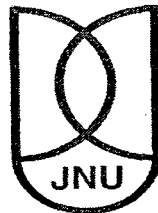


# **DEMOCRATIC DEFICIT IN THE EUROPEAN UNION**

*Dissertation submitted to Jawaharlal Nehru University  
in partial fulfilment for the requirement of the  
award of the degree of*

**MASTER OF PHILOSOPHY**

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**2008**

*Dedicated to my grandfather (Late) Dr. Vrajeshwar Varma,*

*who spent his entire life*

*in the pursuit of knowledge and to my parents.*



Date:

DECLARATION

I declare that the dissertation entitled "Democratic Deficit in the European Union" submitted by me for the award of the degree of **Master of Philosophy** is my own work. The thesis has not been submitted for any other degree of this University or any other university.

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CERTIFICATE

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## **Acknowledgement**

The work with this dissertation, though extensive, has been exceptionally exciting and indeed enjoyable. But for the support from persons who were with and around me, I would never have been able to complete this work.

First of all I would like to thank my supervisor Prof. R.K. Jain for his inspiring and encouraging attitude in navigating me to a deeper understanding and knowledge of the subject as also his invaluable comments all along this dissertation. To say the least, he has been my guiding spirit from the day I took up this work, and more especially during the final stages of the work.

I am grateful to all the faculty members at CES who were such a great help in developing an understanding about our respective topics and research. Their patience to listen, and respond with constructive comments and positive suggestions, contributed significantly in improving the content of the dissertation.

I would also like to extend my very special gratitude to the following people:

My parents: had it not been for them, this would not have happened in the first place; my wonderful friends, Antara, Urmila, Kusu, Garima, Kavitha and my roommate Arunima for being there to tap my shoulder whenever I felt low towards my dissertation; my ex-roommate Tripti di and my teacher Dr. Monika Srivastava, who are a source of inspiration for me. Very special thanks to Shweta, Swati and Ritambhara for their invaluable suggestions and feedback throughout my work. Thanks to Shakti, Mahesh and Runa for guiding me in troubled waters. My relations; Manju mami, Shikhar mama, and Ritu mami, and Prasun mama. The contributions of Amit mama and Jayati mami, need special mention. I would not have chosen to study this subject for my dissertation in the first place had they not suggested me. Thanks to my brother Anupam Kumar and sister-in-law Anubha as also my sister Aditi for there continuous support, whenever it was most needed, to keep me free from tension. Thanks to all my colleagues, seniors and juniors especially at the Centre for European Studies for providing a good working atmosphere especially Mr. Umashankarji and Mr. Shishupalji in the CES office.

At last I may say that I would not thank Ikhalaque and Priyanka since thanking them would blemish the wonderful friendship we share.

There are others whose names I have not mentioned yet they have contributed in this work in their own special way. I thank them all for supporting me with love and understanding and also for all interesting and endless discussions concerning the work.

## List of Abbreviations

CFSP	Common Foreign and Security Policy
CoM	Council of Ministers
COREPER	Committee of Permanent Representatives
EC	European Community
ECOFIN	Economic and Financial Council
ECSC	European Coal and Steel Community
EDA	Group of the European Democratic Alliance
EDC	European Defence Community; also European
EMU	European Monetary Union
EP	European Parliament
EPC	European Political Cooperation
EPP	European People's Party
EPP-ED	European People's Party- European Democrats
EU	European Union
GAC	General Affairs and External Council
IGC	Intergovernmental Conference
MEP	Members of the European Parliament
PES	Party of European Socialists
QMV	Qualified Majority Vote
SEA	Single European Act
TEC	Treaty of European Communities
TEU	Treaty of European Union

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# Chapter 1

## Introduction

A democratic deficit is supposed to be occurring when a democratic organisation or institution particularly a government is unable to uphold its democratic principles (such as public participation) in practice. Williams (1991) defines it as the 'gap between the powers transferred to the Community level and the control of the Parliament over them.'<sup>1</sup> Moravcsik (1998) believes that 'it happens when arrangements tend to be insulated from direct democratic control, but strictly limited by the governmental oversight, resulting in a democratic deficit.'<sup>2</sup> The concept is currently invoked in the context of the European Union, although many argue that it is the most democratic among all international organisations.

The European Union defines democratic deficit as the 'inaccessibility of a democratic organisation to its citizens because the methods of its operation are complex.'<sup>3</sup> Various institutions of the European Union suffer from a lack of democracy because its organisational set-up is dominated by an institution combining legislative and government powers (the Council of the European Union) and an institution that lacks democratic legitimacy (the European Commission). Katz explains democratic deficit as the 'inability of the European Parliament to hold the executive accountable to it in any manner comparable to the way in which national governments are thought to be accountable to their own Parliament.'<sup>4</sup>

In the era of globalisation in which the most powerful governments appear incapable when they come across global markets or transnational cooperation. International relations theory and democratic theory have begun

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<sup>1</sup> Williams, S. "Sovereignty and Accountability in the European Community", in R.O.Keohane and S.Hoffmann (eds.) *The New European Community*. (Boulder, CO. :Westview Press 1991).p 162

<sup>2</sup> Moravcsik, Andrew. *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht*. (Ithaca: Cornell University Press 1998).p.7.

<sup>3</sup>Glossary, Europa [Online: web] Accessed 3 June 2003, URL: [http://www.europa.eu.scadplus/glossary/democratic\\_deficit\\_en.htm](http://www.europa.eu.scadplus/glossary/democratic_deficit_en.htm)

<sup>4</sup> Katz, R.S., "Models of Democracy: Elite Attitudes and the Democratic Deficit in the European Union" *European Union Politics, 2001*{Online: web} Accessed 3 June 2007, URL: <http://www.europeanunionpolitics-essex.ac.uk>

to depict a shared fascination with the idea of democracy beyond borders that is transnational or global democracy (Held 1995; Clark 1999). The European Union is a continuous process. As a cosmopolitan democracy, it lies somewhere between federalism and confederalism (Anthony McGrew 2002; Hüsamettin Inanc and Hayre Hin Ozler 2007). Schmidt (2004) refers to it as a regional state. The question, however, remains as to where is the process heading to and how will one hold it democratically accountable.

The contours of a democratic deficit are of a much contested nature. Some tend to blame the tendency on its multi-level structure and tight Eurocratic control which weakens its democratic institutions, viz. the European Parliament (EP), as against the European Commission (EC) or even the Council of Ministers.

The European Council of Ministers is the EU's most powerful decision-making body. It consists of nationally elected representatives, Committees and Working Groups staffed by national civil servants and experts. The Council is chaired by a President who is the head of the member state of the government on a half-yearly rotational basis. It is assisted by the Committee of Permanent Representatives (COREPER), which comprises of Ambassadors of Member States to the European Union. The main task of the Committees and Working Groups is to assist the Council of Ministers as well as the Commission alongwith COREPER as and when required. The policies proposed, discussed, and eventually decided upon are largely framed by these Committees and Working Groups as well as the Commission.<sup>5</sup>

The extent to which the Council is dependent upon the cooperation of the Commission and the European Parliament depends upon the policy area and the decision-making procedure (unanimity, simple majority, and qualified majority voting) that is to be followed. The Council has most room for independent manoeuvring under Pillar II (Common Foreign and Security Policy) and Pillar III (Justice and Home Affairs) whereas under Pillar I (Committees) decisions are restricted on the basis of Commission proposals.

Prior to the Treaty of European Union (TEU), the Council was the European Union's only legislative body but now the Parliament has become

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<sup>5</sup> Nugent, Neil, "The Council of Ministers" in *Government and Politics of European Union* (New York: Palgrave Macmillan, 2003)

its co-legislator in policy areas where Qualified Majority Voting (QMV)<sup>6</sup> applies. The power sharing was a result of its slow decision-making procedure due to the Luxembourg Compromise (1966) which stipulated that decisions had to be taken by unanimity when the vital interests of a member state were involved. This often led decisions based on the lowest common denominator. The Luxembourg Compromise was never preferred by those member states which wanted the Community to be efficient and dynamic. Thus, soon after the Single European Act Treaty (SEA)<sup>7</sup> in 1986, many policy areas came under the domain of qualified majority voting. Thus, power sharing and enhancement of the role of the European Parliament was a consequence of improving efficiency and not because the Council of Ministers sought to give more powers to the European Parliament

Other than the formal procedure of voting, policies are also discussed in the corridors of the EU institutions. A lot of technical glitches are resolved and compromises are agreed during these informal sessions. Eurocrats develop an understanding as to when can a policy be cleared in the Council and when does it require adjustments at the Committee level. The Committee members when in session work till late without rest to arrive at decisions. Therefore, these sessions are more of a test of stamina, both physical and mental, and hence, the decisions arrived at are at times forced consensus rather than a genuine one.

The main problem with the Council is that although it is an elected body with a very competent staff its heads are nationally elected and hence accountable only to their national electorates rather than the entire European electorate. Together with the Parliament, they serve the second largest electorate (492 million) in the world, but still lack democratic legitimacy as their base is not wide enough. The Union operates on a supranational and intergovernmental platform at one level. Therefore, in some areas the Council is superior to the Parliament and only requires consulting the elected body. This has led many scholars to argue that there are issues of transparency and

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<sup>6</sup> QMV: Qualified Majority Vote. Under this system of voting the number of votes allocated to each Member State has been re-weighted, in particular for those States with larger populations, so that the legitimacy of the Council's decisions can be safeguarded in terms of their demographic representativeness.

<sup>7</sup> SEA: Single European Act signed in the 1989 provided the European Union with a single common market and was the first wide ranging constitutional reform of the EU since 1950s.

accountability which need to be reformed in order for the issue of democratic deficit to be resolved.

The European Parliament is unable to hold the Council of Ministers accountable. The Council can pass legislation without the consent of the European Parliament except in cases where co-decision applies to matters pertaining to QMV in the Council of Ministers. Though the European Parliament remains the only democratically elected body in the world since 1979 at the regional level, its influence on the policies seems to be lesser than that of the European Council. The powers of the Parliament have grown with each successive treaty since the Single European Act introduced QMV certain important issues like; the Common Agriculture Policy and taxation are still the preserve of the Council of Ministers.

Theoretically, the European Parliament has two powers. It can reject the annual budget of the European Union which it did six times in the 1980s, but if it does so now with a common currency, it would have serious consequences. It is therefore unlikely to do so. The Parliament also has the theoretical right to dismiss the College of European Commissioners if two thirds of the Members of the European Parliament do so. In 1999, the entire Santer Commission resigned as a result of parliamentary pressures.

The European Council that brings together the heads of the national governments and the foreign ministers has for long been an informal part of the Union. It was in the 1970s and early 1980s that it issued declarations and got recognition via the Single European Act. The Council discusses and formulates policies on all the three Pillars. It is a separate organ and except that one of its members chairs the Council of Ministers for six months, legally speaking it has no formal hierarchical relation with the Council. However, informally it does play a vital role in the Council as the very members of the European Council are also the heads of the member states' government.

Democratic deficit in the European Union is also the result of the absence of proper communication channels between the EU institutions and the citizens of the European Union, especially the achievements and the relevance of the European project. Some scholars regard this as the primary reason for the rejection of the draft Constitution treaty in 2005 even though it had provided for the expansion of powers of the European Parliament.

Another reason for its lack of democratic credentials focuses on the blame game played by the national parliamentarians during national elections. By making Brussels the whipping boy, national politicians tend to shrug off their own responsibilities and are unable to communicate the relevance and importance of the process of European integration for the common man. Even the MEPs contest elections to the European Parliament mostly on national agendas rather than on European one.

Due to the multi-layered nature of the EU, a number of formal, informal, democratic, and non-democratic bodies participate in the decision-making procedure. All these complications have hobbled the process of decision-making and with enlargement it is expected to slacken further. To ensure that the decision-making mechanism in the EU remains efficient and legitimate despite a near doubling of its membership the draft Constitution treaty was introduced in 2003.

The draft Constitution treaty significantly altered the decision-making procedure in the EU. It redistributed votes among the member states by shifting from QMV to double majority voting. It proposed that decision in the Council could now be taken only if it satisfied the double criteria of support of; a) 50 percent of member states and, b) 60 percent of the EU population. This feature thus increased the votes of the large states on one threshold (population) but reduced them on the other (membership), ensuring that the large states could proceed without jeopardising the development of small states, hence creating a system of checks and balances.

The draft treaty also introduced changes in the structure and powers of the EU institutions. It reduced the number of Commissioners to 15 but also strengthened their position in the EU. The term of the European Council President was increased to two and a half years. The draft treaty confirmed the limits of the Nice Treaty on the number of MEPs. It also increased the range of issues under Parliament's authority.

The double majority criteria reduced the powers of the Council of Ministers as it would have been much easier to find winning coalitions. The treaty allotted more powers to the European Parliament hence making the institution more democratic. But, unfortunately it failed to be ratified in the referenda in France and the Netherlands.

The rejection of the draft treaty re-ignited the debate on democratic deficit. Popular disaffection now included reasons like stagnant economic growth, rising unemployment, and increased burden on social security. The membership of Turkey also played a significant role in highlighting these concerns in the two nations. Though 18 of the 27 member states have ratified the draft treaty, it was shelved for the time being as the EU went into a 'period of reflection'. On January 2007 the German Presidency declared the end of the reflection period and came up with the 'Reform Treaty. The treaty was signed on 13 December 2007 under the Portuguese Presidency. It made some significant changes to enhance its democratic credibility by inserting the 'one million initiative', and opening the Council's voting debates on European legislature for public viewing. It also gave the EU a single legal entity by dissolving the three pillars and bringing the European Council under the treaty framework. It has retained the Charter of Fundamental Rights and all the institutional changes mentioned in the draft Constitution treaty. Poland and UK have opted out of the declaration of fundamental rights and re-invoked the '*Ioannina Compromise*'.<sup>8</sup>

Apart from these the Lisbon Treaty also contains provisions relating to contemporary concerns such as climate change, combating terrorism, strengthening mutual cooperation among the member states and energy solidarity.

### **The Debate on the Democratic Deficit in the European Union**

The European Union originated as an economic entity. With the passage of time, it has reached far beyond the economic sphere. It is, in fact, the first regional organisation that provides direct active political participation

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<sup>8</sup> The Ioannina compromise takes its name from an informal meeting of foreign ministers in the Greek city of Ioannina on 29 March 1994. Among the decisions taken at the meeting was a Council decision concerning the specific question of qualified majority voting in an enlarged 16-member Community. The decision was later adjusted in the light of Norway's decision not to join. The resulting compromise lays down that if members of the Council representing between 23 votes (the old blocking minority threshold) and 26 votes (the new threshold) express their intention of opposing the taking of a decision by the Council by qualified majority, the Council will do all within its power, within a reasonable space of time, to reach a satisfactory solution that can be adopted by at least 68 votes out of 87.

of citizens at the transnational level through the European Parliament. The European Council of Ministers has elected members from the nation-states. However, these MEPs are elected by a very few number of people who participate in the elections. During the last election to the European Parliament, only 45 percent of the Europeans voted. This hardly boosts the democratic credentials of EU. There has been a substantial degree of work on the topic.

Christopher Lord (1998) feels that we should keep an open mind about democracy in a post-national context such as the EU, though he agrees that any democratic system needs to fulfil the basic criteria of popular authorization, representation, accountability, and congruence with a felt political identity.

Richard S. Katz (2000, 2001) argues along the same lines. He believes that the EU is both the greatest hope and greatest danger to democracy. He maintains that instead of popular sovereignty model of democracy, a pluralist model or veto group liberalism model will be more appropriate for the EU institutions as well as the current European society and will help reduce the democratic deficit.

Hüsamettin Inanc and Hayre Hin Ozler (2007) like Katz also feel that a cognitive and ideological emancipation from the restrictions set by nation-state paradigm is vital to foresee a pluralist multicultural European community. Only within a pluralist policy network can European demos be visible and can a European wide democracy be realized.

Scholars like Majone (1994, 1996) and Moravcsik (2001, 2003, 2004) experience it differently. They find the European Union to be as democratically organised as it can be. The people in general, they believe, have become apathetic towards democracy. This, they speak, is evident from the fact that, even at the state level, the electorate's participation rate is declining. Majone (1989) argues that there are non-democratic sources of legitimacy as well as policy areas which being universally valid norms, do not require legitimacy, and that the EU is dealing with only those aspects. Jan Erik Lane (2003) is also of the view, that 'state-ness' is not an essential characteristic of the Union and that the idea of democratic deficit is misplaced.

Instead, he argues that the EU is a regional coordination mechanism, which the West-European governments have set forth for specific purposes.

But Majone's argument does not hold in the present circumstances where the EU's policy areas have considerably widened. Thus Fritz W. Scharpf (1997) argues that the frustrations of democratic governance in Europe result primarily from the fact that the range of feasible policy choices has been reduced at the national level while policy making at the European level still lacks democratic legitimacy.

Other scholars like, Michalis Attalides (2002) argue, that the deficit of legitimacy, rather than democratic deficit is the problem. This lack of legitimacy, he points out, has many reasons, but is mainly arising because Brussels is not perceived to be doing enough in areas of concern to the citizens, like controlling the high rate of unemployment, which results in a low popular support. Legitimacy is also lacking because of the complex legal and institutional structure of the EU where decisions are taken in a complex manner. Moreover, the EU vocabulary is incomprehensible to the common European citizen. All of this does not contribute to transparency, ease of understanding, openness, and democratic attribution of political responsibility.

In support of Attalides, Follesdal and Hix (2005) point towards the institutional problems that the EU encounters because of its structure. They argue that the EU has a democratic deficit because a non-elected executive body (the European Commission) controls its essential institutions. They claim that citizen preferences should have a chance of being modified or created within the arena of political contestations and what matters are institutions that reliably ensure policies responsive to these preferences, rather than matching by happy coincidence. The European Commission has paid attention to this reason and perhaps this is why has introduced the one million initiative in the Lisbon treaty.

P. Baecke (2006) focuses on the role of expertise and knowledge on rationalising the democratic deficit. He feels that the expertise and knowledge have been introduced in the EU to justify its use of authority and high control as well as usurping the powers of its sovereign member states. Hence, he unlike Attalides believes that the incomprehensive language is a deliberate measure to maintain the supremacy of the EU. However, such legitimacy can



only be temporary, it can justify the decisions but not the apparatus and the EU needs to justify its implicitly exercised state-like powers.

There are other thinkers who believe that the democratic deficit exist because of external factors. Holland (1980), and Kevin Carey (2001), argue that the European 'democratic deficit' arises because the politicians of EU member states do not want to impart greater legitimacy to the European Parliament on the ground that it would reduce the legitimacy of national parliaments. This has led to people viewing the EU as an unreasonable source of authority Richard Bellamy (2001, 2005) focuses on the low level of identification among Europeans with the EU. Europeans tend to forget about the important achievements of the EU which make their lives simpler, including the common currency, the border-free travel, and the new EU health card. In 2004, the President of the European Parliament remarked that "my own contention is that Europe is not short of information but short of communication."

Ben Crum (2005) opines that democratising the EU is essentially a learning process. Over time, the diagnosis of the challenges involved evolves, institutional reforms are brought into place, and the attitudes of elites as well as of the public at large adjust. In terms of 'normal' EU politics, the Draft Constitutional Treaty offered some very valuable overtures, even if it fell short of determining the EU's democratic finality.

### **Rationale of Study**

The European Union has been in a continuous state of transition; it is constant work in progress. Its nature has changed considerably as the integration process has deepened and widened. This is depicted clearly in the changing process of decision-making since mid-1980s. It is unique in the sense that it embodies both supranational and inter-governmental features. Attempts have been made to conceptualise the nature of the European Union to highlight its basic features. At one level it has been compared with intergovernmental organisations -- the customary way in which states interact with each other on a structural basis, and on the other level it is compared with the state itself- the most important unit of international system.

In an intergovernmental organisation (IGO), representatives of national governments come together on a voluntary basis for reasons of mutual benefit. IGOs have little autonomy and cannot impose their decisions on the member states. Conversely, the EU is much more complex in its institutional structure, its policy area is wider and has a greater degree of autonomy than any IGO and thus, it is more than an IGO.

Nevertheless, when the EU is compared with a state we realise that it falls short of the traditional criteria of a state, which is sovereign territoriality, legitimacy, and monopoly of governance. The EU shares its territory and sovereignty with its member states, its legitimacy is thinly based internally, and externally it is limited to Common Commercial Policy. It monopolises governance on a very few policy areas and is dependent on member states for their implementation.

The EU is then compared with a federal state but again here it fails to fully meet the criteria. Excluding the specified division of power between the EU institutions (the Commission, the Council of Ministers, and the European Parliament) and the member state governments, it does not account for the rest of the features. Key policy areas like as security, foreign policy, and citizenship, which traditionally the prerogative of the centre in any federal government are privileges of the member states. Though the EU has begun to take steps in this direction but its role is still rather limited.

Nonetheless, in the modern world the realities of traditional statehood are breaking down most particularly under pressures of international interdependence. No modern state can claim complete sovereignty in a *de facto* sense and the EU member states cannot even claim it in the *de jure* sense.

In context of this changing reality the European Union does display some characteristics of statehood and these will strengthen as the integration process deepens. Majone (1992, 1994, 1996) has conceptualised the EU as a regulatory state in terms of both its functions and institutions. The EU is seen as not being greatly involved in distributive or redistributive functions but as being extensively involved in regulating such policy areas, which have a universal appeal. As an institutional structure, Majone argues that a range of

regulatory and non-majoritarian institutions exist that collectively constitute a fourth branch of government.

