European University Institute

EUROPEAN POLICY UNIT

In Collaboration With The

UNIVERSITY OF STRASBOURG and

TEPSA

E.U.I. WORKING PAPER No. 85/164

The Institutions and the Decision-Making Process in the Draft Treaty Establishing the European Union

by

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March 1985

This paper may be cited as forthcoming in:
Bieber, Jacqué, and Weiler (eds.), An Ever-Closer Union: A Critical Analysis of the Draft Treaty Establishing the European Union, in European Perspectives, Luxembourg.

(c) European Policy Unit
Printed in Italy in March 1985
European University Institute
Badia Fiesolana
50016 S. Domenico di Fiesole (FI)
Italy

The European Policy Unit

The European Policy Unit, at the European University Institute, was created to further three main goals. First, to continue the development of the European University Institute as a forum for critical discussion of key items on the Community agenda. Second, to enhance the documentation available to scholars of European affairs. Third, to sponsor individual research projects on topics of current interest to the European Communities. Both as in-depth background studies and as policy analyses in their own right, these projects should prove valuable to Community policy-making.

In October 1984, the EPU, in collaboration with the University of Strasbourg and TEPSA, organised a conference to examine in detail the Draft Treaty Establishing the European Union. This Working Paper, presented at the conference and revised in light of the discussion, will appear in book form later in 1985 along with other studies of the Draft Treaty.

Further information about the work of the European Policy Unit can be obtained from the Director, at the European University Institute in Florence.

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1. Introduction

a. The role of institutions in an organization

Any organization needs institutions in order to determine, to express and to implement the intentions of the members of the organization. In political organizations, the institutions provided for by the constitution are the formalized structure through which the organization's overall power is exercised.(1) Institutions, their respective powers and their mutual relations are thus a necessary prerequisite of any organization. Institutions also represent, like the tip of the iceberg, the visible part of the entity. The very existence of an organization depends on its capacity to remain "visible", to establish a reality for its constituent parts. Through their role in embodying the character of an organization for its members, institutions generate and aggregate consent for the organization. Consent within an organization - legitimacy - presupposes an identification of its members with the organization. Identification (or "loyalty") can only be achieved when a minimum of stability exists within the institutional framework.

Hence institutions fulfill essentially three functions:

- they promote the efficiency of an organization by providing the tools necessary for the achievement of the organization's aims;
- they provide legitimacy for an organization through participation of members of the organization in decision-making and by rendering this process publicly accountable;

- they generate identity by intergrating social actors into the organization.

How these basic functions of an institutional system are fulfilled depends largely on the kind of institutions which a given constitution provides for and from the way in which cooperation and mutual control are built into the institutional structure. Although any institutional system serves the same set of basic functions, the operation of institutions cannot be separated from the aims for which they have been created. Institutions and aims are in fact related to each other through a dialectical process.

These observations are valid both for States and for international organizations. In this (formal) respect, any text which lays down the guidelines for the institutional system of an organization may be considered as a constitution.(2) Depending on the number and the stability of the proper values this dialectic process has generated for the institution, however, this text may also be considered a constitution in a substantive sense. The EC Treaties in a substantive sense are considered as either in a "process of constitutionalization",(3) or already as a constitution,(4) depending on the number and the stability of the proper values this dialectic process has generated for the EC.

In the present EEC Treaty, Article 4 expressly relates aims and institutions by stating:

"The tasks entrusted to the Community shall be carried out by the following institutions..."

This means, on the one hand, that the institutions do not have any function outside the scope of the Treaty and, on the other hand that the tasks shall not be carried out by any institution other than those provided for in the Treaties. This intrinsic link between policies and institutions has to be kept in mind when submitting proposals either for reforms of policies or of institutions.

b. Institutional essentials in a constitution

On the assumption that a constitution is the formal framework for determining the aims of a political organization and providing the instruments for the achievement of those aims, a draft constitution has to provide for a minimum institutional structure. In theory, every new constitution has a free choice among possible institutions, but constitutional history shows that the variety of institutions tends to be limited and that one of the characteristic features of institutions resides in their being designed in reply to previously existing institutions, either by developing certain features in order to make institutions more able to confront new tasks or by avoiding certain errors of past institutions.(5)

