 'an ever closer union among the peoples of Europe'. Therefore different components of the representational schemes have to be adapted, either in response to enlarged membership

or in response to qualitative policy changes. For example, a representational scheme would have to be judged to be deficient if a member state was not (adequately) represented. Moreover, in the present situation, the Union's representational architecture should, at least in some way, reflect the shift from an Economic Community to a political Union.

The five components of the representational scheme will be described and assessed in the following subsections that deal, respectively, with the European Parliament, the Council, the Commission, and the two consultative committees, namely the Economic and Social Committee and the Committee of the Regions.[32] The respective historical background and evolution will be taken into account where deemed necessary. The same applies to recent reforms and current reform proposals. The overall representational architecture of the European Union will be discussed in the conclusion.

4.1. The European Parliament

The European Parliament consists of 'representatives of the peoples of the States brought together in the Community' (Art. 189 TEC). Its creation dates back to 1952 when the ECSC Assembly was set up. Since then the Parliament has sought to assert itself by using virtually any means at its disposal. It is, accordingly, the Community institution that has changed most over time. Originally, Community decision-making was centred on the Council and the Commission. Parliament's central achievement was that it could establish itself as a Community institution that mattered. By arguing that in

[32] The two consultative committees are not Community institutions in a legal sense. Here 'institution' is used in a broader sense, referring to those interest representing 'institutions' that are named in Article 7 TEC. Thereby I will not analyse the Court of Justice and the Court of Auditors. Both represent, inasmuch as they stand for values and norms: the Court of Justice for legal certainty and the norms agreed upon in the Treaties; the Court of Auditors for financial accountability. Given the active role the Court of Justice has been playing in deepening European integration one could argue that it sometimes stands for a predetermined, even political interest. Yet there remains a significant difference between representing values and norms and the (political) representation of interests, insofar as the latter implies an interplay between the represented and the representatives.

a political Union the representation of the peoples must be on an equal footing with the representation of states, Parliament successfully built up the notion of an 'institutional triangle' which gradually replaced the hitherto dominant bicephalous structure consisting of the Council and the Commission. In the same vein, Parliament claimed that there was an imbalance within the 'institutional triangle' and made it one of its priorities to redress the imbalance.

Overall, the existence of a supranational parliamentary assembly was central to enabling and furthering supranational integration because it fundamentally challenged the logic of external relations. The following observation with regard to the parliamentary assembly of the Council of Europe (established in 1949) equally applies to the creation of the European Parliament.

> Parliamentarians for the first time participated in (the external representation) of the State. Parliamentary action began to replace diplomatic action. This gradually changed relations in Europe from a character of foreign policy to a character of home policy, from international law to constitutional law. (Posselt 1992, quoted from Corbett 1999: 90)

From this perspective, the development of the European Parliament mirrors the evolution of the Community as a whole on its route from a member state dominated economic Community to a full-fledged political Union.

4.1.1. Powers

The Parliament has started as a purely advisory body. Ever since it has gone far on its route to becoming a co-legislator alongside the Council. Its *legislative*, *budgetary* and *control powers* have been extended less following a coherent approach than in a piecemeal manner, depending on what the member states were willing to confer upon it. Today, therefore, the Parliament has not yet turned into a co-legislator generally on an equal footing with the Council.

The European Union has four main legislative decision-making procedures. They are named after the powers of Parliament within the procedure: consultation, cooperation, co-decision, or assent (for a detailed overview of Treaty provisions covered by these procedures see appendix 4.1.). Until 1987 Parliament was a purely consultative body in legislative matters. The *assent* procedure was introduced by the Single European Act. It extends Parliament's powers under the consultation procedure. Here the Parliament can accept or reject a proposal but has no right to amend it. Also established by the Single European Act the *cooperation* procedure (Art. 252 TEC) foresees two parliamentary readings. Overall, it gives the Parliament the opportunity to influence a Council decision through amendments but it does not confer proper decision-making powers upon the Parliament. These were given to the Parliament with the Maastricht Treaty which introduced the *co-decision* procedure (Art. 251 TEC). It includes up to three readings and a conciliation procedure. Here the Parliament shares legislative powers with the Council.

Today, attention is mostly directed toward the introduction and extension of the co-decision procedure. Yet the areas covered by the consultation procedure - and its extended version, the assent procedure - remain important. Policy fields that are *partly* covered by consultation or assent include: EU citizenship, police and judicial cooperation with the objective to establish an area of freedom, security and justice, the approximation of laws, transport, social policy, research and technological development, environment, and the EMU. Policy fields where the Parliament's powers are *fully* restricted to consultation or assent include: tax provisions, any further measures to attain the overall objectives of the common market, agriculture, competition, the authorisation of enhanced cooperation, institutional matters, the Common Commercial Policy, the Community's international agreements and the CFSP.

Moreover, substantial parts of the Community's core policies completely fall outside the Parliament's competencies. This concerns agriculture and competition

policy, the EMU and the Common Commercial Policy. Member states seem to be particularly reluctant to grant rights to Parliament in the monetary and financial field. The Economic and Monetary Union is the only policy field which is still partly covered by the cooperation procedure (in all other cases cooperation has been 'up-graded' to co-decision), and the Parliament has no powers in the field of capital and payments. The member states' reluctance also applies to trade policy where neither consultation nor assent is required for international trade agreements.

Nevertheless, Parliament rightly regards itself as the institution that has most profited from Treaty revisions, insofar as substantial policy fields are now (fully or partly) covered by the co-decision procedure.[33] However, in quantitative terms, the Parliament is still far from being a general co-legislator. In 2002, the Parliament and the Council together enacted 24 regulations, whereas the Council alone enacted 140. A similar pattern applies to directives and decisions. The Parliament and the Council enacted 36 directives and six decisions compared to 113 directives and 51 decisions that the Council enacted alone in 2002 (European Commission 2003). Furthermore, the consultation and assent procedures constitute the bulk of the Parliament's legislative activities as can be seen in Table 4.1. which shows the distribution of the different procedures used for the adoption of legislation as required under the Amsterdam Treaty.[34]

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[33] These include: EU citizenship (the right to move and reside freely), the free movement of workers, the right to establishment and provide service, judicial cooperation in civil matters and immigration, transport, the harmonisation of the internal market, social policy, education, vocational training and youth, culture, public health, consumer protection, trans-European networks, industrial policy, economic and social cohesion, research and technological development, environment and development cooperation.

[34] The Amsterdam Treaty entered into force on 1 May 1999 and was replaced by the Nice Treaty that entered into force on 1 February 2003.

	Consultation	Assent	Co-Decision
May-Dec 1999	82	11	22
2000	113	14	60
2001	190	16	85
2002	136	4	90
Total	**521**	**45**	**257**

Table 4.1. Distribution of legislative procedures under the Amsterdam Treaty
Data drawn from European Commission (2000a), (2001a), (2002a), (2003)
Legislation covered by cooperation procedure has been changed to co-decision after the entry into force of the Amsterdam Treaty. The remaining four cases of cooperation have not been used during this period.

In the early days of the Communities, *budgetary powers* were vested in the Council alone which was assisted by the Parliament through consultation. In 1970, a system of 'own resources' (initially consisting of customs duties and agricultural levies) was established thereby replacing the direct financial contributions of the member states.[35], Hence, the Community's revenue was no longer controlled by national parliaments. As a corollary, the European Parliament was granted substantial budgetary powers that were further extended in 1975.[36] From then on, the Parliament and the Council jointly constituted the two branches of the budgetary authority. Thus, the Community's overall representational scheme was adapted to a qualitative change in the Community system.

Under Art. 272 TEC the Parliament may increase, reduce or redistribute Community expenditure. Furthermore, it may reject the draft budget (Art. 272 (8) TEC) and has the exclusive right to grant discharge to the Commission in respect of the latter's implementation of the budget (Art. 276 TEC). However, there is a distinction central to the budgetary procedure between compulsory and non-compulsory expenditure. Compulsory expenditure is defined as 'necessarily resulting from this Treaty or from acts adopted in accordance therewith' (Art. 272 (4) TEC). The decision

[35] Currently, the Union's revenue consists of four resources: customs duties, agricultural levies, a uniform percentage rate of the member states' VAT assessment base and a GNP-based resource.

[36] Parliament's budgetary powers were granted through the Treaty Amending Certain Budgetary Provisions of the Treaties (1970) and Treaty Amending Certain Financial Provisions of the Treaties (1975).

on what falls under compulsory respectively non-compulsory expenditure is much more political than technical because the Council has the final say concerning compulsory expenditure whereas the Parliament ultimately determines the allocation of non-compulsory expenditure. The most prominent compulsory expenditure is the Common Agricultural Policy which, at times, amounted to almost 80 per cent of the entire budget.

Although relatively slender, the budget is prone to constituting the Community's battlefield *par excellence*. Both the revenue and the expenditure as well as the budgetary procedure have been the subjects of protracted disputes. To the Parliament, the budgetary powers were a central means to assert itself *vis-à-vis* the Council and to establish itself as an actor able to carry through its own policy choices. On the whole, the Parliament has achieved a power balance between the two arms of the budgetary authority. It has done so by reducing the scope and total amount of compulsory expenditure, so that, today, it has the final say for about half of the budget's total expenditure. It has promoted own policy preferences, most notably the structural and cohesion funds accounting for about a third of the Community budget. Overall, Parliament has used its 'powers of the purse' in a way that it could gain overall leverage on Community decision-making.

However, there are two structural weaknesses. The distinction between compulsory and non-compulsory expenditure remains in place and the Parliament has almost no influence on the financial perspectives. The three financial perspectives that were adopted hitherto (the two Delors packages and Agenda 2000) were mostly 'Commission-sponsored and member state-negotiated' (Nugent 1999: 215). Thus, the far-reaching powers in the field of expenditure are confined in the sense that Parliament has

> very limited impact on the structure of the revenue used to finance that expenditure. (Corbett et al. 2000: 232)

As a result of the successive Treaty revisions, the European Parliament's *control powers* have been extended substantially. Since Maastricht the Parliament has been given the right to receive petitions (Art. 194 TEC), to appoint and dismiss a European ombudsman (Art. 195 TEC) and set up temporary committees of inquiry to investigate alleged contraventions or maladministration in the implementation of Community law (Art. 193 TEC). The Nice Treaty extended the Parliament's powers in the field of judicial review substantially (under Art. 230 TEC) and gave the Parliament the right to initiate a Council decision to determine a breach of fundamental rights by one of the member states (Art. 7 TEU).

The Parliament has control powers with respect to other Community institutions. It is consulted for the nomination of the members of the Court of Auditors (Art. 247 TEC), the President of the European Monetary Institute (Art. 117 TEC) and the members of the executive board of the ECB (Art. 112 TEC). Certainly, these are only consultative powers, yet they provide the otherwise purely intergovernmental process of nomination with a genuine supranational dimension. The Parliament's most far-reaching control powers are those *vis-à-vis* the Commission. The Treaty of Rome gave the Parliament the right to censure the Commission (Art. 201 TEC). This put a powerful weapon at its disposal but it could not deploy leverage as long as it was not complemented by other rights, notably the right to give discharge to the Commission in its capacity to implement the budget (see above).[37] After the first direct elections a parliamentary practice was established to give a newly nominated Commission a vote of confidence (Corbett et al. 2000: 242). The Maastricht and Amsterdam Treaties eventually gave the Parliament the right to approve the nomination of the Commission President as well as the nomination of the College of Commissioners (Art. 214 TEC). In order to emphasise the salience of the Parliament's control powers *vis-à-vis* the

[37] The Parliament has never adopted a censure motion. Yet the sheer fact that it had the option to do so together with the refusal to grant discharge to the Commission in respect of its implementation of the 1996 budget have led to the collective resignation of the college of Commissioners in early 1999 (Corbett et al. 2000: 243ff.).

Commission the two institutions have, since the Maastricht Treaty, the same period of mandate.

4.1.2. Election

The Members of the European Parliament are elected by direct universal suffrage for a term of five years (Art. 190 TEC). They exercise their mandate independently, are not bound by any instructions and shall not receive a binding mandate (Rule 2 RoP).

At the inception, members of the Assembly were only indirectly elected, insofar as they were national MPs, nominated by national parliaments. Direct elections in accordance with a uniform electoral system were foreseen under the Rome Treaty. Article 138(3) of the Treaty of Rome stipulated that

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

However, it would take 21 years until the first direct elections in 1979, and another 25 years will have elapsed until the first European elections on the grounds of an (almost) uniform electoral procedure.

The Parliament issued its first proposal for direct elections in 1961 but the Council, contrary to the Treaty provisions, did not act on it. Member states, in particular France, were reticent for two main reasons. A directly elected Assembly would have disposed of such a legitimacy that would have been incompatible with the idea of a *l'Europe des nations* (as favoured by de Gaulle) and with the fact that the Parliament was a purely consultative body at that time. It was argued that if Parliament was directly elected it would be inevitable that it be bestowed with more powers. This would lead to

a fundamental change in the Community system that was hitherto mainly based on a bipolar structure of national interests (articulated through the Council) and Community interests (articulated by the Commission). After the 1973 enlargement the United Kingdom and Denmark joined the opposition camp because they did not want a strong Parliament which they conceived of as a potential vehicle of centralisation and the strengthening of the supranational dimension. Faced with the Council's prolonged inaction the Parliament adopted further resolutions and went so far as to threaten to take the Council to Court. Italy, Luxembourg and Germany even considered having their MEPs directly elected on a national basis alone. Eventually, in 1974 at the Paris summit of the European Council, the Heads of Governments agreed on direct elections, and, as a result, on an extension of the Parliament's powers in European decision-making (Bieber 1976a: 230ff., Bieber 1976b: 709ff., Müller-Graf 1977: 14-26, Schreiber and Schrötter 1978: 3-7, Nugent 1999: 221, Corbett et al. 2000: 11).

The problem that the Treaty foresaw direct elections *in accordance with a uniform procedure* remained. Most member states use a kind of proportional system whilst the United Kingdom uses a 'first past the post' system. The introduction of a uniform proportional electoral system would have meant that the United Kingdom would have had to give up its traditional system for European elections, which it was not willing to do. Therefore, the question of a uniform electoral system was disentangled from that of universal suffrage (Bieber 1976a: 233, Corbett et al. 2000: 11). On this ground, the Council adopted the Act concerning the election of the representatives of the European Assembly by direct universal suffrage in 1976.[38]

Direct elections had an ambiguous effect at first. On the one hand, the EP could not meet the expectations derived from its newly bolstered legitimacy since it remained a mainly advisory body. Critics gained ground who regarded the European Assembly as a toothless tiger that hardly deserved the label of a parliament (Corbett 1999: 91-2). On

[38] Annexed to Council Decision 76/787/ECSC, EEC, Euratom, OJ L 278/1, 8.10.1976.

the other hand, however, Parliament could thereafter rely on the fact that it is the only directly elected body at European level to make its claims to more powers heard effectively.

The lack of a uniform electoral procedure remained a major weakness and exposed the Parliament to continual criticism. The Parliament elaborated several reports on the issue which either failed because of internal, or the Council's opposition (Corbett et al. 2000: 22-4). As a corollary of the newly established Union citizenship the Maastricht Treaty brought the first change in the electoral procedure as it granted the right to every citizen of the Union residing in a member state to have the right to vote and to stand as a candidate in European elections (Art. 19 TEC). In theory, this provision was an important step towards strengthening the supranational dimension of European elections. Yet it has not led, in practice, to major changes either with regard to the candidates or the electorate.[39] A breakthrough for a uniform electoral system was made possible with the Amsterdam Treaty which reduced the requirement for a uniform electoral procedure (Art. 190(4) TEC) and the British change to a proportional system from the 1999 European elections on. In 2002 the Council amended the 1976 Act[40] and thereby established a proportional electoral procedure common to all member states. With regard to the implementation member states are free to have different regulations as long as these do 'not affect the essentially proportional nature of the voting system' (Art. 8). So, member states may use the list system or the single transferable vote (Art. 1), they may – but do not have to – establish constituencies (Art. 2), set a minimum threshold that does not exceed 5 per cent (Art. 3) or set a ceiling for candidates' campaign expenses (Art. 4). Finally, the Council decision proclaims the incompatibility

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[39] Italy had, in 1989, already provided that candidates from any member state would be eligible for European elections. This option was used by the British David Steel and the French Maurice Duverger. The rights established by the Maastricht Treaty have been exercised by a further five candidates so far (the Belgian Olivier Dupuis in Italy, the Dutch Wilmya Zimmermann in Germany, the Italian Monica Frassoni and the Luxemburger Frédérique Ries in Belgium, and the German Daniel Cohn-Bendit in France). As to EU citizens residing in another member, few voted in their country of residence in the 1994 and 1999 European elections (Corbett et al. 2000: 14-5).

[40] Council Decision 2002/772/EC, Euratom, OJ L 283/1, 21.10.2002.

of a dual national and European parliamentary mandate from 2004 (and from 2009 for Irish and British MPs, Art. 7). Thus the way was paved to fully realise an idea that had been envisaged in 1957.

Yet there remains a *desideratum* as regards the election to the Parliament which is to strengthen the supranational dimension of European elections. The latter is rather weak due to the nationally organised election campaigns. European elections that were held on European, rather than national, themes might help to build up a European public sphere where politics could be discussed in a broader ideological framework also involving those who are not particularly involved, or interested in, European politics.