However, given the multi-dimensional and multi layered nature of current EU policies, their effect is no longer limited to nation-states and governments, but substantially influences the everyday life of common European citizens. Thus, it has become essential for institutions to be democratically accountable towards its citizens. The Treaty of European Union recognises this obligation and therefore under Article 1 and Article 6 talks about forming an 'ever closer union with the peoples of Europe' founded on the 'principles of liberty democracy and respect for human rights and fundamental freedom and the rule of law'.

All variants of democratic polities share a reliance on electoral accountability for keeping governors oriented towards the common interest of their constituencies. This also implies a basic asymmetry between actors that are electorally accountable and 'independent' governing agencies. In case of the EU the ability to take decisions is more or less inversely proportional to democratic accountability. The more democratically chosen an organ is, the lesser is its ability to act. This has created a democratic deficit in the organisation. People are apathetic towards the democratically elected members of the Parliament. This finds proof in the low levels of participation in the European Parliamentary elections. During the last European Parliament elections only 45 percent of the Europeans voted. This hardly boosts its democratic credentials. This deficit is deep and wide enough to create a vicious circle. Thus, the draft Constitution treaty that was formulated to eliminate the deficit to a certain degree was rejected in the founding member states of France and the Netherlands. Nonetheless, the European Union has in June 2007 formulated the new Reform Treaty also known as the Lisbon Treaty because it was signed by the member states in Lisbon on 13 December 2007. The Lisbon Treaty borrows certain features from the Draft Constitution Treaty but also makes a few innovations like the one million initiative, and the opening the Council's legislative proceedings for public viewing. The Lisbon Treaty is scheduled for implementation in January 2009 if it is ratified by all the member states. The member states are not keen on putting the treaty to referenda. Nevertheless Ireland still plans to hold it. It is widely perceived that

the treaty is a copy of the Draft Treaty and therefore it should be put to referenda as promised earlier. The scholars point that the member states avoid the referenda because they fear that the treaty might be rejected. On the contrary, the member states believe that the treaty is a new beginning for the European Union and referenda may further delay the process of integration and achieving efficiency.

To what extent the Lisbon Treaty will be able to reduce the democratic deficit is a subject of much debate and discussions among the scholars. However, there are chances that the Lisbon Treaty will reduce the communication deficit that may indirectly affect the democratic deficit.

## Chapter 2

### **The Council and the Council of Ministers**

The European Union (EU) has been a continuous process. It cannot be classified into traditional regional organizations or the traditional model of a state as it contains features of both. In its incessant evolution, it has followed a pattern of moving from low politics to high politics, i.e. moving from less controversial issues to more controversial ones. The European Union institutions are not just dry organizations but they are a dynamic amalgamation of judicial, executive and legislative powers. This chapter here tries to examine the intricacies of the working and decision-making of the Council of Ministers and the European Council in the European Union and also highlights its relationship with the European Parliament in terms of allocation of powers and seek to assess how and why the democratic deficit occurs. Both these institutions bestow the Union with an attribute of a regional organisation, as the members are drawn from national legislatures making its structure more intergovernmental. “Nonetheless, this ‘non-stateness’ of the EU political system does not remove the need for it to meet the same broad criteria of legitimacy as liberal-democratic states if it is to deliver the core attribute of democratic governance which is public control with political equality.”<sup>1</sup> As the scope and competencies of the Union increase with subsequent treaties, the substitute forms of legitimacy are not enough. This chapter will first discuss the Council of Ministers the ‘formal’ organ of the European Union and then take an overview of the European Council till now the ‘informal’ organ of the European Union although considerably influential due to its impressive portfolio.

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<sup>1</sup> Lord, Christopher and Beetham, David “Legitimizing the EU: Is there a ‘Post-Parliamentary Basis’ for its Legitimation? In *Journal of Common Market Studies*, Vol.39, and No.3 (Oxford: Blackwell Publications, September 2001), p. 444.

## **The Council of Ministers**

The Council of Ministers is the principal decision-making body of the European Union. When the Community was founded in the 1950s, many expected that the role of Council would gradually decline especially in relation to the European Commission, instead the Council has not only defended but also extended its powers and influence. This has naturally produced some frustrations in the Commission and also in the European Parliament. It has also ensured that the national governments are centrally placed to influence most aspects of the EU business<sup>2</sup>.

The extent to which the Council must work with, and is dependent upon the cooperation of the Commission and the European Parliament in respect to the policy and decision-making varies between policy areas and according to what type of decisions are being made. The Council has most room for independent maneuverability under the Pillar II (Justice and Home Affairs) and Pillar III (Common Foreign and Security Policy) whereas under Pillar I (Committees) it is largely restricted to Commission proposals, as well as the opinions of European Parliament which since Single European Act has become the co-legislator with the Council in those policy areas where the procedure applies. However, article 208 of the TEC (Treaty of European Community) says:

‘The Council may request the Commission to undertake any studies the Council considers desirable for the attainment of the common objectives, and to submit to it any appropriate proposals’<sup>3</sup>

In addition to Article 208 four other factors have enhanced the council’s policy initiating role viz;

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<sup>2</sup> Nugent, Neil, “The Council of Ministers” in *Government and Politics of European Union* (New York: Palgrave Macmillan, 2003), p.150 .

<sup>3</sup> Nugent, Neil, “The Council of Ministers” in *Government and Politics of European Union* (New York: Palgrave Macmillan, 2003), p. 151.

1. 'Adoption of resolutions, agreements and recommendations by the Council. Although they are not legal but they carry political weight and hence the Commission cannot ignore.
2. The movement of EU into policy spheres that are not covered or are not covered clearly in the treaties, this creates certain grey areas the Council exploit.
3. There are many quarters in the Council network where ideas can be generated. The Council Presidency plays a particularly important role in enabling the Council to influence policy directions and priorities.
4. The increasing willingness of the states to find aspects of their cooperation not on EU laws but on non-binding agreements and understandings.'<sup>4</sup>

The Council has always served the function of developing mutual understanding between the member states. Council participants display the ability to compromise in negotiations. But as the EU grows in size the challenges have become increasingly difficult. Mediation between the actors and the institution is not the only sphere that needs attention but also understanding among the three institutions of EU the Council of Ministers, the European Parliament, and the Commission as well as other non- state actors require some arbitration.

### **Composition**

Legally there is only one Council of Ministers but in practice there are more than one as the Council meets in different formations or configurations to deal with different policy areas. In attempts to improve the consistency and coherence the size of the Council has been reduced twice. The Council use to meet in twenty different

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<sup>4</sup> Ibid. p.151

formations, in December 1999 Helsinki meeting it was decided to reduce its size to 16. After the Seville summit (2002), it was reduced to 9.

Among the nine formations the General Affairs and External Council (GAC) has the widest brief and is composed of Foreign Ministers. It handles foreign policy and external trade. It deals with General Affairs such as the preparation for and follow up to the European Council, institutional and administrative questions, horizontal dossier entrusted to it by the European Council having regard to European Monetary Union (EMU) rules. The whole of Unions external action, namely the Common Foreign and Security Policy (CFSP), European Security and Defense Policy (ESDP), foreign trade, development cooperation and humanitarian aid. To enable GAC to deal with these two diverse aspects of its work, it was agreed at the Seville Summit that Foreign Ministers would henceforth hold separate meetings with separate agendas and possibly on different dates.

The Economic and Finance Council (Ecofin) also has a broad remit in that, especially since the development of the EMU<sup>5</sup>, few economic and financial issues are excluded from its portfolio. Beyond the GAC and the Ecofin more sectoral matters are dealt with, the technical Councils, which are composed of Agriculture, Energy, Environment Ministers, etc .

In these meetings care is always taken to ensure that national interests are defended and hence ministers of similar standing and portfolio attend the meetings. But difficulties do arise when a reduction in status or political weight of the delegation makes it difficult for binding decisions to be achieved or when the minister attending does not feel fully equipped to speak on behalf of other ministers with a direct interest and therefore insisting on the matter being referred back to the national capitals.<sup>6</sup> Hence, all meetings are attended by national representative alongwith national delegations that comprise of national officials and experts plus at important meetings

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<sup>5</sup> EMU: European Monetary Union

<sup>6</sup> Nugent, Neil, "The Council of Ministers" in *Government and Politics of European Union* (New York: Palgrave Macmillan, 2003), p. 155.



where there is wide-ranging agenda, junior ministers to assist the senior ministers. Normally five or six officials and experts support 'the inner team', but this number can vary according to the policy area concerned. The task of the supporting team is to ensure that the minister is properly briefed and fully understands the implications of what is being discussed, and does not make negotiating mistakes. Sometimes when confidential matters are being discussed the size of delegation may on a proposal from the President also be reduced to 'Minister plus two', or 'Minister plus one' or exceptionally 'Minister and the Commission'.

Outside the formal Council framework some groups of ministers, particularly the Foreign ministers and the Ecofin ministers have periodic weekend gatherings, usually in the country of Presidency to discuss matters in an informal basis without any pressures to take decisions.<sup>7</sup>

Each of the member states has a national delegation – or Permanent representation which acts as a kind of embassy to the EU. The Permanent Representations are headed by a Permanent Representative who is normally a diplomat of very senior rank, and are staffed in case of a larger state by thirty or forty officials plus back support; about half of them are drawn from national diplomatic services the others from appropriate national ministries. Of all the forums in 'Council' below the ministerial level the most important is the Committee of Permanent Representatives (COREPER). There are in fact two COREPERs. COREPER II is the more important as it comprises of Permanent Representative and support staff. Because of its seniority it is the more political of the two COREPERs and works mainly for the Foreign Ministers (and through them for the European Council) and Ecofin. COREPER II is assisted by Antici Group, made up of senior officials from Permanent Representation. Antici Group also acts as a key information gathering and mediating forum between the member states. The COREPER I consists of Deputy Permanent Representatives and support staff. It normally deals with environment social affairs, transport and the

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<sup>7</sup> Nugent, Neil, "The Council of Ministers" in *Government and Politics of European Union* (New York: Palgrave Macmillan, 2003), p. 157.

internal market. Most agricultural matters are dealt with by Special Committee on Agriculture (SCA) which is staffed by senior officials from the Permanent Representations and from national ministries from agriculture. Beyond preparing Council meetings, COREPER also exercises a number of general functions on behalf of the ministers in the Council and the EU system.

The Council of Ministers, the COREPER and the SCA is assisted by a complicated network of committees and working groups. These Council committees are composed of national officials are established by the EU treaties or legislation. Their task is to provide advice to the Council and Commission as and when required. In addition to these Committees established by the treaties or by EU legislation many other committees also assist the work of the Council. These are often referred as working parties or simply meetings and are most often found in emerging policy areas. The role of Council working groups or working parties is more specific than that of the committees as they are responsible for carrying out detailed analysis of formally tabled Commission proposals for legislation. The number of working groups in existence at any one time varies according to the overall nature of the EU's workload and the preferences of the Presidency in office, but in recent years there have been usually over 200. Members are almost invariably national officials however where a highly technical or a complex issue is concerned a non-civil servant may also be appointed.<sup>8</sup>

The main administrative support for the work of the Council is provided by the General Secretariat. Headed by the Council's Secretary General who also acts as the EU's High Representative for the Common Foreign and Security Policy, its chief responsibility is to service the Council machinery from ministerial to working group levels. The Secretariat works closely with representatives from the member state of the President-in-office. The extent to which the Presidencies rely on the Secretariat varies considerably, with the smaller countries, because of their more limited administrative resources, tending to be most reliant.

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<sup>8</sup> Nugent, Neil, "The Council of Ministers" in *Government and Politics of European Union* (New York: Palgrave Macmillan, 2003), p. 159-60.

## **Operation and Structure of the Council**

The Council Presidency rotates between the states on a six-monthly basis with at least one large state in the Council's troika- which consists of the preceding, current and succeeding Presidencies. This system ensures some continuity and consistency of policy development. The main tasks of the Presidency are to arrange and chair the Council meetings from ministerial level downwards. As the chair of the meetings the Presidency has considerable control over the proceedings. It also builds consensus over issues. A successful Presidency is regarded as one which gets things done. Another task of the Presidency is to represent in dealings with outside bodies. Holding the Presidency has both advantages and disadvantages. One advantage is the prestige and status that is associated with the office. Another advantage is that during its tenure the Presidency can do a lot more than it can as an ordinary member state to help shape and set the pace of EU policy priorities, though six months is not long not long enough to shape the policies. As for the disadvantage they include the maintenance of administrative paraphernalia which small states find difficult. Another disadvantage is that the Presidency is supposed to adopt a broadly consensual position on disputed issues, which can limit its ability to defend its own national interests as happened in case of German Presidency in the first half of the year 1999. It could not press its concerns on the budgetary issues for the period of 2000-06. But the worse disadvantage is the blow to the prestige and esteem when a state is judged to have run a poor Presidency as happened in the case of France in the second half of 2000.<sup>9</sup>

The structure of the Council is hierarchical. It consists of ministers on the top namely the GAC and to an extent Ecofin, followed by COREPER and other specialized high level Committees like the SCA and Political and Security Committee and the other committees and working groups. The seniority of GAC over other Councils has had no

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<sup>9</sup> Nugent, Neil, "The Council of Ministers" in *Government and Politics of European Union* (New York: Palgrave Macmillan, 2003), p. 162.

legal basis pre-Seville summit it rather stemmed from the ill-formulated understanding that the GAC has a special responsibility of dealing with disputes that cannot be resolved at the sectoral Councils. The Seville Conclusions clearly strengthened the GAC's political authority in this regard.<sup>10</sup>

Any proposal that comes to the Council through the Commission passes through three stages. The first examination of the initial Commission text is taken up by the working group or several groups. If unanimity of the Council is requirement then the deliberations may take as long as necessary. The General Secretariat of the Council is always pressing for process and ensures that a working group does not need to meet more than thrice on an issue. The document is then eventually produced indicating points of agreement and disagreement. The second stage is the reference to COREPER and in case of agriculture the SCA. COREPER acts as a sort of filtering agency for ministerial meetings. If agreement has not been reached by the working groups COREPER can do three things: try itself to resolve the issue; refer it back to the working group, with accompanying indications of where an agreement can be found; or pass it upward to the ministers. Hayes-Renshaw and Wallace (1995) estimate that about 70 percent of the business is agreed at the working group level and a further 15-20 percent at the COREPER level, leaving only about only 5 percent of the issues requiring substantial discussion at the ministerial level.<sup>11</sup> However whatever progress has been made at working group level or at COREPER level final decisions can only be made at the ministerial level. Ministerial meetings thus constitute the third and the final stage of the Council's procedure.<sup>12</sup>

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<sup>10</sup> Nugent, Neil, "The Council of Ministers" in *Government and Politics of European Union* (New York: Palgrave Macmillan, 2003), p. 166.

<sup>11</sup> Hayes-Renshaw, Fiona and Helen Wallace (1995), "Executive power in the European Union: the function and limits of the Council of Ministers", in *Journal of European Public Policy*, 2:4, December, pp.559-623.

<sup>12</sup> Nugent, Neil, "The Council of Ministers" in *Government and Politics of European Union* (New York: Palgrave Macmillan, 2003), p. 165

## Decision-making Procedures

The treaties provides for three basic ways the Council can take a decision: by unanimity, by simple majority and vote by qualified majority vote (QMV).

Unanimity used to be the normal requirement. However, treaty reforms since the Single European Act has greatly reduced the circumstances in which it is required. It now applies to Pillars II and III and matters pertaining to constitutional and financial issues. Unanimity is also required when the Council wishes to amend the Commission's proposal against its wishes. With the Amsterdam Treaty providing for 'constructive abstentionism' under the CFSP pillar a member state 'shall not be obliged to apply the decision but shall accept the decision commits the Union (Article 23 Treaty of European Union).<sup>13</sup>

Simple majority voting gave all states one vote each. It was used mainly for procedural purposes. The French policy of empty chair in 1965 led to *Luxembourg Compromise* (1966) which stipulated that decisions had to be taken by unanimity when the vital interests of a member state were involved.<sup>14</sup> This often led decisions to be based on the lowest common denominator resulting in most decisions being negotiated and deliberated until an agreement finally emerged. Therefore, there was rarely a need for veto to be formally invoked, and it was so only very occasionally. The *Luxembourg Compromise* was never preferred by those member states who wanted the Community to be efficient and dynamic.<sup>15</sup>

<sup>13</sup>Nugent, Neil, "The Council of Ministers" in *Government and Politics of European Union* (New York: Palgrave Macmillan, 2003), p. 168.

<sup>14</sup> "The Luxembourg Compromise" in *Index* [Online: web] Accessed 2 January 2008 URL: [europa.eu/scadplus/glossary/luxembourg\\_compromise\\_en.htm](http://europa.eu/scadplus/glossary/luxembourg_compromise_en.htm) -

<sup>15</sup>Article 23, The Treaty of European Union [Online: web] Accessed: 2 January 2008, URL: [eur-lex.europa.eu/en/treaties/dat/12002M/pdf/12002M\\_EN.pdf](http://eur-lex.europa.eu/en/treaties/dat/12002M/pdf/12002M_EN.pdf) -

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Qualified majority now applies to most types of decisions under the EC pillar. Prior to the Treaty of European Union (TEU), the Council was the European Union's only legislative body but now the Parliament has become its co-legislator in policy areas where Qualified Majority Voting (QMV) applies. The power sharing was a result of its slow decision-making procedure due to the Luxembourg Compromise. Thus, soon after the Single European Act Treaty (SEA) in 1986, many policy areas came under the domain of qualified majority voting.<sup>16</sup> An abstention has the same effect as a 'negative vote', since the total vote required to achieve a majority is not reduced as a result of abstention. The minimum votes for a QMV was 71 percent and a blocking minority required at least 26 votes i.e. 29.88 percent of the total votes. The U.K and Spain in 1994 during the EFTA enlargement round argued that the blocking minority should be retained at 23 this would have meant the qualified majority threshold be increased to 78 percent from 71 percent many member states did not agree with it hence '*Ionnina Compromise*' was agreed whereby the blocking minority was increased but 'if the member of the Council' representing 23 to 25 votes indicated their intention to oppose then a reasonable time would be allowed to elapse to see if an agreement could be found. Following a re-weighing of votes the treaty of Nice puts an end to the Ionnina Compromise. The enlargement increases number of votes in the Council. There must now be a minimum of 255 votes out of 345 (73.9 %) and a majority of member states (sometimes a two-third majority). A majority representing 62% of the EU's population may also be taken into account.<sup>17</sup>

The decision-making in the Council proceeds usually on the understanding that difficult and controversial decisions are not imposed on dissenting states without giving full considerations to the reasons for their resistance. They may be put on defensive, pressed to give way, or at least compromise but putting to vote is not precedent.

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<sup>16</sup> Nugent, Neil, "The Council of Ministers" in *Government and Politics of European Union* (New York: Palgrave Macmillan, 2003), p. 168.

<sup>17</sup> *Ibid*, p. 169.

Though there are good reasons for pressing for unanimity it is now generally accepted that the principle cannot be applied to universally or rigidly. QMV has thus now become common when the treaties allow so.

### **Conduct of the Meetings**

Meetings are held in large rooms, with national delegations sitting together. At one end or one side of the meeting table sits the Presidency- whose delegation is led by the most senior figure present from the country currently holding the Presidency; at the other end the Commission representatives; and ranged between the Presidency and the Commission are the representatives of the member states- with the delegation from the country holding the Presidency sitting to the right of but separate from the President.<sup>18</sup>

Council meetings can often appear to be chaotic with more than 100 people in the room, with ministers often arriving late and leaving early and official coming and going in relation to items on the agenda; ministers are constantly being briefed by the officials as new points are raised; a considerable hobnobbing takes place; there are huddles of delegations during breaks and telephone calls are made to the national capitals. Not surprisingly, those delegations that are headed by ministers with considerable domestic political weight and are well versed in the EU ways are particularly well placed to exercise greater influence.<sup>19</sup>

A device that is sometimes employed at Council meetings, especially when negotiations are making little progress, is the *tour de table* procedure whereby President invites each delegation to give a summary of its thinking on the matter under consideration. This ensures that the discussion is not dominated by a few. It can thus help reveal possible grounds for agreement and provide useful guidance to the President as to whether a compromise is possible or whether an attempt should be made

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<sup>18</sup> Nugent, Neil, "The Council of Ministers" in *Government and Politics of European Union* (New York: Palgrave Macmillan, 2003), p.174.

<sup>19</sup> Ibid, p.175.

to proceed to a decision. However, there are also draw back with the procedure. Firstly, because states may find it difficult to alter there position once they have gone public and secondly because it is very time consuming. Presidencies are hence, advised by the General Secretariat to be cautious about using this method. It is considered a better proposition to invite the Commission to amend its constitution.<sup>20</sup>

Presidencies are very important in the Council of Ministers. A good chairman is often able to judge when the most appropriate moment for a decision to be made. On the contrary, a poor chairman may allow a proposal to drag on, or may rush it to such a hurry that a state who might have agreed if give some time refuses to cooperate.<sup>21</sup>

A final feature of the Council decision-making procedures is the extremely important role of informal processes and relationships. Many understandings and agreements are reached at lunches that are very much a part ministerial meetings. A good chairman will make advantageous use of requested and scheduled breaks to explore possibilities of settlement. This may involve holding off-the record-discussions with the delegations. Also national officials based in Brussels come to know their counterparts in other Permanent Representations. This enables them to understand when a country is posturing and when it is serious and when and how a deal may be possible. This enables them understand when deliberations are possible at their level if more serious difficulties are to be avoided at the ministerial level. Thus, the corridors of the EU institutions function as a sort of outlet for a tête-à-tête, resulting in settlements.