The complexity of modern institutional structures tend to echo the complexity of aims assigned to modern political

organizations, namely the State and international organizations,(6). The achievement of the traditional formal aims of such organizations (aggregating public opinion, and making, implementing and interpreting laws) entails a more or less complex institutional system, but in any event requires different specialised institutions. The "division of power" among several institutions permits a more specialised and therefore more efficient activity of the individual institution and limits at the same time its weight in comparison to other institutions. Any draft constitution has to assign the four traditional functions to institutions and has to determine, at least in principle, how those functions are to be exercised. It has, furthermore, to lay down rules for the establishment of the institutions, the procedure for the selection of office-holders and for the duration of their term of office. A further necessary set of rules concerns the relations among the institutions with respect to the execution of their respective tasks (e.g the question of judicial control). Finally, an institutional system must be provided with rules which create flexibility within and among the institutions and also for the entire institutional system. This flexibility is usually achieved through some level of institutional autonomy, either expressly, through the authorization to adopt Rules of Procedure and to create auxiliary institutions, or tacitly through the acceptance of the principle of "implied powers".

c. The starting point for institutional proposals in the Draft Treaty establishing the European Union

The draft is not to be considered as a blueprint of an abstract "ideal" constitution for a European Union. The text has been designed as a constitution for an organization that comprises the members of the existing European Communities. It will not create an organization functionally separate from the EC but will be the result of an evolutionary process which has its origins in the present Treaties.(7) In this respect, the draft follows the same line of thought which has inspired proposals for a closer Union among Member States ever since the ECSC was established in 1952,(8) although the first proposal, submitted in 1953, was inspired by more abstract considerations since it built on hardly any experience with the institutions of the ECSC that had shortly before been established.

Therefore, the 1984 draft bears all the signs of traditional constitution making: it aims at maintaining a maximum of stability in the existing institutional structure, and proposed modifications considered necessary due to a change in the priority of values. It would, of course, have been possible for Parliament to design a completely new and different institutional system, but it was probably easiest to maintain the known structures as long as no consensus for deviations from them could be found, thus making the possible change "calculable" for the MEPs. This approach also has its "external" justification: as pointed out in the introduction, institutions serve as identification marks of an organization. The more stable institutions are, the more capable they are of generating loyalty

towards the organization and its institutions. This is particularly significant in the present situation, since the loyalty of the Community citizens is one of the major shortcomings of existing institutions. It is certainly wise to base proposals for a "new" organization on the existing institutional structure.

On this basis, it is possible to identify three different currents of thought which influenced the institutional proposals in the draft:

i. According to Parliament the evolution of the institutional system of the EC Treaties requires major adjustments in order to increase its efficiency and its legitimacy(9);
ii. The new competences attributed to the Union in the draft imply a further transfer of competences from national Parliaments and would therefore require a parallel increase in parliamentary powers on the EC level(10);
iii. In order to promote the further process of integration, it is necessary to strengthen the independence of the organization from the Member States.(11)

These three factors could be characterized as Efficiency (i), Democracy (ii) and Independence (iii).

It seems appropriate to examine the institutional structure of the Draft Treaty in the light of experience with the

institutions established by the EC Treaties and to take into account the specific aims of Parliament.(12)

2. The institutional system of the EC

Since the Merger Treaty of 1965, the EC Treaties(13) provide for four institutions, Assembly, Council, Commission and Court. An auxiliary institution, the Economic and Social Committee fills an advisory function in regard to the Commission and the Council within the framework of the EEC and Euratom Treaties. Another auxiliary institution was established by the Treaty of July 22, 1975, which transformed the control committee into the Court of Auditors.(14) In addition, the institutions are surrounded by a large number of complementary entities with different legal nature.(15) Formally, the European Council, the Conference of Heads of State and Government, acts outside the institutional structure of the Treaties, but it can meet as a Council. The "Conference of the Representatives of the Member States", which is not an institution of the EC, but formally a type of inter-governmental cooperation, often prepares or complements EC legislation.