There are two complementing strategies for fostering the supranational dimension of European election campaigns. The first concerns the strengthening of transnational party federations. As early as the 1950s they started to organise themselves at European level as loose discussion fora and, on the occasion of the first direct elections, as transnational party federations and groupings (Hrbek 1976, Hix 1996).[41] Transnational party cooperation only gained momentum with the negotiation of the Maastricht Treaty, and still remains rather limited (Hix 1996 and 1998, Ladrech 1996, Smith 1996). This might not be surprising given the historically developed embeddedness of national parties in the nation state. On the explicit demand of the European Parliament (Ladrech 1996: 298) an Article has been inserted in the Maastricht Treaty proclaiming that

> [p]olitical parties at European level are important as a factor for integration within the Union. They contribute to forming a European awareness and to expressing the political will of the citizens of the Union. (Art. 191 TEC)

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[41] There are four formally established transnational party federations at European level. The Conference of Socialist Parties was established in 1974 and became the Party of European Socialists (PES) in 1992. The European Christian Democratic Party (EPP) and the Party of European Liberals, Democrats and Reformers (ELDR) were both formed in 1976. Finally, in 1993, the European Federation of Green Parties (EFGP) was established. In addition to the transnational party federations, there is cooperation between party families. The European Free Alliance (established in 1978) brings together regional parties whereas the European Democratic Union (EDU) serves as a forum for parties of the extreme right. Both were established in 1978 (Hix 1996: 312).

This declaration was supplemented in the Nice Treaty by a provision to elaborate a statute of European political parties which is currently being debated, including the funding out of the Community budget.

The second strategy is to 'Europeanise' the electoral procedure. Here the Commission has put forward a proposal according to which transnational lists should be established. Similar to the German electoral procedure, voters would then cast two votes, a national/regional and a European one (European Commission 2002c: 16). This would certainly stress considerably the supranational dimension of European elections and, simultaneously, constitute a major incentive to transnational party federations to organise themselves more effectively. The major obstacle to the realisation of such a proposal is that those elected via transnational lists would not fit into the national quota system (see 4.1.3.). Even if these lists were geographically balanced there would be no guarantee that, in the end, the sum total of candidates who either have the nationality of, or reside in, a given country would equal one-half of the country's national quota. Philippe Schmitter put forward another, 'more modest', proposal according to which one-half of the candidates on the national/regional lists would be nominated by European party federations (Schmitter 2000: 58). Indeed, together with the Community funding that these federations will soon receive such an alteration of the nomination procedure might constitute an important step toward making European elections more European.

4.1.3. Seat Allocation

The allocation of seats is one of the most sensitive issues in the representational design of the European Parliament. Since MEPs are the representatives of the *peoples* of Europe one might deem the principle of proportional representation as the appropriate mechanism for seat allocation so that, ideally, each member would represent the same number of citizens. Accordingly, the Treaty states that 'the number of representatives

elected in each Member State must ensure appropriate representation of the peoples of the States brought together in the Community' (Art. 190 (2) TEC). Among all EU institutions proportional representation, therefore, figures most prominently in the representational scheme of the European Parliament. However, the principle of equal representation of member states has invariably been a part of the distribution key. The question of how the two principles of representation should be applied has led to controversies, most notably on the occasion of direct elections, German unification, and the ongoing enlargement rounds.

Direct elections made necessary a complete reshuffle of the seat distribution. Hitherto, the seat distribution of the nominated Assembly was based on country categories that only roughly mirrored the differences of member states' populations, comparable to the seat distribution of the ESC and the CoR (see 4.4. and 4.5.).[42] The new Members of Parliament, however, would be directly elected by a constituency, so that the differences in populations mattered far more. Thus direct elections necessitated representation be more proportional to population. Accordingly, the European Council in its 1974 decision laid down that 'appropriate representation' of the peoples of the member states must be ensured. Parliament had proposed a different seat allocation for each individual member state but the matter then became highly sensitive in the Council negotiations (Bieber 1976a: 235-6, Bieber 1976b: 707-8, Schreiber and Schrötter 1978: 6-7). A compromise was struck on the grounds that the category of large member states was retained so that the 'big four' (Germany, the United Kingdom, Italy and France) could be treated equally despite a higher population in Germany. Moreover, the medium sized countries had to accept the loss of some seats.[43] Apparently, the thinking of

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[42] Originally, the large countries (Germany, France, Italy) were allocated 36 seats, the medium-size countries (Belgium, the Netherlands) 14 and Luxembourg six. After the first enlargement round the United Kingdom was classified as a large country and another quota of 10 seats was set up for Denmark and Ireland.

[43] The Parliament had proposed the following seat distribution: Germany 71, United Kingdom 67, Italy 66, France 65, the Netherlands 27, Belgium 23, Denmark 17, Ireland 13, Luxembourg 6 (Schreiber and Schrötter 1978: 7, footnote 17). The final Council decision fixed the quota as follows: Germany, United Kingdom, Italy and France 81, the Netherlands 25, Belgium 24, Ireland 15, Luxembourg 6.

European leaders was mainly guided by the early modern concept of a balance of power in Europe. Later, the extension of German population 'growth' after unification posed a new problem to the seat allocation in the EP. France initially refused to have less seats than Germany. For two years, the 18 East German representatives could only be observers to, but not members of, the Parliament.[44] The solution that was adopted by the European Council in Edinburgh in December 1992 eventually foresaw a re-distribution of seats. In order to compensate for Germany's additional 18 seats, the United Kingdom, Italy and France were each given six additional seats (Corbett et al. 2000: 21). Thus, the seat distribution basically still followed the logic of a balance of power among the larger European states to the detriment of the representation of German citizens in terms of the ratio of inhabitants per seat (see below).

In addition to the question of to what extent parliamentary representation should be proportional to population, the question of how to sustain the Parliament's capacity to act grew in importance on the occasion of the ongoing enlargement rounds. In general, the total number of MEPs increased enormously over time. Until the first direct election seats increased from 142 to 198 members (the ECSC Assembly having originally started with 78 seats). This figure rose to 410 in 1979 and is today at 626. On the advent of the next enlargement rounds the rapid growth in size was stopped in order to enable the Parliament to work effectively. Consequently, the allocation of seats had to be re-arranged again so that, with the exception of Germany and Luxembourg, the old member states lost a portion of their national quotas. After the 2004 elections the Parliament will have 682 members. After the prospective later accession of Bulgaria and Rumania the total number of seats will reach the ceiling of 732 that was fixed under the Nice Treaty. The present and future seat allocations can be seen in Table 4.2.

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[44] The status of observer gave East German representatives the right to attend plenary and committee meetings and the right to speak in committee. They had, however, no voting rights nor the right to speak in plenary (Corbett et al. 2000: 21).

Member State	Seat allocation before enlargement	Seat allocation after enlargement	Member State	Seat allocation before enlargement	Seat allocation after enlargement
Germany	99	99	[Bulgaria*]		[17*]
United Kingdom	87	72	Austria	21	17
France	87	72	Slovakia		13
Italy	87	72	Denmark	16	13
Spain	64	50	Finland	16	13
Poland		50	Ireland	15	12
[Romania*]		[33*]	Lithuania		12
Netherlands	31	25	Latvia		8
Greece	25	22	Slovenia		7
Belgium	25	22	Estonia		6
Portugal	25	22	Cyprus		6
Hungary		20	Luxembourg	6	6
Czech Republic		20	Malta		5
Sweden	22	18	**Total**	**626**	**682 [732**]**

Table 4.2. EP seat distribution before and after enlargement
* Romania and Bulgaria will not become members of the European Union before 2007
** Total number after accession of Rumania and Bulgaria

The relation between Germany and Luxembourg is often referred to as a shocking example of how unbalanced representation of the populations is in the EP (828,667 Germans per MEP compared to 71,500 in Luxembourg), and this relationship will, indeed, remain the same after enlargement. As can be seen in Table 4.3., seat allocation follows the general rule that the smaller the population size the smaller the ratio of inhabitants per parliamentary seat. This can be explained firstly by the sheer necessity that Parliament has to be able to work effectively. In a system of completely balanced proportional representation under which Luxembourg was allocated the minimum of one seat only, Parliament would have to have at least 875 seats in a Union of 15. After enlargement (including Romania and Bulgaria) the number would rise to at least 1,122 seats. Thus, if the ratio of inhabitants per seat was the same for all member states, the Parliament's capacity to act as representative body would be seriously threatened.

Second, it has to be borne in mind that MEPs are the representatives of the member states' peoples and not the representatives of a European people. The cluster system that allows for different ratios of citizens represented per seat is suited to accommodating the difference between national units within the EU. The over-representation of medium and small sized member states is a means to outbalance the

numerical strength of populations and the heterogeneity of different national and cultural identities. There needs to be a sufficiently large number of MEPs per member state so that all peoples can make their voice heard and be represented in their diversity. In a Union of 27 the discrepancy in terms of population per member state will increase considerably. 19 countries, that is the large majority, will have populations ranging from half a million to 10 million whilst four countries will have a population of more than 50 million. Described in other terms: the sum of the populations of Malta, Luxembourg, Cyprus, Estonia, Slovenia, Latvia, Lithuania, Ireland, Finland, Sweden, the Czech Republic and Hungary is still less than the German population. Thus, the maintenance of a biased system of proportional representation is vital to the representational scheme of the European Parliament, as long it represents the European peoples and not the people of Europe.

Member State	**Ratio inhabitants per seat before enlargement**	**Ratio inhabitants per seat after enlargement**	**Member State**	**Ratio inhabitants per seat before enlargement**	**Ratio inhabitants per seat after enlargement**
Germany	828,667	828,667	[Bulgaria*]		[484,118*]
United Kingdom	681,000	822,875	Austria	384,857	475,412
France	677,770	818,972	Slovakia		414,846
Italy	662,207	800,167	Denmark	332,188	408,692
Spain	615,531	787,880	Finland	322,500	396,923
Poland		773,340	Ireland	249,600	312,000
[Romania*]		[681,485*]	Lithuania		308,417
Netherlands	508,387	630,400	Latvia		304,875
Greece	421,320	478,773	Slovenia		282,571
Belgium	408,520	464,227	Estonia		241,000
Portugal	399,200	453,636	Cyprus		125,333
Hungary		504,600	Luxembourg	71,500	71,500
Czech Republic		514,500	Malta		75,400
Sweden	402,455	491,889	**Average**	**599,561**	**660,499 [657,348**]**

Table 4.3. Ratio inhabitants per seat in EP before and after enlargement
Data on population drawn from European Commission 2000c: 61
* Romania and Bulgaria will not become members of the European Union before 2007
** Average after accession of Rumania and Bulgaria

Table 4.3. shows that proportional representation is generally balanced among groups of countries with similar populations sizes. The exception to the rule are the member states with about 10 million inhabitants (Belgium, Greece, Hungary, Czech Republic) and the category of smallest member states (Luxembourg and Malta), where

the joining member states will be under-represented compared to the old member states in their group. Remarkably, the re-distribution of seats after enlargement redresses the imbalance between the 'big four' as they will have similar ratios of inhabitants per seat from 2004 on.

4.1.4. Group Affiliations

The most prominent group affiliation within the European Parliament is the political party group. The first groups were formed in the ECSC Assembly in June 1953, and since 1958 MEPs no longer sit in national delegations but, rather, according to political affiliation. Initially there were three groups, the socialists, the Christian democrats and the liberals, which were, and still are, the three largest groups in the European Parliament. National delegations do not enjoy official status in the EP. National group affiliations are not completely absent in parliamentary work, however, but are mostly channelled through political groups. After the first direct elections MEPs have additionally organised themselves in informal and formally recognised intergroups that bring together parliamentarians from different ideological backgrounds who are particularly interested in a common political field.

4.1.4.1. Political Groups

Since the ECSC Assembly the minimum number of members required to form a political group has changed upwards and downwards. In general, the requirements for setting up a group are rather low compared to national parliaments. Since 1999 members must come from at least two different member states instead of one (Corbett et al. 2000: 59-63). Rule 29 RoP sets the minimum threshold at 23 if they come from two member states, 18 if they come from three and 14 if they come from four member states. After enlargement the requirements will be tightened considerably. As of 1 July 2004 members must come from at least one-fifth, i.e. five, of the member states. The

minimum number will be 16 MEPs. The Parliament's President has to be notified of the establishment of a political group which is then published in the Official Journal (Rule 29 (4) and (5) RoP). Political groups and non-attached members receive technical assistance from the Parliament. Political groups all have a president, a governing bureau and their own secretariat and staff. At present, there are seven political groups which account for more than 95 per cent of MEPs and 31 non-affiliated members.

Political Group's official name and acronym	Number of members	Number of member states represented	Number of political parties represented
European People's Party (Christian Democrats) and European Democrats (EPP-ED)	232	15	34*
Party of European Socialists (PES)	175	15	21*
European Liberal Democrat and Reform Party (ELDR)	54	11	21
Confederal Group of the European United Left – Nordic Green Left (GUE/NGL)	50	10	13
Greens/European Free Alliance (Greens/EFA)	45	12	17
Europe of Nations Group (UEN)	22	5	5
Europe of Democracies and Diversities (EDD)	17	4	5

Table 4.4. Political groups in the European Parliament as of 31 Dec 2002
* Number drawn from Corbett et al. 2000: 64, as of Oct 1999

Political groups enjoy considerable statutory rights. Their actual influence on the workings of the Parliament is even higher. They are firstly decisive for the election of the Parliament's officers, namely the President, the 14 Vice-Presidents and the five Quaestors. They have the official right to nominate the candidates (Rule 13 (1) RoP). In practice, the presidency is rotated between the two large groups, the socialists and the Christian democrats (with the exception of four liberal Presidents out of 25 up until 2004)[45]. This is important insofar as the President does more than just officially represent the Parliament and preside over its proceedings. He or she has invariably been an eminent political actor who has played an important role in further promoting the

[45] Presidents who belong to the liberal political group were elected in 1962 (Gaetano Martino), 1973 (Cornelis Berkhouwer), 1979 (Simone Veil) and 2002 (Pat Cox).

Parliament's influence and shaping its activities. Furthermore, political groups determine to a large extent the Parliament's internal organisation through the Bureau[46] (Rule 21 RoP) and the Conference of Presidents that consists of the Parliament's President and the chairmen of political groups. It has far-reaching powers with regard to legislative work and external relations (Rule 24 RoP). Matters that fall within the remit of the Conference of Presidents include:

- *Organisation of Parliament's work and matters relating to legislative planning*: drawing up of draft agenda for plenary sessions (Rule 100 (1) RoP), decision to allocate speaking time to a particular debate (Rule 120 RoP), authorisation to draw up own-initiative reports (Rule 163 RoP), authorisation of recommendations to the Council under the 2nd and 3rd pillar (Rules 104, 107 RoP), composition of and procedural guidelines for the Conciliation Committee under the co-decision procedure (Rule 82 (2) and (7) RoP).
- *Relations with the other institutions and bodies of the European Union and with the national parliaments of Member States*: conferral of mandate and designation of members of COSAC and any other delegation (Rules 56, 56a RoP).
- *Composition and competence of committees*: setting up of standing committees (Rule 150 (1) RoP), proposals for composition of committees (Rule 152 RoP), authorisation to appoint a subcommittee (Rule 156 (1) RoP), proposal for setting up and nominations for composition of committees of inquiry (Rule 151 (3) and (11) RoP), fixing the quota of seats that is allocated to each political group in the Conciliation Committee under the co-decision procedure (Rule 82 (2) RoP).
- *Allocation of seats in the Chamber* (Rule 31 RoP).

Given the absence of a government-opposition cleavage and the heterogeneity of the ideologies represented, the Parliament works on the basis of the general rule that the representation of political views should be balanced and consensus be reached among

[46] The Bureau is responsible for financial, organisational and administrative matters concerning members and the internal organisation of Parliament (Rule 22 RoP).

political groups. In a formal way, this can be observed in the decision-making procedure of the Conference of Presidents. The Rules of Procedure provide that when taking its decisions the Conference of Presidents shall try to reach consensus. Where this is not possible the votes are weighted on the basis of the number of members of each political group (Rule 23 (3) RoP). The fair representation of political views is also the leading principle for the composition of committees which constitute the heart of the parliamentary working system (Rule 152 RoP). In general, committee membership depends exclusively on membership of a political group. Hence Rule 153 RoP lays down that 'a committee member may not under any circumstance be a substitute for a colleague who belongs to another political group'. This provision is particularly apt for strengthening the dominant position of political groups to the detriment of both national and intergroup affiliation that cut across ideological lines.

The key positions within the committees are the (vice-)chairmen and the rapporteurs. Officially, the committee members elect the chairman and up to three vice-chairmen and nominate the rapporteurs (Rule 157 and 159 (2) RoP). In practice, however, these posts are distributed among political groups according to their numerical strength in the Parliament. The (vice-)chairmanships are distributed with the help of the d'Hondt system of proportional representation. The privilege of nomination is allocated according to the groups' respective sizes. The groups get 'slots' to name candidates for their preferred committee.

> In 1999, for example, the EPP-ED Group had the right to the first, third, fifth, seventh, tenth, thirteenth, fifteenth and seventeenth choices of committee, the Socialists to the second, fourth, sixth, eleventh, fourteenth and sixteenth choices, the Liberals to the eighth choice, the Greens to the ninth choice and the GUE Group to the twelfth choice among the 17 available committees. (Corbett et al. 2000: 108)

The posts of rappporteurs are allocated on the basis of an auction system. Here each group is given a certain quota of points according to its size. Bids for the rapporteurship can then be made. When a political group considers a certain political

theme as being a key topic it will make higher bids if possible. Of course, such an auction system is open to tactical behaviour. So there is

> the tendency for Groups not especially interested in a report to try and raise the bids, in order to make other Groups 'pay' more for them. (ibid. 117)

Overall, political groups in the European Parliament have been successful in building up internal cohesion and securing stable voting behaviour (Kreppel and Tsebelis 1998, Hix 1998: 223-4, Nugent 1999: 229). Thus, they are central to rendering the Parliament's working procedure effective and make its voice heard in European politics by way of enabling the majorities required under the Treaty.