### **The European Council**

The main reason for the creation of the European Council was a growing feeling that the Community was failing to respond adequately or quickly enough to new and increasingly difficult challenges. A form of authority was seen as necessary in order to make the Community more effective, both domestically and internationally. In

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<sup>20</sup> Nugent, Neil, "The Council of Ministers" in *Government and Politics of European Union* (New York: Palgrave Macmillan, 2003), p. 175.

<sup>21</sup> Ibid, p.175.



somewhat similar fashion to the 'Luxembourg Compromise' and European Political Cooperation (EPC), the European Council was thus to be a part of the 'unofficial' approach to the integration rather than the official treaty based approach. It evolved through a number of stages.<sup>22</sup>

First, the declarations by the European Council itself in the late 1970's and early 1980's - notably London (1977) and Stuttgart (1983) did something though not a great deal to clarify its role. Second, in the 1986, the European Council was given recognition for the first time via the Single European Act though only in two short paragraphs -confined to clarifying membership and reducing the minimum number of meetings from three to two. The paragraphs were not incorporated into the Community treaties on such a legal basis that whatever interpretation European Council gives to its role cannot be challenged in the Court of Justice. Third, the Maastricht Treaty expanding on the SEA contained three sets of 'references' to the European Council: it was assigned responsibility for identifying the general direction of the EU's development, it was given certain duties and powers in the CFSP pillar. Fourth the Amsterdam Treaty confirmed the Maastricht provisions in respect of its general directional role and with regard to EMU (European Monetary Union), and greatly strengthened the European Council's position in respect to CFSP. Fifth, the Nice Treaty gave the *de jure* status to the *de facto* situation wherein the European Council nominates the person who is to be put forward for the position of the President. The evolution, operation and influence of the European Council owe more to political and practical necessities than to agreed rules and requirements.<sup>23</sup>

The members of the European Council are heads of government or states (in case of France and Finland whose member states are elected). Due to the imposing portfolios the limited treaty base of the European Council has never been a hindrance. Over the years, the European Council has climbed to the top of the EU decision-making

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<sup>22</sup> Nugent, Neil, "The European Council" in *Government and Politics of European Union* (New York: Palgrave Macmillan, 2003), p.178.

<sup>23</sup> Ibid, p.179

hierarchy. They put the Council at the very heart of the European Union decision-making not on a day-to-day basis in the manner of the formal European Union institutions, but rather from a more distanced position, where it is centrally involved in setting overall parameters of the European Union system. Final and legally binding EU decisions concerning the institutional and policy development of the EU are now generally taken by, or at least are channeled through and given clearance by the European Council.<sup>24</sup>

The Council meets four times every year, i.e. twice in every six months. These meetings generally referred as summits and are known by the name of the country in which they are hosted although the Nice Treaty stipulates that all the Council meetings shall be held in Brussels 2003 onwards. The European Council membership is based on Council of Ministers model in the sense that it is made up of national delegation and the Commission. Unlike the Council of Ministers however, the participants in the formal European Council sessions are not accompanied by the teams of national officials. The original thinking behind this restriction on access to the summit meeting room was that it would encourage relaxed informality, and in any event was not strictly necessary. However, in practice it has proved difficult to achieve the desired mood, not least because of the increased number of participants following EC/EU enlargements and the increased importance of decisions taken at European Council meetings. Its far reaching and dramatic decisions have helped propel their meetings into the public spotlight, where they have become the focal point for the media coverage of the EU. Hospitality including for the press conferences have become elaborately staged events.<sup>25</sup>

The European Council's other broad function, is problem resolution, which is less amenable to public display. Issues which cannot be resolved at COREPER or Council levels often can be resolved at this elevated political level, perhaps through

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<sup>24</sup> Bomberg, Elizabeth, Cram, Laura and Martin, David, "The EU Institutions", in Bomberg, Elizabeth and Stubb, Alexander (ed.) *The EU: How Does it Work* (Oxford, Oxford University Press 2003), p.45 .

<sup>25</sup> Nugent Neil, "The European Council" in *Government and Politics of European Union* (New York: Palgrave Macmillan, 2003), p.181.

informal persuasions, or forging of package deals which trade off agreement on one issue(say regional spending) in exchange for concessions on another (say reform of the Common Agriculture Policy). Serious deadlocks on budget agreements often have been resolved only through deals in late night meetings.

### **Council of Ministers and the European Council**

There exists no rigid hierarchical relationship between the European Council and the Council of Ministers; however, Council of Ministers has lost power to the European Council because most decisions are referred to the European Council in some form. Nonetheless the loss has been exaggerated. Firstly because the matters referred to the European Council are filtered through proper channels and formations of the Council of Ministers. Secondly the European Council has no legislative power thus though its decisions are politically binding they cannot be legally endorsed unless legislated by the Council of Ministers. There is no guarantee that an agreement at the European Council will automatically generate ease of passage. One reason is that the guidelines laid down by the European Council are sometimes insufficiently precise to clear all political obstacles. Another reason is that the governments occasionally decide after the summit that their delegations have given too much and that ground must be retained by taking a tougher stand in the Council of Ministers. Lastly, the reason for the European Council to not have much power is that it meets only for six to eight days a year, it cannot hope to do anything more.<sup>26</sup>

### **The Councils and the Parliament**

It is challenging to control executive bodies through the Parliaments under any democratic system. For once, the executive hamper such attempts and two because the parliamentarians lack requisite knowledge. In case of the European Parliament two more problems are added. First, is the control and supervision concerning the policy implementation. In policy spheres where the Commission's role is limited national

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<sup>26</sup> Nugent, Neil, "The European Council" in *Government and Politics of European Union* (New York: Palgrave Macmillan, 2003), p.194.

governments are the agencies often reluctant to open the books to or cooperate with the European Parliaments' investigations. There is no chance of government ministers allowing themselves to be grilled by the European Parliament on the competence and honesty of national bureaucrats.<sup>27</sup>

The second problem specific to the European Parliament is that on broad controlling and supervisory issues-problems arise due to blurring of roles between the European Union institutions. The European Parliaments powers are weakened in context of the Council of Ministers and the European Council. This is because the European Union treaties do not make the European Council of Ministers accountable whether directly or indirectly to the European Parliament. As for the European Council the European Parliament has virtually no power. The relationship between the European Parliament, the European Council of Ministers and the European Council is separately dealt below.

### **The Council of Ministers and the European Parliament**

The relation between the two institutions is not based on political equality. European Parliament is too feeble to control and supervise the Council of Ministers for three main reasons:

First, the Council of Ministers is the meeting ground for national governments to make its members responsible to the European Parliament would be to introduce a measure of supranationalism into the European Union that would be unacceptable to most of the governments. Hence, the view has been taken that Council as a collective body should not be responsible to anyone and its individual members should not be responsible to EU institutions.<sup>28</sup>

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<sup>27</sup> Nugent, Neil, "The European Parliament" in *Government and Politics of European Union* (New York: Palgrave Macmillan, 2003), p.210.

<sup>28</sup> Nugent, Neil, "The European Parliament" in *Government and Politics of European Union* (New York: Palgrave Macmillan, 2003), p.210.

Second, in respect of CFSP, Police and Judicial Cooperation and EMU the Parliament is relatively weak. This is partly because decisions in these spheres sometimes need to be made quickly and in secret and partly because some member states favour intergovernmentalism as the prevailing decision-making mode in these sensitive areas. The European Parliament is thus left to make the best it can of its powers to be consulted, to be kept informed, to ask questions and to make recommendations. There are about forty seven policy areas where the European Parliament has some say since the co-decision procedure applies therefore, consent from both the institutions is required before a law may be adopted. Under this procedure, the Commission presents a proposal to Parliament and the Council. Following its first reading the Parliament may propose amendments. If the council accepts these amendments then the legislation is approved. If it does not then it adopts a "common position" and submits that new version to the Parliament. At its second reading, if the Parliament approves the text or does not act, the text is adopted; otherwise the Parliament may propose further amendments to the Council's proposal. It may be rejected outright by an absolute majority of Members of the European Parliament. If the Council still does not approve the Parliament's position, then the text is taken to a "Conciliation Committee" composed of the Council members plus an equal number of MEPs<sup>29</sup>. If a Committee manages to adopt a joint text, it has to still be approved by both the Council and Parliament or the proposal is abandoned.<sup>30</sup>

Third the very nature of Council with its ever-changing composition its specialist Councils and its rotating Presidency-means that continuity of relations between it and the European Parliament is difficult to establish.<sup>31</sup>

The amount of access the European Parliament gets depends on the country holding the Presidency. Nevertheless, there are certain points of contacts which at least provide if the European Parliament to challenge the Council of Ministers on its general

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<sup>29</sup> MEP: Member of Parliament

<sup>30</sup> Ibid. p.210.

<sup>31</sup> Ibid. p.211.

conduct of affairs. First, is the appearance of the Council Presidency before the European Parliament at the beginning and the end of the six-month term of office. Second, the ministers from the Presidency usually attend the Parliament committees that deal with their sphere of responsibility at least twice during their country's Presidency. Third, ministers from the Presidency also usually attend European Parliament plenary sessions and participate in important debate and lastly European Parliament through Presidency can question the Council.

### **The European Council and the European Parliament**

The Parliament is wholly bereft of any supervisory power over the European Council. This is largely because it is an intergovernmental organization is largely outside the framework of the Treaty of European Commission (TEC); it meets only six days a year and most of its members, Heads of Governments not only wish to be unaccountable to MEP but also have ensured this through the contents of the treaties that are framed largely at this level.<sup>32</sup>

The TEC and the Treaty of European Union (TEU) do give consultative powers to EU in case of EMU but these are anticipated as being only for occasional use. It is only twice that the European Parliament comes in contact with the European Council; first is at the opening session of the European Council meetings when the European Parliament addresses them and the President informs about the views of the MEPs on current issues and the second is when the European Council President delivers a report and answers the questions on the outcome of the summit before European Parliament plenary session at the end of the European Council meetings.

The European Parliament has very little influence on the European Council and its functioning. There are limited linkages between the two institutions, and there is no

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<sup>32</sup> Nugent, Neil, "The European Parliament" in *Government and Politics of European Union* (New York: Palgrave Macmillan, 2003), p.211

reason to suppose that the European Council will be worried about the views of the European Parliament.

### **The Democratic Deficit and the Councils**

Power in the European Union is dispersed and reliant on the enforcement structures of others, primarily the administrations of the Member States. J.H.H Weiler views that the EU has a 'top- to- bottom hierarchy of norms' but a 'bottom- to top hierarchy of authority and real power'.<sup>33</sup> The relationship among the European Union institutions as discussed earlier is not a balanced one. The intergovernmental organizations dominate the supposedly democratic institution in policy formation as well as implementation. This 'not so democratic' nature of the Union confronts it with a legitimacy deficit. Until the Maastricht Treaty, it was assumed that a need for democratizing the European Union does not exist as the European Union is a non-state political system. It faced few and insubstantial legitimation requirements than the state. Where the state legitimacy is multidimensional based on performance, democracy and identity Union legitimacy was thought to be indirectly legitimated by its member states on the idea that a body that is composed of legitimate governments is itself legitimate.<sup>34</sup> This idea finds expression in the Copenhagen criteria under which democracy is an essential criterion for a state applying membership in the Union. Such preconditions fit the 'end of history' argument that democracy has become a universal principle of good governance, a benchmark for comparing systems and a test for the admissibility for relationships with others (Fukuyama, 1989). Those who use the European Union to affirm democratic principles bind themselves into replicating those standards in their own behavior. The only escape would be to claim that it is enough for the European Union institutions to be democratic in their consequences without being democratic in their internal characteristics. But that presupposes that integration is the net benefit to

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<sup>33</sup> Weiler, J.H.H (2002), "A Constitution for Europe? Some Hard Choices" in *Journal for Common Market Studies*, Vol.40, and No.4, (Oxford: Blackwell Publications, September 2002), p.568.

<sup>34</sup> Lord, Christopher and Beetham, David "Legitimizing the EU: Is there a 'Post-Parliamentary Basis' for its Legitimation? In *Journal of Common Market Studies*, Vol.39, and No.3 (Oxford: Blackwell Publications, September 2001), p. 444

democracy in other arenas and the European Union has no need for democracy as a basis for its own identity because its non-stateness as a political system makes it immune to meet the same broad criteria of legitimacy as liberal democratic states. Thus when the same are expected out of the European Union the Union falls short of them. Where the legitimacy at the state level is explicit through regular elections, Union legitimacy is implicit.<sup>35</sup>

The core attributes of democratic governance as mentioned by Christopher Lord and David Beetham (2001, p.446) are public control with political equality. This seems both to be expected of the European Union by the public and to follow from the logic of its own mission statements. The policy area under the foothold of the European Union has incessantly increased. This however is not supported by a directly proportional increase in accountability and transparency. The processes of policy formation and implementation have become far more complex and intricate. Scharpf (1997) argues that the frustrations of democratic governance in Europe result primarily from the fact that the range of feasible policy choices has been reduced at the national level while policy making at the European level still lacks democratic legitimacy.<sup>36</sup> Certain policy areas such as the CFSP, Justice and Home Affairs and EMU are comprehended by the European demos' as eroding the national sovereignty as against creating a united Europe. The Council of Ministers is involved in public goods provisions as varied as market regulation macroeconomic stabilization, environmental protection and internal and external security. These policy regulations influence the day to day life of the citizens. An increase in the prices of a commodity, or enlarging the market, or altering the value of currency affects the entire European population. Hence, Majone's (1989) argument that there are non-democratic sources of legitimacy as well as policy areas

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<sup>35</sup> Lord, Christopher and Beetham, David "Legitimizing the EU: Is there a 'Post-Parliamentary Basis' for its Legitimation? In *Journal of Common Market Studies*, Vol.39, and No.3 (Oxford: Blackwell Publications, September 2001), p. 445

<sup>36</sup> Scharpf, Fritz W, "Economic Integration Democracy and the Welfare State" in *Journal of European Public Policy*, Vol.4 and No.1. (London: Routledge, 1997) p.18.



which being universally valid norms, do not require legitimacy, and that the EU is dealing with only those aspects does not hold any longer.<sup>37</sup>

The most baffling aspect about this arrangement is that the European citizens can do nothing as the Council of Ministers is an intergovernmental body. The structural adjustments make it unreachable. The structural constraint lead it to an absence of viable policy options for the citizens. They may as nationals of a state change their respective national delegations by altering the political leadership in their respective nation-states from the Council of Ministers but as a unit of a regional institution the will of the Council is invincible.

The European Parliament mostly participates as an advisory body to the Council of Ministers and is quite dependent on the Presidency's support in raising its concerns. The main reason behind this is that the members of the intergovernmental unit do not want to be answerable to any one other than their own national legislature. Some scholars like Holland(1980) and Kevin Carey (2001) believe that the European 'democratic deficit' arises because the politicians of EU member states do not want to impart greater legitimacy to the European Parliament on the ground that it would reduce the legitimacy and sovereignty of national parliaments.<sup>38</sup> However, they fail to address the legitimacy and sovereignty questions at the regional level. This imposes a systemic constraint. The ideas of state sovereignty and cosmopolitan democracy challenge each other. Thus the whole constructive paradigm to create a new European identity fails in the face of realism - the Hobbesian understanding of politics within Europe.

Other factors that contribute to the democratic deficit are political constraints like- negative campaigning during the national elections. The state politicians blame Brussels for every flaw but claim its credits for themselves. There is a lack of a proper

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<sup>37</sup> Majone, G. "The Rise of Regulatory State in Europe" in *West European Politics*, Vol. 17 and No.399 (Routledge: London1994) 77-101.

<sup>38</sup> Carey, Kevin, "The Democratic Deficit", [Online: web] Accessed 3 June2007, (2001) URL: <http://www.g21.net/do186.htm>.

communication channel between the European citizens and the Union institutions. Public opinions are not addressed timely and often results in miscommunication. The vacuum is misused by both the private as well as the national media to twist and turn information for its own purposes. This creates skepticism in the minds of the people.

Though the powers of the European Parliament have increased with every successive treaty, it is not fully equipped to take into account its executives as they are not selected or could be penalized by them. It was in 1999 that the European Parliament became the only institution to improve its ratings by 8 percent in the Eurobarometer when it forced the Santer College of Commissioners to resign.<sup>39</sup> Yet its identity as a democratic institution of a transnational nature is not deeply rooted. The elections conducted every five years witness, low participation. The election campaign is also based on issues that are domestic in nature as against European. However this should not be seen as a reason to dismiss the idea of making the European Union more democratic. There is in fact a general apathy towards democracy among states that have historically been democratic. The turn out at national elections in old democracies is decreasing. But among newly democratic states it is comparatively high. The European Union has old democratic states as its members. It is only now that young democracies have joined the Union thus the public participation in those states is comparatively higher. The reluctance on part of the executive to imbibe the European Parliament with more effective powers therefore should not be taken lightly.

“I have never understood why public opinion about European ideas should be taken into account.”<sup>40</sup>

Raymond Barre, former French premier and European  
Commissioner

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<sup>39</sup> Lord, Christopher and Beetham, David “Legitimizing the EU: Is there a ‘Post-Parliamentary Basis’ for its Legitimation? In *Journal of Common Market Studies*, Vol.39, and No.3 (Oxford: Blackwell Publications, September 2001), p. 445.

<sup>40</sup> Kohnstamm, Max. “*The EP elections: Deepening the democratic deficit*” [Online: web] Accessed 3 June 2007, URL: (2006) [www.euractiv.com/en/future-eu/ep-elections-deepening-democratic-deficit/article-128495](http://www.euractiv.com/en/future-eu/ep-elections-deepening-democratic-deficit/article-128495).

## Chapter 3

### The European Parliament

In the last chapter we discussed that how legitimate democratic bodies become undemocratic at the regional level due to certain structural, systemic and political limitations. Thus there are difficulties in solely depending upon the national representation to make the European Union democratic and legitimate. Hence, the European Union has provided itself with a European Parliament. The European Parliament (EP) is the only directly elected institution of the European Union (EU). Together with the Council of Ministers of the European Union (the Council), it forms the bicameral legislative branch of the Union's institutions and has been described as one of the most powerful legislatures in the world. 'The European Parliament was first formed as the Assembly of the European Coal and Steel. The title of the European Parliament was adopted in 1962 and since 1979 it is directly elected for every five years. Independently, it has been regarded as an ineffectual institution, but this reputation is no longer justified as with subsequent treaties its powers have gradually increased.'<sup>1</sup> Like the national parliaments its influence is exercised in three main ways; through the legislative process, through the budgetary process, and through control and supervision of the executive. The Parliament is composed of 785 MEPs (Member of the European Parliament), who serve the second largest democratic electorate in the world (after India) and the largest trans-national democratic electorate in the world (492 million). The debate on democratic deficit raises three questions for the European Parliament:

1. How closely is the European Parliament related to the people?
2. How do Members of the Parliament organize themselves and operate?
3. What powers do they exercise?

This chapter will discuss these three questions as well as it will seek to study the increase in the powers of the European Parliament with every successive ratified treaty

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<sup>1</sup> Nugent Neil, "The European Parliament" in *Government and Politics of European Union* (New York: Palgrave Macmillan, 2003), p.197.

and to what extent it has been able to counter the democratic deficit in the European Union.

### **The People and the European Parliament**

Since 1979 each member state has formed a constituency to elect a bloc of Members of the Parliament and each has its own electoral system to do so. Hence, the methods of conducting the elections are far from uniformity. The electoral systems vary in every state and the vote counting is independent from the European Union institutions. <sup>2</sup>Given that MEPs are elected in national blocs, it is not surprising that the voters get to choose between national and not European parties. Reif and Schmitt (1980) refer to them as 'second-order national contests'. <sup>3</sup>The crux of this theory is that both voters and parties consider competition for power in the national arena more important than the European arena that they use their only opportunity to elect a Union institution to express domestic political preferences. The consequences of second order voting include the following issues.<sup>4</sup>

European election campaigns are dominated by national issues. Although political parties get together to issue pan-European manifestos, they dare not make those prominent in their campaigning, since that would mean ignoring the domestic issues that the voters really care about. Participation in European Parliament elections is low and has been continuously decreasing. During the 2004 Parliament elections, the participation rate was less than 50 percent. Table 3.1 shows the voters participation trend among the member states since 1979.

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<sup>2</sup> Lord, Christopher, "Democracy and Democratisation in the European Union", in the Bromley Simon (ed.), *Governing Europe: Governing the European Union* (London: Sage Publications, 2001), p. 174.

<sup>3</sup> Reif, K and Schmitt, H, "Nine Second-Order Elections: A Conceptual Framework for the Analysis of European Election Results" in *European Journal of Political Research*, Vol:8 and No. 1 (Oxford: Blackwell Publications, 1980) p. 3.

<sup>4</sup> *Ibid.* p.175.