This institutional system reflects concepts about legitimacy of power, of due process in law and of checks and balances. But it is not modelled on a specific constitution of a state or an international organization. Legislation and executive functions are horizontally divided between Council and Commission, the

Parliament fulfills codecision and control functions, and judicial control is exercised by the Court. The composition of the institutions aims essentially at legitimacy. Thus, all Member States are represented. Their size, determined with an eye to efficiency, depends on the tasks assigned to each. Enlargements of the EC have, therefore, led to an increase in size of the institutions.

The Treaties describe in an abstract way the powers of each institution,(16) but those enumerations are not sufficiently complete and precise to determine the role of each institution in decision-making. The different procedures for adopting legislative acts can only be inferred from the Treaty provisions providing for specific policies.

A particular feature of these procedures is the cooperation between several institutions required to adopt legislative acts. Within this cooperation, the Commission has the (formal) right of initiative and the task of preparing legislative acts, the Council has the legislative decision power and Parliament has the task of public discussion and of control over the Commission. This original system underwent considerable modifications in the form of Treaty amendments, unilateral decisions by institutions, and agreements among the institutions. The modifications strengthened the position of the Council to the detriment of the Commission and of Parliament. The institutional system, both in its original form as shaped by the Treaties and in its constitutional life, had

to face increasing criticism of the efficiency, legitimacy and balance among the institutions.

The most pertinent of these criticisms can be summarized as follows(17):

- The institutions of the EC are still not considered by its own citizens as producing and guaranteeing solutions for vital problems.
- The political options underlying decisions are hardly ever made public and are only indirectly subject to influence and control. Community citizens do not see themselves as participants in the system. In other words, it lacks representativeness. Together, the first two criticisms amount to a claim that the Community lacks legitimacy and, hence, has not attracted the loyalty of its citizens.
- The efficiency of the system when producing decisions is doubtful. Furthermore, decisions often are not taken according to a proper common interest but rather according to the smallest common denominator.

To a large extent similar criticisms are made within States. But within the EC the system. Three main amplifying factors can be identified;

- the incomplete legal framework governing relations between the institutions,
- the dynamic conception of the organization, and

- the position of Parliament, which differs from that in national constitutions.

Especially the dynamic conception of the Treaties, which applies both to policies and to institutions, has repeatedly encouraged the institutions to question their present position. As early as 1962, and from then on in regular intervals, Parliament has submitted proposals for a substantial increase in its own powers. But these proposals were designed as modifications within the present Treaty structure.(18)

Although these proposals were dealt with separately from the preparation of a proposal for the European Union, their underlying philosophy with regard to institutions and decision-making is similar. The prevailing aim is the strengthening of the parliamentary and Community elements against the influence of national governments on the EC system.

3. The Draft Treaty establishing the European Union

a. The ideological background

The institutions and the decision-making process occupy a central position in the approach chosen by the European Parliament towards European Union. Their key role is apparent for the fact that the relevant articles(19) cover more than one third of the entire Draft Treaty. This formal element reflects not only priorities concerning the method of achieving European Union, but

also Parliament's central concern with the failures of the existing system. Parliament, in fact, expressly decided in 1982 "to maintain the institutional structure of the Community and to adjust it so that defaults are abolished and the Union on the other hand gets the possibility of executing new tasks".(20) Altiero Spinelli has given six reasons for the initiative for a European Union, all of which are related to the malfunctioning of the present institutional system of the Communities.(21) In fact, Parliament seems to consider the draft essentially an instrument to repair defects of the existing institutional system. This approach is radically different from the one displayed, for example, in the proposals for an economic and monetary union,(22) where institutional changes were considered as an annex to an enlargement of EC competences. Similarly, the Tindemans Report of 1975 on the European Union suggested minor institutional improvements only as a consequence of substantive reforms.(23) One might object to Parliament's approach, that an agreement on institutions and procedures for the solution of future problems distracts from the necessary agreement on the substance of those problems. But experience shows that a well designed institutional sub-system, like the Court of Justice, may have a larger impact on the evolution of European Union than discussions on the substance of policies that remain hypothetical because of a defective institutional system.(24)