The emergence of coherent political groups was not evident firstly because they lack important devices to control the behaviour of individual members. None of them supports a government so there is much less pressure to vote for or against a bill than there is for MPs of a governing national party. Moreover, they are not decisive for the re-election of MEPs since candidates for European elections are nominated by national parties. In the same vein, they do not function as a human resource pool for posts in the executive. Secondly, the integration that has been achieved is all the more impressive against the background of an ever growing heterogeneity of political parties represented within a given group (Hix 1998: 224). The split between pro- and anti-marketeers, for example, deeply divided the socialist group in the early 1980s (Corbett et al. 2000: 90). However, such splits should not be seen as a weakness in the political groups. Rather, the possibility to express divergent thoughts within the group structure is a central mechanism of integration because it enables critics to become, and remain, engaged in European politics. In the short run, contention may hamper cohesion. Yet, in the long run, it makes cohesion not based on the uniformity of thought but as a result of the integration of diversity. It is arguably because political groups lack the devices to discipline their members that are at the disposal of their national counterparts they had

to learn to integrate a great diversity of individual views in order to be able to speak with one voice.

4.1.4.2. Articulation of National Interest

That 'the dog that has barked remarkably rarely is 'national interest'' (Wallace 1996: 64) is clearly a result of the central position that political groups enjoy. Nevertheless, national interest is not fully absent. Formally, the need for fair representation of member states is acknowledged, although in a way subordinated to the representation of political groups. Whereas the aim to ensure an overall balanced representation of political views runs like a thread through the Rules of Procedure, 'fair representation of Member States' is only mentioned with regard to the election of the President, the Vice-Presidents and Quaestors (Rule 13 (2) RoP). National delegations are formed but usually as a component of political groups, i.e. only among members who belong to the same national party (or party family). As such they function as the Parliament's link to national parties (Corbett et al. 2000: 87). Furthermore, national delegations normally propose candidates for the Parliament's key posts who are then nominated by the political groups. Here account is taken that all the delegations are duly represented.

> If a national delegation within a Political Group has already provided a President, Vice-President or Quaestor of Parliament, or the chair of its Political Group, its chances of gaining a major committee chair may diminish since other delegations must also get their turn. (ibid. 108)

There are cases where national party interests prevail. For the reasons explained above, political groups usually accept this even if it may lead to a voting behaviour which is opposed to that of the political group (ibid. 89).

4.1.4.3. Intergroups

The first intergroups were formed in 1980, in the aftermath of the first direct elections. The Parliament's relative openness for elaborating and articulating new policy approaches together with its increasing competencies have made the number of intergroups rise over the years. Since they are not all are formally established official intergroups (see below) it is impossible to know their exact number. As of 21 February 2003, 22 intergroups are registered with the Secretary-General (European Parliament 2003) whereas an indicative list for the 1999-2004 parliamentary term names more than 80 intergroups (Corbett et al. 2000: 165). Intergroups bring together MEPs of different political backgrounds and nationalities who share an interest in a particular policy field. Their scope and intensity of activity as well as their organisational forms may vary considerably. Some receive outside funding from interest groups or the Commission (ibid. 157). In many cases the secretariat is provided by an interest group and the technical assistance (meeting rooms, interpreters...) normally falls under the responsibilities of the political groups. Membership may be restricted to MEPs or be open to the interested public. In most cases, intergroups are composed of MEPs and interest group representatives. In one rather particular case membership consists of parliamentarians from around the globe (Global Legislators for a Balanced Environment, GLOBE) (ibid. 158). Usually, intergroups serve as a forum for discussing long-term issues rather than urgent day-to-day matters, for building up a policy approach common to its members and for raising awareness of particular problems. Therefore, intergroups may become powerful internal lobbying groups. The typical workings of intergroups are described by Mel Read, a British Labour MEP, for the case of the Animal Welfare Intergroup:

> A typical agenda might begin with a discussion of legislative strategy on current Commission initiatives having a bearing on animal welfare, which are on the agenda of the current Session. There are then discussions of items of general interest such as proposed future legislation initiatives, or issues which the Intergroup would like the Commission to tackle. Other issues may appear on the agenda as a result of concern expressed by individual members or by a

national animal welfare association. The Intergroup can seek to have reports drawn up by a particular Committee. It can even seek the direct adoption of written declarations - which requires an absolute majority of MEPs. If and when the Commission responds to Parliament's pressure, the Intergroup then tries to mobilise support within the Parliament and to fend off counter lobbies.

Intergroups may focus on a wide range of issues and activities. A number of intergroups is country-specific or deal with policies related to a particular region, such as the East Timor, Tibet, Friends of Israel, Friends with Morocco, Elimination of the Embargo against Cuba, North Sea, Mediterranean or Euro-Arab Intergroup. Others are more policy-centred, as for example the Textile, Clothing and Leather, Duty Free, Beer Club or Land Use and Food Policy Intergroup. In some cases, intergroups seem to be more a social club than a political forum. This category may apply to the Golf Team, the Rugby League or the Ecumenical Prayer Intergroups. Finally, a small number of intergroups deal with horizontal policies, *inter alia*, the Sustainable Development and the SOS Democracy Group as well as the (former) Crocodile Club[47] and the Kangaroo Group.[48] The 'political animal groups' both belong to the first generation of intergroups, the Crocodile MEPs fighting for a federal European Union based on a European Constitution proper and the Kangaroo MEPs for a Single Market. Both have attracted members from a wide range of member states and political parties. In addition, the Kangaroo Group has a large corporate membership. Their respective activities are not confined to Parliament but aimed at convincing member states' policy-makers of their overall goal.

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[47] The Crocodile Club was founded in 1980 by Altiero Spinelli who imitated tactics of French revolutionaries by naming the group after the Strasbourg restaurant where its founding members had met. The Crocodile Club ceased to exist after Spinelli's death. Yet MEPs continued their efforts to achieve the Club's overall objective, from 1986 to 1992 as the Federalist Intergroup, then as SOS-Europe, and since the 1999 elections as the European Constitution Intergroup.

[48] The Kangaroo Group owes its name to a trip to Australia by one of its founding members. He came back with a kangaroo badge which inspired the group's name as its members found that the kangaroo symbolised a 'peaceful nature and [the] ability to take great leaps forward with an empty pouch over any boundaries' (Kangaroo group self-description).

Since they began to mushroom after the first direct elections, the formation of intergroups were not welcomed neither by the Parliament's governing bodies nor the political groups. They are not part of the formal processes of the Parliament and very unlikely to ever gain official status on their own right. The informal setting together with the possibility to discuss long-term policy developments constitute the main advantages of intergroups as they help to bring about a common understanding among its members. Yet they are criticised for enabling organised interests to have uncontrolled influence on MEPs and undermining the role of political groups which are officially recognised as being the Parliament's centres of opinion formation.

> Intergroups thus not only help to form cross-Group coalitions on specific issues, but to forge wider political friendships which can be useful in other circumstances, and can help build that wider consensus which is often essential in the European Parliament. The very success of intergroups, however, has meant that they can constitute a rival centre of attention to official parliamentary activities, and in certain circumstances may undercut the latter. (Corbett et al. 2000: 158)

As a result, attempts have been made to control interest group's influence on intergroups and minimum requirements have been established for intergroups to receive technical assistance from political groups. The Parliament's Rules of Procedure lay down that 'chairmen of groupings of Members, both intergroups and other unofficial groupings of Members, shall be required to declare any support'. To this end, the Quaestors keep a register for the declaration of outside support which is accessible to the public (Art. 2, Annex I RoP). In addition, the rules for the establishment of intergroups adopted by the Conference of Presidents state that intergroups are not organs of the Parliament, that they are not allowed to either speak in the name of Parliament or undertake any activities which might result in confusion with the Parliament's official activities. In December 1999, the conditions for the official establishment of intergroups were tightened (European Parliament 1999). Intergroups now need to have the support from the chairmen of at least three political groups. Yet the number of signatures available to the political groups is limited so that only a

maximum total of 26 intergroups may be established officially. This explains the important difference in numbers between the officially recognised and the informal intergroups (see above). It remains, however, doubtful as to whether the current rules are suited to controlling interest group influence on intergroups and restricting their overall number at the same time. It seems that the guiding principle for the intergroup rules was to restrict their official number because they appear to be competitors to political groups, rather than to establish rules that are conducive to bringing about more transparency with regard to interest group influence. Thus, most intergroups have to remain in the 'underworld' of parliamentary activity instead of being exposed to the light of public scrutiny. Arguably, political groups are less willing to accept functional affiliations than the national and ideological heterogeneity of their members.

4.1.5. Assessment

In the early days of the European Communities one could have argued that a functional representative assembly was better suited to integrating and ensuring the participation of the societal level because European integration was built on a dominantly functional approach. That parliamentary representation could be adapted to a supranational environment and hence enrich the Community with a genuine dimension of trans-national democracy was considerably helped by the widespread public conception of parliamentary representation. The latter has become to feature prominently in our thinking about representation. Usually, it is regarded as 'superior' form of representation, sometimes to such an extent that the entire category of representation is exclusively understood as parliamentary representation. Against this backdrop, European parliamentarians have acted from the very beginning as if the European Parliament was naturally entitled to rights comparable to national parliaments. They did so as nominated MEPs and even more so since they were directly elected. In order to make this understanding amply clear the European Assembly, as it was

originally called in the Treaties, soon called itself European Parliament (as of 30 March 1962). In the same vein, member state representatives have granted more powers to the Parliament because they deemed parliamentary representation as a suitable means to render the Union more legitimate. Thus, one can say that European parliamentary representation as such fits the overall social context very well. Because the imagery of parliamentary representation resonates strongly both within national public spheres and among European policy-makers, a powerful dynamic could unfold. As a result, the parliamentary component of European integration has been increasingly strengthened. What is more, the Parliament has achieved internal integration that transcends national affiliation. Ever since the first plenary of the EEC Assembly, MEPs sit in political groups rather than in national delegations. Over time, political groups have become the central players in the internal workings of Parliament. Additionally, functional affiliations in the form of intergroups have grown in importance without, however, gaining an official position in parliamentary organisation. Both affiliations, ideological and functional, bring about supranational integration, the latter being a supplement to the former.

That the Parliament's mission as understood in the broader social context does not correspond to its powers has constituted both a source of criticism and activism since its inception. Not surprisingly, the image of the mismatch was accentuated since the European Parliament is directly elected. Yet one could argue that parliamentary representation is inextricably linked to the nation state and, therefore, cannot be realised in a way consonant to its widespread conception in a non-state, non-nation environment such as the European Union. Drawing on this line of argument, a qualification should, indeed, be made in respect of parliamentary representation on the European level. As the Parliament represents the peoples of Europe and the Union is based on its member states as high contracting parties, the European Parliament lacks the basis to function as the expression and articulation of the sovereignty of a single European people.

However, the former Economic Community has become part of a political European Union. In political communities the citizen has become to be the entity which is central to being represented properly if government is to be regarded as legitimate. In the context of European integration this would mean that both the member states and their citizens would have to be equally represented. Already in its 1984 resolution on the draft Treaty establishing the European Union (the so-called Spinelli-report, OJ C 77/53, 19.3.1984) the Parliament had by this time given birth to the idea that the European legislature should be based on a bicameral system – the first chamber representing the peoples of Europe, the second chamber representing the member states. What was a visionary idea in 1984 would have to be realised today if the Parliament's mission is to correspond with the actual stage of integration and a broader social understanding of parliamentary representation. In turn, a full-fledged bicameral system would have to entail a further considerable extension of the Parliament's powers. Most significantly, the Parliament would have to be a general co-legislator in Community affairs and fully share budgetary powers with the chamber of the states.

4.2. The Council

The Council is the forum for member states to pool their sovereignty. To this end, it brings together a great number of national representatives and civil servants. The Council provides the framework wherein they jointly take decisions ranging from the day-to-day business of Community policies to the broader framework of European integration. The Council is also the institution that is most affected by enlargement. The necessity to continue to work effectively made necessary a thorough reform of its internal working and decision-making procedures.

With hindsight it may come as a surprise that the institution that came to be the centrepiece of European decision-making was not foreseen by either Schuman or Monnet as being part of the institutional make-up of European integration. According to

their original plans the European Coal and Steel Community would be led by a supranational High Authority that was independent from member state governments. The latter would entirely renounce national sovereignty over the coal and steel sector. However, the Benelux countries were anxious about becoming dominated by France and Germany and therefore favoured the establishment of an intergovernmental body to control the High Authority. The governments of the larger states gave the proposal a warm welcome because they too were not prepared to accept their total exclusion from ECSC decision-making. Thus, they agreed upon the establishment of an ECSC Council of Ministers. Nevertheless, the ECSC High Authority was bestowed with extensive supranational powers. Yet the power balance between the High Authority and the Council of Ministers led to an unproductive climate, arguably national ministers were neither used, nor willing, to be subordinated to a commissarial bureaucracy. When the negotiations of the Rome Treaties started it was clear that national governments would aim at playing a central role in the new European communities. The Rome Treaties took account of member states' claims and thus the Euratom and EEC Council of Ministers were established which merged together with the ECSC Council into a single Council in 1967 (Westlake 1999: 1-4).

Although the Euratom and EEC Councils were the central decision-making powers, member states' apprehension about supranational integration remained. They did not see their role being confined to being the titular 'masters of the Treaties'. Hence, intergovernmental cooperation was to become a central feature of European integration. The 'empty chair' crisis of 1965 was the most visible sign that the ultimate control of European integration rested with the member states. In reaction to a package deal proposed by the Commission, the French President De Gaulle had called back all French representatives from the Council. The Commission's proposal had tied the setting up of de Gaulle's much desired Common Agricultural Policy to the introduction of a system of 'own resources' coupled with direct elections to the European Parliament both of which the French President would not accept. In the course of the crisis de

Gaulle added the envisaged shift from unanimity to majority voting in the Council to the list of issues to which he was opposed (Cini 1996: 46ff., Teasdale 1999). Agreement could only be reached in 1966 on the basis of the so-called Luxembourg Compromise. Herein the member states laid down that thereafter they would not proceed to majority voting if at least one member state claimed that 'very important' national interests were at stake. In those cases the Council should endeavour to reach consensus 'within a reasonable time-span'.[49]

The Luxembourg Compromise was never incorporated in the Treaty and, accordingly, never officially acknowledged by either the Commission or the Court. Yet what came to be interpreted as an actual veto power conferred upon each member state loomed large in Community decision-making. Hence, for a considerable amount of time, many key policy fields were blocked in the Council. During the 1980s the possibility to veto gradually lost its impact. In accordance with common understanding it ceased to exist altogether after the decision-making procedures had been restructured by the Single European Act. The Luxembourg Compromise, however, had a lasting impact on the Commission's autonomy. The institution that was designed to be an independent supranational body had to accept the fact that no European legislation could go its way without the full cooperation of national governments.[50]

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[49] The relevant paragraphs of the Luxembourg Compromise read as follows:

1. Lorsque, dans le cas de décisions susceptibles d'être prises à la majorité sur proposition de la Commission, des intérêts très important d'un ou de plusieurs partenaires sont en jeu, les membres du Conseil s'efforceront, dans un délai raisonnable, d'arriver à des solutions qui pourront être adoptées par tous les membres du Conseil dans le respect de leurs intérêts mutuels et de ceux de la Communauté [...].
2. En ce qui concerne le paragraphe précédent, la délégation française estime que, lorsqu'il s'agit d'intérêts très importants, la discussion devra se poursuivre jusqu'à ce que l'on soit parvenu à un accord unanime.
3. Les six délégations constatent qu'une divergence subsiste sur ce qui devrait être fait au cas où la conciliation n'aboutirait pas complètement.

[50] The Luxembourg Compromise proclaimed, *inter alia*, that the Commission should consult with COREPER before adopting important legislative proposals and that it should not publish any such proposal before the Council had taken account of them.

Further, the Commission gradually lost its monopoly on being European integration's driving force as intergovernmental summitry of the heads of governments started to take shape in the late 1960s and eventually became institutionalised in 1974. The 1983 Stuttgart Solemn Declaration explicitly placed the European Council within the Community framework by stating:

> When the European Council acts in matters within the scope of the European Communities, it does so in its capacity as the Council within the meaning of the Treaties. (Stuttgart Solemn Declaration, EC Bulletin 1983, n° 6)

Finally, the European Council's composition, overall mission and specific tasks were incorporated into the Treaty through the successive Treaty revisions.

The establishment of the European Council had two significant effects on the workings of European integration. First, by acting as a final arbiter for political decisions, the European Council introduced a notion of hierarchy into a system based on the notion of institutional balance. Second, it complemented (and, arguably, sometimes replaced) the supranational Commission-led integration method by intergovernmental bargaining. Whilst the Luxembourg Compromise was informed by reactive obstruction, the European Council turned member states' apprehension about supranational integration into much needed proactive initiative, so that

> it is no exaggeration to say that, since 1975, most of the major political decisions of the European Community have been taken in the European Council. (Westlake 1999: 23)

4.2.1. Powers

The Council's powers clearly display the fact that the Union is constituted by its member states. The Council assembles the level of governance that ultimately decides upon the allocation of powers at European level (although not in the framework of the Council). In exercising that prerogative state representatives are exclusively accountable

to national parliaments but independent from the other EU institutions the powers and institutional make-up of which are fixed by the high contracting parties. Hence, in contrast to the other institutions under investigation, the Council disposes of encompassing decision-making powers in *all* areas that fall under the remit of the European Union. Its powers are shared where the Treaty so requires or where it is deemed appropriate by the Council.