Table: 3.1

Voter's turnout since 1979 to 2004 in the EU Parliamentary Elections

Country	1979	1984	1989	1994 (95: SE, AT, FI)	1999	2004	Trend
Austria				67.7	49.4	41.8	Downward
Belgium	91.4	92.2	90.7	90.7	91.0	90.8	Downward (mandatory voting)
Denmark	47.8	52.2	47.4	52.9	50.5	47.8	Downward
Finland				57.6	31.4	41.1	Upward
France	60.7	56.7	48.8	52.7	46.8	43.1	Downward
Germany	65.7	56.8	62.3	60.0	45.2	43	Downward
Greece	78.6	77.2	80.1	80.4	75.3	62.8	Downward (mandatory voting)
Ireland	63.6	47.6	68.3	44.0	50.2	59.7	Upward
Italy	84.9	83.4	81.4	74.8	70.8	73.1	Upward
Luxembourg	88.9	87.0	96.2	88.5	87.3	90	Upward (mandatory voting)
Netherlands	58.1	50.6	47.5	35.6	30.0	39.1	Upward
Portugal		72.4	51.2	35.5	40	38.7	Downward
Spain		68.9	54.7	59.1	63	45.9	Downward
Sweden				41.6	38.8	37.2	Downward

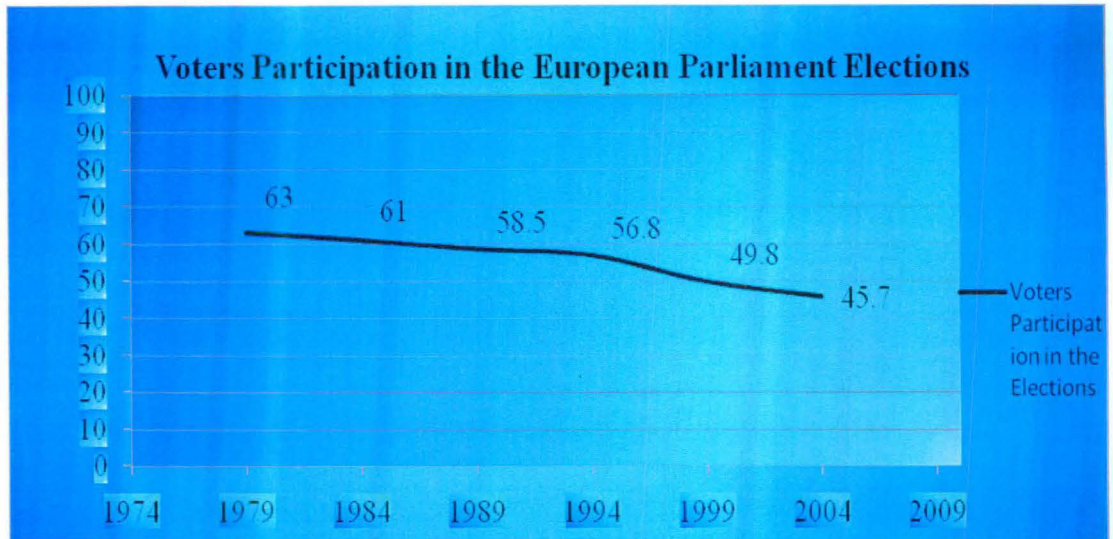
United Kingdom	32.2	31.8	36.6	36.4	24.0	38.9	Upward
*	*	*	*	*	*	*	*
Cyprus						71.19	
Czech Republic						27.9	
Estonia						26.89	
Hungary						38.47	
Latvia						41.23	
Lithuania						48.2	
Malta						82.4	
Poland						20.4	
Slovakia						16.7	
Slovenia						28.3	

\*Source:<http://www.euractiv.com/en/elections/european-parliament-elections-2004-results/article-117482>

The above table indicates that since the first European elections in 1979 (EU-9), the rate of participation has not stopped declining. Looking at the details of the differences between the new Member States and the fifteen members before enlargement we find that, only one fourth (26.9%) of registered voters in these countries met this new European electoral appointment. Malta and Cyprus are the only two nations to have voted in the elections enthusiastically. Since there is no reference to compare these results with a previous European election, we can only refer to average turnout in the

most recent general elections held in these countries. This was about 56%, nearly 30 points higher than the results recorded for the European elections.<sup>5</sup>

Figure 3.1



\*Source : [http://ec.europa.eu/public\\_opinion/flash/FL162en.pdf](http://ec.europa.eu/public_opinion/flash/FL162en.pdf).

The results of the European Parliament elections are strongly influenced by domestic political cycles. If they are held immediately before or after the national election they mirror it. If they are held during the mid-term of a national parliament they tend to register an anti-government swing. European elections tend to favour small national parties. This is because of mid-term protest votes against the sitting government and second because voters in European elections need not feel constrained to plump for parties with a real chance of winning power. Consequently, these will be the elements of party fragmentation for the European Parliament.<sup>6</sup>

After 1979, some 30 percent MEPs were also the members of their national legislatures. This figure was inflated; however, many MEPs had contested the election for domestic political concerns and had no firm commitment to completing their terms in office. Such changes and turnovers in personnel affects the way most organizations

<sup>5</sup> "EOS Gallup Europe Flash EB 162 «Post European elections 2004 survey» "(21/06/2004 - 30/06/2004) - Report. [Online: web] Accessed on: 18/06/2007, [http://ec.europa.eu/public\\_opinion/flash/FL162en.pdf](http://ec.europa.eu/public_opinion/flash/FL162en.pdf).

<sup>6</sup> Lord, Christopher, "Democracy and Democratisation in the European Union", in the Bromley Simon (ed.), *Governing Europe: Governing the European Union* (London: Sage Publications, 2001), p. 175

work. The European Parliament is no exception to this; the more effective MEPs tend to be those who have developed policy interests and expertise in European affairs over time and have come to know their way around the EU system. Lack of continuity in membership was a problem after the first EP elections in 1979, with nearly one-quarter of MEPs being replaced before the 1984 elections. Things have since settled down and now only a relatively small proportion of MEPs resigns before the end of their term.<sup>7</sup>

The overall implication of the second order voting is that there is no systematic electoral linkage to the politics of representation and accountability (Lord 2001). Electoral outcomes can neither be interpreted as preferences for the prospective development of the Union policies over the coming five years (representation) nor taken as comments on the performance of the European Parliament or the European Union (accountability).<sup>8</sup>

As the European Parliament acquired more power in the recent past, it has become less of a second order election in character. However, since the 1979 elections the participation rate has only fallen even though each election is followed by treaty changes since 1989. In Figure 3.1 we see that in 1999 only 49.8 percent of the people turned up for voting and a mere three months later the Parliament demonstrated its powers to force the resignation of the Santer College of Commissioners.<sup>9</sup> This although improved the Parliaments rating as against other European Union institutions. They did not affect the election trends and the 2004 European elections witnessed an even lower participation (45 percent).<sup>10</sup> The inverse relationship between the empowerment of the European parliament and the voters' participation has led to questioning the second order model. In a study of 1994 elections Jean Blondel, Richard Sinnot and Paule

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<sup>7</sup> Nugent Neil, "The European Parliament" in *Government and Politics of European Union* (New York: Palgrave Macmillan, 2003), p.206.

<sup>8</sup> Lord, Christopher, "Democracy and Democratisation in the European Union", in the Bromley Simon (ed.), *Governing Europe: Governing the European Union* (London: Sage Publications, 2001), p. 177

<sup>9</sup> "EOS Gallup Europe Flash EB 162 «Post European elections 2004 survey»" (21/06/2004 - 30/06/2004) - Report. [Online: web] Accessed on: 18/06/2007, [http://ec.europa.eu/public\\_opinion/flash/FL162en.pdf](http://ec.europa.eu/public_opinion/flash/FL162en.pdf).

<sup>10</sup> Lord, Christopher and Beetham, David "Legitimizing the EU: Is there a 'Post-Parliamentary Basis' for its Legitimation? In *Journal of Common Market Studies*, Vol.39, and No.3 (Oxford: Blackwell Publications, September 2001), p. 444.



Svenson found that the voters and abstainers differed little in their estimates of European Parliament powers.<sup>11</sup> The low turnout is a result of not European Union lacking in powers rather a consequence of separation of powers: a vote for the legislative only partially determines as to where actual powers lies.<sup>12</sup>

### **Representation through the European Parliament: Organization and Operations**

Although Members of the Parliament are elected under national party labels they serve in the European Parliament in multinational party groups. On the whole, the groups are organized on a left-right continuum that corresponds to the main ideological party families found in the most member states: Socialists, Conservatives, Christian Democrats, Liberals and Greens and far left and far right. The Union of European nations, however, attempts to project intergovernmentalist perspectives onto the integration issue, while the Europe of Democracies and Diversities Group takes an overtly eurosceptic stance.

There are strengths and weaknesses in this structure of representation. Although the Euro groups are largely unknown to the public, they do correspond to the voters preferences on what is overwhelmingly the most important dimension of the political choice in the work of the European Parliament: the left-right spectrum. But there are pressures to align along the left right dimension of the European Union politics concerned with supranationalism versus intergovernmentalism for institution building.

MEPs in Parliament are organized into seven different parliamentary groups, including over thirty non-attached members known as *non-inscrits*. The two largest groups are the European People's Party-European Democrats (EPP-ED) and the Party of European Socialists (PES). These two groups have dominated the Parliament for much of its life, continuously holding between 50 and 70 percent of the seats together. No single group has ever held a majority in Parliament.

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<sup>11</sup> Blondel, J., Sinnot, R. And Svenson, P. "Democracy and Symbiosis in the European Union: Towards a Confederal Consociation?" in *Western European Politics* (London: Routledge, 1997), p.14.

<sup>12</sup> Lord, Christopher, "Democracy and Democratization in the European Union", in the Bromley Simon (ed.), *Governing Europe: Governing the European Union* (London: Sage Publications, 2001), p. 176.

Groups are often based around a single European political party such as the socialist group. However they can, like the liberal group, include more than one European party as well as national parties and independents. For a group to be recognized, it needs 20 MEPs from six different countries. Once recognized groups receive financial subsidies from the parliament and guaranteed seats on Committees, creating an incentive for the formation of groups.<sup>13</sup> Figure 2.2 shows the major political parties in the European Parliament in 2004 and their respective strengths.

An analysis of how Members of the Parliament vote provides an indication of the representation offered by party groups in the European Parliament. A striking feature is the frequency with which the main party groups of the centre-right (EPP) and the centre-left (PES) vote together.<sup>14</sup>

Institutional factors constrain Members of the Parliament to follow this 'grand coalition' approach to politics. Since it is stipulated in the treaty that parliament could exercise only on a majority of its membership not just on a majority of votes cast, winning coalition will almost always need to include the EPP and PES on the following assumptions; first that there will always be significant number of absenteeism second that representatives from neighbouring positions on the political spectrum are more likely to form alliances than those who hold opposite views.<sup>15</sup>

A common critique is that collaboration between the centre-left and centre-right suspends political competition in the European Parliament reducing it to a cartel in which Members of Parliament collude to carve up the benefits from the exercise of Parliamentary powers. The long term cost according to this view is the absence of contestation that would highlight awareness of the choices or the cleavages intrinsic to

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<sup>13</sup> Nugent Neil, "The European Parliament" in *Government and Politics of European Union* (New York: Palgrave Macmillan, 2003), p.216.

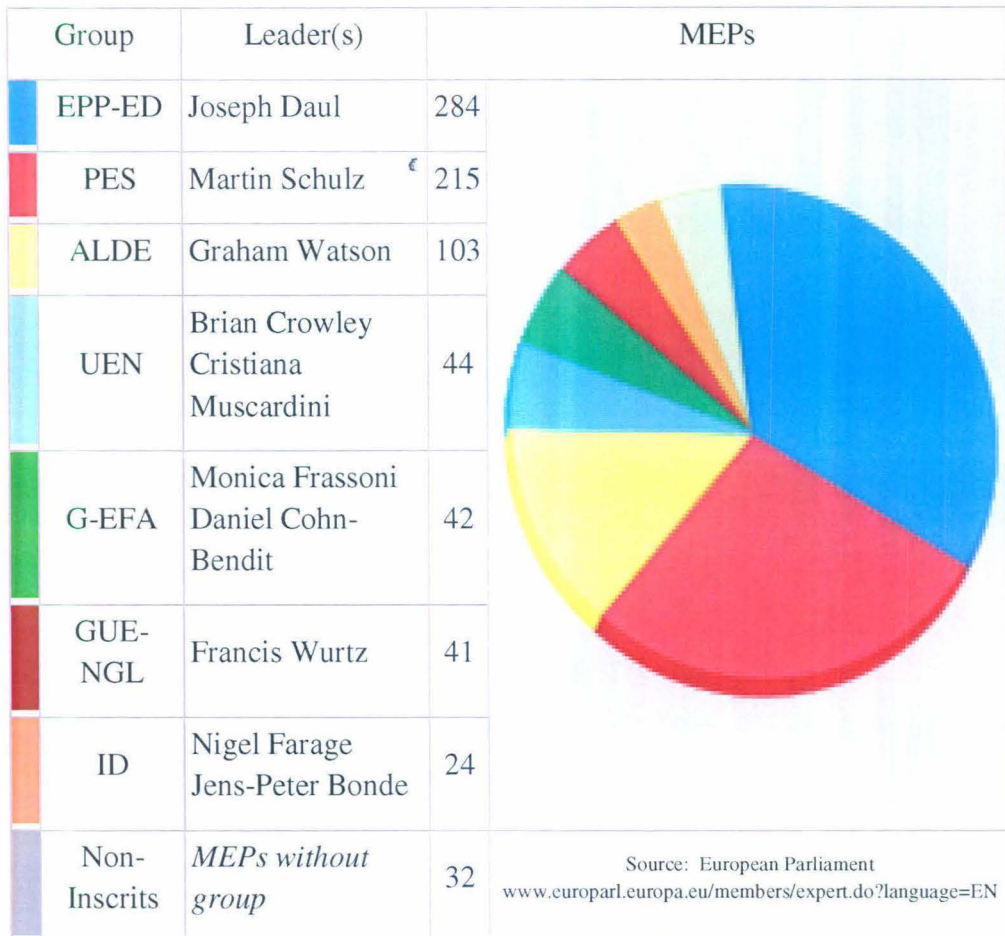
<sup>14</sup> Christopher, "Democracy and Democratisation in the European Union", in the Bromley Simon (ed.), *Governing Europe: Governing the European Union* (London: Sage Publications, 2001), p. 177

<sup>15</sup> Nugent Neil, "The European Parliament" in *Government and Politics of European Union* (New York: Palgrave Macmillan, 2003), p.218

European integration. This factor interacts with the second order character of Euro elections to constrain the development of a Euro democracy.<sup>16</sup>

Figure: 3.2

Distribution of Seats in the European Parliament



\*Source: [www.europarl.europa.eu/members/expert.do?language=EN](http://www.europarl.europa.eu/members/expert.do?language=EN)

Not all assessments of the grand coalition politics in the European Parliament are negative. EPP-PES alignments are often only a part of a more inclusive consensus not only across member states but also across party. Political divisions may also be

<sup>16</sup> Christopher, "Democracy and Democratization in the European Union", in the Bromley Simon (ed.), *Governing Europe: Governing the European Union* (London: Sage Publications, 2001), p178.

defensible in the case of a novel and transnational political system. The Union could well run into legitimacy problems if it consistently excludes a mainstream party political family from the benefits of integration. It also does not need rules requiring high levels of inter-party consensus on final decisions preclude political competition and contestation at earlier stages of political debate, notably in the Committees of the European Parliament that provide the in-depth preparation of decisions.<sup>17</sup>

It is some times suggested that the MEPs are not of the same calibre and therefore do not carry the same political weight as their counterparts in the national legislatures. Because the EP is not high profile it only gathers second rate parliamentarians, or those who regard it mainly as a stepping stone to a national career or advancement. There is some truth in this view major national figures have tended either not to contest EP elections or not complete their terms in office. But the situation should not be exaggerated. The competition to become an MEP is normally fierce and requires all the customary political skills. Perhaps the key point to be emphasized is that it should not be assumed that those who chose to stand for or work in the EP are settling for second best.

The work of the European Parliament is carried on three sites in three different countries. Full plenary sessions are held in Strasbourg while mini-plenary sessions are held in Brussels. Committees usually meet in Brussels. Around half of the European Parliament staff who works in the Parliament's Secretariat is based in Luxembourg, with the rest mainly at Brussels. This situation is clearly annoying and is a source of grievance for many MEPs. Reasonably conscientious MEPs may have to change their location half a dozen times in a month. If the European Parliament had just one base and especially if that was Brussels it is likely that Parliament's efficiency, influence, and visibility would all be increased. However, the Council has the power of decision and hard lobbying from Luxembourg and the French governments has ensured that arguments for 'sense to prevail' and a single seat to be agreed may not be acted upon.

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<sup>17</sup> Christopher, "Democracy and Democratization in the European Union", in the Bromley Simon (ed.), *Governing Europe: Governing the European Union* (London: Sage Publications, 2001), p.178.

## **Workings of the European Parliament**

Compared with most national parliaments the European Parliament enjoys considerable independence in its affairs. Though they are bound by the treaties but on many agendas such as the timetable and organizational matters it certainly enjoys a higher degree of independence.

The reason for this independence is again the special institutional structure under which the European Parliament operates. The executive body of the Union is not controlled by its legislature therefore the Parliaments opinions and activities may not be welcomed but they do not normally have politically damaging or unmanageable consequences. Secondly, the absence of any clear consistent identification, either positive or negative kind, between the European Parliament and the EU executives i.e. the Commission and the Council of Ministers gives it a considerable degree of independence as the Commission is non-partisan and the Council is multi-party, multi-ideological and multi-national in its membership. Lastly, the European Parliament is entitled to adopt its own Rules of Procedure. This it has done, amending and streamlining the Rules in order to make itself more efficient and more influential.<sup>18</sup>

Most decisions about the operation and the functioning of the Parliament are delegated to the President, the Bureau, or the Conference of the Presidents. The President is elected for a period of two-and-a-half year term. According to the Rule 19 of the Rules of Procédure, 'the president shall direct all activities of Parliament and of its bodies under the conditions laid down in these Rules.' In practice, this means that the President has many functions, such as presiding over debates in the chamber, referring matters to the committees as appropriate and representing the European Parliament in dealing with the EU institutions and outside bodies. An effective President must be an administrator and a politician skilled in organizing and also liaising and bargaining.<sup>19</sup> The President of the European Parliament is therefore also its speaker .Currently the post

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<sup>18</sup> Nugent Neil, "The European Parliament" in *Government and Politics of European Union* (New York: Palgrave Macmillan, 2003), p.226.

<sup>19</sup> Ibid,p.227.

is held by Hans-Gert Pöttering (EPP), elected in January 2007. He presides over a multi-party chamber, the two largest groups being the European People's Party-European Democrats (EPP-ED) and the Party of European Socialists (PES).<sup>20</sup>

The Bureau consists of the President and the fourteen Vice- Presidents. Like the President the Vice- Presidents are elected for two-and-a-half years though by tradition the post is distributed amongst the political groups and member- states. The Bureau deals with various financial and administrative organizational matters concerning members. Five Quaestors, who are also elected, sit in the Bureau in an advisory capacity.<sup>21</sup>

Organizational matters other than those that are dealt by the Bureau are the responsibility of the Conference of the Presidents. This is composed of the EP President and the chairmen of the political groups. MEPs who are not attached to any group can delegate two of their members to attend meetings. Matters that fall within the remit of the Conference of the Presidents include the following: deciding on the seating arrangements in the Chamber— a potentially sensitive and highly symbolic issue when groups do not wish to be seated too far to the left or too far to the right of the hemicycle, arranging the European Parliaments' work programme, including assigning the drafting of the reports and drawing up the draft agenda of plenary session; and authorizing the drawing up of own initiative reports.<sup>22</sup> By and large, the Conference responds to the matters coming before it from the Parliament group and committees rather than imposing itself on Parliament. Two other Conferences, viz the Conference of Committees Chairs and the Conference of Delegation Chairs, also discuss organizational and planning matters. They meet on a monthly basis.

Much of the European Parliamentary work is carried out by committees. They are of two types. The first and by far the most important are the standing or the

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<sup>20</sup> "The President of the European Parliament" [Online : web] Accessed on 18/03/08, URL: <http://www.europarl.europa.eu/president/defaulten.htm>

<sup>21</sup> Nugent Neil, "The European Parliament" in *Government and Politics of European Union* (New York: Palgrave Macmillan, 2003), p.227.

