Chapter 3

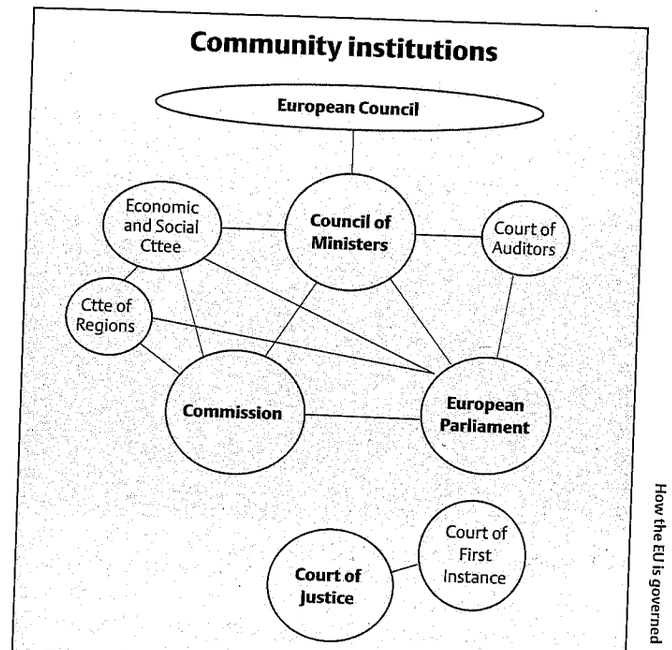
How the EU is governed

The EU has major economic and environmental powers, and is increasingly active in foreign policy, defence, and internal security. How is this power used and controlled? How is the Union governed?

The answer, according to many intergovernmentalists, is through cooperation among the governments of member states: the other institutions are peripheral to the Council in which the governments are represented, and this fact will not go away. But while the Council is still the most powerful institution, federalists regard the Parliament, Commission, and Court of Justice not only as sufficiently independent of the states to have changed the nature of the relationships among them, but also as major actors in a process that may, and should, result in the Union becoming a federal polity.

The European Council and the Council

The Council consists of ministers representing the member states; and at the highest level there is the European Council of Heads of State or Government together with the President of the European Commission. Heads of state are included in the title because the Presidents of France and Finland participate as well as their prime



The straight lines show direct relationships between the institutions, e.g. the Court of Justice and Court of First Instance are entirely independent of the others.

ministers, since they have some of the functions performed by heads of government elsewhere.

The European Council meets three or four times a year and takes decisions that require resolution or impulsion at that political level, sometimes because ministers have been unable to resolve an issue in the Council, sometimes because a package deal involving many subjects, such as a major amending treaty or a seven-year financial perspective, has to be assembled. The European Council

9. European Council 1979: facing different ways

also has to 'define general political guidelines'. Its rotating presidency is an important function, both for the management of current business and for launching new projects.

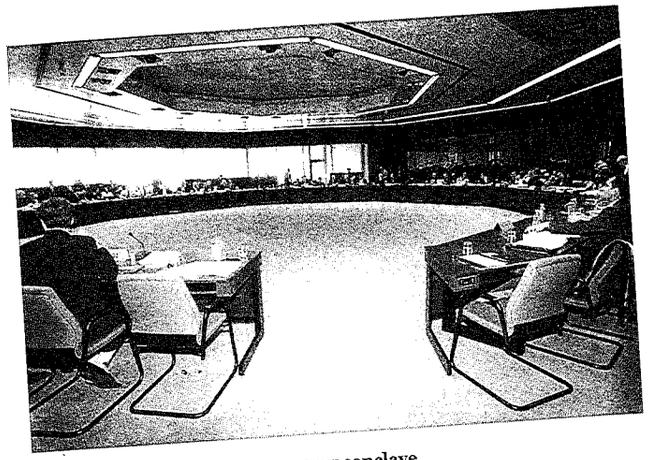
The meetings themselves are confined to three presidents (of France, Finland, and the Commission) and 27 heads of government, accompanied by foreign ministers, and sometimes finance ministers. But they are surrounded by a vast media circus which presents the results to the citizens of different countries in radically different ways. Thus readers of British newspapers could have been forgiven for supposing that the European Council in Helsinki in December 1999 was dominated by quarrels between Britain and France about beef and between Britain and the rest about proposals for a tax affecting the financial interests of the City of London. Yet beef was not on the agenda and tax

took up only a little time. Many journalists in other countries emphasized the decisions to open entry negotiations with six more states and to establish a rapid reaction force to help with peacekeeping.