A further objection which might be raised against the method chosen by Parliament is related to the "reactive" character of the

Draft. The institutional parts of the text are heavily conditioned by the present Treaty structure, Parliament tries to "repair" rather than to "invent". One might be disappointed to see a new adventure like the European Union result from the ruins of the present Treaties. Continuity is of course the safest way of avoiding major errors and of reassuring the political opponents, thus a defendable way to increase "acceptance". But the stability of the political system, which this approach implies, is in the light of strong negative opinion on the EC only a relative constitutional value.

One might, therefore, regret that the requirements of an institutional system for the Union, even in the context of the present Treaties, have not been further explored. Such an analysis could have tried to establish a relationship between the competences of the Union and the necessary instruments for their implementation. Another approach could have been to evaluate critically the potential of efficiency, legitimacy and flexibility in the present institutional system and to try to submit suggestions for increasing this potential. This might have led to questions such as:

- are the present institutions sufficiently representative for the people of the Union? Would, for example, a regional representation or a representation of national Parliaments (like in the Draft of 1953) not be necessary? Would size, allocation of seats and electoral period of Parliament not have to be reconsidered?

The main aim of Parliament's draft obviously is to extend its own powers within the present institutional framework. One might well ask whether this step is not at the same time too large (because it shifts legislative authority from Council to Parliament) and too small (because it does not substantially increase the overall legitimacy of the institutional system).

b. The proposed institutional structure(25)

The institutional structure proposed for the Union hardly differs from that existing under the present Treaties. In fact, Article 8 of the draft differs in substance from Article 4, par. 1 of the EEC Treaty only in adding the European Council to the institutions of the future Union. Parliament seems to have included it somewhat reluctantly, since the European Council is placed at the very end of the list, which otherwise follows the order as established by Article 4 (EEC).

In any event, it should be borne in mind that the European Council, although of highly symbolic value, is an emanation of national Governments. Its formal establishment and bestowment with specific powers implies a major transfer of powers from national Parliaments to their respective Governments. This is particularly obvious for the power of the European Council to establish a Union competence in the field of defence policy. Suspicion of national Parliaments towards the Union is therefore

likely to increase and might, in fact, create an obstacle to the ratification of the draft.

In the Union, the European Parliament and the European Council will be - as they tend already to be under the existing Treaties - the two poles of inter-institutional rivalry and tension. Both will claim a maximum of autonomous legitimacy. It is doubtful whether the system proposed for the Union is sufficiently sophisticated to balance those tensions. One possibility could have consisted in strengthening Parliament by creating a "Senate" in which national Parliaments were represented. This solution was, in fact, proposed in 1953.(26) Another method could have been to integrate fully the European Council into the institutional system. But the Draft's silence about the possibility of trusting constitutional conflicts between the European Council and the Parliament to the Court, and Parliament's reluctance to provide for rules of procedure of the European Council(27) indicate that Parliament seems to accept that the European Council enjoys, like a monarch, a particular autonomy. Under the present Treaties, the legal powers of the European Council do not differ from those of the Council. The draft assigns to it the power to decide new areas of Community competences (Arts. 54, 68). This innovation creates, in fact, a Treaty amendment procedure which one might locate between Articles 235 and 236. Those decisions will in most cases have to be unanimous.

With three exceptions, the proposed text on Parliament confirms the institutional position it has acquired within the EC Treaties. In particular, its composition and the term of office are not modified. The three new features concern its powers:

- its consultative function is transformed into participation in legislation and in the adoption of the budget;
- it approves the appointment of the Commission and it participates in the nomination of the members of the Court and the Court of Auditors (although this elective function is not mentioned in Article 16 of the draft, which lists the powers of Parliament);
- finally, a new element is the recognition of a power to conduct enquiries and to receive petitions. The really important question of the legal powers Parliament has for this purpose, however, is left to organic laws (Art. 18).