<sup>22</sup> Ibid p.227.

permanent committees of which there are seventeen. The second are the ad hoc committees which are established to investigate specific problems and topics. MEPs are assigned to the standing committees at the beginning and the half way through each five-year term. Assigning to the Ad Hoc Committee is as and when required.<sup>23</sup> The standing committees have 40-60 members and most MEPs are therefore members of some standing committee. The most important task of the committees is to examine the Commission proposal which is as follows:

Each proposal is referred to an appropriate committee. The responsibility of drawing up the committee's report is entrusted to a *rapporteur* who is a committee member formally chosen by the fellow members. They are appointed as a result of negotiations among political groups. A first draft is produced to the committee according to an agreed timetable. Drafts are normally presented in four main parts: Amendments to the Commission's proposal (if any); a Draft Legislative Resolution; an Explanatory Statement; and Annexes (if any), including the opinions of other committee members. How much discussion the draft provokes and how many committee meetings are required before a text is adopted depends on the complexity and the controversiality of the subject-matter. Outside factors that are likely to shape the views of the committee members include national and ideological perspectives, lobbying by outside interests, and views expressed by the Commission. The *rapporteur* acts as the committees' principle spokesperson when the report is considered in the plenary. In this capacity she/he may have to explain the committees view on amendment put forward by non-committee members, or be called upon to use her/his judgement in making recommendations to Parliament on what it should do when the Commission goes, some, but not all the way towards accepting the Committee approved amendments.<sup>24</sup>

Where the cooperation or the co-decision procedure apply the role and activities of the committees at the second reading stage are similar to those at the first reading, i.e. they examine the proposal and make recommendations to the plenary. The responsibility

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<sup>23</sup> Ibid, p.228

<sup>24</sup> Nugent Neil, "The European Parliament" in *Government and Politics of European Union* (New York: Palgrave Macmillan, 2003), p.228

of drawing the report falls automatically on the committees involved in the first reading and the *rapporteur* remains the same. The reports normally have two main sections: recommendations for the Second Reading and Justifications or Explanatory Statements.

The committee that has dealt with a proposal at the first and second readings is not directly concerned with the proceedings if the conciliation committee is convened under the co-decision procedure. However, the EP delegation to a conciliation committee always includes some members of the committee concerned including the chairman and the *rapporteur*.<sup>25</sup>

The workings and the influence of a particular committee depends on a number of factors like committee expertise, Secretariat support, committee chairmanship and cohesiveness significance of the policy area within the European Union system, the extent of the EU policy development, and the power of the EP within the policy area.<sup>26</sup>

There are twelve full plenary meetings, or part sessions as they are officially known, each year the sessions are held in Strasbourg that last from Monday to Thursday. In addition to twelve full plenaries, four to six full mini-plenaries are held each year. They normally take up two half days and are held in Brussels. Full plenaries have three standard elements first, consideration of committee reports. Second time is set aside for debate on topical and urgent matters. Finally, there is a one-and-a-half hour Commission Question Time and a one and half hour Council Question Time. Who answers on behalf of the Commission and the Council depends on the policy content of the questions. The Parliament in session is not a dynamic place. Attendance in the chamber is poor, translation problem limits spontaneity, and much immediacy is lost in the practice of taking most votes in clusters at allocated voting times other than at the end of debates. Nonetheless the working procedures have been gradually improved over the years, most notably by the removal of such minor business from the floor of the chamber.<sup>27</sup>

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<sup>25</sup> Nugent Neil, "The European Parliament" in *Government and Politics of European Union* (New York: Palgrave Macmillan, 2003), p.228

<sup>26</sup> Ibid p.229

<sup>27</sup> Ibid p.229



## **Powers of the European Parliament**

There are three main ways in which Parliaments generally exercise control over executives: through the legislative process, through and budgetary process, and through control and supervision of the executive. There are two main ways in which this representative body can exercise an element of control over the executives. One is through appointment or dismissal of key office-holders (College of Commissioners), who then go on to supervise the various bureaucracies that make up a governing authority. The other is through granting or withholding the key resources (finance and legislative authority) that an executive body needs to function effectively. The conventional wisdom is that the European Parliament has only slender powers of executive formation or dismissal. On the other hand, its legislative powers can be impressive.<sup>28</sup>

With every passing treaty, certain changes have been made in the powers and authority of the European Parliament. These changes have been more rapid during the last decade. No Parliamentary term is passed without treaty changes that increase the authority of the European Parliament since the Single European Act (1986). This section traces their history and their effects on the European Parliament. Table 3.2 briefly narrates the changes mentioned in the main EU treaties.

*The Treaty of Rome (1957)*: the treaty is the founding treaty of the EC<sup>29</sup>. It provided with a European Parliament. It gave the Parliament the right to be consulted on legislative matters and dismiss the College of Commissioners.

*Treaties amending Certain Budgetary Provisions of the Treaties and the Treaty Amending Certain Financial Provisions of the Treaties* signed in 1970 and 1975 together they laid down the budgetary procedure and allocated budgetary powers

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<sup>28</sup> Christopher, "Democracy and Democratisation in the European Union", in the Bromley Simon (ed.), *Governing Europe: Governing the European Union* (London: Sage Publications, 2001), p.179

<sup>29</sup> EC-European Community

between the EC institutions. The powers allocated to the European Parliament regarding the budget of the Community were of particular importance.<sup>30</sup>

Table 3.2

The European Parliament from Rome to Nice: Treaty Reforms and Powers Conferred		
	Treaties	European Parliament
1.	Treaty Of Rome (1957)	Right to be consulted on legislation; right to dismiss the Commission.
2.	Single European Act: SEA (1986)	Extension of legislative authority through the introduction of legislative procedure.
3.	Treaty of Maastricht (1992)	Right to amend and pass legislation in limited range of areas (co-decision procedure); greater role in appointing Commission.
4.	Treaty of Amsterdam(1997)	Co-decision extended; right to approve appointment of Commission President and Commission as a whole.
5.	Treaty of Nice(2001)	Further extension of co-decision procedure; right to place matters before the Court on equal footing with Council and Commission; legal base established for party funding at European level

\*Source: Bomberg Elizabeth and Stubb Alexander (2003), *The EU: How Does it Work*, Oxford University Press, Oxford

<sup>30</sup> Nugent Neil, "From Rome to Amsterdam" in *Government and Politics of European Union* (New York: Palgrave Macmillan, 2003), p.58 .

*The Act Concerning the Elections of the Representatives of the Representatives of the Assembly by Direct Universal Suffrage* signed in 1976 but not ratified by all member states until 1978, this Act provided the legal base for direct elections to the European Parliament and laid down certain rules for their conduct, but did not in any direct way increase the powers of the European Parliament.<sup>31</sup>

*The Single European Act: SEA (1986)*: recognised in 1985 it was formally signed February 1986. It came into force in mid 1987 because of ratification difficulties in Ireland. The SEA contained a wide range of measures of which the ones meant for Parliament were:

- a. A new legislative procedure - the cooperation procedure – was established with a view to improving the efficiency of decision-making in the Council of Ministers and increasing though not by too much, power of the EP. Regarding the first of these aims, the Council's ability to take decisions by Qualified Majority Vote (QMV) was extended to most decisions subject to the procedure, whilst regarding the second aim the single reading of the legislative proposals under the established consultation procedure was extended to two readings. Several legislative areas were covered under the new procedure including, crucially most of the measures 'which have as their object the establishment and functioning of the internal market'.<sup>32</sup>
- b. The European Parliament's role and potential influence was further increased by the establishment of a new 'assent procedure'. Under the procedure the European Parliament's assent, by an absolute majority of members, became necessary both for the accession of new members to the Community and for association agreements between the Community and the third countries.<sup>33</sup>

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<sup>31</sup> Ibid, p.58.

<sup>32</sup> Nugent Neil, "From Rome to Amsterdam" in *Government and Politics of European Union* (New York: Palgrave Macmillan, 2003), p.59

<sup>33</sup> Ibid, p.59.

*The Treaty of Maastricht (1992)*: the collapse of the Soviet Union and the need for more integration among the EC member states led to the Treaty of Maastricht. Also known as the Treaty of European Union (TEU) it was formally signed by the Foreign and Finance Ministers in Maastricht in February 1992. It created a new organization, the European Union, which was to be based on three pillars: the European Communities; a Common Foreign and Security Policy (CFSP); and Cooperation in the fields of Justice and Home Affairs. The treaty was designed to improve the efficiency and democratic nature of the Community's institutional structures and decision-making process. The greatest impact was on the Council of Ministers, which was empowered to take a greater range of decisions on the basis of QMV, and on the European Parliament, which was given increased powers and influence in several areas- notably in terms of legislation. The following are the list of institutional changes that were most significant for the European Parliament:

- a. A new legislative procedure – the co-decision procedure was established. In effect the procedure extended the cooperation procedure established by the SEA, by allowing- if the Council and the European Parliament could not agree at second reading- for the convening of the conciliation committee and for a third reading of legislation by both the Council and the EP. Unlike the cooperation procedure, which enabled a determined Council to ignore the Parliament's expressed opinions, the co-decision procedure would allow the European Parliament, for the first time, to veto legislative procedures it did not wish to accept.<sup>34</sup>
- b. The policy areas subject to the cooperation procedure were revised, with some areas previously covered by the procedure being 'transferred out' to the co-decision procedure and some new policy areas previously subjected to the consultation procedure (which allows only one reading of the legislation) being 'transferred in'.<sup>35</sup>

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<sup>34</sup> Nugent Neil, "From Rome to Amsterdam" in *Government and Politics of European Union* (New York: Palgrave Macmillan, 2003), p.60

<sup>35</sup> Ibid, p.65.

- c. The scope of assent procedure by which the Parliament's approval is necessary for certain EC actions, was extended.
- d. The term of office of the Commissioner was extended from four to five years so as to bring the lifespan of the Commission into line with the lifespan of the Parliament. The national governments were to nominate by common accord, after consulting the European Parliament, the person they intended to appoint the President of the Commission. Other members of the Commission were to be nominated by the national governments in the established manner, but now in consultation with the nominee for Commission President. The entire prospective Commission was to be subject to a vote of approval by the European Parliament before being formally appointed by a common accord of the national governments.<sup>36</sup>
- e. The European Parliament was to appoint an Ombudsman to receive complaints from citizens 'covering instances of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role'.<sup>37</sup>

*The Treaty of Amsterdam (1997):* Article N of the TEU specified that another IGC should be convened in 1996 to examine the operation of the Treaty. The advance notice given allowed the Amsterdam Treaty to be considered and prepared over a much longer period than any other treaty in the EC/EU's history. The Amsterdam treaty was not innovative or as important as either the SEA or the TEU. The intention from the outset was that it would essentially be a revising rather than a pioneering treaty. Therefore, the focal point of institutional changes was again effective functioning and extending the democratic base of decision-making instead the great debate of EU internal issue- EMU.

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<sup>36</sup> Ibid, p.66.

<sup>37</sup> Nugent Neil, "From Rome to Amsterdam" in *Government and Politics of European Union* (New York: Palgrave Macmillan, 2003), p.66

Disappointing however it was for those who wished to see decision-making and institutional arrangements put in place in preparation for enlargement, the following significant reforms were nonetheless agreed:

- a. Major revisions were made in the TEC to the application of the EU's legislative procedures. Most importantly the cooperation procedure was virtually abandoned, being now restricted to a handful of EMU decisions and the remit of the co-decision process was extended to 23 new cases, making it a 'normal' procedure for most legislation in that it would apply to most areas apart from agriculture and justice and home affairs matters where consultation procedure continued to apply.<sup>38</sup>
- b. The co-decision procedure was streamlined and the European Parliament's position was strengthened.
- c. A number of changes were made to the TEC in respect of the appointment of the President and other members of the Commission, and the position of the President was strengthened: what had become established as the *de facto* right of the European Parliament to approve European Council's nominee for Commission President was given treaty status; the nominations of the national governments to the College must now be made 'by common accord' with the President designate; the Commission would now be required to work under the political guidance of its President', and in a declaration attached to the treaty it was stated that 'the President of the Commission must enjoy broad discretion in the allocation of its tasks within the College, as well as in any reshuffling of those tasks during a Commission's term of office'.<sup>39</sup>

*The Treaty of Nice (2001)*: the June 1999 Cologne summit led to the IGC meeting opening in February 2000 and closed at December 2000 Nice European Council. The

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<sup>38</sup> Ibid, p.70

<sup>39</sup> Nugent Neil, "From Rome to Amsterdam" in *Government and Politics of European Union* (New York: Palgrave Macmillan, 2003), p 77

treaty finally was passed in 2001. The treaty addressed enlargement issues and provided the European citizens with fundamental rights.<sup>40</sup> The treaty further tried to democratise the EU institutions. It provided the following alterations for the European Parliament:

- a. It fixed the ceiling on the number of MEPs at 732 from 700 in the European Parliament. In the meantime the 2004-2009 Parliament will vary according to the pace of accession of the new states.
- b. Under Article 7 of the TEU<sup>41</sup>, the European Parliament would join the Commission and member states in being able to launch an initiative to charge a member state with a breach of fundamental rights. Under Article 20 TEC<sup>42</sup>, it joins the Commission, Council and member states in being able to challenge the legality of an act in the Court of Justice. And under Article 300 TEC it is given equal status with the Council, Commission and the member states in being able to obtain an opinion from the European Court of Justice on the validity of international agreement.
- c. The co-decision procedure which gives the European Parliament a veto over proposals was also extended in its application, but only to seven treaty articles. New articles to be covered by the procedure include certain anti-discrimination measures, judicial cooperation in civil matters (except family law) and specific industrial policy support measures. The EP's hopes and request that the procedure should apply to all areas- including agriculture and competition- the consultation procedure, which only gives EP consultative and advisory powers still applies.<sup>43</sup>
- d. The assent procedure under which decisions require the assent of the EP- was extended in its application. First, it is now to apply when enhanced cooperation

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<sup>40</sup> Nugent Neil, "The Treaty of Nice" in *Government and Politics of European Union* (New York: Palgrave Macmillan, 2003), p.87.

<sup>41</sup> TEU- Treaty of European Union also known as the Maastricht Treaty.

<sup>42</sup> TEC- Treaty of the European Community

<sup>43</sup> Nugent Neil, "The Treaty of Nice" in *Government and Politics of European Union* (New York: Palgrave Macmillan, 2003), p.87.

concerns an area that falls under the co-decision procedure. Second, responding to the recent electoral success and participation in government of Jörg Haider's right wing Freedom Party (FPÖ) in Austria, it was decided that the assent procedure for breaches of EU principles on which EU is founded (Article 7 TEC). The principle themselves remain those specified in Article 6 TEU as being 'liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law'. If a breach is held to be at risk or to exist, the Council may determine appropriate action, including a new Nice provision making recommendations where a risk exists, or- an Amsterdam-established provision- suspending EU voting right.<sup>44</sup>

## **Conclusion**

From an assembly of European Coal and Steel Community to a democratically elected body, the European Parliament has certainly gained some control. It signifies democratisation at regional level. Obviously, the problems encountered by the Parliament with regard to structural, systemic and political constraints are new. Though the institution has gained an equal status vis-a-vis other EU institutions through regular treaties this gain is not reflected in the Parliamentary elections. Scholars like Moravcsik (2001, 2003, 2004) and Majone (1994, 1996) feel that the people in general have become apathetic towards democracy and therefore low participation in the elections is a follow on to the general trend that says nothing about the Union.

However, this reason does not sideline the fact that the participation rate in the European elections- the 'second order national contest' is even lower than the local elections in many states. The 2004 European Parliament elections could not even gather 50 percent of eligible voters in Europe. Enhancement of Parliaments powers through treaties has missed upon something essential. It seems that the aspiration for democratisation (Lawrence Whitehead: 1996) does not come from within (the people)

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<sup>44</sup> Ibid, p.88.



rather from external compulsions such as market constraints and international political scenario. In fact, the European citizens are so sceptic regarding the European Union that given a chance they would not ratify any treaty that further integrates them with the European Union, and perhaps, that is what happened in the case of the Draft Constitutional treaty which came right after the Treaty of Nice and was supposed to provide the Union with a binding constitution and establish a European identity.

The next chapter will critically examine the draft Constitutional Treaty and analyse the reasons for its rejection by the European citizens.

## Chapter 4

### The Draft Constitutional Treaty

#### Background

The Treaty of Nice (2001) had emphasized the need to review the constitutional framework of the European Union mainly because of the imminent accession of the 10 new member states into the European Union. The agreements at Nice had thus paved the way for further enlargement of the Union by reforming the voting procedures. But, the treaty was widely regarded insufficient. The opportunity was taken to declare that after the Nice Treaty, the possibility of simplifying and consolidating the existing treaties will be examined. With successive enlargements the decision-making procedure became more and more complicated. Hence, to ensure efficiency and legitimacy the draft treaty was drafted. The process for its establishment started following the Laeken declaration in December 2001. The European Convention was established to produce a draft of the Constitution. It was chaired by former French President Valéry Giscard d'Estaing.<sup>1</sup> It was presented at the Convention on the Future of Europe- the European Council meeting in Thessaloniki, on 20-21 June 2003. It proposed the most radical reforms for the European Union institutions ever put forward. "Its main aims" according to Baldwin and Widgren (2003), "were to replace the overlapping set of existing treaties that compose the Union's current informal constitution, to codify human rights throughout the EU and to streamline decision-making in what is now a 27-member organization."

The draft constitution treaty was signed in Rome by representatives of the member states on 29 October 2004, and was in the process of ratification by the member states when, in 2005, French (29 May) and Dutch (1 June) voters rejected the treaty in referenda. The failure of the treaty to win popular support in these two countries caused some other countries to postpone or halt their ratification procedures, and the European Council to enter a "period of reflection".<sup>2</sup> Had it been ratified by all Member States, the treaty would have come into force

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<sup>1</sup> Valéry Giscard d'Estaing served as the third President of the fifth Republic of France from 1974-81.

<sup>2</sup> The period of reflection refers to the post referenda period during which the European Union contemplated over the future of the draft Constitution treaty.

on 1 November 2006. In perspective, 18 member states ratified the text (three by referendum: Spain, Luxembourg and Romania) while 7 postponed the ratification process after the two rejections.

### **The Structure of the Draft Constitution Treaty**

The draft treaty took as its starting point the codification of the EU's<sup>3</sup> two primary existing treaties, the Treaty of Rome of 1957 and the Maastricht Treaty of 1992, as modified by the treaties of Amsterdam (1997) and Nice (2001). The "Draft Treaty establishing a Constitution for Europe" was published in July 2003. After protracted negotiations during which disputes arose over the proposed framework for qualified majority voting, the final text of the draft treaty was settled in June 2004 under the Irish Presidency.

Compared to the Nice Treaty rules the draft treaty proposed a set of rules that was not so complicated. The treaty made it dramatically easy to pass EU legislation, thus strongly improving the efficiency – “the ability to act” (Baldwin and Widgren: 2003:1). The treaty also shifted a great deal of power to large member-states by making it easier to find a winning majority in the Council of Ministers

This chapter discusses the institutional aspects of the treaty such as, the changes in the decision-making procedures, and their effects on democracy and efficiency of the European Union. Later, it will critically analyse the reasons for its rejection in the two founding member states. The chapter will therefore be divided into four sections that will discuss the draft treaty in context of: the decision making efficiency and power distribution among the EU institutions, its implications on the influence of EU institutions and member states, effects on efficiency and democratic principles of legitimacy and accountability, and the subsequent reasons for its failure to get ratified.

### **Decision-making efficiency and Power Distribution**

The draft treaty distributed power among the European Council of Ministers, the European Parliament and the Commission in such a way that the role of the Parliament could

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<sup>3</sup> EU-European Union

be enhanced. With the new members joining in the weighted voting method would have become complicated and time taking. Thus, the draft treaty took some sweeping measures to ensure swiftness and transparency. This was a significant step towards democratisation of Europe.

### *The Council of Ministers*

The biggest change by far was the radical overhauling of the Council of Ministers voting procedure. The current procedure the QMV<sup>4</sup> rules, with enlargement would have become more cumbersome as small states with lesser population would have gained stronger position vis-a-vis large states with more population. It is noteworthy to mention here that, even though QMV is the basis of most Council decisions, the Council rarely votes- preferring instead to decide by 'consensus'. Baldwin and Widgren (2003:3) point that this will not diminish the importance of voting weights. If nations know that they will be outvoted, they usually join the band wagon to be collegial and so a vote is needed. Thus, even without formal voting, nations go through a mental process of 'shadow-voting' before deciding whether to join the consensus or not.

Because the vote share of the small states is far bigger than their population under the vote allocation rules used in previous enlargements, it was predicted by most observers that the decision-making would become extremely difficult. To redress this potential problem, the member-states agreed to reform the Council's voting rules. In the earlier treaties of Amsterdam and Nice the attempt to reform the voting procedure was largely seen as a botched attempt. It failed to keep the decision-making procedure efficient and legitimate (Baldwin, Berglof, Giavazzi and Widgren: 2001).<sup>5</sup> It was the Accession Treaty<sup>6</sup> reforms that changed the QMV in two main ways and made the rules binding:

First it made the decision-making system more complex by introducing the three threshold criteria that a winning majority must meet. It redistributed votes among the member

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<sup>4</sup> QMV: Qualified Majority Voting. It is the principle method of reaching decisions in the Council of Ministers. Under this mechanism each country is provided with a certain number of votes based upon its population ratio.

<sup>5</sup> Baldwin, Richard and Widgren, Mika, "Decision-making and the Constitutional Treaty Will IGC Discard Giscard?" in CEPS Policy Brief, No. 37/August 2003 p. 3.

<sup>6</sup> Accession Treaty reforms are agreements between the member states on joining the European Union. They are an integral part of the Constitutional basis of the European Union

states on three thresholds; number of votes, number of members and, population. Specifically the triple criteria required that the winning coalition: a) must represent 72 percent of the Council votes, b) 50 percent of member states and, c) 62 percent of the EU population. It introduced a system of double voting. This feature thus increased the votes of the large states on one threshold (population) but reduced them on the other (membership), ensuring that the large states could proceed without jeopardizing the development of small states, hence creating a system of checks and balances

Second, it reallocates the number of votes in a way that favours the big nations. The point was that the new majority thresholds were basically irrelevant. In the EU27, there would be about 2.7 million possible ways to form a winning coalition under Nice's weighted vote.