The Council's mission is to 'ensure that the objectives set out in [the] Treaty are attained'.[51] To this end, the Treaty confers upon the Council legislative as well as executive powers. In addition, the European Council has the mission to 'provide the Union with the necessary impetus for its development' and to 'define the general political guidelines thereof' (Art. 4 TEU, see above).[52]

As regards the Council's *legislative powers*, the Treaty simply states that it has decision-making power (Art. 202 TEC). The Council 'acts in legislative capacity [...] when it adopts rules which are legally binding in or for the Member States, by means of regulations, directives, framework decisions or decisions, on the basis of the relevant provisions of the Treaties [...]' (Art. 7 RoP). The decision-making procedures vary depending on whether, and how, other institutions participate in the procedure and whether the Council acts on a Commission proposal or on its own initiative (see the other sections of this chapter). In all cases, the power to legislate rests – fully or partly – with the Council. European legislation has either to be adopted by the Council or the power to legislate has to be conferred to another authority by the Council. It is, therefore, the Union's central legislator. In addition, the Council shares *budgetary*

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[51] The Union's objectives as defined in Article 2 TEU are the promotion of economic and social progress and a high level of employment, the achievement of a balanced and sustainable development, the assertion of the Union's identity on the international scene, the protection of the rights and interests of the member state nationals, the development of the Union as an area of freedom, security and justice, finally the full maintenance of the *acquis communautaire*.

[52] The Stuttgart Solemn Declaration ascribed to the European Council some more tasks all of which it has been fulfilling ever since. These include: to bear in mind the need for overall consistency in its deliberations, to initiate cooperation in new areas of activity, to express common positions in the field of external relations and to define approaches to further the construction of Europe.

powers with the European Parliament (see 4.1.1.). As regards its *executive powers*, the Council usually confers – partially or wholly - the power of implementation on the Commission (Art. 202 TEC). In most cases the Council scrutinises and controls the implementation undertaken by the Commission through so-called 'comitology' committees. In specific cases it may also exercise implementation powers on its own.

In addition to its legislative and executive functions, the Council is a *forum for intergovernmental cooperation and coordination*. Under the TEC, it has to ensure the coordination of the general economic policies of the member states (Art. 202 TEC) and of certain matters of employment policy (Art. 126 TEC). Furthermore, the Council is the central actor within the Union's intergovernmental pillars, namely the CFSP and Police and Judicial Cooperation. In addition, the Council has to authorise any enhanced cooperation among member states within the EU framework and, together with the Commission, has to ensure its overall consistency (Art. 27, 40, 43, 44, 45 TEU).

As regards the Union's external relations, it may not come as a surprise that the Council, bringing together national governments, plays an important - although not exclusive (see 4.3.1.) - role as the Union's *external representative*. To this end, the rotating Presidency represents the Union in CFSP-related matters. It is assisted by the Council's Secretary-General who exercises the function of High Representative for the CFSP. Furthermore, the Council may appoint special external representatives and bestow them with a mandate (Art. 18 TEU).

Finally, the Council has a central position with regard to *appointments*. It is competent for most appointments within EU institutions and bodies, namely the European Commission, the Court of Justice, the Court of Auditors, the Economic and Social Committee, the Committee of the Regions, and Europol.

4.2.2. Composition

Despite the Council being a single legal entity it meets in various configurations. Somewhat apart stands the European Council which is defined as the Council 'meeting in the composition of Heads of State or Government' together with the President of the Commission. In addition, they are assisted by the ministers of foreign affairs and by a member of the Commission (Art. 4 TEU).[53] As regards the other Council configurations, the Treaty states that

> [t]he Council shall consist of a representative of each Member State at ministerial level, authorised to commit the government of that Member State. (Art. 203 TEC)

It is worth noting that Article 203 TEC is formulated in a way that takes account of the particular domestic structure of federal states. Accordingly, regional ministers may replace their national counterparts if they are competent to do so (see also 4.5.).

The Council configurations can be divided into one horizontal Council – the General Affairs and External Relations Council bringing together the foreign affairs ministers – and a number of sectoral Councils. The pre-eminence of the General Affairs Council has developed since the early days of the ECSC Council. At that time foreign ministers usually dealt with the political questions, and only when technical issues were dealt with were they joined by the competent ministers. Gradually, the latter started to meet separately (Westlake 1999: 61). Until the 1990s more than 20 sectoral Councils had been established. Depending on the subject-matters and the decision-making procedures that have to be applied, the sectoral Councils developed specific working procedures as well as specific corporate identities. The growing fragmentation of the Council increasingly hampered its efficiency. With a view to enlargement, the Council compositions have been cut down to nine (see RoP as adopted 22 July 2002, OJ L 230,

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[53] In practice, the Secretary-General of the Council and the Commission also participate in the European Council meetings. Furthermore, the ministers of economics and finance assist the meetings if EMU-related issues are at stake.

28.8.2002). The overall principle of sectoral Councils, however, remains in place. This in turn poses a problem with regard to overall political guidance and consistency. The Council never meets in a cabinet-like round where specific dossiers could be discussed in a broader perspective among different ministers. Neither does it have a permanent President or Prime Minister who would be responsible for the overall political direction and programming. According to the new Rules of Procedure political guidance is assured through the European Council, the respective Presidency and the General Affairs Council, all of which are involved in the elaboration and adoption of a multiannual strategic programme. This, in turn, is implemented through annual operation programmes (Art. 2 (49 and (5) RoP). As to the consistency of the Council's work, this has to be ensured by the General Affairs Council and COREPER, the latter bringing together the Permanent Representatives of the member states who prepare the work of the Council (Art. 207 (1) TEC). The Council's Rules of Procedure lay down that the General Affairs Council is responsible, *inter alia*, for the preparation for and follow-up to the European Council, the overall coordination of policies, institutional and administrative questions and horizontal dossiers which affect several of the Union's policies (Art. 2 (2)a RoP). COREPER has to 'ensure consistency of the Union's policies and actions' and see to it that the principles of legality, subsidiarity and proportionality are observed (Rule 19 (1) RoP).

Permanent Representatives are delegated national diplomats. Thus, from a theoretical representational perspective, they do not represent in a political sense because it is their task to fulfil a mission that has been previously defined by member state governments. In practice, however, they are central to the Council's negotiations. Hardly any consensus could be reached, or bargains be struck, without their intermediary work.

> COREPER is one of the most powerful organs within the European Union's institutional structure. It is also one of the most obscure. A prime reason for this obscurity is that COREPER is composed of career diplomats whose

> theoretical task is merely to prepare the work of their political masters. In reality, these diplomats wield considerable *de facto* executive and legislative power. (Westlake 1999: 276)

In fact, the tasks assigned to COREPER under the Rules of Procedure are much more than merely procedural in character. In general, once a proposal has been tabled, its technical details are first discussed in a working party or committee that is composed of national expert civil servants. The working parties and committees are set up (or approved by) COREPER (Rule 19 (3) RoP). Political issues are then dealt with at the COREPER level. Here a consensual solution is fleshed out, if possible. It is only if there remains disagreement among the Permanent Representatives that the issue is tabled for decision needing discussion as so-called 'B-Point' at the relevant Council of Ministers. As many matters are successfully resolved at COREPER level, the Councils just have to rubberstamp those proposal which have been tabled as so-called 'A-Point'. Furthermore, COREPER takes a number of decisions in respect of the publicity of Council acts and debates, and the internal as well as the legislative decision-making procedure.[54]

It has become evident over time, that the Council could not work effectively if it did not rely on COREPER. These long-serving diplomats constitute the institutional backbone of the Council and ensure a minimum of efficiency. They are helped by a corporate identity based on mutual understanding and the acknowledged need to reach consensus. Thus they effectively *represent* their governments' interests. The problem here is not that the Permanent Representatives do not represent but that they do not represent in a democratic sense.

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[54] These are, *inter alia*, the decision to hold a public debate in the Council; the decision, in certain cases, to make the results of votes public; the decision to publish or not to publish a text or an act in the Official Journal; the decision to use the written procedure in urgent cases; the decision to consult an institution or body; the decision to extend the time-limits under the conciliation procedure with the European Parliament (Art. 19 (7) RoP).

The Union is composed of democratic states and declares itself to be founded on the principle of democracy (Art. 6 (1) TEU). Ministers can legitimately claim to be the constituent parts of the Union's central decision-making body because they are democratically elected. It follows that ministers have a free and political mandate. Therefore they can take binding decisions. They are subjected to parliamentary scrutiny and ultimately controlled by their electorate. Civil servants, on the contrary, are delegated. Therefore they have a predetermined negotiation mandate what makes them represent in a static sense. Ultimately, they are accountable to elected ministers or governments. It is a general feature, borne out of sheer necessity, that civil servants negotiate on behalf of democratic governments. Because they cannot represent in a democratic sense they can not take binding decisions. Accordingly, COREPER does not have the right to vote. Yet, even in the absence of a formal vote, COREPER has considerable influence on the shaping of decisions to be taken. Its doings are not exposed to either direct parliamentary scrutiny or broader public control, all the more so because negotiations take place behind closed doors. Thus, it has to be borne in mind that the recently established transparency rules as well as the reinforced mechanisms to enable national parliaments to effectively control their ministers do not reach beyond the ministerial level (see Art. 3 (3), 8 and Annex II RoP, Protocol on the role of national parliaments). Therefore, the long negotiation procedures that lead to minister's final decision-making remain in the realm of the diplomatic *arcanum*.

4.2.3. Vote Weighting

As a general rule, the Treaty lays down that

> [s]ave as otherwise provided in this Treaty, the Council shall act by a majority of its members. (Art. 205 TEC)

This provision may be somehow misleading, taking into account that for a long time Council votes were formally or *de facto* subjected to the requirement of unanimity

(see above). The extension and amplification of the Union's policies since the beginning of the 1980s made it clear that progress in integration could not be achieved if a single member state could continuously block decisions. Hence, the number of areas subjected to Qualified Majority Voting (QMV) has been increased considerably since the Single European Act. QMV has not (yet) become the general rule for Council decision-making but the prospect of the next enlargement round put a strain on member state representatives to agree on extended application of QMV voting. As a result, a further 34 areas have been changed from unanimity to QMV requirement under the Nice Treaty (though, in some cases, the introduction of QMV has been deferred until a later date, for an overview see European Parliament 2000).

Under the Council's Rules of Procedure it is relatively easy to put a decision to the vote. Article 11 RoP stipulates that votes are taken either on the initiative of the President or on the initiative of a member of the Council or of the Commission provided that a majority of the Council's members so decides. However, in reality, the Council votes rather rarely. Given its general consensus-based culture, Council representatives usually prefer to continue discussions and to try to reach agreement. However, even if the option to vote is rarely used, majority voting is, nevertheless, of central importance. On the one hand, from a practical point of view, the mere option to put something to vote facilitates considerably the consensus-seeking process. Faced with a QMV requirement, a reticent government will rather seek to negotiate favourable conditions than to voice unconditional opposition. This explains why, even though votes are rarely taken and consensual solutions are usually preferred, a number of policy fields have remained subject to unanimity voting on the explicit demand of single member states.[55]

[55] This concerns in particular taxation (due to the opposition of the United Kingdom), immigration and asylum (due to the opposition of Germany), important exceptions with respect to cultural aspects of trade policy (due to the French *exception culturelle*) and exceptions with respect to environmental policy (due to the opposition of Austria).

On the other hand, from a representational perspective, Qualified Majority Voting implies, as the term already suggests, a *qualification*. First, QMV makes a qualification with regard to the weighting of the equal representation of states versus the proportional representation of their populations. Second, the allocation of votes indicates the member states' different 'weights' within the Community of states. In reality, the allocation of one or two more votes to a single member state would not change its effective influence because QMV requires the formation of broad coalitions. Yet the re-weighting of votes has invariably been a sensitive issue because a member state's 'weight' points to its position and status.

Under the ECSC Treaty (and later under the Treaties of Rome) votes were allocated according to three categories: one vote for Luxembourg, two votes each for Belgium and the Netherlands and four votes each for Germany, France and Italy. On the occasion of the first enlargement round the existing categories were reorganised whilst maintaining the original ratio. Luxembourg was allocated two votes, Belgium and the Netherlands five votes each and the 'big four' ten votes each. A new category was added for Denmark and Ireland with three votes each. In the course of the next enlargement rounds two further categories were established: one for Spain with eight votes and another one for Austria and Sweden with four votes each. In order to accommodate 12 more member states the allocation of votes was re-shuffled again in the Nice IGC. The cluster-system, however, was maintained, so that in a Union of 27 member states votes will be allocated according to nine categories, ranging from three to 29 votes. The overall allocation of votes under QMV can be seen in Table 4.5.

Member State	Allocation of votes under QMV EU 15	Allocation of votes under QMV EU 25 [27]*	Member State	Allocation of votes under QMV EU 15	Allocation of votes under QMV EU 25 [27]*
Germany	10	29	[Bulgaria]*		[10]*
United Kingdom	10	29	Austria	4	10
France	10	29	Slovakia		7
Italy	10	29	Denmark	3	7
Spain	8	27	Finland	3	7
Poland		27	Ireland	3	7
[Romania]*		[14]*	Lithuania		7
Netherlands	5	13	Latvia		4
Greece	5	12	Slovenia		4
Belgium	5	12	Estonia		4
Portugal	5	12	Cyprus		4
Hungary		12	Luxembourg	2	4
Czech Republic		12	Malta		3
Sweden	4	10	**Total**	**87**	**321 [345**]**

Table 4.5. QMV in the Council before and after enlargement
* Romania and Bulgaria will not become members of the European Union before 2007
** Total number after accession of Romania and Bulgaria

The new system of vote weighting will not imply a major change with respect to the qualified majority threshold which, from 1958, has been slightly above 70 per cent.[56] The Nice Treaty has, however, introduced a so-called 'demographic safety net'. From 1 January 2005 a member state may request verification that at least 62 per cent of the total population of the Union is represented by the qualified majority. If this is not the case the decision will not be adopted (Art. 205 (4) TEC). In fact, with increasing membership the minimum population required for a qualified majority has dropped considerably, reaching a low of 58 per cent with the 1995 enlargement. Hence, maintaining the cluster system of vote allocation implied the risk that in a Union of 27 a number of countries representing a majority of the total population could be outvoted.

Table 4.6. shows the respective share of the vote and population before and after enlargement. Overall the same leading principles of representation as for the European Parliament apply, that is the populations of medium and small sized countries are over-represented in order to accommodate the heterogeneity of the Union's territorial units.

[56] The qualified majority threshold ranged from a minimum of 70.59 per cent in 1958 to a maximum of 72.41 per cent over the period from 1973 to 1981. When the Union reaches a membership of 27 states the threshold will rise up to a maximum of 73.9 per cent (see Declaration of the Nice Treaty on the qualified majority threshold and the number of votes for a blocking majority in an enlarged Union).

In addition, it should be borne in mind that a demographically balanced system where Malta was allocated a minimum of one vote only would be comprised of a total of more than 1200 votes!

Member State	Share of votes EU 15 (percentages)	Share of the population EU 15 (percentages)	Share of votes EU 27 (percentages)	Share of the population EU 27 (percentages)
Germany	11.5	21.86	8.41	17.05
United Kingdom	11.5	15.79	8.41	12.31
France	11.5	15.71	8.41	12.25
Italy	11.5	15.35	8.41	11.97
Spain	9.2	10.5	7.83	8.19
Poland			7.83	8.04
Romania			4.06	4.67
Netherlands	5.75	4.2	3.77	3.28
Greece	5.75	2.81	3.48	2.19
Belgium	5.75	2.72	3.48	2.12
Portugal	5.75	2.66	3.48	2.07
Hungary			3.48	2.1
Czech Republic			3.48	2.14
Sweden	4.6	2.36	2.9	1.84
Bulgaria			2.9	1.71
Austria	4.6	2.15	2.9	1.68
Slovakia			2.03	1.12
Denmark	3.45	1.42	2.03	1.1
Finland	3.45	1.37	2.03	1.07
Ireland	3.45	0.98	2.03	0.78
Lithuania			2.03	0.77
Latvia			1.16	0.51
Slovenia			1.16	0.41
Estonia			1.16	0.3
Cyprus			1.16	0.16
Luxembourg	2.3	0.11	1.16	0.09
Malta			0.87	0.08

Table 4.6. Share of votes in the Council and share of the Union's total population before and after enlargement
Data on population drawn from European Commission 2000c: 61

In general, the allocation of votes in a Union of 27 member states is more proportional to population than before.[57] With regard to the clusters of countries who share the same number of votes, the relative under-representation of the Netherlands will be redressed in the new system. However, there remains an imbalance between the

[57] The discrepancy in proportional representation measured by the standard deviation between a country's share of population and its share of votes is 2.29 under the future system of vote allocation compared to 3.83 in the Union of 15 member states.

two smallest member states, Luxembourg and Malta, and with regard to the category of largest member states whereby Germany is under-represented, although less after enlargement than before.

4.2.4. Assessment

In power terms the Council is the Union's central institution. Over time, it came to share some of its powers with the European Parliament. Yet the Parliament is still very much the 'junior partner' of the Council. For the reasons explained above a bicameral Community system would be more adequate to reflect the Community's shift to a political Union in representational terms (see 4.1.5.). Subject to purely intergovernmental, i.e. 'non-Communitarised' policies, the Council would have to learn to be on an equal footing with the Parliament with respect to legislation, the budget and some executive, in particular comitology-related, functions. One can only surmise that such a change in the Union's institutional architecture would have far-reaching repercussions on the Council's internal workings which are, to date, still very much informed by the logic of intergovernmental bargaining.