The institutional position of the Council is visibly reduced in respect to its legislative powers. According to Article 21, the Council participates in the legislative and budgetary procedure.(28) In its composition, the Parliament seems to adopt the idea of "European ministers". Article 20 of the draft provides that each representation "shall be led by a minister who is permanently and specifically responsible for Union affairs". This formula looks like an interference into the autonomy of national Governments. It is in fact difficult to imagine that the Council would refuse the participation in its work to a minister

who is designated on an ad hoc basis by the Head of State or the national Government.

One indication of the above mentioned "reactive" character of the draft can be found in Article 24, where it is stated that Council's rules of procedure shall provide for publicity of meetings in which the Council acts as a legislative or budgetary authority. For itself Parliament did not consider such a rule necessary. In any event, its application would require substantial changes in the Council's internal rules and perhaps in its habits, although the confidentiality of Council meetings at present is often pure fiction.

Contrary to Article 5 of the Merger Treaty, combined with Article 148, par. I (EEC), the Draft provides that the Council's rules of procedure shall be adopted by an absolute majority. Although this wording establishes a parallel between Parliament and Council, the notion "absolute majority" is defined differently for the Council (combined majority of weighted votes and of a number of representations)(29) and for Parliament (majority of members).(30)

The new way of counting majorities in Council renders routine decisions easier, because a simple majority is also obtained from weighted votes, thus enabling the four "big" countries to establish a majority.(31) But more important decisions, which

require an "absolute" majority are more difficult to take (provided that votes are taken at all).

With respect to the Commission it should be noted that the draft establishes a link between its terms of office and the term of Parliament, thus prolonging the present four year period to five years and underlining at the same time the political responsibility of the Commission towards Parliament.

With regard to its appointment, the draft provides for a somewhat awkward procedure (Art. 25, 16). Its president is appointed by the European Council (this appointment meaning at the same time cooption to the European Council), the president then selects the other members of the Commission. Finally, the Commission obtains "investiture" from Parliament. The legal consequences of failure to obtain this investiture are not indicated. If there are none, then this procedure comes very close to the present selection system where Parliament has de facto no influence on the choice of members of the Commission, since the Governments are eager to preserve their prerogative in this respect.

Parliament's underlying assumption is that the President of the Commission, whose authority originates from the European Council, would seek an understanding with Parliament on the choice of his colleagues. This concept is unrealistic because a European

Council will hardly appoint somebody President of the Commission who has not committed himself to a certain team.

With respect to the Court and to the Court of Auditors, the draft provides for appointment of some of its members by Parliament and by Council (Arts. 30,33). This technique is likely to create conflicts among the appointing institutions, e.g. on the methods for providing for a representation of all Member States in those institutions. It would be safer to provide for a mechanism which guarantees that decisions on appointments are taken in due course before the end of the term of the outgoing member.

The Court of Auditors and the Economic and Social Committee shall no longer enjoy the privileged status conferred upon them by Article 4, pars. II and III (EEC) where they are mentioned together with the main institutions. Together with the Investment Bank and the Monetary Fund they are now named "organs" and listed in Article 33. Apart from this more politically(32) relevant reduction in status, the terminology used in Article 33 will contribute to further confusion: In the English versions those entities are called "organs", whilst the German version uses the term "Einrichtungen". Until now the notion of "Organ" was used in the German version of the Treaties for the main institutions (Parliament, Council, Commission, Court). It is difficult to see why the Draft did not use any internationally recognized terminology such as, for example, that used for the Charter of the

United Nations, in order to call its entities in as meaningful and least confusing a way as possible.