The draft Constitution proposed a radical change in the QMV rules by shifting from weighted voting to double majority. A winning coalition or 'qualified majority' must contain at least half the EU member states that represent at least 60 percent of the EU population. The draft treaty rules essentially assign different weights to each member's vote. Its vote is then weighted by its membership share. Then the two weighted votes are checked against two different thresholds: 60 percent of the population and 50 percent of the membership. One of the weighting schemes of the draft treaty- the population weight- increases the weight of the large nations while the other- the membership weight decreases it.<sup>7</sup>

### *The European Council*

The big change here was the appointment of a president to chair the European Council meetings for a term of two-and-a-half years. The President will still be approving decisions by consensus of all member states, where the voice of each member state counts equal at least in principle. The European Council has no direct role in the standard legislative procedure (referred as 'ordinary legislative procedure' in the draft Constitution). The Commission has a monopoly on drafting and proposing new legislative acts that must be passed in the Council of Ministers and the Parliament. The European Council will continue to provide political

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<sup>7</sup> Baldwin, Richard and Widgren, Mika, "Decision-making and the Constitutional Treaty Will IGC Discard Giscard?" in CEPS Policy Brief, No. 37/August 2003 p. 4

coordination and political drive, but the unelected president will have little direct power when faced with the national leaders, all of whom are democratically elected.

The presidency of the European Council therefore becomes little more than a ‘bully pulpit’<sup>8</sup>. This ensures continuance and consistency of major EU initiatives. The role of the President however, was not directly powerful.

### *The European Parliament*

The draft treaty proposes few substantive changes to the European Parliament’s decision-making procedures. A majority of 50 percent remains the standard threshold for winning the coalition. The draft treaty confirms the limit of the Nice Treaty on the number of MEPs<sup>9</sup>. The draft treaty does not impose a rule allocating seats among nations.

The major changes in the draft treaty concern the range of issues over which the Parliament has power. The first big change is related to the extension of the parliament’s ‘veto’ to most legislative acts. Whenever, the Council votes on a QMV basis, the Parliament must also approve the measures by a simple majority. The second change is that the draft treaty shifts many issues that are currently decided under a unanimity rule in the Council to majority voting. This gives the Parliament approval power over an even wider range of issues.

The key goal of the draft treaty is to ensure that the EU’s decision-making mechanism remains efficient (ability to act) and legitimate despite a near doubling of its membership.

### *The Commission*

The draft treaty limited the size of the College of Commissioners to 15 representatives. The nationalities of these 15 will rotate evenly among member states. This change broke the five decade old tradition of having one Commissioner from each state. The draft treaty created a post called ‘*non-voting commissioner*’ allocating one of these to each nation that does not have a commissioner.<sup>10</sup>

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<sup>8</sup> Ibid

<sup>9</sup> Members of the European Parliament

<sup>10</sup> Ibid p. 6

It strengthened the position of the president who can demand the resignation of individual commissioners. Commission president has the right to choose his Commissioners. Each member state with the right to have a European commissioner presents a list of three people; the president select among these three national nominees. Moreover, the president-elect determines the internal structure of the Commission, including allocation of portfolios. The Commission is the only organ not accountable to the people in any way. The powers of the Commission was greatly increased under the draft treaty rules hence it had a big impact on the perception of the Union's legitimacy.

### **Implications on the Influence of EU Institutions and Member States**

The fact that it will be easier to find a majority in the EU's prime decision-making body- the Council of Ministers- has important implications for the balance of power among EU institutions. But Kristy Hughes (2003) believes that the draft Constitutional treaty introduces more complexity rather than more simplicity. "Crucially, there are some big gaps on the democratic front, in particular on the accountability of the executive."<sup>11</sup> Looking at the three main institutions, it can be said that the European Parliament has been strengthened in important ways. But the picture is much less clear for the Commission and Council, confusion looks likely to be one of the legacies of the changes proposed, with neither institution necessarily ending up substantially strengthened.

The main implications for the three institutions are as follows:

*The European Parliament:* Draft treaty strengthened Parliament's powers to shape the EU legislation in two ways:

- a) The Parliament's ability to veto the EU legislation allows it to exercise the positive powers when its veto threat forces a modification that is subsequently adopted by the Council or the anticipation of its veto forces the Commission to modify its proposal. When a very narrow range of proposals can win in the Council, the Parliament faces something close to a

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<sup>11</sup>Hugh, Kristy, "A Dynamic and Democratic EU or Muddling through Again?" (2003) [Online: web] Accessed: 1 June 2007 URL:[http://www.eu-consent.net/library/brx061012/WP%20II%20III%20Paperredefining concepts.pdf](http://www.eu-consent.net/library/brx061012/WP%20II%20III%20Paperredefining%20concepts.pdf)

‘take-it-or-leave-it’ proposition. Parliament can still veto the legislation, but this is not a great source of power.<sup>12</sup>

b) The Parliament’s power increased in a second, more direct way. The increase in Council’s efficiency will surely raise the flow of legislation. This is what happened when the last time efficiency rose, namely when QMV became the rule for Single Market measures after the 1986 Single European Act. The European Parliament becomes more influential because there will be more to influence.<sup>13</sup>

However, the convention conveniently ignored issues such as the location of the Parliament.

*The Commission:* The Commission has the monopoly on the right to propose legislation under normal circumstances. The ‘first mover advantage’ gives it the influence over the shape of the EU legislation, but the influence value of this monopoly depends upon how easy it is to find a majority in the Council and the Parliament.<sup>14</sup>

Under the draft treaty rules the scope of Commission’s influence increased. To put it colloquially, a rule that facilitates finding a winning coalition in the Council of Ministers increases the Commission’s ability to play one coalition against another. The Commission president under the treaty became one of the big power winners.<sup>15</sup>

The Commission is viewed as a ‘fair broker’, rather than a ‘pawn’ of particular set of countries. For this reason the non-voting commissioner proposal in the draft treaty reduces its democratic legitimacy further.<sup>16</sup>

*The Council of Ministers:* As it becomes easier to find a winning coalition in the Council of Ministers, the range of passable propositions expands. Since the Council does not

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<sup>12</sup> Ibid

<sup>13</sup> Ibid

<sup>14</sup> Baldwin, Richard and Widgren, Mika, “Decision-making and the Constitutional Treaty Will IGC Discard Giscard?” in CEPS Policy Brief, No. 37/August 2003 p. 16

<sup>15</sup> Hugh, Kristy, “A Dynamic and Democratic EU or Muddling through Again?” (2003) [Online: web] Accessed: 1 June 2007 URL:[http://www.eu-consent.net/library/brx061012/WP%20II%20III%20Paperredefining concepts.pdf](http://www.eu-consent.net/library/brx061012/WP%20II%20III%20Paperredefining%20concepts.pdf)

<sup>16</sup> Baldwin, Richard and Widgren, Mika, “Decision-making and the Constitutional Treaty Will IGC Discard Giscard?” in CEPS Policy Brief, No. 37/August 2003 p. 16



get to decide which proposals are presented to it- that is the Commission's job- the wider the range of passable propositions reduces the Council's influence on what gets cleared.

The proposal that passes in the Council does not have to address all the concerns but only the concerns of 50 percent of the members and 60 percent of the population. Because something like one-fifth of all of the 134 million possible coalitions in the EU27 will satisfy the 50 percent and 60 percent criteria, the Commission will have a great deal of choice when deciding upon those concerns to which it pays attention. One hopes, however, that the Commission will act in the best interest of Europe, but this treaty is about power, efficiency and legitimacy.

*European Council:* The institutional debate and battle focused to an excessive degree on the so-called ABC proposal (Aznar, Blair, Chirac) for a permanent president of the European Council.<sup>17</sup> It is these proposed reforms and compromises around the Commission and Council, both European Council and Council of Ministers that have high probability to become an obstacle in the future functioning of the EU.

The enlarged EU will have three main public figureheads, according to the draft treaty: the European Council President, the European Commission President and the new EU foreign minister. There is potential here for rivalry between these three posts most notably between the two presidents, and also between the European Council President and the EU foreign minister, as well as between the Commission and Council as institutions.

The new European Council President is intended to prepare, chair and drive forward the work of the European Council. But both the preparation of the Council's work and its continuity by the President shall be done "in co-operation with the President of the Commission, and on the basis of the work of the General Affairs Council". At the same time under the description of the role of the Council of Ministers, it is the General Affairs Council which shall "in liaison with the Commission, prepare, and ensure follow-up to, meetings of the European Council."<sup>18</sup>

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<sup>17</sup> Hugh, Kristy, "A Dynamic and Democratic EU or Muddling through Again?" (2003) [Online: web] Accessed: 1 June 2007 URL:[http://www.eu-consent.net/library/brx061012/WP%20II%20III%20Paperredefining concepts.pdf](http://www.eu-consent.net/library/brx061012/WP%20II%20III%20Paperredefining%20concepts.pdf)

<sup>18</sup> Ibid

Meanwhile it is the Commission that will draft the EU's annual and multiannual programming. The Legislative and General Affairs Council will be chaired on a rotating basis. While some of the allocations are appreciated, they are also confusing as to who does exactly what, and the hierarchy between the roles. The relative powers and roles of the two presidents in the end will depend to an important degree on what happens in practice, not least on the political personality and abilities of the first occupant of the Council President role relative to the Commission President.

How the rotating chairs of the Council of Ministers formations will coordinate their work with each other and with the President of the European Council is another important question. There is also scope for confusion, both inside and outside the EU, over external representation. Though the draft treaty emphasizes the importance of coordination across different aspects of external coordination whether this new division of labour will have been conducive is at best an open question.

*The member states:* Each nation's vote is weighted by both its population share and its membership share. Plainly the four big nations Italy, France, Britain and Germany-gain a great deal, with Germany's share of power rising 65 percent roughly from 8 percent to 13 percent the some of the power share of these 'big four' increased to 40 percent under the draft Constitution rules..17 of the EU27 member states lost power.<sup>19</sup>

The small states also gained power from the draft Constitution rule changes. The draft Constitution's dual weighting scheme shifts voting weights in two opposing directions. Under the population weighting the, the vote weight of the large nations falls a lot. The effective power share of each nation will be some sort of average of its two weights. For the biggest nations the membership share is almost irrelevant, so the big increase in their membership share is what matters a lot. For the smallest nation the population share is almost irrelevant, so the big increase in their membership share is what matters.<sup>20</sup> Because the power sum is 100 percent the in-between nation's lose. They see only mild differences between their weighted vote share under the Treaty of Nice and their population and membership shares under the draft

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<sup>19</sup> Baldwin, Richard and Widgren, Mika, "Decision-making and the Constitutional Treaty Will IGC Discard Giscard?" in CEPS Policy Brief, No. 37/August 2003 p. 12

<sup>20</sup> Ibid .p.14

Constitution. The institutional compromise was a ‘trade-off between the demands of larger and smaller countries and integrationists versus intergovernmentalists’.<sup>21</sup>

These two sets of groups are not identical – smaller countries are not necessarily the more integrationist. ‘While smaller countries may in general tend towards, for example, supporting a stronger Commission, most of the small nations in fact put greatest emphasis on retaining their right to having an individual Commissioner, something liable to weaken the Commission.’<sup>22</sup> Furthermore, in EU-27, with only 6 large states and the rest small states, the small states in many cases are more concerned to defend national sovereignty - their veto rights.

The complications came into the institutional debate when Spain and Poland in particular realised they would lose some voting power in the move to double majority voting, based on country and population- an issue that raised many eyebrows at IGC<sup>23</sup>.

This distracted attention from other important issues of reform around the Council of Ministers and also from focused attention on to the balance of power between Commission and Council. The winner in fact out of this debate was the European Parliament which has emerged with much stronger powers of co-decision, established as the ‘*ordinary legislative procedure*’. Together with more budgetary control, more powers in other areas such as trade and justice and home affairs, and a - debatably – stronger role in electing the Commission President, with the convention method now enshrined in the draft treaty.

### **The Draft Treaty and Democracy and Efficiency**

The strengthening of the European Parliament is pleasant both in democratic and efficiency terms. In context of the EU efficiency means the ‘ability to act’. But the institutional changes to Council and Commission discussed above are disappointing in democratic terms. Executive accountability and legitimacy has not been adequately strengthened. The new European Council President is to be appointed behind closed doors by the European Council and will similarly be accountable to the European Council in private, with a very weak

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<sup>21</sup> Hugh, Kristy, “A Dynamic and Democratic EU or Muddling through Again?” (2003) [Online: web] Accessed: 1 June 2007 URL:[http://www.eu-consent.net/library/brx061012/WP%20I%20III%20Paperredefining concepts.pdf](http://www.eu-consent.net/library/brx061012/WP%20I%20III%20Paperredefining%20concepts.pdf)

<sup>22</sup> Ibid

<sup>23</sup> Intergovernmental Conference

reporting obligation to the European Parliament.<sup>24</sup> In the battle over the distribution of power between the two institutions, democracy and simplicity got left behind.

But some important democratic steps forward have been taken in the draft Constitution Treaty. First and foremost is the opening up of the Council's legislative process, though the power of unelected officials in Council working groups will remain. Nonetheless, it is a powerful move in the right direction.

Secondly the new 'yellow card' system to give national parliaments a clear role in monitoring subsidiarity is also an important democratic step. If the yellow card system works, it will also encourage communication and co-operation across national parliaments.

Other important initiatives are the inclusion of the charter of fundamental rights in the treaty and the establishment of a single legal personality allowing accession to the European Convention on Human Rights.

Simplification of the legislative procedures of decision-making is a positive and significant step. The extension of areas covered by qualified majority voting and not unanimity is also an important move in terms of efficiency.<sup>25</sup> The existence of one single treaty and of a first constitutional section is also an important step in the right direction for both democracy and efficiency. A single treaty as a reference point to all laws saves one from the hassles of going through all the other treaties to locate some rule or a procedure. This not only saves time but also makes it more convenient for people to know about the EU.

However, being a 450 page document in English with another 400 pages of appendices, comments and declaration, the draft treaty could hardly be claimed to be easily accessible to the person in the street, but it is nonetheless more coherent, more consistent and more accessible than other treaties. However, the failure to take more time over drafting in an accessible style or to set as a priority the ease of understandability of the first constitutional section tends to reflect the continuing elitist nature of EU construction. While of course taking account of legal and political needs, a more serious commitment, by the Convention, to bringing the EU closer to its people would have been demonstrated if a substantial effort had been made to road test the language and presentation of the constitutional section.<sup>26</sup>

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<sup>24</sup> Ibid

<sup>25</sup> Ibid

<sup>26</sup> Ibid

Perhaps these are the tiny fault lines that led to the failure of the draft Constitutional treaty when it was put to referenda in France and the Netherlands. In the referenda in both the nations were a constitutional obligation and the state governments exerted themselves rigorously to get it ratified. However, the draft treaty failed to get ratified in both nations. French voters went to the polls in a referendum on ratification on 29 May 2005. Both the government and the main opposition party campaigned for a 'yes' vote. The Constitution was blocked, with 55% per cent of voters against, from a 69 per cent turnout. This resulted in a humiliation for the Chirac administration and put the future of the Constitution in an uncertainty. This referendum was legally binding, although it is not impossible for France to hold another referendum, with renegotiations in the treaty. But immediately after the French election the Netherlands held a consultative referendum on 1 June 2005. The Constitution was rejected by an even greater margin than in the French referendum. Fearing the 'Domino effect' some member states postponed or halted their ratification procedures. The text was ratified by 18 member states, three of them Spain, Luxembourg and Romania conducted a referenda, while 7 postponed the ratification process after the 2 rejections. But the treaty required the ratification of all the then EU25 member states to come into force from November 2006.

### **Reasons for the Failure of the Draft Constitution Treaty in the French and Dutch Referenda**

The draft Constitution treaty, it is believed, was rejected not so much for its own flaws but more because of the domestic political reasons within these two states. The fact that two founding countries of the European Community were unable to ratify the Constitution resulted in a major shock. Luxembourg's Prime Minister Jean-Claude Juncker summed up what many felt when he said: "Europe no longer makes people dream"<sup>27</sup>. The first commonly suggested explanation for the French and Dutch rejection of the Constitutional draft is based on the

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<sup>27</sup> Constitutional Treaty: the 'reflection period' [Archived] (1 June 2006) [Online: web] Accessed 18/03/2008, URL: <http://www.euractiv.com/en/future-eu/constitutional-treaty-reflection-period-archived/article-155739>

'second order national elections'<sup>28</sup> view of the European election and referenda. In essence this model assumes that the outcome of the EU elections or referenda are based not upon the true evaluation of the alleged object of the election/referendum but are in reality a referenda on the popularity of the national governments. This explains why so many Dutch voted 'nee' even though all the major political parties were officially in favour of the draft Constitutional treaty. (Toonen, Steunenberg, Voermans, 2006).<sup>29</sup> This theory has been supported by considerable evidence from the European Parliament elections and referenda in the past two decades. (Reif and Schmitt 1980)

Zaller's<sup>30</sup> fundamental insight on the mediating role of knowledge on the link between values, attitudes and political behaviour (1992) reminds us that knowledge is critical in determining how attitudes towards the European Union are formed. Knowledge about the draft treaty was inconsistent across Europe. According to the Eurobarometer, 'around 65% in Cyprus, 50% in the United Kingdom and 45% in Greece and Ireland said that they have never heard about the treaty. In France, and the Netherlands the level of awareness about the treaty was higher than that of other states as the Netherlands had the Presidency of the Council in second half of 2004 and in France nearly three out of four had heard about the draft Constitution drawn up by the Convention chaired by Valéry Giscard d'Estaing. But only 10 percent of the respondents in France and 19 percent in the Netherlands stated that they broadly knew its overall contents, which indicated the superficial nature of knowledge of the draft Constitution'.<sup>31</sup> The fact that these countries had already announced that they will be holding a referendum on the subject did nothing to improve these results. This evidence therefore leads

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<sup>28</sup> Second-order elections are elections that have less importance for voters. The European Parliament elections are considered to be second-order national elections, as the voters use their choices for representatives to the supranational body to send signals to their national government.

<sup>29</sup> Grosskopf, Anke, "Why 'non' and 'nee' to the EU Constitution? Reconsidering the shock of the Dutch and the French Referenda" (May 2007) [Online: web] Accessed 17/03/2008, URL: <http://www.unc.edu/euce/eusa2007/papers/grosskopf-a-01h.pdf>

<sup>30</sup> Zaller, John, R. *The Nature and Origins of Mass Opinion*. (Cambridge, Cambridge University Press 1994)

<sup>31</sup> Grosskopf, Anke, "Why 'non' and 'nee' to the EU Constitution? Reconsidering the shock of the Dutch and the French Referenda" (May 2007) [Online: web] Accessed on 17/03/2008, URL: <http://www.unc.edu/euce/eusa2007/papers/grosskopf-a-01h.pdf>

us to consider the domestic reasons for the failure of the treaty. In this section we will first take a separate look at the domestic politico- economic conditions that affected the draft treaty in the two states and then the other dimensions.

## France

As mentioned earlier, the Convention was chaired by Valéry Giscard d'Estaing, therefore it was more shocking that the treaty failed to get ratified in his country. In France, the decisive rejection of the document forced President Jacques Chirac to remove his prime minister. He replaced Jean-Pierre Raffarin with Dominique de Villepin in a bid to prove he had listened and responded to voters' discontent.

. Jacqueline Grapin, president of the European Institute in Washington argued that the French people had expressed the fact that they suffer from the policies which are developed at the level of the European Union which is different from the French level, without consultation. Thus, democratic deficit has resulted in the rejection of the draft treaty.<sup>32</sup> Though the government tried its best for a 'oie' (yes) vote but the domestic conditions of the state worked against the treaty, hence it was rejected. The internal reasons for the result can be clubbed under the following heads:

The French were unhappy with the state of affairs. Every time some unpleasant policies were introduced all mainstream political parties blamed the EU. This time however, they worked together to gather support for the treaty. This rather than easing the minds of the people resulted in raising scepticism. They believed that the treaty would lead them to loose their nationality, sovereignty and identity. Thus, they voted negatively.

Continuous recession in the European markets had led to a very low rate of growth in the region. The French economy was no exception. It resulted in thousands becoming unemployed and installed a heavy burden on the Social security system which took a downturn. With the free trade area further increasing to 10 new nations the French feared a further reduction in job

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<sup>32</sup>" France Votes 'no'"(May 2005) [Online: web] Accessed 18/03/08  
[http://www.pbs.org/newshour/bb/europe/jan-june05/france\\_5-30.html](http://www.pbs.org/newshour/bb/europe/jan-june05/france_5-30.html)

as well as the collapse of the Social safety system. This was also referred by some as the 'Polish plumber syndrome'<sup>33</sup>. The slow pace the economy and rising public fears resulted in a 'non' vote for the draft Constitution treaty.

Besides the domestic political reasons there are other explanations as well that led to the rejection of the draft treaty. One such explanation is given by the '*true Constitutional attitude*' theorists.