Due to the status attached to the allocation of votes under QMV the re-weighting of votes was the main reason for a major crisis during the Nice negotiations. The outcome has been criticised for being based too much on political choice rather than on objective criteria (in particular with regard to the German share of votes) and for having established too complex a system. For the sake of simplicity the Commission had proposed, and continues to propose, a scheme of 'simple dual majority' under which a qualified majority would consist of a simple majority of member states representing a majority of the Union's total population. In addition, specific sensitive cases would require an 'enhanced dual majority' consisting of three-quarters of member states representing two-thirds of the Union's total population (see European Commission 2002c: 16-7). Of course, this would make the Council decision-making much more

understandable both to government representatives and the public. Yet, from a representational point of view, the post-enlargement system of vote allocation does not undermine the Council's overall representational scheme, inasmuch as it accounts for two important features. First, according to the shift from an Economic Community to a political Union it reflects the growing influence of proportional representation on European decision-making. Second, the cluster system is a useful representational mechanism for a Union that brings together a small number of large countries and a growing number of medium and small sized countries.

However, the fact that unanimous decision-making has not been repealed entirely points to a major weakness in the representational scheme of the Council. Regardless of how a majority is defined, majority voting generally tells us something about the representational character of a body. It might be helpful here to recall the basic principles common to all representative bodies that have evolved from medieval corporate representation, and particularly that of identity representation (see 2.3.1.). These are:

- A community is formed by way of representation.
- Constitutional procedure is crucial for the creation of a legitimate representative body.
- The members of the body are equal and therefore act in the spirit of collegiality.
- Majority voting is the expression of the fact that the body as such (and not its individual members) acts on behalf of those it represents.

Thus majority voting is not just a question of efficiency. For where the Council acts on the grounds of a common accord it resembles a conference of states which is principled by intergovernmental bargaining. Only when the Council acts according to its majority does a representational dynamic unfold that brings about the integration of its members as a corporation (in the original sense of the word). The idea of a (corporate) representative Council is concordant with the original idea and construction

of the European Communities. Here lies a central difference between European integration and international organisations. Tellingly, the Treaty provides for the simple majority as standard decision-making rule. A change to a bicameral system would arguably help member state representatives to eventually subscribe fully to the original idea of a Council of Ministers.

4.3. The European Commission

The first European 'Commission' was the ECSC High Authority, set up in 1952. Under the Rome Treaties two further Commissions were established in 1958, the Euratom and EEC Commission. In 1967, the three institutions merged into one single Commission, then officially named Commission of the European Communities. Finally, as a result of the creation of the European Union, the name changed to European Commission *tout court* since the Maastricht Treaty.

As has been noted above, the original plan to set up a High Authority foresaw that it should govern almost alone. It should be the centrepiece of European integration. Jean Monnet who was largely responsible for the Schuman Declaration and the first President of the ECSC High Authority wanted the institution

> to be an innovative organisation that was adventurous in spirit and open to new ideas. Routine and detailed work should be left, as far as possible, to national authorities. (Nugent 2001: 21)

Yet, contrary to Monnet's vision, the Commission is but one institution of the 'institutional triangle'. Soon, it had to learn to share its role as motor of integration with the Council and, to a smaller degree, with the European Parliament. Further, Monnet ignored that it did not suffice to bestow the Commission with extensive supranational powers in order to make it fully independent. Rather, the Commission is reliant on its external environment. It soon had to accept the fact that, ultimately, it can only go as far as member state governments let it go. Accordingly, since its inception the Commission

has been wont to search for allies within its institutional environment as well as in the form of interest groups.

4.3.1. Powers

The Treaty provides only a vague definition of the Commission's mission which is to 'ensure the proper functioning and development of the common market' (Art. 211 TEC). To this end, the Treaty specifies that the Commission shall

> have its own power of decision and participate in the shaping of measures taken by the Council and by the European Parliament;
>
> ensure that the provisions of [the] Treaty and the measures taken by the institutions pursuant thereto are applied;
>
> exercise the powers conferred on it by the Council for the implementation of the rules laid down by the latter;
>
> formulate recommendations or deliver opinions on matters dealt with in [the] Treaty, if it expressly so provides or if the Commission considers it necessary.

Taking the provisions of Article 211 TEC together, the Commission has *legislative* and *executive functions*, serves as the Union's *think tank*, and is its *legal guardian*. In addition to the enumeration in Article 211 TEC, the Commission acts as *external representative* of the Union and *negotiator* on behalf of the Community.

As regards the Commission's *legislative functions* it has the exclusive right to initiate Community legislation and policies in almost all policy areas. The sole exception to this rule under the TEC is constituted by those Justice and Home Affairs (JHA) policy fields that were transferred from the intergovernmental to the Community pillar by the Amsterdam Treaty. Here the Commission shares the right of initiative with the member states until 1 May 2004 (Art. 67 (1) TEC). Under the TEU, the Commission has no exclusive right of initiative. However, it shares this right with the member states under the CFSP (Art. 22 (1) TEU) and Police and Judicial Cooperation in criminal matters (Art. 34 (2) TEU), including the transfer of certain policies to the Community

pillar (Art. 42 TEU). Finally, the Commission or one-third of the member states or the European Parliament may initiate the determination of a breach of fundamental rights by a member state (Art. 7 (1) TEU). The right of initiative provides the Commission with the power to frame the ground rules of the Union's policies. Yet the Commission does not act in an empty space where it elaborates proposals that it deems necessary or desirable. In exercising its right of initiative, the Commission is rather more re-active than pro-active, as the overwhelming part of Commission proposals is either derived from Treaty obligations under which the Commission has the duty to initiate legislation that translates broader frameworks into detailed policies, or responds to external demands (Cini 1996: 20-1, Nugent 2001: 236ff). The latter may come from the Council (Art. 208 TEC),[58] most notably the European Council, the European Parliament (Art. 192) or, in one particular case, one of the member states.[59] Alternatively, a Commission proposal may originate in interest group lobbying. What is more, the Commission does not act in isolation during the drafting phase. Rather, it starts a broad consultation process with the public and institutions concerned, sometimes in an institutionalised form through advisory or consultative committees that bring together either national civil servants or interest group representatives. Consultation strengthens the Commission's position during the ensuing decision-making process as it can position itself as a provider of technical information and defend its proposal on the grounds that it is consonant with the views of the concerned public. After the College has issued a given proposal, the Commission continues to 'participate in the shaping of measures', as the Treaty states. To this end, it participates in all stages and working levels of the decision-making process: in parliamentary committees and plenary sessions, in Council working parties, COREPER and ministerial meetings. During this period, the Commission fulfils two basic functions. The first is that of an 'honest broker' between

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[58] In addition, the Treaty explicitly states that the Council may request a Commission proposal in order to implement a joint action that has been agreed under the CFSP (Art. 14 (4) TEU).

[59] From 1 May 2004, a member state may request the Commission to propose legislation in the field of Justice and Home Affairs under Art. 67 (2) TEC.

the institutions and member states. Here the Commission uses its knowledge of the detailed positions of the legislating institutions to build a consensus which is acceptable to all parties involved. More generally, the Commission assumes this role in all sorts of Union matters, for example during Intergovernmental Conferences. Second, the Commission tries to shape the final outcome of a given piece of legislation in a way that it deems to be in accordance with the 'general interest of the Community'. The Treaty leaves to the Commission a certain margin of manoeuvre, which varies under the four decision-making procedures. Except for the assent procedure under which the Commission usually just translates Community agreements into a legal form, the Commission can either facilitate or hamper the realisation of amendments made by the legislating institutions by accepting or rejecting them. Under the consultation, cooperation and up until after Parliament's second reading under the co-decision procedure, the Commission can at any time during the decision-making process alter its proposal. A qualified majority is normally required in the Council to adopt a (modified) Commission proposal whilst unanimity is normally required to amend it. The Commission's power to alter, and ultimately even withdraw its proposal, does not reach beyond the second parliamentary reading under the co-decision procedure. For the last stage of the co-decision procedure the Commission is then associated with the legislative process via its participation in the conciliation committee.

It would be a cumbersome task to measure the legislative influence of the Commission as reflected in the final piece of legislation compared to the original Commission proposal. Estimations range from that the final act 'usually contains 80 per cent of [the] proposal' (Hull 1993: 83) to that it 'usually bears little resemblance to the proposal' (Cini 1996: 172). However extensive the Commission's influence on European legislation may be, the Commission's legislative functions contain two significant tasks. First, the Commission acts as a service provider in the cause of the Community, inasmuch as it translates broader goals into specific policies, puts technical information at the disposal of the legislator, and mediates between the Parliament, the

Council and the member states. Second, it feeds the 'Community interest' into the legislative process by framing policies and by taking corrective action during the decision-making process. Here the actual influence of the Commission does not matter as much as the fact that one of the institutions that take part in the shaping of European legislation has the task of functioning as a watchdog for the Community interest (see also 4.3.3.).

More generally, the Commission's two tasks in legislative matters point to a further function which is to be the Union's *think tank*. The Commission not only drafts specific policies but provides the Union with inputs with respect to general questions regarding broader themes. It does so mostly in the form of white papers, opinions and communications.

The Commission's *executive* tasks are not less important than its legislative ones. Here the Commission acts either on the grounds of its own decision-making power or on the grounds of powers that have been conferred to it by the Council. The latter scrutinises and controls the Commission with the help of 'comitology' committees. Direct implementation of Community legislation usually rests with the member states, to varying degrees depending on the policy, whilst it is the Commission's responsibility to lay down the guidelines for, and supervise, implementation. Thus, the Commission's rule-making power generally serves to implement a legal framework that has previously been agreed by the Community legislator (for detailed overviews see Cini 1996: 22ff. and 160ff., Nugent 2001: 262ff.). Accordingly, most of the Community legislation is issued by the Commission. In 2002, it enacted 602 regulations, 44 directives and 610 decisions, compared to 164 regulations, 149 directives and 57 decisions that were enacted by the Parliament and the Council or the Council alone (European Commission 2002a). The bulk of the Commission decisions concern the almost daily adjustment of agricultural prices. A special case constitutes competition policy where the Commission has a 'quasi-legislative role' (Cini 1996: 23), most notably in respect of restrictive practices, the

abuse of dominant trading positions and certain forms of state aid (Art. 81, 82 and 87 TEC). The Commission's powers in this field are far from being restricted to merely administrative tasks. Finally, the Commission disposes of a certain measure of discretion when drafting the budget and managing the Union's revenue as well as expenditure, most notably including the Community funds.

In order to give teeth to the Commission's task to supervise the implementation of Community law, the Treaty bestows upon the Commission the function as *legal guardian*. Certainly, the Commission has neither the capacity to fully monitor the implementation of Community law nor the capacity to act on all the cases where a member state fails to fulfil a Treaty obligation. The infringement procedure under Article 226 TEC serves as last resort to ensure the coherent application of Community law and the overall functioning of the Community. Therefore, the Commission mainly avails itself of its legal power when it judges the case to be of particular importance. On the whole, the Commission

> [...] does not have the right to legislate: but neither does it have responsibility for practical implementation. In fact, the Commission plays an intermediary role between these two stages in the policy process, though it is nevertheless involved in or associated with all stages in that process. (Cini 1996: 22-3)

Despite not being mentioned in Article 211 TEC, the Commission has evolved into playing a significant role as *external representative* of the Union and *negotiator* for the Community. Today the Commission is active in the fields of foreign policies, world trade, development policy and humanitarian aid, external cooperation programmes and enlargement. Over time, the Commission's negotiation power that had been given to it by the Treaty of Rome grew in importance. It was helped, *inter alia*, by the Court who laid down in its AETR ruling that 'with regard to the implementation of the provisions of the Treaty, the system of internal Community measures may not be separated from that of external relations'.[60] Therefore, the Commission has the power to negotiate on

[60] Case 22/70, *Commission v. Council*, [1971] ECR 263.

behalf of the Community with third countries on issues that are related to Community policies. The extension of the scope of Community policies as well as globalisation have further strengthened the Commission's position. Over time it has become active in international negotiations on a number of policy fields, such as agricultural, transport, fishery, development, environmental or energy policy. A special case constitutes the Community's Common Commercial Policy (Art. 133 TEC) where the Commission has successfully established itself as a policy actor on its own right. Overall, depending on the policy and type of international agreement, the Commission negotiates by itself, or together with the Council Presidency and/or member state representatives. This it does on the basis of a Council mandate (under Art. 300 TEC).

With regard to the CFSP the Commission plays a secondary role by the very nature of the policy area. Yet the Treaty states that the Commission shall be fully associated with CFSP-related work (Art. 27 TEU). In addition, the Commission together with the Council has the task to ensure the overall consistency of the Union's external activities (Art. 3 TEU).

Furthermore, the Commission participates in the representation of the Union *vis-à-vis* international organisations. Here, external representation is governed by a complex set of rules to accommodate the specific functions of the Council Presidency, the High Representative of CFSP and the Commission. Finally, the Commission has become to play an important role with regard to the ongoing enlargement process. Primarily, enlargement falls under the remit of the Council and the Commission plays a subordinated role, its formal task being mainly that to assist the member states during the enlargement process. Hence, the Commission's position with respect to the ongoing enlargement is derived less from formal powers than from its function as the Union's think tank and 'honest broker'. In sum, the Commission has been wont to establish itself as a external representative for the Union that gets associated with specific policy priorities and strategies. Even though it has to share this role with the Council, this role is of particular importance in representational terms, as the creation of an external

image of the EU through the Commission complements its EU-internal representative function of embodying the 'general European interest' and, more broadly, the European integration process as such (see 4.3.3.)

4.3.2. Appointment and Composition

Originally, the members of the Commission were nominated and appointed by member state governments, acting by common accord.[61] As a result of changes made by the Maastricht, Amsterdam and Nice Treaties, the nomination and appointment procedure has been Europeanised considerably, involving in addition to national governments the European Council, the European Parliament and the Commission President. The next Commission will be appointed as follows:

1. The European Council, acting by a qualified majority, proposes a candidate for the post of the Commission President.
2. The European Parliament approves the nomination.
3. The member states make proposals for the other members of the Commission.
4. The European Council, acting by qualified majority and by common accord with the Commission President-designate, draws up a list of nominees for the other members of the Commission.
5. The European Parliament approves the College of Commissioners as a body.
6. The College of Commissioners is appointed by the European Council, acting by qualified majority.

Thus, the role of individual national governments provided for by the Treaty has been significantly reduced to the advantage of the European Council. Most notably, the latter acts in this case as a truly representative body because the common accord

[61] With the exception of one member of the ECSC High Authority who was co-opted by its colleagues (see below).

requirement was replaced by qualified majority voting. As regards the European Parliament, it was officially ascribed a role in the appointment procedure that had already been developed in practice (see 4.1.1.). Similarly, with respect to the Commission President, it became customary since the nomination of Roy Jenkins in 1976 to designate the President before the nomination of the other Commission members. The President-designate in turn used to take advantage of his earlier nomination, touring the national capitals in order to discuss the nomination of candidates. Since the Amsterdam Treaty the President's position *vis-à-vis* the national governments was reinforced, insofar as he is no longer merely consulted but has to give his assent to the nomination of the other Commission members.

Together the appointed members of the Commission form the College of Commissioners. The College is a representative body that entirely fits the concept of identity representation. As the name indicates, the College is based on the principle of collegiality (Art. 217 (1) TEC). From that it follows that the body acts by a simple majority of its members (Art. 219 TEC) who are collectively responsible for the decisions taken (see Art. 13 and 14 RoP[62]). The College's internal deliberations and votes are not public. Outside the College the Commissioners have to act as if they were members of a single, coherent body. Hence, any Commission member is obliged to represent any collective decision as if it were his own, regardless of his personal opinion or of how he has voted on the matter. In accordance with the idea that the College represents a single *corpus*, Parliament can only give its approval to the College as a whole and is unable to single out individual Commission members that it would not like to see appointed. In the same vein, a parliamentary motion of censure can only be directed against the body as such, not against one of its constituent members. Lacking the possibility to censure individual Commission members may seem regrettable to

[62] As entered into force on 24 January 2002.

some MEPs. Yet it is fully consonant with the Commission's representational make-up and buttresses the principle of collegiality. As a reaction to the departure of the Commission in 1999 the Nice Treaty confirms the so-called *Lex Prodi,* that is that a 'Member of the Commission shall resign if the President so requests'. This provision potentially undermines the nature of the Commission's corporate representation. Yet it does not fully do so because the President needs the approval of the College if he wants to make a member resign (Art. 217 (4) TEC).

The Commission President has always functioned as *primus inter pares*. After the Treaty revisions he now has an officially recognised eminent position within the College. In representational terms he can be described as the *head* of the College whilst the other Commissioners constitute its *limbs*. This position is reflected in the appointment procedure and the President's competency to make a Commission member resign. In addition, the Treaty states that the Commission works under the political guidance of its President (Art. 217 (1) TEC). To this end, the Treaty confers on him extensive organisational powers, most notably the power to allocate and reshuffle the Commission members portfolios. The latter 'shall carry out the duties devolved upon them by the President under his authority' (Art. 217 (2) TEC). Furthermore, under the Commission's Rules of Procedure, the President convenes the Commission meetings and adopts the agenda (Art. 5 and 6 RoP).[63] Finally, the President is given the task to 'represent the Commission' (Art. 3 RoP). Here 'to represent' can only be meant in the sense of ceremonial representation because, due to the principle of collegiality, each member represents the Commission, inasmuch as they have to act on behalf of the entire College.