The 'Presidency Conclusions' are issued after each meeting, usually in a lengthy document, sometimes with bulky annexes. Of course the heads of state and government themselves initiate only a few of their decisions, and do not have time or inclination for thorough discussion of all that is put before them. They do initiate some major projects, as for example the rapid reaction force, which was a joint British and French proposal. But most of the detail and the 'political guidelines' emerge from the Union's institutions, working with the European Council's President-in-Office.

The Council of Ministers is a more complicated body. Which minister attends a given meeting depends on the subject. It meets in up to 15 forms, including an Economic and Financial Council (Ecofin), an Agriculture Council, a Justice and Home Affairs Council, and a General Affairs Council comprising the foreign ministers, which is supposed to coordinate the work of the other Councils, but is in practice hard put to it to control Councils of ministers from powerful departments of state. Each Council is, like the European Council, chaired by the representative of the state that is serving in turn for six months as President-in-Office.

Unlike the European Council, large numbers attend the meetings of the Council. Several officials as well as ministers or their representatives from each member state are present; and they are joined by the relevant Commissioners. Officials from the Commission also attend, as well as those from the Council Secretariat, which provides continuity from one presidency to the next and has become quite a powerful institution. Also unlike



10. Council of Ministers: not a cosy conclave

the European Council, much of the Council's work is legislative and some is executive.

After protracted pressure for the Council to hold its legislative sessions in public, it does have open sessions for all deliberations under co-decision and for its first deliberations under other legislative procedures. But its proceedings remain more like negotiations in a diplomatic conference than a debate in a normal democratic legislature.

The resemblance to an international negotiation was yet more pronounced before the mid-1980s when, with the launching of the single market programme, qualified majority voting (QMV) began to replace unanimity as the procedure for legislative decisions. Though the treaty stipulated that only texts proposed by the Commission could be enacted into law, the unanimity procedure had given each minister a veto with which to pressure the Commission into amending its proposal; and although the treaty provided for QMV on a range of subjects, the veto implicit in the Luxembourg 'compromise' extended its scope in

practice to virtually the whole of legislation. The Committee of Permanent Representatives of the member states (called Coreper, after its French acronym) seeks common ground beforehand in the governments' reactions to the Commission's proposals; and given the difficulty of securing unanimity, it was thanks to the dedication of many of these officials that the Community was able to function at all. But measures identified by the Commission as being in the general interest and enjoying the support of a large majority were often reduced to a 'lowest common denominator', reached after long delay.

This contributed to the failure to make much progress towards the single market until the voting procedures were changed following the Single European Act. Up to then, single market measures had been passed at a rate of about one a month, barely enough to keep up with new developments in the economy, let alone complete the whole programme inside a quarter of a century. But the Single Act's provision for QMV on most of the single market legislation helped speed the rate to about one a week, putting the bulk of the laws in place by 1992.

The qualified majority among the 27 member states is 258 out of the total 345 weighted votes. The weights depend on size: France, Germany, Italy, and the UK have 29 votes each; Poland and Spain 27; Cyprus, Estonia, Latvia, Lithuania, and Slovenia have 4; Malta 3; and the rest are in between. Germany, with the biggest population, has the additional edge that the qualified majority will have to contain at least 62% of the Union's population, while to protect the smaller ones, at least a simple majority of states is required. This result of late-night bargaining in the Nice IGC was not designed for the EU citizens, who have to obey the laws and pay the taxes, to understand; and the Constitutional Convention had, as we shall see at the end of this chapter, a better idea.

While QMV is designed to ensure that laws wanted by a substantial majority can be passed, the Council still tries to

avoid overriding a minority of one government about something it regards as important. This is due partly to the need to treat minorities with care in a diverse polity, as is the case in the Swiss federal system; and that motive has an edge in the EU, where a disgruntled government could retaliate by bringing business to a halt on other matters still subject to unanimity. Partly it reflects the diplomatic culture which prevails in the Council. But the difference between that and the 'Luxembourg veto' is that a vote is quite often taken, and proceedings take place in what has been called 'the shadow of the vote', so that ministers prefer to compromise than to run the risk that a vote will produce an outcome which is worse for them. Often the President, judging that a problem has been resolved, suggests that a consensus has been reached and, if there is no dissent, the Council accepts the text without a formal vote.