Firstly, a rational analysis of the cost-benefit by the French and the Dutch itself explains the result of the referenda. The European Union has reached deepest integration in economic fields and economic self interest calculations are the main factors in explaining attitudes towards European integration (Gabel:1998)<sup>34</sup>. Such transformations create both winners and losers. Citizens may base their opinion on their evaluation of whether it will benefit them or hurt them.

Secondly, Grosskopf points that "the European Union may be a welcome relief to national political inefficiency (Kritzinger 2003) or corruption (Sánchez-Ceunca 2000) or it may be perceived as a threat to national identity. People may feel that their national values are being sold out in the specific form European integration is taking place."<sup>35</sup>

The draft Constitution treaty was more than a 400 page document with a 400 extra pages of appendices, comments and declarations. People would have hardly read it and to understand is altogether a different thing. Given the complex nature of the treaty it was easy enough for Euro sceptics to unearth the threatening elements in the Constitutional draft and use these to mobilize the 'no' campaign. Further compounding to the problem was the late reaction of the mainstream parties to campaign for the treaty. So the rejection of the treaty according to

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<sup>33</sup> Ibid

<sup>34</sup> Grosskopf, Anke, "Why 'non' and 'nee' to the EU Constitution? Reconsidering the shock of the Dutch and the French Referenda" (May 2007) [Online: web] Accessed 17/03/2008, URL: <http://www.unc.edu/euce/eusa2007/papers/grosskopf-a-01h.pdf>

<sup>35</sup> Ibid



this explanation should be seen as not against Europe but against a particular model of integration best characterised as 'Bolkesteins Europe'<sup>36</sup>.

This also points towards the existing communication deficit between the voters and the EU institutions that led to the rejection of the treaty. Nijerboer (2005) argues that the Dutch campaigns are traditionally short, which may have the mainstream parties to lag behind the euro-sceptics who started early in the race. In France, however, things had a different impact. The Bolkestein campaign in mid-March 2005 outpolled the proponents of the Constitution supporters. Where as in case of the Dutch the citizens made up their minds early ti case of France they changed their minds to vote for '*non*'.<sup>37</sup>

Another explanation for the outcome could be the hard core xenophobia nationalism among the nations. Proponents of this view argue that a substantial number of voters rejected the constitution because it threatens there national or social identity and culture. This threat goes much deeper than the one discussed in the '*true constitution attitude model*'. It stems from the perception that the European integration is linked with immigration which equates to an erosion of identity. Scholars believe that this kind of anti-immigration sentiments can be very powerful. Based upon a national analysis of Danish and Dutch 2002 survey data De Vreese (2004:17) even dared to predict in his article, "Why European Citizens Will Reject the EU Constitution":

"Considering the importance of anti-immigration sentiments and economic evaluations to ensuring a 'yes' vote in a referendum, any government calling a referendum must be very popular to compensate for the negative impact of economic pessimism and anti-immigration and sentiments in order to se its proposal endorsed by Europe's citizens."<sup>38</sup>

As it turned out that neither the French nor the Dutch government were popular enough to offset the perceived threats to their people's identities. Clearly, both the states rejected the

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<sup>36</sup> Former European Union Commissioner Frits Bolkestein warns the European leaders, for the acceptance of Turkey as a member-state of the EU. Bolkestein fears that to many countries, like the Ukraine, Belarus and Moldova, with a weak economy cannot be refused as EU member after Turkey is accepted.

<sup>37</sup> Grosskopf, Anke, "Why 'non' and 'nee' to the EU Constitution? Reconsidering the shock of the Dutch and the French Referenda" (May 2007) [Online: web] Accessed 17/03/2008, URL: <http://www.unc.edu/euce/eusa2007/papers/grosskopf-a-01h.pdf>

<sup>38</sup> Ibid

Constitution. The October 2005 riots in the *banlieues*, or the Dutch cartoon controversy suggest that there may be ‘collective misreading’ (Berezin: 2006: 272) just how widespread these problem may currently have been.<sup>39</sup>

In this dimension it would have been extremely difficult to ratify the constitution in this form.

### **Conclusion**

The draft Constitution treaty was not flawless in terms of democracy and efficiency. The European Parliament did gain more powers yet its capabilities remained inversely proportional to accountability. However, the fact that it was rejected on the grounds of changing realities cannot be denied. Michalis Attalides argue that the deficit of legitimacy, rather than democratic deficit is the problem. This lack of legitimacy, he points out, has many reasons, but is mainly arising because Brussels is not perceived to be doing enough in areas of concern to the citizens, like controlling the high rate of unemployment, which results in a low popular support. Legitimacy is also lacking because of the complex legal and institutional structure of the EU where decisions are taken in a complex manner. Moreover, the EU vocabulary is incomprehensible to the common European citizen. All of this does not contribute to transparency, ease of understanding, openness, and democratic attribution of political responsibility.<sup>40</sup>

In mid-June 2005 the European Council declared a period of reflection for the treaty. The main idea was to give the countries more time to debate and to ratify the Constitution. Originally, the period of reflection was supposed to last no longer than one year but it lasted for two. However, while more than half of the countries had already ratified the text EU heads of state and governments agreed on 15 and 16 June 2006 that a solution to the constitutional deadlock should only be in place by end of 2008 at the latest (under the French Presidency).

The issue at stake was not only the draft treaty but also the question that how EU can gain more support from its citizens. Some suggested that the ratification procedure should

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<sup>39</sup> Ibid

<sup>40</sup> Attalides Michalis, (2002), “Addressing the Democratic Deficit” [Online: web] Accessed 3 June2007, URL: [www.mfa.gov.cy/mfa/mfa.nsf/15BF8562A35BD2DAC2256BDF003F2924/\\$FILE/sp.Attalides%20Intercollege-14.06.02.pdf](http://www.mfa.gov.cy/mfa/mfa.nsf/15BF8562A35BD2DAC2256BDF003F2924/$FILE/sp.Attalides%20Intercollege-14.06.02.pdf) –

continue others were in favour of a completely new treaty and some more suggested that some elements of the treaty should be 'cherry picked' and implemented under current treaty or by amending the Nice treaty. EU leaders in June 2006 decided to open Council meetings to the public and broadcast them over the internet, whenever the Council acts as co-legislator, thereby aiming to improve transparency.<sup>41</sup>

However, opponents feared that simply implementing certain elements of the Constitution without changing the legal framework would make the EU even more complex. Furthermore, there are only a few who believe that the Nice Treaty is a viable basis for the EU and further enlargements.<sup>42</sup>

The Commission launched a number of initiatives to improve its communication with the citizens, among them an action plan to make its communication more professional, a "Plan D for democracy, dialogue and debate".<sup>43</sup> 'There is widespread agreement that EU policies should be more in touch with the wishes and concerns of its citizens, the main dilemma for the EU is that in many of those areas where the citizens want "more Europe" and where they have the biggest concerns (such as employment and foreign and security policy), the EU is highly dependent on its member states to deliver.'<sup>44</sup>

In June 2007 the EU summit agreed on a detailed mandate for institutional reforms. In July 2007 the Reform treaty opened under the Portuguese Presidency. The treaty was signed in Lisbon on 13 December 2007. Thus it is also known as the Lisbon Treaty. The new treaty shall enter into force by 1 January 2009 only when it is ratified by all the 27 nations. The next chapter will discuss the Lisbon treaty that is put forward by the European Union and what affects will it have on the democratic deficit in the European Union.

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<sup>41</sup> "Constitutional Treaty: the 'reflection period'"(2006) [Online: web] Accessed on 18/03/2008, URL: <http://www.euractiv.com/en/future-eu/constitutional-treaty-reflection-period-archived/article-155739>

<sup>42</sup> Ibid

<sup>43</sup> Ibid

<sup>44</sup> Ibid

## Chapter 5

### The Lisbon Treaty (2007)

#### Introduction

The shocking rejection of the draft treaty in the two founding member states of France and the Netherlands highlighted the problem of democratic deficit that had penetrated deep in the multi-level structure of the EU as well as among the people. Thus the European Union declared a 'period of reflection'. The questions that lay before them were not only what to do about the draft Constitution treaty that had already been ratified in 18 states, but also how to bring the European Union closer to the people.<sup>1</sup>

In 2007, Germany took over the rotating EU Presidency and terminated the period of reflection. On 21 June 2007 the European Council met in Brussels to agree upon the foundation of a new treaty. The name "Reform Treaty" also emerged, finally eliminating the name "Constitution for Europe" for the new EU treaty at the European Council meeting on 18 October and 19 October 2007 in Lisbon, a few last-minute concessions were made to ensure the signing of the treaty:

1. Italy gained an additional MEP, while the President of the EP will be counted as an extra MEP (thus keeping the 750 MEP ceiling);
2. Poland got a slightly stronger wording for the revived *Ioannina Compromise*,<sup>2</sup> plus a nomination for an additional Advocate General at the European Court of Justice. The creation of the permanent "Polish" Advocate General is formally conditioned by an increase of the number of Advocates General from 8 to 11.
3. Austria got a suspension of the court case over its student quotas;

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<sup>1</sup> "Constitutional Treaty: the 'reflection period' "(2006) [Online: web] Accessed on 18/03/2008, URL: <http://www.euractiv.com/en/future-eu/constitutional-treaty-reflection-period-archived/article-155739>

<sup>2</sup>The Ioannina compromise takes its name from an informal meeting of Foreign Affairs ministers in Ioannina in Greece in 1994. It enables a group of states close to the minority blockage – but who have not achieved this – to request the re-examination of a decision adopted by the qualified majority in the Council of Ministers.

4. Bulgaria succeeded in having the Cyrillic transcription of "euro" be spelt "евро" to sound "evro" (instead of "eypo" as requested by the European Central Bank).<sup>3</sup>

The treaty was signed on 13 December 2007 by heads of the governments of member states in the Jerónimos Monastery in Lisbon, Portugal. Thus the treaty in keeping with the tradition is also called the Lisbon treaty. If the treaty is ratified by all the member states it shall come into force on 1 January 2009.<sup>4</sup> Excluding Ireland most states are planning to ratify the treaty through the Parliament in place of conducting a referendum. This chapter seeks to discuss the provisions of the Lisbon Treaty and compare it with the draft Constitution treaty.

### **The Contents of the Lisbon Treaty**

Until now the European Union has been built through a succession of treaties, signed by the member states. The method led to positive results as the union mechanism moved forward towards deeper integration. Since the beginning, the union has been facing the dual challenges of admission of new member states and enhancing the efficiency of the decision making process without jeopardising the legitimacy of the decisions.

The draft treaty aimed at improving the efficiency of the Union institutions and making them more democratic. But the failed referenda in the France and the Netherlands left the problem unresolved. Hence came the Lisbon Treaty; a compromise among the member states and governments on the draft Constitution treaty agreements. The Treaty is divided into several parts:

- Article 1: Preamble
- Changes to the Treaty on European Union (Article 1, Page 3-40)
- Changes to the Treaty establishing the European Community (Article 2, Page 41-150)

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<sup>3</sup> "EU leaders agree new treaty deal" (2007) [Online: web] Accessed: 19 March 2008 URL: <http://news.bbc.co.uk/2/hi/europe/7141651.htm>

<sup>4</sup> "Taking Europe into the 21st century" (2007) [Online: web] Accessed: 19 March 2008, URL: [http://europa.eu/lisbon\\_treaty/take/index\\_en](http://europa.eu/lisbon_treaty/take/index_en).

- Final provisions (Article 3-7, Page 151-152)
- Protocols
- Declarations <sup>5</sup>

‘The draft Reform Treaty would repeal or amend every single Article of the 62 Articles of the current Treaty on European Union (TEU) and would make 296 amendments to the 318 Articles of the current Treaty establishing the European Community (TEC). It would also amend or repeal most of the current 36 Protocols to the current Treaties as well as many Articles of the separate Treaty establishing the European Atomic Energy Community (the Euratom Treaty). Finally, it would add a number of new Protocols and Declarations to the Treaties.’<sup>6</sup>

The Lisbon treaty maintained all the important institutional features of the draft Constitution Treaty, setting aside certain secondary or emblematic elements, which bothered eurosceptics, notably: the title of "Constitution" and the reference to the symbols of unification, such as the flag with the twelve stars, the anthem of Europe and the day of Europe.

The key innovations of the treaty of Lisbon are divided under the following heads:

### **Structural Innovations**

By structural innovations of the Lisbon Treaty were as follows:

- The three pillars will be merged together. The Maastricht Treaty organized the European Union around the three pillars- EU Communities (EC, EURATOM, and ECSC), Justice and Home Affairs and the Common Foreign and Security Policy. The Lisbon Treaty does away with these three pillars. ‘This merger of the pillars, including the European Communities, would partly finalise the progress of establishing various

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<sup>5</sup> “The Treaty of Lisbon: a Constitution reborn without title” (2007) [Online: web] Accessed: 20 March 2008 URL: <http://www.europedia.moussis.eu/discus/discus-1204205768-176961-17764.tkl>

<sup>6</sup> “Understanding the Lisbon treaty” (2007) [Online: web] Accessed: 21 March 2008, URL: <http://www.robert-schuman.eu/tout-comprendre-sur-le-traite-de-lisbonne.php>

communities and treaty-bodies that has been going on since around the 1950s. The defence body of Western European Union (WEU) would effectively also be absorbed by the EU, through European Defence Agency, which will be empowered under the Lisbon Treaty.<sup>7</sup> The exception is the EURATOM, which due to fears of sparking unnecessary opposition by people against nuclear power, was left out when the Constitution was drafted.

- The treaty makes the European Union a legal entity. ‘This implies that the European Union has the ability to enter into a contract, notably to be part of an international convention or be a member of an international organisation. Until now the European Communities was the only pillar with a legal personality.’<sup>8</sup> Under the new provisions, the three pillars would be merged into one legal personality called the European Union. The Treaty on European Union would after the Treaty of Lisbon state that "The Union shall replace and succeed the European Community."<sup>9</sup> Hence, the existing names of EU institutions would have the word Community removed. For instance, the de facto title 'European Commission' will become official, replacing its treaty name of 'Commission of the European Communities'
- The Council of the European Union is divided into the Council of Ministers and the European Council. Thus, European Council is brought under the treaty framework.

### **Innovations for a more Democratic EU**

Certainly the EU has learned from its past treaties. Therefore to enhance the role of the citizens in the European affairs the EU has introduced some measures that may facilitate communication between the people and the institutions.

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<sup>7</sup> "Understanding the Lisbon treaty" (2007) [Online: web] Accessed: 21 March 2008, URL: <http://www.robert-schuman.eu/tout-comprendre-sur-le-traite-de-lisbonne.php>

<sup>8</sup> Sheet 1, "What does the Lisbon Treaty Include?" (2007) [Online: web] Accessed: 21 March 2008 URL: <http://www.robert-schuman.eu/doc/divers/lisbonne/en/fiche1.pdf>

<sup>9</sup> Sheet 2, "How will the European Union work with the Lisbon Treaty?"(2007) [Online: web] Accessed: 21 March 2008 URL: <http://www.robert-schuman.eu/doc/divers/lisbonne/en/fiche2.pdf>

- ‘The enhancement of representative democracy comprises a central element of the democratisation of the Union planned for in the Lisbon Treaty. The treaty creates the right of citizens’ initiative. ‘European citizens may ask the Commission to propose a "draft law" if they gather at least one million signatures from a significant number of Member States. The treaty acknowledges the importance of dialogue between citizens, civil society associations and the Union’s institutions particularly the Commission. Hence, this step enhances the possibility on the part of organisations and civil society associations to take part in European decisions.’<sup>10</sup>
- Enhancement of democratic participation. In order to bring citizens closer to the decision making process in Europe, the Lisbon Treaty introduces, quite uniquely, details which will foster citizen participation in the Union’s democratic life. ‘The Council of Ministers sits in public when it debates and votes on European legislation. The transparency and public nature of the Council’s work facilitates civil society’s participation. Journalists can inform citizens of the debates taking place in the Council. With regard to social matters dialogue is confirmed by the acknowledgement of various consultation possibilities, notably the tripartite social summit between European social partners and the Union.’<sup>11</sup>
- The Charter of Fundamental Rights will be retained. This will be legally binding except for the UK and Poland which will enjoy a derogatory measure. ‘The 54-article Charter of Fundamental Rights lists citizens’ political, social and economic rights. It is intended to make sure that European Union regulations and directives do not contradict the European Convention on Human Rights which is ratified by all EU Member States’<sup>12</sup>

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<sup>10</sup> Sheet 4, “Who is Responsible for What?” (2007) [Online: Web] Accessed: 21 March 2008 URL: <http://Www.Robert-Schuman.Eu/Doc/Divers/Lisbonne/En/Fiche5.pdf>

<sup>11</sup> Sheet 4, “Who is Responsible for What?” (2007) [Online: Web] Accessed: 21 March 2008 URL: <http://Www.Robert-Schuman.Eu/Doc/Divers/Lisbonne/En/Fiche5.pdf>

<sup>12</sup> Sheet 1, “What does the Lisbon Treaty Include?” (2007) [Online: web] Accessed: 21 March 2008 URL: <http://www.robort-schuman.eu/doc/divers/lisbonne/en/fiche1.pdf>



## **Institutional Innovations**

The institutional innovations mostly talk about the division of power within the EU and how decisions are taken. The decisions made within the EU affect the common man in Europe hence it has become essential to ensure that the institutions are accountable and their policies legitimate. The reform treaty has followed the draft Constitution in this area but has tried to be more specific about the changes. The most important institutional reforms proposed by the defunct Constitution are taken over by the Treaty of Lisbon. These include the following:

- The present functions of the High Representative of the Union for Foreign Affairs and Security Policy (position occupied by Javier Solana at present) and the European Commissioner for external relations (position occupied by Benita Ferrero-Waldner at present) will be merged together. This provides greater coherence and unity to the European Union's external action.
- The High Representative of the Union for Foreign Affairs and Security Policy will be appointed by the European Council and sworn in by the European Parliament. He/she will be Vice-President of the European Commission and will also chair the Foreign Affairs Council at the Council of Ministers.

### *The European Parliament*

With the Lisbon Treaty, the European Parliament will see a radical increase in its powers and its political weight within the institutional triangle of the Commission, the Council of Ministers and the European Parliament. The powers of the European Parliament are extended in a number of areas which are as follows:

- The number of MEPs is limited to a maximum of 750 (with a minimum of 6 and a maximum of 96 per country), but Italy managed to squeeze in an extra MEP, putting it

back on equal footing with the UK (73 seats each and 74 for France). The new '750 plus one' formula assumes that the Parliament President will not exercise his right to vote.'<sup>13</sup>

- Extension of the legislative co decision procedure to nearly 50 new areas. This procedure gives the European Parliament legislative powers comparable to those of the Council of Ministers.

- 'The European Parliament has been given the equal right to decision as the Council of Ministers, notably with regard to the adoption of the entire annual budget (whilst today the Council has the last word on the so-called "compulsory" expenditure which represent a major part of the European budget, notably agricultural expenditure)'<sup>14</sup>

- The Parliament elects the President of the Commission on the proposal of the European Council. 'This will lead to a politicisation of the European elections and thereby give weight to the vote of European citizens who may now influence the course of European political affairs. Voters will be able to influence directly the political bias of the President of the Commission and his team. The same will apply to the political choices of the college.'<sup>15</sup>

### *The Council of Ministers*

The shift in the decision making procedure of the EU reallocates the balance of power in favour of the Parliament. This happens simply because more legislation can be passed through the Council because of many possible coalitions.

- A new rule of double majority<sup>16</sup> is introduced. A double majority rule for Council decisions will be invoked. However, due to fierce Polish opposition, the new voting system will only apply from 2014, with an extra transition period until 2017 when additional provisions making it easier to block a decision will apply the Ioannina clause. Measures relative to the extension of the new double majority rule will be applied in an

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<sup>13</sup> "Implementing the Treaty of Lisbon" (2007) [Online: web] Accessed: 18 March 2008 URL:<http://www.euractiv.com/en/future-eu/implementing-treaty-lisbon/article-168843>

<sup>14</sup> Sheet 2, "How will the European Union work with the Lisbon Treaty?"(2007) [Online: web] Accessed: 21 March 2008 URL: <http://www.robert-schuman.eu/doc/divers/lisbonne/en/fiche2.pdf>

<sup>15</sup> Ibid

<sup>16</sup> Double majority means that for any proposed legislation to pass by qualified majority it is required the 55% of member states and 65% of the EU's population need to support.

increasing number of areas for example; with regard to visas and the monitoring of the movement of foreigners, the common asylum system, the common immigration policy and judicial co-operation in criminal matters, etc.

- The co decision procedure between the Council of Ministers and the European Parliament will be affirmed as the 'ordinary legislative procedure'.
- 'The Council of Ministers would have an 18-month rotating Presidency shared by a trio of member countries, in an attempt to provide more continuity. The exception would be the Council's Foreign Affairs configuration, which would be chaired by the newly-created Representative for Foreign Affairs and Security Policy.'<sup>17</sup>

#### *The European Council*

There has been a basic change in the structure of EU. It has brought the European Council under the remit of the reform treaty. It is a big change as this step allocates a certain degree of accountability of this institution to the European Parliament.

The European Council is also allotted a full time president who will not be able to assume a national mandate. A stable presidency of the European Council for a period of two and a half years, that will be renewable only once. It initiates stability in the structure of the Council and provides leadership to the EU.