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[63] The Commission's Rules of Procedure stipulate that, in addition, proposals involving significant expenditure must be on the agenda in agreement with the Commissioner responsible for the budget (Art. 6 (2) RoP).

There remains the question of the College's size. Repeatedly, the number of Commissioners has been subject to debate. It already constituted a stumbling block during the negotiations that led to the ECSC Treaty. The Benelux countries were wary that Franco-German domination would work through a completely independent High Authority. Thus, whilst France and Germany were willing to accept Monnet's idea that the High Authority should have five members to whom no national quota should apply, the Benelux countries insisted that there should be at least one national from each member state (Nugent 2001: 21). Notably the Belgian delegation proposed that

> there should be equal representation of member state 'delegates' on a 'board', presided over by the President of the High Authority [...]. The independence of the board's members would be assured by a lengthy term of office. Since the governments would not be represented on the board, they would have 'Commissioners' [...] on the High Authority whose job it would be to watch over their states' interests, if needs be, to defend those interests in law.' (Westlake 1999: 2)

The compromise that was eventually struck foresaw that the ECSC High Authority should have nine members, two each from France and Germany, and one from each of the Benelux countries and Italy. The ninth member should be co-opted by his colleagues. Yet all members had to be chosen 'on the grounds of their general competence' and had to be completely independent (Nugent 2001: 21). From 1970 on, two of the nine Commission posts were allocated each to France, Germany and Italy, and one of the remaining three posts to each of the Benelux countries (Cini 1996: 50, 53). The national quota system was adapted on the occasion of each enlargement round so that the overall number rose to 13 in 1973, 14 in 1981, 17 in 1986 and 20 from 1995 on. Under the present Commission, the five largest countries (France, Germany, Italy, United Kingdom and Spain) each send two Commissioners, the other ten member states each send one.

When the number of Commissioners reached 17, some began to argue that the growing size of the College would be detrimental to its efficiency and the spirit of

collegiality. However, despite attempts to repeal the national prerogative to send 'their' Commissioner(s), the national quota system 'survived' the Maastricht and Amsterdam negotiations. During the Nice negotiations, too, member state representatives could not agree upon a solution that would have significantly reduced the size of the Commission College. Faced with the prospect that the Commission's capacity to act would be seriously damaged in a Union of 27 if the system of seat allocation was not changed, the large member states eventually renounced their second Commission member. Hence, the Protocol on the enlargement of the European Union lays down that the next Commission will be composed of one national of each member state. Furthermore, it was agreed that once the Union consists of 27 member states the overall number of Commission members will be reduced. The Council, acting unanimously, will then establish a rotation system based on the principle of equality among the member states.

However, the relinquishment of the second Commission member and a rotation system based on the principle of equality among member states does not substantially alter the national quota system. Tellingly, the rotation system will have to be set-up by a unanimous Council decision in order to safeguard the prerogatives of national governments. In sum, a system that originally resulted from the fear that smaller countries might be dominated by the larger member states has evolved into a stumbling block, cherished by some national governments for completely different reasons.

4.3.3. Mandate

Compared to the mandates of the other European institutions under investigation the notion of independence features most prominently in the Commission mandate. The Treaty lays down that the Commission members 'shall be chosen on the grounds of their general competence and their independence shall be beyond doubt' (Art. 213 (1) TEC). In a lengthy passage Article 213 TEC goes on:

> The Members of the Commission shall, in the general interest of the Community, be completely independent in the performance of their duties.
>
> In the performance of these duties, they shall neither seek nor take instructions from any government or from any other body. They shall refrain from any action incompatible with their duties. Each Member State undertakes to respect this principle and not to seek to influence the Members of the Commission in the performance of their tasks.
>
> The Members of the Commission may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits. [...] (Art. 213 (2) TEC)

Thus the Commission member's independence not only excludes that they are bound by any mandatory instruction. It is also relevant to their nomination, the exercise of their office during which they must not accept nor seek instructions, and the time after their term of office during which they are obliged 'to behave with integrity' in respect of their Commission office.

The Commission members' independence is not an end in itself. Rather, it serves as prerequisite for the Commission to be able to claim to represent the European interest. The emphasis on the independence of the Commission members serves to systematically exclude any outside influence that would undermine the Commission's claim to act in the general interest of the Community. Because the Commission's legitimacy is based on its mission to represent the European interest, it is very sensitive to being accused of representing any other interest, such as a national or industrial one.

The supranational mandate to represent 'the general interest of the Community' through a College of independent Commissioners enables the Commission to embody the European integration process as such. This aspect of its representational functions is most noticeable under a strong presidency. Walter Hallstein and Jacques Delors, for example, came to be seen as the personification of European integration. Yet, in

representational terms, the College as a whole embodies the European integration process, even under the leadership of less eminent personalities. By way of embodiment, the Commission generates an image of the European integration process that may be dynamic or frail. The central feature of the fact that the College incorporates the integration process is that it provides a means to localise and imagine the otherwise abstract process of European integration.

Yet the Treaty leaves the question open of how the 'general interest of the Community' referred to in the Commission mandate is defined. There are two possible interpretations. According to the first interpretation, the College of Commissioners identifies a predetermined European common good. Its actions are guided by the overall goal to make the European common good understood and accepted by member state governments and peoples. This interpretation is consonant with Monnet's original vision of a High Authority that would be bestowed with largely uncontrolled supranational powers and function as the motor of the European integration process. Such a non-partisan body – similar to the French Planning Commission that had previously been led by Monnet – would be located above the everyday struggles of partisan politics which Monnet had experienced as particularly tortuous under the French Fourth Republic. The High Authority would function as a self-binding mechanism that would prevent member states from repeating Europe's war-stricken past, just as Odysseus was saved from the destructive workings of the sirens by binding himself to the ship's mast.

In contrast to what might be labelled as a Rousseauean European *volonté générale* represented by a largely technocratic body, pluralism provides us with a second possible interpretation. Here the 'general interest of the Community' is defined as one component of the group process that leads to the formulation of the European common good. The latter is the result of the input of a wide range of institutionalised interests – the interests of member state governments in the Council, the interests of

member state peoples in the European Parliament, various categories of functional interests in the Economic and Social Committee and regional interests in the Committee of the Regions - and non-institutionalised interest groups. According to this interpretation, the Commission is an innovative body, insofar as it functions as the institutionalisation of the 'European integration interest'. Most importantly, the Commission interest is partial for it is but *one* of the interests the representation of which bring about the European common good. From a pluralistic point of view, the process of politics remains tortuous. Yet the interest represented by the Commission does not stand above it, rather it is one of its constituent parts.

In sum, the Commission's mandate contains a certain ambiguity in respect of what is the 'general interest of the Community'. In reality, the Commission's actions and rhetoric oscillate between the two interpretations, depending on the personal conviction of its members and the outer limits of its powers. The Commission may understand itself as the body where the general interest of the Community is defined. In this case, a 'good' policy solution is derived from the Commission's independent insights, and its mission is to convince the actors involved in European legislation as well as the broader public of the predetermined general interest. Inversely, the Commission may act as a body that facilitates European integration with the help of its independence and expertise, by simultaneously feeding into the decision-making process the policy solution that it deems to be useful for the overall European integration process.

From a pluralist point of view, however, there is but one possible interpretation. For if the Commission represented the general interest in the sense of a predetermined European common good its mandate would constitute a contradiction in terms. It would make the Commission represent what should be the outcome of the process of European interest representation. As a corollary, the function of the other European representative bodies and interest groups would be reduced considerably. They would be consisted of creating coherence in order to better channel the Commission-defined European

common good to the European peoples, member state governments, categories of functional interests, regional and local bodies and interest group constituencies. In short, European interest representation would be reduced to mediation. Thus in theoretical terms it is accurate to understand the Commission's mission as consisting of representing the European general interest as but one of the partial interests represented.

4.3.4. Assessment

The Commission constitutes the most original institutional innovation of European integration. It represents the general interest of the Community and as such embodies the European integration process. This representative function has been complemented over time by the Commission's (albeit not exclusive and limited) role as the Union's external representative. Its powers comprise a crucial role in European decision-making as well as executive functions. More generally, it participates in shaping almost any action taken at European level. The Commission is both an expertise-generating organisation with administrative functions and also has an undeniable political role to play. The hybrid institutional status makes the Commission vulnerable. It is regularly accused either of being technocratic or of lacking the legitimacy to play an overtly political role. On the other hand, the unique combination of the Commission's powers and the representational make-up of the College constitutes the basis of its strength and allows the Commission to appear to be located 'at the heart of the Union' (see Nugent 1997).

As has been explained above, the Commission's capacity to represent the general interest of the Community and to embody the European integration process hinges, to a large extent, on its member's independence. However, the national quota system that applies for the appointment of the College puts their independence into question. It is conducive to national governments and publics expecting 'their' Commissioner(s) to act in the national interest. It should be borne in mind that the

origin of the national quota system lies in the idea that Commissioners defend national interests. Arguably, it is also the reason for member state governments' reluctance to fully or partly renounce 'their' Commissioner(s). Thus, the question of maintaining or dropping national quotas is not merely a question of efficiency. More significantly, the national quota system undermines the Commission's mandate. It contributes to projecting an image of the College as being composed of national representatives to the detriment of the College's representative function as the incorporation of the Community interest. In particular, this can be observed when the Commission takes a decision that is deemed to be against a given national interest. Usually, the decision will be portrayed in the media as having been taken with, or against, the vote of the national Commissioner(s). Notwithstanding the fact that Commission votes are not public, such heightened national expectations, be they public or governmental, exercise undue pressure on the Commissioners not to act in the European interest and to violate the principle of collegiality.

The Commission members do not have to strip off their respective national identities in order to form and act as a College. What is more, their experience in national politics serves them as a means to better communicate European politics to their home countries. However, dropping the national quota system altogether would not necessarily have to imply that the Commission's capacity to act would be weakened *vis-à-vis* those member states that do not send a Commissioner. Rather, an overall geographically balanced composition would make the College a body that consists of members who come from different national and cultural backgrounds and represent in this capacity the general interest of the Community as a whole. This in turn constitutes the theoretical pre-condition for the Commission to be able to fully live up to its representative functions in the context of widened and deepened integration.

4.4. The Economic and Social Committee

The two consultative committees of the European Community, the Economic and Social Committee (ESC) and the Committee of the Regions (CoR) were established in 1958 and 1993 respectively. Both committees reflect broader trends of European integration which were dominant at their time of creation. The ESC gives expression to the concept of functional economic integration. It was established as a means to allow the main socio-economic forces of the member states assist the Councils of Ministers and the Euratom and EEC Commissions.[64] The idea for such a consultative body based on functional representation had been formulated previously, in particular by French trade unions that wanted an institutionalised form of participation in European integration. A predominantly technocratic approach, they feared, would lessen the trade union's influence in industrial relations. On the other hand, in the late 1950s ideas about functional democracy were quite common and a European consultative body may have looked like a means for their realisation (Zellentin 1962: 1-4). Furthermore, with the exception of Germany, five out of six founding member states had national economic and social councils. Thus, it seemed obvious to organise the participation of interest groups in politics in a similar way to that at national level. However, the idea of establishing an European socio-economic council did not figure in the Spaak report that served as a starting point for the negotiations of the Rome Treaties nor did concrete plans to set up such a council come onto the negotiation table until shortly before its closure. The German delegation was strongly opposed to the creation of a socio-economic consultative body, whereas the Belgian and Dutch delegations kept insisting on its establishment. [65] Since refusal would have endangered the successful conclusion of the Rome Treaties, the German delegation eventually gave in, under the condition that they would have a major say in ESC's institutional arrangement (ibid. 16ff.). As a

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[64] The European Coal and Steal Community disposed of a distinct consultative body.

[65] At that time German economic policy was dominated by a neo-liberal approach that excluded corporatist-like participation of interest groups in politics. Moreover, there was widespread consensus against the establishment of a new socio-economic council due to the *Reichswirtschaftsrat* during the Weimar Republic which was perceived as a complete failure (Zellentin 1962: 21).

result, the ESC was not granted the right to issue own initiatives opinions and the body was called a 'committee' instead of a 'council', 'making it sound less important and more technical than political' (van der Voort 1997: 90).

4.4.1. Powers

The Economic and Social Committee is a purely advisory body. It takes part in European decision-making only indirectly. The ESC is consulted by the Commission and the Council on either compulsory basis in those areas required under the Treaties, or on an optional basis. In addition, the ESC was granted the right to issue opinions on its own initiative in 1972. Since the Amsterdam Treaty came into force of the Committee also advises the European Parliament on an optional basis (Art. 262 TEC).

The Treaty provides for compulsory consultation in a host of policy fields (for a detailed overview see appendix 4.2). A number of provisions are connected to the completion of the internal market, such as the free movement of persons, services and capital, the harmonisation of national legislation, and transport policy. Furthermore, the ESC assists the Commission and the Council in the fields of employment and social policy (including the European Social Fund), in education and vocational training, public health, consumer protection, trans-European networks, industrial policy, in the fields of economic and social cohesion, research and technological development, and environmental policy. In some cases, consultation takes place on an equal footing with the European Parliament. These concern the liberalisation of services, the harmonisation of tax provisions and national legislation which affects the common market, as well as specific measures in transport, employment, social, research, and environmental policy. On the whole, the bulk of ESC opinions are issued on optional request (van der Voort 1997: 78), contrary to what the wide scope of compulsory consultation required under the Treaty would suggest.

4.4.2. Appointment and Composition

The ESC constitutes a unique body, inasmuch as it brings together representatives of a broad variety of economic and social interests. According to Article 257 TEC, the Economic and Social Committee

> shall consist of representatives of the various economic and social components of organised civil society, and in particular representatives of producers, farmers, carriers, workers, dealers, craftsmen, professional occupations, consumers and the general interest.

At present, the ESC has 222 members. Seats are allocated to member states according to five quotas that take into account the different population sizes very roughly. The seat distribution is as follows: Germany, France, Italy, and the United Kingdom 24 seats each, Spain 21 seats, Belgium, Greece, the Netherlands, Austria, Portugal, and Sweden 12 seats each, Denmark, Ireland, and Finland nine seats each, and Luxembourg six seats. The Nice Treaty provides that the total number of members shall not exceed 350 after enlargement. The future seat distribution will differentiate between eight groups of countries with Poland joining Spain (21 seats), Rumania with 15 seats, the Czech Republic, Hungary, and Bulgaria joining the group of states having 12 seats, Slovakia and Lithuania with nine seats, a new group formed of Latvia, Slovenia and Estonia with seven seats, Cyprus joining Luxembourg with six seats and Malta becoming the new smallest member state with five seats.

ESC members are nominated by member states and appointed by the Council for a four year, renewable term. To this end, the Council is required to consult the Commission and may also hear European social and economic interest organisations (Art. 259 TEC). Whilst in theory the nomination and appointment procedure involves the national and the European level, member states entirely determine the ESC's composition in reality. The weak European dimension of the procedure together with some imprecise Treaty provisions result in what most authors depict as an unbalanced

composition of the ESC (van der Voort 1997: 154, Vierlich-Jürcke 1998: 38-9, Morgan 1991: 6, Kirchner and Schwaiger 1981: 68).

As regards the nomination procedure, the Treaty leaves open the question of how to draw up the candidate lists. Consequently, different practices have been developed in the various member states. In some countries the task of nominating interest representatives falls under the responsibility of either the Head of State, the central government or individual governmental departments, in others the national corporatist bodies are decisive. Most nomination processes are neither formalised nor transparent. Only Austria has a legally formalised nomination procedure anchored in the constitution (van der Voort 1997: 154-6, Vierlich-Jürcke 1998: 44-7). Overall, the lack a formalised and transparent nomination procedure weakens the independence of ESC members and makes it difficult for European candidates to become nominated. Even during the first nomination round party politics and good relations to national governments seem to have mattered, leading to the exclusion of communist trade unions and representatives of European organisations (Zellentin 1962: 62-3, 80). Moreover, there is no consensus among member states on whether nominees should belong to an organisation. The ratio of ESC members who either do not belong to an organisation or do not stand for a clearly defined interest is particularly high within the British delegation. This seems to be part of 'a tradition of nominating consultants who serve every interests that finds it [the UK government] expedient to make use of the ESC' (van der Voort 1997: 159). Further confusion stems from the category of general interest representative that is listed in Article 257 TEC (see above). It remains unclear whether these are meant to represent the general interest in the sense of an overarching common good in contrast to their fellow members who represent societal factions. From a pluralist perspective it would be a contradiction in terms to have someone represent what should ideally be the outcome of the group process. In other words:

> However, when the public interest has already been represented, why then bother about dialogue? The representatives of the public interest could simply

> express their views on an issue, and the other ESC members would know where their discussion should lead to! (van der Voort 1997: 159)

The ambiguity inherent in the definition of a general interest representation may explain why member states did not use this nomination option frequently. Yet there were cases of general interest representatives, including university professors and state officials (Zellentin 1962: 31ff, Kirchner and Schwaiger 1981: 66, van der Voort 1997: 159). Finally, certain economic interests, in particular those of farmers, workers and employers, tend to be over-represented because member states with small national quotas usually nominate representatives of what they consider core interests mentioned in Article 257 TEC. Only the larger member states extend the scope of represented interests. For example, Germany is the only member state that has, since 1982, nominated a representative of environmental interests on a regular basis.