With the use of QMV for single market legislation, the Luxembourg veto began to fade away, so that QMV became the context for a wider range of decisions; and it was extended by the Maastricht, Amsterdam, and Nice Treaties to cover some four-fifths of all fields of legislation. The remaining one-fifth or so to which unanimity applied comes under a variety of headings. Britain was among those that insisted it apply to some aspects of employment-related social policy, for reasons of ideology as well as subsidiarity. Money, rather than ideology, was the motive of those who opposed QMV for decisions on the aims, tasks, and organization of the structural funds. There is British insistence on unanimity for tax harmonization, partly on grounds of sovereignty. Treaty amendments raising the ceiling for the Union's tax revenue and treaties of accession or even association have been held to touch sovereignty so closely that they must be ratified by each member state. While the Nice Treaty provided QMV for nomination of the President and other members of the Commission, and the Secretary General of the Council, the states have kept their veto over other major appointments such as Judges of the Court of Justice and Executive Board members of

the European Central Bank, which have to be made by 'common accord' among the governments. Unanimity also prevails in the other two pillars, as Chapters 7 and 8 show.

The greater the number of member states, the harder it becomes to reach unanimous agreement. So in the context of enlargement, pressure grew to reduce the scope for the unanimity procedure, as the Nice Treaty indeed did to some extent; and this has been a source of conflict between those with more, or less, federalist orientation. A similar argument arises about the Council's executive role.

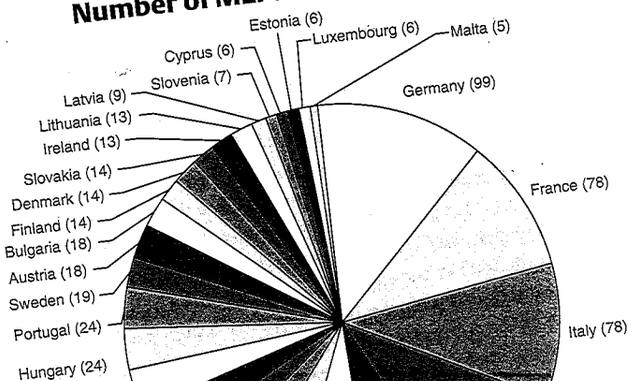
Unlike a legislative body in most democracies, the Council exercises significant executive powers. Although the Commission is, as Monnet envisaged, the Community's principal executive body, the Treaty allows the Council to 'impose requirements' on the way in which the Commission implements the laws, or even to see to their implementation itself. The Council disposes of a large number of committees of member states' officials to supervise the Commission's implementation and of 'working parties' to examine its legislative proposals, the whole network being controlled by Coreper. Each committee specializes in a branch of Community activity. They can be a useful means of liaison between the Commission and the states' administrations, to which the bulk of the execution of Community policies is in fact delegated. But the procedure that the Council has laid down for some of the committees makes it possible for officials from a minority of states to block the Commission's action until such time as the matter comes before the Council, which may then confirm the decision to block. This has led to complaints that the 'comitology', as the system is ironically called, undermines the Community's efficiency; and the Parliament, where it has the right to co-decide legislation, has used this to minimize the committees' blocking power. A committee may well be justified in resisting something the Commission wants to do in a particular case. But in general, it seems hardly credible that such a vast

and complex matter as the execution of a wide range of the Community's policies could in effect be the responsibility of a body comprising the representatives of 27 separate governments.

The European Parliament

Members of the European Parliament (MEPs) are directly elected by citizens throughout the Union in June of every fifth year. There are 785 of them, distributed among the member states in proportions that favour the smaller states, though to a lesser degree than in the weighting of votes in the Council: ranging from 99 from Germany; 78 each from France, Italy, and the UK;

Number of MEPs from each state



Total number of MEPs: 785

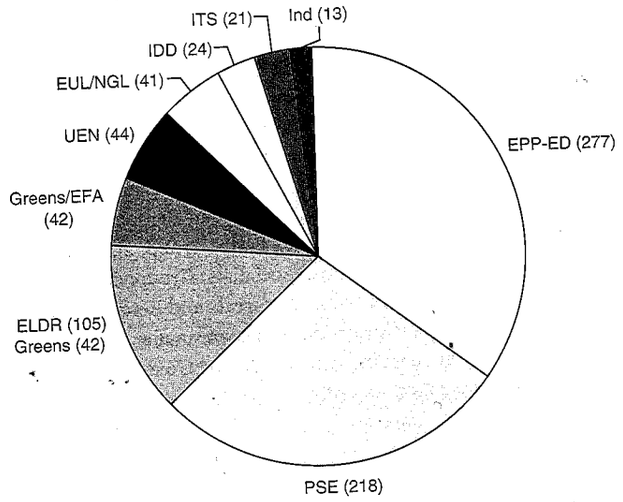
and 54 each from Poland and Spain; down to 7 from Slovenia; 6 each from Cyprus, Estonia, and Luxembourg; and 5 from Malta.