#### *The European Commission*

The European Commission maintains a central role. It has the entire monopoly over the initiative to legislate which provides it with major political importance. It defines the legislation hence it shapes the direction towards which the EU is headed. After the Lisbon Treaty has entered into force:

- The number of Commissioners is reduced from 27 to 15 by 2014. The new system is a sign of progress as the reduction in the Commission's size will avoid any

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<sup>17</sup> "Statewatch analyses The EU's draft Reform Treaty"(2007) [Online: web] Accessed: 20 March 2008  
URL: [www.statewatch.org/news/2007/aug/eu-reform-treaty-texts-analyses.htm](http://www.statewatch.org/news/2007/aug/eu-reform-treaty-texts-analyses.htm)

nationalisation of the Brussels College which is in charge of representing the Union's general interest.<sup>18</sup>

- The first Commission to be sworn in (2009-2014) will comprise, as today, a Commissioner from each Member State.
- As from 2014 the number of Commissioners will correspond to two-thirds of the Member States i.e. 18 in a Union comprising 27 Member States. The members will be chosen according to an equal revolving system between States.

### *Member States*

The Lisbon Treaty clarifies the distribution of power between the European Union and the Member States. It provides an answer to the question "Who is responsible for what?"<sup>19</sup> This is a decisive element in the democratisation of Europe in that it strengthens the responsibilities at various levels of power.

- The role of national parliaments is defined. The Lisbon treaty provides for a greater role of the national parliaments in the European affairs. The national parliaments will check the competences shared between the Union and the member states. National parliaments will be given a greater role in any reform of the EU Treaty. It introduces an "early-warning mechanism."<sup>20</sup> This mechanism will allow each national parliament to indicate when the subsidiarity principle is in danger of being violated by the European institutions. Beyond one third (or one quarter in the area of "Justice and internal affairs") of negative opinions on the part of national parliaments the Commission must review its proposal. This includes the possibility for each House of each national parliament to turn to the Court of Justice for any violations of the subsidiarity principle.

‘Article 8c: National Parliaments shall contribute actively to the good functioning of the Union:

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<sup>18</sup> Sheet 2, "How will the European Union work with the Lisbon Treaty?" (2007) [Online: web] Accessed: 21 March 2008 URL: <http://www.robert-schuman.eu/doc/divers/lisbonne/en/fiche2.pdf>

<sup>19</sup> Sheet 4, "Who is Responsible for What?" (2007) [Online: Web] Accessed: 21 March 2008 URL: <http://Www.robert-schuman.Eu/Doc/Divers/Lisbonne/En/Fiche5.pdf>

<sup>20</sup> Ibid.

- (a) through being informed by the institutions of the Union and having draft European legislative acts forwarded to them in accordance with the Protocol on the role of national Parliaments in the European Union;
- (b) by seeing to it that the principle of subsidiarity is respected in accordance with the procedures provided for in the Protocol on the application of the principles of subsidiarity and proportionality;
- (c) by taking part, within the framework of the area of freedom, security and justice, in the evaluation mechanisms for the implementation of the Union policies in that area, in accordance with Article 61C of the Treaty on the Functioning of the European Union, and through being involved in the political monitoring of Europol and the evaluation of Eurojust's activities in accordance with Articles 69D and 69G of that Treaty;
- (d) by taking part in the revision procedures of the Treaties, in accordance with Article 48 of this Treaty;
- (e) by being notified of applications for accession to the Union, in accordance with Article 49 of this Treaty;
- (f) by taking part in the inter-parliamentary cooperation between national Parliaments and with the European Parliament, in accordance with the Protocol on the role of national Parliaments in the European Union.<sup>21</sup>

These points were '*red line*' issues for Dutch Prime Minister Jan-Peter Balkenende who wanted a greater role for national parliaments in the EU decision making process.

- An exit clause is also introduced making it possible for members to leave the EU.
- 'New opt in/out provisions. Some new policy provisions have been extended for UK, such as policies on border checks, asylum and immigration, judicial co-operation in civil matters, judicial cooperation in criminal matters and police co-operation.'<sup>22</sup>

Apart from these the Lisbon treaty addresses new challenges such as climate change, combating terrorism, strengthening mutual cooperation among the member states and energy solidarity.

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<sup>21</sup> "Conference of the Representatives of the Governments of the Member States Brussels" (2007) [Online: web] Accessed: 19 March 2008, URL: <http://consilium.europa.eu/uedocs/cmsUpload/cg00014.en07.pdf>

<sup>22</sup> "Understanding the Lisbon treaty" (2007) [Online: web] Accessed: 21 March 2008, URL: <http://www.robert-schuman.eu/tout-comprendre-sur-le-traite-de-lisbonne.php>

## **The Lisbon Treaty and the Draft Constitution Treaty: A Comparative Study**

There are some similarities as well as differences between the Lisbon and the draft treaty. The Lisbon treaty has borrowed all the institutional innovations from the draft treaty including the role of national parliaments (yellow card) and added a few policy and structural innovations to facilitate communication between people and the EU.

The most significant difference between the draft treaty and the Lisbon Treaty is that, while the former suggested repealing all the present treaties and replacing them by a new treaty, the latter is limited to reform or modification hence, the name is reform or modifying treaty. 'This explains why many countries have chosen to ratify via parliament, notably France as announced by the President of the Republic during his presidential campaign.'<sup>23</sup> These ratifications will give rise to public debates on the new treaty between democratically elected representatives. Certainly the reform treaty is an improvement on the draft Constitution treaty.

'This new treaty brings modifications to the Treaty on European Union (1992) and the Treaty of Rome (1957). It details the competences and areas of intervention on the part of the European Union. The Maastricht Treaty will be modified to affect the institutions, enhanced cooperation, foreign and security policy, defence policy where as the Rome Treaty becomes the "Treaty on the functioning of the EU" (TFEU).'<sup>24</sup> This change in perspective, provides a response to requests made by certain countries such as the Netherlands, the Czech Republic and the UK, who believed, during negotiations, that the following should be abandoned: The "constitutional" symbols (the terms "Constitution", "European Foreign Affairs Minister" "laws" and "framework laws"); Union symbols (flag, anthem, motto, etc.)<sup>25</sup>

Therefore, any reference to the EU symbols will be dropped off. However all the symbols are already in use, the flag having been adopted in the 1980s, and the

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<sup>23</sup> "EU leaders sign landmark treaty" (2007) [Online: web] Accessed: 19 March 2008 URL: <http://news.bbc.co.uk/2/hi/europe/7141651.stm>

<sup>24</sup> Sheet 1, "What does the Lisbon Treaty Include?" (2007) [Online: web] Accessed: 21 March 2008 URL: <http://www.robert-schuman.eu/doc/divers/lisbonne/en/fiche1.pdf>

<sup>25</sup> Sheet 4, "The Lisbon Treaty and Citizens' Powers in the European Union" (2007) [Online: Web] Accessed: 21 March 2008 URL: <http://www.robert-schuman.eu/doc/divers/lisbonne/en/fiche4.pdf>

Constitution would have just given them a more formal status. So despite being dropped from the text, use will continue: indeed the Parliament, in response to the dropping of the symbols, announced it would make greater use of them. In line with eliminating all "state-like" terminology and symbols, new names for various types of EU legislation have been dropped, in particular the proposal to rename EU regulations and directives as EU "laws".<sup>26</sup> Sixteen EU-countries have declared their allegiance to these symbols in the new treaty although the annexed declaration is not legally binding.

The Treaty of Lisbon is a series of amendments. It consists solely of cross-references amending the existing treaties, and is not intended to be a normal text in itself, in contrast to the European Constitution which was a single readable document.<sup>27</sup> A typical example from the Treaty of Lisbon text is:

"Article 7 shall be amended as follows: (a) throughout the Article, the word "assent" shall be replaced by "consent", the reference to breach "of principles mentioned in Article 6(1)" shall be replaced by a reference to breach "of the values referred to in Article 2" and the words "of this Treaty" shall be replaced by "of the Treaties"."<sup>28</sup>

The draft Constitution treaty gave equal power and status to European Parliament vis-a-vis EU's other institutions but it did not offer any platform for the people to express their concerns. It lacked interaction between people and EU institutions hence, the people rejected it. In contrast, the Lisbon treaty provides for a one million initiative to the people. It has also opened the Council debates for public review.

In this context it can be said that the Lisbon treaty is certainly an improvement on the draft Constitution treaty. However, the treaty cannot be claimed to be flawless. The treaty if read independently gives the impression of a jigsaw puzzle. Its language and presentation are very complicated. It needs to be read alongwith the founding EU treaties hence, the meaning of the treaty is context dependent. It can therefore be manipulated

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<sup>26</sup> "EU leaders sign landmark treaty" (2007) [Online: web] Accessed: 19 March 2008 URL: <http://news.bbc.co.uk/2/hi/europe/7141651.stm>

<sup>27</sup> "The Treaty of Lisbon: a Constitution reborn without title" (2007) [Online: web] Accessed: 20 March 2008 URL: <http://www.europedia.moussis.eu/discus/discus-1204205768-176961-17764.tkl>

<sup>28</sup> "Implementing the Treaty of Lisbon" (2007) [Online: web] Accessed: 18 March 2008 URL: <http://www.euractiv.com/en/future-eu/implementing-treaty-lisbon/article-168843>

time and again. Secondly, as all the institutional innovations are borrowed from the draft treaty they continue the problem of balance of power between the European Commission and the Council of Ministers. The European Parliament no doubt gains more in terms of both power and status, it still lags behind. Its permanent seat is still not decided that causes much confusion and delay in its workings. The European Council though comes under the remit of the treaty the Council President carries a weak obligation to the European Parliament. Hence, the Lisbon treaty is although a better version of the draft treaty more is required to achieve a greater degree of democracy and legitimacy.

### **Conclusion**

The Reform Treaty is set to come into force as soon as all 27 member states have ratified it, preferably ahead of the European elections in June 2009. While pro-European MEPs praised the deal for “safeguarding the substance of the draft EU Constitution”, Eurosceptics criticised EU leaders for passing the rejected EU Constitution with another heading.<sup>29</sup> Joseph Daul the chairman of the EPP-ED group remarks:

"Once this Treaty has been adopted, our political leaders will have to make bolder and more decisive moves to take whatever measures are needed at national level and at European level. We must try to rid ourselves of futile and dangerous accusations such as 'it is the fault of Brussels'. This is not the way to meet the challenge of globalisation."<sup>30</sup>

Those who do not agree with the treaty, point that the treaty actually paints and plasters the draft treaty instead of building afresh. Scholars point that the Lisbon treaty has complicated the EU further. The Special CEPS Report: *'The Treaty of Lisbon: Implementing the Institutional Innovations'* published in November 2007 argues that focusing too much on the legal provisions has led to the neglect of the potentially problematic implementation.

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<sup>29</sup> Ibid

<sup>30</sup> Ibid



'The new treaty is described as an 'obscure' and 'complex' document, 'full of cross references, after thoughts, protocols and declarations'. This may lead governments and public opinion to lose any appetite that they might have incurred for institutional debate and constitutional reforms. It is argued that future treaty change will now first be attempted without resorting to the 'ordinary procedure' of calling a convention and intergovernmental conference. Instead, leaders may favour "simplified revision procedures", including by parliamentary assent and a unanimous Council decision, thus producing a treaty ratified by member states "according to their constitutional procedures", or by providing for enhanced cooperation. The authors add that "the estrangement of public opinion is not likely to diminish" and even be aggravated by the "technocratic" Treaty of Lisbon, and hope that measures such as a new role for national parliaments and the politicisation of the appointment of the Commission president will bring citizens closer to the EU.'<sup>31</sup>

The European Trade Union Confederation (ETUC) stated that it regretted the unambitious nature of much of the EU Reform Treaty.

"We have a series of modest adjustments to the EU's framework of rules, which will have only a limited impact on the process of deepening Europe's capacity to act decisively in the world."<sup>32</sup>

While most countries will try to have the new EU Treaty passed through their national parliaments, some countries have come under pressure to hold public consultations. According to an EU-wide TNS poll, 75% of those questioned said that they were in favour of giving people a say in a referendum or citizen consultation.<sup>33</sup> Ireland is the only country which is constitutionally bound to a popular vote. The option of holding a referendum is especially discussed in Denmark, as well as in the Netherlands, where the draft EU Constitution was rejected by a popular vote in 2005.

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<sup>31</sup> Ibid

<sup>32</sup> Ibid

<sup>33</sup> Ibid

British Prime Minister Gordon Brown is also under pressure to hold a referendum from the opposition Conservative Party, which claims the new document almost identical to the rejected Constitution. However, the Prime Minister while talking to the journalists prior to the Lisbon Summit said that the it was fundamentally different from the defunct EU Constitution: "Because we have a very different document with our protocol, with our opt-ins, with our emergency breaks, with all these protections for the British national interest there is no fundamental change and that is why I believe the proper way of discussing this...is parliamentary debate."<sup>34</sup>

Secretary General of the European SME employers' organisation UAPME, Hans-Werner Müller points that the Reform Treaty will increase both the room for and the speed of manoeuvre of the European institutions, and strengthen the European Union's voice on the global arena.

"Europe cannot afford another slow and painful approval. EU leaders have set the ball rolling tonight – it is now up to Europe's governments and citizens to keep up the positive momentum. This is an opportunity that cannot be missed under any circumstances."<sup>35</sup>

From the above discussion it is clear that not everybody is happy with the treaty. The treaty may be an overhauling of the draft treaty it does provide with some significant provisions to improve both efficiency and democratic values among the union institutions. Though ratifying the treaty through the Parliament instead of the referendum complicates the matters.

Democracy is about legitimacy of policy initiative and accountability of the leaders towards their electorate. The Lisbon treaty is another example of a complicated treaty that needs to be simplified for a layman's understanding. The treaty improves the democratic efficiency of the organisation but, failing to ratify it through the referenda puts a question mark on its legitimacy as well as accountability of the EU institutions. It is therefore required to make the people aware about the treaty, its alterations as well as

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<sup>34</sup> Ibid

<sup>35</sup> Ibid

its similarities with the draft treaty. The draft treaty failed to get ratified because of the identity issues and economic slump. The Lisbon treaty has tried to work on the two by removing any reference that suggested supra-nationalism, guaranteeing people's right and improving the links between the EU and the people.

The Lisbon treaty has borrowed heavily from the draft treaty when it comes to institutional changes. To what extent will they help the European Parliament reduce its inverse proportionality between capability and accountability is yet to be seen. It will only be after the 2009 European Parliament elections that the new treaty will enter into force. Till then, how effective will the treaty be in reducing the democratic deficit will remain an open ended question.

## Chapter 6

### Conclusion

The European Union was founded as a mechanism to maintain peace among the European nations. It has gradually moved from issues of low politics to high politics. It is an experiment in regional integration. For more than half a century the EU has avoided conflicts among the member states. It has been very successful in achieving economic growth and integration for all its member states. Hence, the integration was taken a step further-towards creating a political entity. It is the only transnational institutional body that has tried to imbibe democratic principles in its structure. Since 1979 the European citizens have been participating in the European Parliament elections. It is the only regional organisation in the world to have a directly elected body.

But there remains a gap between the European citizens and the European Union. As a result, the participation rate has been declining in the European parliamentary elections. This gap between the EU and the people has been referred as democratic deficit. It is pointed that the EU mechanism is too complicated for a layman's understanding and therefore there is a democratic deficit. Scholars do not however agree on why the democratic deficit occurs. Some (Christopher Lord, Richard S.Katz, Hüsamettin Inanc and Hayre Hin Ozler) feel that there is no one size fit model of democracy and the popular sovereignty model chosen for EU lacks credibility because of the pluralist nature of the EU. Thus they opine that the democratic deficit is a result of popular sovereignty model of democracy rather than its internal intricacies. What ever the model of democracy may we may choose, the lack of democracy results in a low credibility of the organisation among the people. The decisions made at this level are thus seen by the general public as illegitimate. In this dissertation it is pointed that there are three reasons for the occurrence of democratic deficit; structural, systemic and political.

The EU is structured in such a way that the most accountable institution lacks power and the most powerful institution has no accountability. The Council of Ministers and the European Council are not accountable to the European Parliament. Also the

functioning of the European Parliament is carried in three different locations Strasbourg, Luxembourg and Brussels. Reasonably conscientious MEPs (Members of the European Parliament) may have to change their location half a dozen times in a month. If the European Parliament had just one base and especially if that was Brussels it is likely that Parliament's efficiency, influence, and visibility would all be increased. . However, the Council has the power of decision and hard lobbying from Luxembourg and the French governments in the Council has ensured that arguments for 'sense to prevail' and a single seat to be agreed may not be acted upon. Therefore, there are structural problems in the Union. Hence even if we chose a different model of governance the absence of proper distribution of power can again lead to democratic deficit.

The member states' governments believe that it would give them the space and freedom to maintain the sovereignty of the member states who actually believe in the realist paradigm of power. Hence, this systemic constraint causes it to lose its legitimacy as a prime decision making body. The nation- states talk of sovereignty and accountability at national level but fail to address the same issues at the regional level. The whole constructive paradigm to create a new European identity fails when faced with realism; - the Hobbesian understanding of politics within Europe.

The structural and systemic constraints are further aggravated by deteriorating political and economic situations within the member states whose representatives put all the blame on the EU during their election campaigns. Lack of a channel of communication between the European citizens and the Union institutions often results in miscommunication. This gives way to scepticism. These three together form the vicious circle of democratic deficit.

Though the powers of the European Parliament have increased with every successive treaty it is not fully equipped to take into account its executives as they are not selected or could be penalized by them. Its identity as a democratic institution of a transnational nature is not deeply rooted. The elections conducted in every five years witness a declining rate of participation. The election campaign is also based on issues that are domestic in nature rather than European. However this should not be seen as a reason to dismiss the idea of making the European Union more democratic. The decisions made by the European Union affect every citizen of the member states hence its

accountability to them is the minimum requirement to establish its democratic credentials.

The European Parliament signifies democratisation at the regional level. The problems encountered by it with regard to structural, systemic and political constraints are new. Though the institution has gained an equal status vis-a-vis other EU institutions through regular treaties this gain is not reflected in the Parliamentary elections. Some scholars (Majone 1994, 1996 and Moravcsik 2001, 2003, 2004) feel that the people in general have become apathetic towards democracy and therefore low participation in the elections is a follow on to the general trend that says nothing about the Union. Katz has gone a step further by criticising the popular sovereignty model of democracy as unsuitable for the European Union. Others (Holland 1980, Hix, and Follesdal, 2005 Carey, 2005) on the contrary, point towards the executive control of its essential decision making units.

However, this reason does not sideline the fact that the participation rate in the European elections Reif and Schmitt's 'second order national contest' is even lower than the local elections in many states. The 2004 European Parliament elections could not even gather 50 percent of eligible voters in Europe. The distrust runs so high among the people that if they could they would not let the EU take any decision and perhaps this is why they rejected the draft Constitution treaty that was supposed to provide the Union with a binding constitution and establish a European identity.

Had the treaty been passed the enlarged EU would have had three main public figureheads, the European Council President, the European Commission President and the new EU foreign minister. This had increased chances of contention between the three chiefs. The decision making procedure would have shifted from QMV to double majority thus enhancing the efficiency of the Union to take decisions and in the process giving more power to the European Parliament simply because there is more to decide on.

The treaty was passed in 18 states but failed to get ratified in the two founding member states of France and the Netherlands mainly because of anti-incumbency factor. They also viewed it as a threat to their national identity, economic growth and development. The treaty had loopholes like but mostly it was rejected because it was

incomprehensible to the people and they feared that it will jeopardise their state sovereignty.

Hence suggestions were made to reframe the treaty and in 2007 the EU summit agreed on a detailed mandate for institutional reforms. In July 2007 the Reform treaty opened under the Portuguese Presidency. Signed in Lisbon the treaty is therefore also called the 'Treaty of Lisbon'. If the treaty is ratified by all the member states it will come become operational from 1 January 2009. The Lisbon treaty talks of amending the past treaties instead of bringing them under one treaty.

The treaty has made some amendments to the draft treaty like; removing all the references to the EU symbols, making the EU a single legal entity by merging all the three pillars, bringing the European Council under the treaty framework, recognizing the universal fundamental rights, the one million citizens initiative to the Commission for proposing legislation, public sitting of the Council of Ministers when it votes on European legislation and enhancing the role of national parliaments. The treaty has integrated all the institutional features of the draft treaty in the Lisbon treaty. Hence the structural problems of the treaty remain intact.

The division of power between the three heads is a bone of contention. The shift to double majority voting was made to make the EU-27 more efficient. The strengthening of European Parliament is a consequence of enhancement of its 'ability to act' quickly and not because it was sought. The European Council is brought under the treaty framework but is not accountable to the Parliament.

The 'one million initiative' for proposing legislation to the Commission, and the opening of the Council voting on European legislation for public viewing will certainly improve its communication deficit. The political reasons for the continuance of democratic deficit will therefore get a backseat due to proper communication. The removal of reference to the EU symbols may also help in reducing the idea of EU being a super-state. But it may not help much in reducing the democratic deficit as the structural reasons remain. The unaccountability of the executives to the European Parliament and the absence of one place of sitting for the European Parliament will in the long run enhance the democratic deficit further. Thus, the Lisbon treaty like the draft treaty

enhances the powers of the European Parliament but the incremental increase may not necessarily reduce the democratic deficit in the Union.



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