As regards the European-level appointment there is no effective mechanism to ensure an overall balanced representation. The Council only rubberstamps the national nomination lists that have previously been examined by COREPER. The latter only looks at the changes on the lists. If an organisation has had a seat in the past the state representatives assume that to be a sufficient criteria for an adequate representation of the various categories of economic and social activity (van der Voort 1997: 154). In addition, whilst European interest organisations do not have any influence on the national nomination procedure, neither do they have any either on the appointment procedure because, with the exception of 1958 and contrary to what the Treaty suggests, the Council does not hear European interest organisations (Kirchner and Schwaiger 1981: 68, Vierlich-Jürcke 1998: 56-7). In sum, the nomination and appointment procedure results in a rather rigid composition structure which neither reflects a genuinely European landscape of interest organisations nor is suited to taking into account societal changes.

4.4.3. Mandate

In order to fulfil their advisory task, the Treaty stipulates that the ESC members are not bound by any mandatory instructions. Furthermore,

> [t]hey shall be completely independent in the performance of their duties, in the general interest of the Community. (Art. 258 TEC)

Thus, the advisory task of the ESC is qualified through a free mandate that is linked to the general interest of the Community. If the ESC was nothing more than a means to let any partial interest influence the European decision-making process, or a comfortable solution to be able to listen to the views of *individual* interest *organisations*, it would be adequate to provide for a binding mandate. But the ESC's task is not confined to being merely a mirror of the social and economic forces of the member states and its type of representation is not restricted to the static notion of 'standing for', or 'depicting' a variety of socio-economic interests. Rather, the free mandate is a necessary pre-condition for the ESC to be able to transcend the stage of being a mirror of socio-economic interests to become a body that brings about the integration of functional interests through representation.

Most of the criticisms that are directed at the ESC misinterpret implicitly its mission. For example, Lodge and Hermann (1980: 270, 282) argued that the free mandate would weaken the position of ESC members both *vis-à-vis* interest organisations and the other Community institutions. Streeck and Schmitter (1994: 188) found that the ESC 'failed completely in providing focus and structure to the growing pluralist system of European interest associations', while van der Voort (1997: 125) held that a growing competitive environment of institutionalised consultation would place the ESC under strain. However, the ESC's mission is neither to provide a forum for lobbying, nor to reach binding agreement among the organisations represented. In no way is the ESC meant as a chamber of the social partners.

Even though ESC members are (mostly) delegates of interest organisations they do not have to act in the latter's individual interest but should represent a given *category of interest* in a broader sense. Accordingly, the list of newly appointed ESC members is published in the Official Journal not in order of interest organisations but in alphabetical order with reference to their nationality and function. Contrary to the opinions of individual interest organisations, the Committee's opinions are an integrative part of the decision-making process. They are required under the Treaties, and can be published in the Official Journal. This could hardly be justified if ESC opinions consisted of a compilation of standpoints transmitted by delegates who receive binding instructions from their parent organisations. Only the free mandate enables dialogue, compromise, and the search for convergence among the various categories of interests represented. On the whole, ESC opinions reflect a common position of divergent, sometimes diametrically opposed categories of interests - such as those of farmers and consumers, of employers and workers, or of large industries and small and medium size businesses – and are elaborated by representatives who have to place their interest within the framework of the general interest of the Community. Hence, the ESC's mission is to enrich the Community's legislative activity with a view that reflects the consensus of *all* the *categories* of interests represented in the Committee, in the general interest of the Community. Herein lies the added value of the consultation process and this is what defines the ESC's specific mission.

4.4.4. Group Affiliations

Two distinct group affiliations are central to the work of the Economic and Social Committee and the identity of its members. Given the national selection of candidates national delegations constituted the first, so to say 'natural', groups within the ESC. Soon after the ESC's creation, however, they were joined by three functional

groups, the employers (I), the workers (II) and the various interests group (III).[66] The Council refused to grant official status to functional groups in the ESC's Rules of Procedure until 1974. The state representatives were wary that the ESC would become a political actor that would be in direct competition to the EP (which was, at that time, also a purely advisory body) and that the existence of functional groups would lead to a direct opposition between the social partners (Zellentin 1962: 109, van der Voort 1997: 164). In the latter case their fear turned out to be ungrounded because of the tripartite structure of the ESC. Indeed, the third group functions as a balancing wheel between the social partners.

> In general, the game played in the ESC is that the first groups seek the support of the third one. The third group, then, is always suspect in the eyes of both group I and II in that it structurally supports the other group. (van der Voort 1997: 163)

Yet the first consideration – that functional groups would make the ESC a more political than a technical body – was correct. ESC's functional groups have evolved into central players within the Committee. They function similar to political groups in the European Parliament insofar as they bring about aggregation of interests on the supranational level and effective work procedures. Today, ESC's internal organisation is principled by a balanced representation of the both group affiliations, functional and national, whereby national delegations are subordinated to functional groups.

The current Rules of Procedure (as adopted on 17/18 July 2002) lay down that the Committee shall be divided into three groups (Rule 2). Rule 27 RoP further stipulates that the groups 'shall participate in the preparation, organisation and coordination of the business of the Committee and its constituent bodies, and help supply them with information'. The presidency of the Committee is rotated between the

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[66] The exact origin of functional groups remains unclear. Their establishment was either a consequence of the distinction between three groups in the guidelines for the first nomination process, or a deliberate attempt of a trade union representative who spoke on behalf of a workers' group in the first ESC session in order to overcome the national delegation structure (Vierlich-Jürcke 1998: 108).

functional groups every two years (Rule 3 RoP). The group presidents are members of the Bureau, assist the Committee presidency in the formulation of policy, the monitoring of expenditure and the preparation of the work of the Bureau and the Assembly (Rule 27(3)-(5) RoP). Moreover, functional groups have a central impact on the drafting and elaboration of ESC opinions because they nominate candidates for the specialised sections' presidents, the rapporteurs, and the members of study and drafting groups (Rule 27(6) and (10) RoP).[67]

The leading principle of balanced representation between the groups and national delegations is mentioned explicitly in the Rules of Procedure. The Bureau, Rule 3 provides, shall include a representative of each member state and observe the balance between the groups at the same time. The groups, on the other hand, in exercising their rights of proposal shall equally take account of an adequate representation of member states and 'the various components of economic and social activity' (Rule 27 (11) RoP). Finally, the Rules of Procedure contain a safeguard clause in respect of balanced national representation. If there is 'need to ensure fair representation of the Member States' an ESC member may belong to more than two specialised sections (Rule 15 (3) RoP).

However, a problem to the internal workings arises from the Committee's tripartite structure. Whereas group I and group II dispose of a predetermined identity (the workers group being the one with the strongest group identity because members can identify with a longstanding trade union philosophy), the identity of the 'various interests' group remains unclear. As its name already indicates, the group is composed of a broad range of interests the only common denominator of which seems to be that they do not fit into one of the other two groups. A self-description of group III strengthens this impression even though the text tries to turn the problem around:

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[67] In the same vein, they are responsible for the nomination of candidates for all the other organisational units, namely the budget group, the observatories and consultative commissions, and the external delegations and joint consultative committees (Rule 27 (7)-(9) RoP).

> The unique feature which forges Group III's identity is the wide range of categories represented within its ranks: its members are drawn from farmers' organisations, small businesses, the crafts sector, the professions, cooperatives and non-profit associations, consumer organisations, environmental organisations, associations representing the family, women, persons with disabilities, the scientific and academic community and non-governmental organisations.
>
> These diverse groupings are bound together by their sense of duty towards the large population whose interests they represent. (Economic and Social Committee 2001: 14-5)

As a result, group III faces serious problems in defining common positions (van der Voort 1997: 167). In order to avoid deadlock within the group, the Rules of Procedure offer the possibility to form subgroups, defined as 'categories representing the various economic and social components of organised civil society in the European Union' (Rule 28 (1) RoP). Once approved by the Bureau, the 'categories' obtain the right to have minority standpoints appended to an official ESC opinion (Rule 28 (3) and Rule 54 (5) RoP). Thus, whilst the functional groups generally bring about the integration of ESC members at European level by transcending, without replacing, national affiliations, the integrative function of group III is seriously hampered by its heterogeneity.

4.4.5. Assessment

As has been described in chapter two, functional representation was a central pattern of representation during the Middle Ages and the early modern period. Much of our understanding of representation originates from the evolution of functional representation since it precedes today's dominant pattern of territorial representation. As illustrates the history of the *Landstände*, territorial parliamentary representation even developed from functional assemblies. However, once the idea of modern national representation gained ground functional representation became to be subordinated to

territorial representation. At the same time, it gradually became to be perceived as outdated or a threat to parliamentary representation. Against this background, the ESC's type of representation is prone to being badly understood or rejected altogether because functional representation figures weakly or negatively in today's general understanding of representation. A newspaper article in which the ESC, 38 years after its creation, is depicted as 'ständestaatliche Relikt' (Stabenow, FAZ January 20, 1996) mirrors the general suspicion with which the ESC is, at times, regarded, notwithstanding the fact that medieval orders and estates ceased to exist a long time ago. Bearing this qualification in mind, functional representation as realised in the representational scheme of the ESC is, nevertheless, in accordance with modern thinking on representation, inasmuch as its powers are confined to consultation and do not include any legislative power. Hence functional representation at EU level is clearly subordinated to institutions based on territorial representation (as in the Council and the EP) to which alone legislative powers are conferred. Moreover, the ESC's representational scheme is generally in line with the European context because it fits well into the logic of functional integration.

In some aspects, however, the ESC's representational scheme has not been adapted to its actual environment. First, the European Parliament only consults the ESC on an optional basis, including those policy fields that are subjected to co-decision. To make the EP a party to compulsory consultation would end the inconsistency that whilst the ESC assists the Council when the Treaty so requires the same obligation does not apply to the European Parliament in those cases where it acts as co-legislator. Second, since the inception of the Community European societies have become more fragmented and pluralistic while the scope of Community policies has been extended widely. Yet ESC's composition has not been adapted to this changed reality, mostly because the nomination and appointment procedure furthers the rigidity of ESC's composition structure. Third, the exclusive repartition of seats among the member states ignores the existence of European-level interest groups just as much as the nomination

procedure does in practice. Against the background of a vibrant scene of European interest associations, representation of the various categories of economic and social activity would surely be more adequate if it took into account both national and European interest groups.

However, even if the representational scheme of the ESC was adapted to its actual context, there would still remain an important deficiency, inasmuch as seats are allocated according to weighted national quotas. As has been discussed throughout the chapter, such quotas are based on a mix of equal representation of the member states and representation proportional to populations. While the national quota just excludes the representation of European or predominantly transnational interest organisations, the aspect of proportional representation is not suited, by definition, to create a functional representative body. The principle of proportional representation is based on representation of individual citizens. However, categories of interest, such as they are represented in the ESC, must be based on representation of groups. They cannot be derived from citizens (in their quality as citizens). Moreover, the individual unites in its person many different, sometimes even conflicting interests, depending on its role in social and economic life and on its private interests. Hence, an individual may even join several groups with contradictory objectives but it may never fit a category of interest with its entire personality. Conversely, categories of interests have to be expressed through groups, just as much workers', industrial, environmental or consumer interests are advocated and represented by interest associations.

In its opinion issued on the occasion of the Nice IGC the European Commission attempted to change the ESC's role into that of a chamber of civil society (see 5.2.2.2.). Most notably, the Commission proposed repealing the enumeration of categories in Article 257 TEC and the national quotas for seat allocation (Art. 258 TEC). Further, the Commission proposed that ESC members should be nominated by European interest associations together with member states and appointed by the Council. Overall, the composition should ensure balanced representation of the various categories of civil

society and appropriate geographical representation (European Commission 2000c: 18, 43-4, see also appendix 4.3.). On the whole, the realisation of the Commission proposal would open up the rigid composition structure and, at the same time, remedy the mismatch of the ESC's mission and creation modus. During the Nice IGC member state representatives did not take up this proposal, yet it is not unlikely that it will be realised at the occasion of the ongoing general overhaul of the European institutional architecture.

4.5. The Committee of the Regions

The creation of the Committee of the Regions by the Maastricht Treaty has to be seen in the broader framework of a general shift toward enabling a direct participation of the subnational level in the implementation of European politics and the active quest of some regions to gain direct access to the European decision-making process. The growing awareness of the importance of subnational bodies to European politics was coupled with the organisation of regions and municipalities on the European level (see Theissen 1996: 59ff., see also 5.1.5.). In 1988, for example, the drafting and implementation procedures of the structural funds were reorganised in such a way as to associate the regions concerned whilst the Commission set up a Consultative Council of Regional and Local Authorities (CCRLA).

On the whole, pressure coming from the German *Länder* was decisive for the creation of the CoR. They had been largely dissatisfied with the outcome of the Single European Act because the SEA had conferred more powers to the European level without giving the *Länder* a say in European decision-making in those areas where their prerogatives were concerned. In the wake of the Maastricht IGC they called for a subsidiarity clause to be added to the Treaty together with the creation of a regional chamber which they understood as the potential forerunner of a Senate of the Regions (ibid. 79ff.). The *Länder* could make their claims heard effectively, mainly because they were in the comfortable position of having to ratify the Maastricht Treaty and could

therefore threaten not to do so were they not given adequate representation in European decision-making. The Belgian regions and the Spanish autonomous communities, in particular, joined the German *Länder* in their effort (Rynck and Maes 1995/6, Parejo Alfonso and Betancor Rodríguez 1995/6).

During the Maastricht negotiations it was clear that domestic federal structures should be adapted to the European decision-making process. This did not pose a problem where it was only a response to the already existing competencies of some regions. Hence, the extension of the membership in the Council of Ministers to any minister who is competent to vote for his member state in the matter concerned (Art. 203 TEC) simply put an end to an absurd situation wherein the competent regional minister had to ask another national minister to cast his vote (Rynck and Maes 1995/6: 116).[68] Yet the idea of setting up a Committee of the Regions triggered opposition for two main reasons. First, it was argued, that an institutionalised participation of the subnational level in European decision-making might fuel domestic conflicts over regionalisation. Regions should not be given the opportunity to grow in importance by taking the Brussels detour. Second, the CoR was seen as a means of European centralisation if regions should become actors in their own right in the European arena. The nation as exclusive frame of reference should not be put into question. As a result, the CoR originally had to deal with some restricting Treaty provisions until they were repealed by the Amsterdam Treaty. For example, the Spanish government had insisted on unanimous approval by the Council of the CoR's Rules of Procedure because it feared that Catalan or Basque might become working languages within the CoR (Doutriaux and Lequesne 2001: 102), and the number of areas of compulsory consultation was rather limited. Overall, the Committee of the Regions has been modelled after the legal structure of the Economic and Social Committee. Hence, both committees have the same number of members distributed according to the same

[68] The re-formulation of Art. 203 TEC concerns Austria, Belgium and Germany.

national quotas, their members are nominated pursuing similar procedures, and the consultation process follows similar lines. Until the Amsterdam Treaty came into force the two consultative committees even shared their administrative facilities.[69]

4.5.1. Powers

The Committee of the Regions is a purely advisory body that influences the European decision-making process only indirectly. It is consulted by the Commission and the Council on a compulsory basis where the Treaty so requires, on an optional basis by the Commission, the Council and the European Parliament, and it may issue opinions on its own initiative (Art. 265 TEC). Originally, the CoR was consulted on a compulsory basis in five policy areas the number of which has doubled since the Amsterdam Treaty (for a detailed overview see appendix 4.2.). These are transport policy, employment policy and social provisions (including the European Social Fund), education and vocational training, public health, trans-European networks, economic and social cohesion, environment, and culture. In three cases the Treaty requires consultation of the CoR together with the ESC and the EP, namely for the setting up of guidelines for national employment policies, for certain social policy matters under Art. 137(3) TEC and for some specific environmental measures. In all other cases compulsory consultation is coupled with the co-decision procedure.

Compared to the areas where the ESC is consulted on a compulsory basis the number and scope of mandatory referrals to the CoR is rather limited. The only field where the CoR but not the ESC is consulted is cultural policy. Yet, unlike the ESC, the CoR is neither consulted in most internal market related areas, nor in important policy fields such as research and technological development. As a remedy to this situation, the Treaty provides that where mandatory referrals are made to the ESC the Committee of

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[69] This was partly the result of the proposal by the British government to extend the ESC membership instead of setting up a separate regional consultative body (George et al. 1995/6: 59).

the Regions may decide to issue an opinion when it considers that specific regional interests are involved. Moreover, the Treaty mentions explicitly that the Commission and the Council may consult the CoR in particular when cross-border cooperation is concerned (Art. 265 TEC). These provision together with the fact that, in practice, the bulk of consultations are based on an optional referral, leaves CoR a much wider scope of action than the list of compulsory consultation required under the Treaty suggests.

4.5.2. Appointment and Composition

Currently, the CoR has 222 full members and the same number of alternates, all being representatives of regional and local bodies. The seats are allocated according to the same key of distribution as for the ESC, that is 24 seats for Germany, France, Italy, and the United Kingdom, 21 seats for Spain, 12 seats for Belgium, Greece, the Netherlands, Austria, Portugal, and Sweden, nine seats for Denmark, Ireland, and Finland, and six seats for Luxembourg. After enlargement the seat allocation will remain the same as for the ESC (see above). Candidates for CoR membership are nominated by the respective member states and appointed by the Council for a four-year, renewable term. There is no uniform European procedure for the selection of candidates which, admittedly, might have constituted an insuperable obstacle given the heterogeneous organisation of the subnational level among the member states. More importantly, the Treaty does not give a right to subnational bodies to participate in the selection procedure, rather the member states are the exclusive frame of reference. In a legal sense, regions and local authorities are not represented through their own right but are defined with regard to the member states. Thus, in the first place, CoR members are not appointed in their capacity of being representatives of regional or local bodies but in their quality of representing the sub*national* level. As a consequence, cross-border regions are excluded from representation in the Committee of the Regions. Whereas in most member states the selection of candidates is controlled by the national government

which has no legal obligation to even hear the regional or local level, the central governments of the federal states Austria, Belgium and Germany only transmit the lists to the Council. Only in these cases the exclusive power to nomination belong to the regional level (Theissen 1996: 185).