In its provision for the rules of procedure of the Court of Auditors, the draft repeats the omission of the EEC Treaty by failing clearly to lay down the autonomy of the Court in this respect.(33)

For the Economic and Social Committee, on the other hand, the autonomy to adopt its own rules of procedure has been recognized and is, contrary to the EEC Treaty (Art. 196, par. II) no longer subject to the approval of the Council. Furthermore, a right of initiative is formally conferred upon ECOSOC (Art. 33, par. 3).(34)

The system of "organs" may be supplemented by the Union itself by means of an organic law (Art. 33, par. 5), thus enabling the institutional structure of the Union to grow and to differentiate according to future requirements. This last proviso in the chapter dealing with institutions and organs highlights a particular dimension of the draft: The large number of references to organic laws which shall lay down further details, coupled with general clauses such as that providing for new organs would generate remarkable dynamics within the institutional structure of the future Union.

c. The decision-making system

It should first be noted that decision-making also includes the budgetary procedure, that is to say the procedure to be followed for the adoption of the budget. The Draft Treaty in Article 76 has - as do the existing Treaties (Art. 203 (EEC)) - completely separated the legislative procedure from the budgetary procedure(35). I wonder whether this separation is necessary. It might have been useful, in fact, to combine the two procedures. As experience shows, legislation and adopting the budget are two faces of the same coin. To ignore this identity is in fact the easiest method to create conflicts among the institutions - and even within the institutions - (Budgetary Council v. Foreign Ministers; Budgetary Committee v. Agricultural Committee). No solution is provided for this kind of conflict.

The objection is not a formality. According to Article 38, par. 4, legislation may be adopted after the conciliation procedure by a simple majority of members composing Parliament. But the adoption of budget items which the Council has modified requires a qualified majority in Parliament according to Article 76 et seq.. If Parliament, against opposition from the Council, has adopted legislation which established financial obligations, and if Council maintains its opposition in the budgetary procedure, it may well occur that Parliament is not able to put into the budget the money necessary to implement legislation which

it has decided by itself. I wonder whether this result was intended by Parliament.

Legislative procedure is entrusted by core Articles 36 and 38 to Parliament and Council which emerge as the joint legislative authority.

The idea of co-decision is already achieved under the present Treaties in the budgetary field and it was proposed for legislation in the "Vedel Report" of 1972. Parliament suggests now that codecision applies to the initiative and to the decisional phase as well. Legislation is generally initiated by the Commission. But both Parliament and Council may, if the Commission refuses, introduce legislation by themselves. This procedure (Art. 37) is not quite clear. It seems as if only the institution which previously invited the Commission to act, may introduce draft legislation (Parliament or Council, not Parliament and Council). Furthermore, it is not clear what is meant by "refuses". Does this imply that a draft text has to be submitted within a certain time limit before Parliament or Council may act by themselves? Can the Commission implicitly reject?

In any event, once the legislative procedure has started, a bill may be enacted after Council and Parliament had the possibility to amend it and after at least one institution has approved it. The Council may reject draft legislation with varying majorities. But if it does not assemble the necessary

majority for rejection within a given time limit, Parliament alone may enact the bill. This is an ingenious proposal which could bring forward two major achievements:

- a participation of Parliament in legislation and
- a way around the notorious lack of capability of the Council to gather a "positive" majority for the adoption of a text.

The procedure on the other hand establishes all necessary safeguards against legislation which is contrary to the will of a vast majority of governments. It even provides a safeguard for individual governments by giving a formal blessing to the "Luxembourg Compromise" of 1966 (Art. 23, 3). Unfortunately it is not clear beyond doubt whether a government should be allowed to block a vote in Council even beyond the time limit in Article 38 or whether this right can be exercised only within this limit.

It is obvious that this decision-making process would increase the legitimacy of the Union, since it would ensure the participation of Parliament. It would facilitate decisions and it would provide for safeguards of individual states' interests. On the other hand, it might be argued that the decision-making process would become more complex and could thus lose in efficiency. This danger, however, seems marginal taking into account the time constraints put on each institution (which for certain legislative projects might be too short but could be prolonged on actual agreement). In comparison to the present system the procedure proposed in Article 38 might well be the

keystone for any further development of the present Treaties, since it would enable the Union to overcome the present inertia.