Contrary to the appointment procedure of the ESC, the Council neither hears the Commission nor any European organisation representing regional or local government. Furthermore, the Council does not have to ensure adequate representation on the European level, leaving this question entirely to the member states' discretion. The absence of a European-level examination procedure further stresses the member states' predominant position. Treaty provisions analogous to those concerning the ESC were not omitted accidentally or because they were considered as unimportant in practice, rather they were left out in response to concerns of member states where issues of regionalism are being highly contested, in particular, Spain, Italy, France and the United Kingdom (Theissen 1996: 185ff.).

The name Committee of the *Regions* is somewhat misleading, inasmuch as the CoR's composition reflects the great variety and diversity of European regional and local government. National delegations range from being entirely composed of regional ministers who all have considerable political weight (Belgium[70]) to those which are entirely composed of local authority representatives (Ireland, Finland, Greece and Luxembourg). Those member states where the majority of seats is allocated to the regional level are Germany,[71] Austria,[72] Spain,[73] and Italy.[74] In France,[75] the

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[70] Seven seats are allocated to Flemish representatives, the remaining five seats to Walloon representatives. One seat is left to the German community from one of the other communities on a two year rotation basis.

[71] 21 seats are allocated to the *Länder*, one seat to each of the 16, the remaining five seats are rotated among the *Länder*. Three seats are left to local authorities.

[72] One seat is allocated to each of the nine *Länder*, the remaining three seats are left to local authorities.

[73] One seat is allocated to each of the 17 autonomous communities, four seats are left to city mayors.

Netherlands,[76] and Denmark[77] the seats are equally distributed among the different levels of subnational government whereas the national delegations of the United Kingdom[78], Sweden[79] and Portugal[80] are mostly composed of local representatives (Theissen 1996: 153-5). The diverse repartition between regional and local representatives leads to a huge disparity among CoR members with regard to the size and powers of the territorial units represented. From the beginning, the CoR had to find a way to come to terms with the different political positions of its members and build up mechanisms to enable internal cohesion.

4.5.3. Mandate

CoR and ESC members have the same mandate. Accordingly, CoR members are not bound by any mandatory instructions and should perform their duties independently and in the general interest of the Community (Art. 263 TEC). Hence, individual CoR members are delegates of regional and local bodies but they represent the broader interests of the subnational level in the European Union. In sum, they are

> [...] Vertreter *der* und nicht *von* regionalen und lokalen Gebietskörperschaften [...] Die Tätigkeit der AdR-Mitglieder ist demnach grundsätzlich nicht einzelnen Regionen oder Kommunen zurechenbar, obwohl sie von diesen entsandt sind. Vielmehr haben sie [...] die Interessen der gesamten unterstaatlichen Ebene vor der Gemeinschaft zu vertreten. (Theissen 1996: 191, emphasis original)

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[74] 12 seats are allocated to the regions, five to the provinces, and the remaining seven seats to local authorities.

[75] 12 seats are allocated to the regions, five to the *départements* and six to the *communes*.

[76] Seats are equally distributed among provinces and municipalities (six seats each).

[77] Eight seats are equally distributed among the *amtskommuner* and local authorities, the remaining seat is given to a representative of the city Copenhagen.

[78] 16 seats are allocated to local authorities, eight seats to the counties.

[79] Eight seats are allocated to local authorities, four seats to the provinces.

[80] Ten seats are allocated to local authorities, the remaining two seats are given to the island regions Madeira and the Azores.

During the Maastricht negotiations the free mandate was a controversial issue. The German *Länder*, in particular, were strongly in favour of a binding mandate which would have secured them a more direct influence on European decision-making. Their opposition went so far as to threaten not to ratify the Maastricht Treaty under the condition of a free mandate (Benz and Benz 1995/6: 245). Yet, as much as the free mandate functions as a pre-condition for the integration of the interests represented on the European level in the case of the ESC, it equally enables the CoR to become a genuinely European representative body. For the CoR is not meant to be a lobbying body for regional and local interests, nor is it meant to be restricted to being a representative body which cannot does not transcend the stage of merely being a mirror of subnational interests. The question remains of how, and to what extent, the aggregation and integration of subnational interests within CoR has been achieved so far.

4.5.4. Group Affiliations

Like in the case of the ESC, national delegations constitute the first, 'naturally' given group affiliation because CoR members are selected on a national basis. Furthermore, nearly all CoR members belong to a political party. Consequently, political groups were formed when the CoR started its work. In addition, one may deduce from the body's composition two further possible group affiliations. The first would follow from the high degree of heterogeneity among its members and be a division along the lines of regional and local representatives. Although different European regional and local government associations exist, no such group affiliation was established within the CoR. A second additional group affiliation could be imagined along broader cultural lines and respond to the fact that European regional policy is, to a large extent, of a re-distributive nature. Such a group affiliation has found

an organisational expression within the CoR, inasmuch as a Mediterranean group was formed soon after the first plenary session.

During the first years after the CoR's establishment, neither national delegations nor political or interregional groups were granted official status and hence administrative support. Yet they all gained recognition in the first Rules of Procedure that the Committee could adopt without needing the Council's approval.[81] Whereas the formation of interregional groups is only tolerated (Rule 10 RoP), Rule 7 RoP confers to national delegations and political groups the task to 'help in a balanced way with the organisation of the Committee's work'. CoR members *have* to belong to a national delegation (Rule 8(1) RoP). In addition, they *may* form political groups. The numbers of members required to do so are

> [a]t least 20 members/alternates from no fewer than two Member States, 18 members/alternates from no fewer than three Member States or 16 members/alternates from no fewer than four Member States – half of whom at least, in all cases, must be members [...]. (Rule 9(2) RoP)

The formation of a political group has to be notified to the Committee's President and published in the Official Journal (Rule 9(3) RoP). At present, there are four political groups: the Party of European Socialists Group (PES), the European People's Party Group (EPP), the European Liberal Democrats and Reform Party Group (ELDR) and the European Alliance Group. For the present term of office, more than 95 per cent of CoR members and alternates belong to one of the political groups.[82] Both national delegations and political groups receive assistance from the Committee's administration.

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[81] As a result of the changes in the Amsterdam Treaty; RoP were adopted on 18 November 1999 and entered into force on 22 January 2000.

[82] The PES and the EEP have members from all member states; the ELDR from ten and the European Alliance from five member states. 91 full members belong to the PES and 85 to the EPP, the ELDR has 28 and the European Alliance 10 full members.

Compared to either the official status of national delegations within the CoR or to the status of political groups within the European Parliament, the CoR's political groups are given remarkably little privileges. Only in two cases the Rules of Procedure confer on them a special, though not exclusive, right. The first concerns the list of speakers for the plenary where priority is given to the chairmen of the political groups together with those of national delegations and the commission rapporteurs (Rule 19 RoP). The second concerns the right to table draft resolutions which have to be submitted by either 32 CoR members or a political group (Rule 42 (2) RoP). With regard to the composition of the Bureau, the criteria of balanced national representation prevail over the influence of the political groups. One member per country has to have the rank of Vice-President. The remaining seats of the Bureau are allocated according to fixed national quotas, whereby the chairmen of the political groups have to be members of the Bureau (Rule 18 RoP). Even where one would expect the political groups to have a predominant position, that is, with regard to the composition of the commissions where the Committee's opinions are drafted, political groups are not even mentioned by the Rules of Procedure. Instead, national representation is given priority, inasmuch as the composition of the commissions has to reflect the representation of member states within the Committee (Rule 44 RoP).

Hence, the provisions of the Rules of Procedure suggest that national delegations play a more important role for the Committee's work than do political groups. The Rules of Procedure, however, do not necessarily have to display the actual distribution of power between the national delegations and the political groups. The election of the Committee President, for example, is not only guided by the goal to achieve balanced representation between member states but is, in practice, rotated between the PES and the EEP which together account for almost 80 per cent of CoR members.[83] Over time, political groups may grow in importance with regard to the elaboration of draft

[83] In addition, regional and local criteria play a role (Mascia 1996: 51).

opinions. The currently loose cooperation between their members may become closer and bring about a more party-oriented voting behaviour in the future. Finally, political groups may strengthen their own position within the Committee as well as the CoR's overall position *vis-à-vis* the institutional triangle by intensifying their links to the political groups of the European Parliament. Yet they are far from rivalling their counterparts in the European Parliament and it is unlikely that the CoR's political groups will ever assume a similar role. Tellingly, political group affiliation has not replaced the Committee's alphabetical sitting order and membership in national delegations is mandatory. The work of national delegations is not restricted to providing their members with services in their own language. They are also active in coordination and opinion formation as can be seen through the close contact that they usually keep to the member states' representations in Brussels (Mascia 1996: 48). Hence, at least in the near future, political groups will not supersede national delegations. The work processes of the CoR will remain equally determined by national and political party affiliations.

4.5.5. Assessment

Those who had hoped that a Committee of the Regions might evolve into a third legislating chamber next to the Council and the European Parliament may be disappointed because its representational scheme reveals the limits of local and regional representation at European level. The nomination procedure demonstrates that regions have not gained access to the EU decision-making process in their own right. Rather, the relationship between regions and the Community is defined as one between the sub*national* level and Europe which can only be established through the member states. Moreover, a Senate of the Regions would presuppose a much more homogeneous composition of the CoR. To this end it would not suffice to exclude local authority representatives of those member states where regions have real powers. Rather, the creation of a full-fledged regional chamber would imply the very unrealistic scenario of

establishing similar regional government structures within all member states. Thus, the CoR will very likely remain a purely advisory body composed of regional and local authority representatives.

This must not be the source of criticism but may also be seen as having a particular value in its own right. The CoR brings together a great variety of subnational government representatives who are not bound by any mandatory instructions and should act in the general interest of the Community. On these grounds the body is suited to integrating a wide range of actors through representative action. Without the need for centralisation the work of the Committee enables a learning process. By integrating the great heterogeneity of the local and regional entities CoR members can develop a genuinely subnational approach to Community policies. The CoR's institutional structure enables the participation of the smallest territorial unit without this being to the detriment of the large and powerful regions because the latter have direct access to the European decision-making arena via the Council. Finally, consultation is not meant as being of a technical but, rather, a political nature. The CoR's mission is less to inform the European legislator about whether Community policies are feasible but much more whether they are desirable in the eyes of regional and local authorities. The electoral mandate of CoR members further stresses the Committee's political character.

Against this background, the Commission proposed to the Nice IGC to change the seat distribution in such a way that it should be determined in the same way as for the European Parliament.[84] This would have meant a shift toward representation being more proportional to member states' populations. Had the member state representatives accepted the Commission's proposal the altered seat distribution would have further stressed the parliamentary nature of the Committee of the Regions. Yet the CoR's present institutional structure fits its mission well. There is no need for a seat distribution which better reflects the populations of the member states in the way it does

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[84] The Commission envisaged a number of CoR members that would have been one-third of the number of MEP's for each member state (European Commission 2000c: 19).

in the case of the European Parliament. First, CoR members represent very dissimilar territorial units. Some seats are even allocated to representatives of umbrella associations, such as the representative of the *Deutsche Städtetag* who can be seen as representing German cities as a whole. Second, the work of the Committee of the Regions is dominated by both national delegations and political groups. Political groups bring about the aggregation of subnational political interests at European level and enable integration of CoR members through the elaboration and representation of Europeanised political interests. On the other hand, national delegations aggregate the subnational interests of a member state and articulate overall national interests. Thus, in practice, the roles played by national delegations and political groups makes the CoR a body that oscillates between being an intergovernmental chamber and a supranational parliamentary assembly - just as much as the patterns of seat distribution do in theory.

4.6. Conclusion

Institutional interest representation at European level is composed of the representation of the European peoples, member state governments, categories of functional interests and the subnational level. It thus brings together the various levels of European governance. It is complemented by the institutionalised representation of the European general interest through the Commission. Furthermore, EU institutional interest representation is generally based on the notion of a balance between its different components, albeit it also contains certain elements of hierarchy, introduced through the representation of member states. Because the Commission incorporates the European general interest it generates an overall image of European integration which would otherwise remain an abstract and barely tangible process. This function is complemented through the gradual formation of an external image of the Union to which contribute the High Representative for the CFSP, the respective Council Presidency and the Commission. Both representative functions help to create an image of European integration in peoples' minds. On the whole, EU institutional interest

representation brings together a range of different types of representation: territorial and functional, executive and parliamentary, finally corporate and symbolical representation.

All the institutions under investigation are composed along the lines of weighted national quotas. Therefore, institutional representation at European level is created on the basis of a mix of equal representation of member states and representation proportional to population. It is worth noting that the point of reference of proportional representation is the respective population of a member state. In no case it is based on the entire European population. Whilst proportional representation points to the supranational character of the Union, the nation state remains the exclusive frame of reference. In no case is the nation state transcended by representation. This construction is similar to that of European citizenship that is derived from national citizenship and cannot be granted on its own right. The Economic and Social Committee is the only European institution the representational scheme of which may in the future be built on transnational rather than national entities. To date its representational scheme is inconsistent because, in theory, functional representation cannot be derived from proportional representation of citizens. Conversely, functional representation at European level is suited to generating a type of representation that no longer relies on the nation state as an exclusive frame of reference but, rather, on national and transnational groups.

The composition of the EP, the Council and the two consultative committees displays a cluster system according to which groups of member states with similar population sizes have the same quota of seats or votes. In general, the weighted national quotas can be regarded as leading to adequate representation on the grounds that they help to accommodate the diversity of sizes of member state. Conversely, a strictly applied system of proportional representation would lead to an unmanageable amount of seats or votes in a Union of 27. Yet the early modern notion of a European balance of power is an additional element of the seat or vote allocation, most significantly with

respect to the largest member states. The Treaty of Nice partly eliminated the hitherto general rule that the large member states have to be treated equally in terms of quotas. Hence, the five largest member states renounced 'their' second Commissioner out of pure necessity to maintain the College's capacity to act. As regards the seat allocation of the European Parliament, member state representatives also fully renounced the idea of an equal national quota for the 'big four' but they did not do so with respect to the vote allocation within the Council, presumably because the Council is judged to be more relevant in the eyes of state representatives. The resulting under-representation of Germany is only assuaged by the overall increase in votes that reduces the relative difference between Germany, the United Kingdom, France and Italy. In addition, the system of seat allocation in a Union of 27 is deficient in respect of some of the joining member states. This concerns Hungary, the Czech Republic and Malta. By applying the logic of the cluster system they are under-represented compared to other member states with similar population sizes in the European Parliament, and Malta additionally so in the two consultative committees. Regardless of whether or not the under-representation is pertinent for the influence of those member states, it may signal to the joining member states that they are not fully treated as equal partners by the old member states. At this point, the representational schemes concerned obviously do not fulfil the theoretical requirement for the smooth integration of new member states.

On the whole, the representation of citizens at European level has grown in importance over time. This is reflected, *inter alia*, in the Parliament's increasing powers and the augmented weight of representation proportional to population. However, member states remain the final arbiters and masters of the Treaties. Thus, the current construction of European integration as exclusively based on member state governments does not take into account that the Community is being built with the goal of an 'ever closer union among the peoples of Europe', nor that it has shifted from an Economic Community to a political Union. Presumably, the 'mending' of the institutional

architecture that has kept on happening on since the late 1980s and has lead to an unprecedented high frequency of IGCs within a relatively short time could come to an end if European integration was based on both the peoples of Europe and their governments. From a representational point of view, such an altered basis is more adequate to a political Union than the present one.

A European Union that was built equally on the peoples and their governments would differ in two significant ways from the present Union. First, the European legislature would sensibly be based on a bicameral system consisting of the European Parliament and the Council, leading to a major shift in the power balance within the 'institutional triangle'. The establishment of a bicameral system would most likely also lead to a qualitative change of European policies, because European-parliamentarian and national-executive representation would contribute equally to the formulation of the European common good in *all* Community areas. For example, to date the Common Agricultural Policy does neither fall under the remit of Parliament's budgetary powers nor is it subjected to the co-decision procedure. As a result, the interests represented in the Agricultural Council are crucial for the CAP, the internal workings of which are depicted by a Council official as follows:

> [A]lthough the Council is a legislative forum, it does not behave like a conventional parliament. It does not have ideological debates (as parliaments do) between left/right, business/environmentalists, deregulators/interventionists. Rather, its debates revolve around national interests from which temporary alliances are regularly formed [...]. (Culley 1999: 195)

In sum, a bicameral system would be in accordance with a European political Union, correspond to a broader social understanding of parliamentary representation and enrich the European decision-making process through the effective diversification of interests represented. Arguably, it would also help the state representatives to entirely repeal unanimity voting in Community policies, thereby making the Council a truly representative body.

Second and ultimately, in a Union based on European peoples and national governments it could no longer be justified that member state governments remain the exclusive high contracting parties of the Treaties. A representative body bringing together national government representatives as well as national and European parliamentarians such as the past and present Conventions would be more suited to laying the foundations of a Union of peoples and states. That such assemblies are able to replace the format of intergovernmental conferences and bargaining has been demonstrated so far by their capacity to reach consensus whilst integrating an impressive array of diverse beliefs and positions emanating from national governments as well as civil society.