But attention must be drawn to the somewhat doubtful proposal contained in Article 38, par. 5 of the Draft. According to this paragraph, decisions may come into effect even if no vote has taken place in the Parliament or Council. The lack of legitimacy of decisions adopted according to this procedure, in my opinion is too large in comparison to the gain in efficiency of the decision-making procedure. It is not compensated by the fact that, in any event, the two other institutions have to approve a text. It is hardly acceptable that the consent of directly elected Parliament is reputed by the absence of a vote within a given time.

d. Possible repercussions of the Draft on the existing Treaties

Parliament has carefully kept separate its proposals on institutional reforms within the framework of the existing Treaties(35) from the proposed institutional system under a new Treaty. But this separation is somewhat artificial since the institutions devised for the European Union for their largest part remain identical to those under the present Treaties. This close relationship provides the advantage that the solutions which were found for given problems of the Union could be used in the context of the EC Treaties. This should in itself be considered as a major advantage of the Draft.

In fact, the decision-making procedure as it is proposed, namely in Article 38, could become part of the present Treaties separately from the remaining text of the Draft. Obviously a treaty revision in accordance with Article 236 would be necessary, but technically it would be possible, even without too many changes in the Treaty - and it would establish a substantial improvement. Therefore, it might be worthwhile considering the alternative to a reform in the decision-making process without having to accept the notion of a European Union.

Notes

1. Cf. Löwenstein, Political Powers and the Governmental Process, 10 (1957).
Although Löwenstein, like many political scientists, uses the notion "institution" in a larger sense, which comprises all political actors, e.g. political parties, it is submitted here that the fact of being formally recognised by the constitution as a mechanism for the exercise of power establishes a substantial difference, which needs to be taken into account. On the other hand, legal science uses the term "institution" often in the sense of "organization" (cf. Hamion, La théorie de l'institution et de la fondation, in Les Cahiers de la Nouvelle Journée 44 (1925); Romano, Santi, L'ordinamento giuridico (1946).
Since the following text deals with the law of the European Communities, the notion "institution" is used here in the meaning given to it by Article 4 of the EEC Treaty. It should be kept in mind that the German version of the Treaty uses the more specific term "Organe". This notion is familiar to the English reader as well. Cf. Article 7 of the UN Charter ("Principal Organs").

2. Bernhardt, Sources of Community Law, in Thirty Years of EC Law 77 (Commission of the EC, ed. 1981).

3. Weiler, The Community System: The Dual Character of Supranationalism, in Yearbook of European L., 267 et seq.(292) (Jacobs, ed. 1981).

4. Schwarze, Verfassungsentwicklung in der Europäischen Gemeinschaft, in Eine Verfassung für Europa 15 (23) (Schwarze, Bieber, eds. 1984).

5. Cf. Mill, Stuart, Utalitarianism, Liberty, Representative Government, 175 et seq. (1910 (1972)). For recent examples see Debré, Les idées constitutionnelles du Général de Gaulle, (1974) (for the Constitution of the V Republic). On the origins of the German Grundgesetz, cf. Hesse, Das Grundgesetz in der Entwicklung der Bundesrepublik Deutschland, in, Handbuch des Verfassungsrechts 3-27 (Maihofer, Vogel, eds., 1983).

6. Most international organizations have a structure that is less complex than the structure of states, but the same trends towards complexity can be observed. Also the different aims lead to partly different institutions. For details see Schermers, International Institutional Law, Vol. I (1972), and Seidl-Hohenveldern, Das Recht der internationalen Organisationen einschliesslich der supranationalen Gemeinschaften, 9 (4th ed., 1984).

7. Cf. Art. 7, par. II of the Draft.

8. For details see Bieber, Verfassungsentwicklung in der Europäischen Gemeinschaft, Formen und Verfahren, in Eine Verfassung für Europa 49-89 (Schwarze, Bieber, eds., 1984).

9. This opinion is not limited to Parliament, see for example The Report on European Institutions, presented by the Committee of the Three to the European Council (1979), and the Vedel Report, EC Bulletin, Suppl. No. 4/1972.

10. This line of thought was already presented in the proposals for an economic and monetary union ("Werner Plan"), in EC Bulletin, Suppl. No. 11/1970, see also the report of experts on the economic and monetary union ("Marjolin Report") of 1975, Chapter IV.1.

11. This view can already be found in the EP Resolution of 10 July 1975 preceding the Tindemans Report, 23 O.J. No. C 179/1975.

12. For details of Parliament's intentions, see Explanatory Statement, in Report of the Committee on Institutional Affairs (Doc. 1-575/83/C, draftsman Mr. Zecchino).

13. Art. 4 EEC, Art. 3 Euratom, Art. 7 ECSC.

14. Art. 4, III and Art. 206 EEC Treaty.

15. For a detailed analysis see Hilf, Die Organisationsstruktur der Europäischen Gemeinschaften, (1982).

16. Parliament, Art. 137; Council, Art. 145; Commission,,Art. 155; Court, Art. 164; ECOSOC, Art. 193; Court of Auditors, Art. 206 EEC Treaty.

17. See analysis in the Report of the Three Wise Men, op. cit. (note 10).

18. Cf. in particular the reports submitted in 1981/82 on relations with Council, Commission and European Council, on the conclusion of international agreements and on Political Cooperation. For details see Le Parlement Européen, 143 et seq. (Jacqué, Bieber, Constantinesco, Nickel, 1984).

19. Arts. 8, 14-44, 75, 76, 78-81.

20. O.J. No. C 238/1982, 25.

21. Sixth Jean Monnet Lecture, Spinelli (European University Institute, 1983); cf. also Spinelli, in Eine Verfassung für Europa 231.

22. See supra note 10.

23. EC Bulletin, Supplement No. 1/1976, Chapter V.

24. Cf. Weiler, op. cit., note 3, supra.

25. For the Court of Justice, see Chapter by Judge Koopmans.

26. Cf. Art. 11 of the Draft Statute, submitted by the ad hoc assembly on March 10, 1953.

27. Cf. Art. 32, par. 2 of the Draft.

28. Cf. Art. 145 EEC Treaty "... have power to take decisions."

29. Art. 23, par. II of the Draft.

30. Art. 17, par. II of the Draft.

31. Note the difference from Art. 148, par. I, EEC Treaty "majority of its members".

32. Although it is significant for Parliament's narrow concept of respresentativity.

33. This might already have been recognised by the heads of state and government in 1972, cf. Final Communiqué of October 20, 1972.

34. For a detailed analysis of the budgetary part of the Draft, cf. the Chapter by Mr. Ørstrøm Møller.

35. See supra, note 18.

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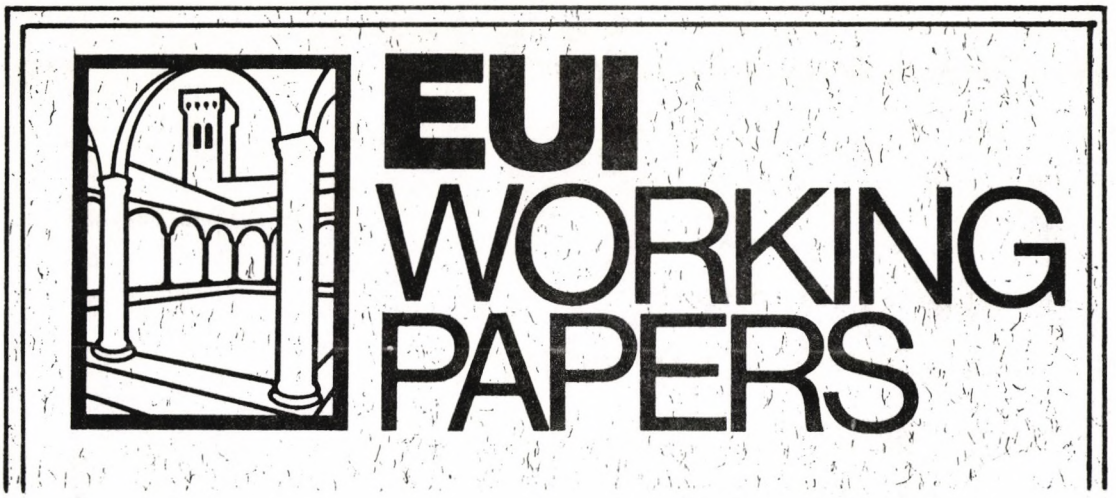

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