The political culture of the European Parliament differs radically from that of the Council. The meetings are open to the public; voting by simple majority is the routine; and the MEPs usually vote by party group rather than by state. Three-quarters of the MEPs elected in June 2004 belonged to the mainstream party groups: 268 to the centre-right Christian Democrat and Conservative EPP (European People's Party) Group; 200 to the centre-left PES (Party of European Socialists) Group; and 88 to the ELDR (European Liberals, Democrats and Reformists) Group. The rest were evenly divided between smaller groups to the left, of which the most important were the Greens, and to the right, with a variety of eurosceptics – including a French party called 'Hunters and Fishermen', opposing EU legislation that affects those sports.

While agreement has not yet been reached on a uniform electoral procedure, or 'principles common to all member states' as the Amsterdam Treaty more tolerantly put it, all the states now operate systems of proportional representation. Until the 1999 European elections, Britain's first-past-the-post system caused violent swings in the balance between parties, reducing the number of Conservative MEPs from 60 in 1979 to 17 in 1994, while that of Labour rose from 17 to 62. But the proportional representation introduced by 1999 moderated the swing, returning 36 Conservatives and 29 Labour – together with 10 Liberal Democrats, compared with only 2 in 1994 from a larger share of the vote.

The balance between the mainstream parties has otherwise been fairly stable, with neither the centre-right nor the centre-left able to command a majority. So a broad coalition across the centre is needed to ensure a majority for voting on legislation or the budget; and this is all the more necessary for amending or

Party groups in the Parliament in 2007



Total number of MEPs: 785

EPP-ED	Group of the European People's Party and European Democrats
PES	Group of the Party of European Socialists
ELDR	Group of the European Liberal, Democratic and Reformist Party
Greens/EFA	Group of the Greens/European Free Alliance
UEN	Group of the Union for a Europe of Nations
EUL/NGL	Confederal Group of the European United Left/ Nordic Green Left
ID	Independence/Democracy Group
ITS	Identity, Tradition & Sovereignty Group
Ind	Independent

rejecting measures under the increasingly important co-decision procedure, where an absolute majority of 367 votes is required. The well-developed system of committees, each preparing the Parliament's positions and grilling the Commissioners in a field of the Union's activities, also tends to encourage consensual behaviour. But there has none the less been a sharper left–right division since the elections of 1999.

Although the Parliament has performed well enough in using its now considerable powers over legislation and the budget, the voters' turnout has declined with each election, from 63.0% in 1979 to 45.5% in 2004. One reason is a general trend of declining turnouts in elections within member states. Another is a widespread decline in support for the Union. Yet another may be that the Parliament in particular has been exposed to critical and, particularly in Britain, downright hostile media comment, fastening on matters such as the prolonged failure to establish an adequate system for controlling MEPs' expenses (largely the fault of MEPs themselves, though by now rectified), and the two costly buildings in Brussels and Strasbourg between which it commutes (entirely the fault of governments). Citizens may, moreover, not yet be aware of how much the Parliament's powers have grown, following the Maastricht, Amsterdam, and Nice Treaties.

The legislative role has developed from mere consultation at first, through the cooperation procedure initiated by the Single Act, to the co-decision introduced by the Maastricht Treaty and extended at Amsterdam and Nice to the point where it now applies to well over half the legislation. Already in 1989 the Parliament could use its influence under the cooperation procedure to secure results such as stricter standards for exhaust emissions from small cars. With co-decision its influence has greatly increased; and it has used its power of assent over association agreements as a sanction against human rights abuses in Turkey, and to ensure better conditions for Palestinians exporting to the Community from the occupied territories.

11. Elected representatives at work: European Parliament sitting

In a typical example of Union jargon that is hard for the public to understand, the budgetary expenditure is divided into CE (compulsory expenditure) and NCE (non-compulsory expenditure). The CE was opaquely defined as 'expenditure necessarily resulting from this Treaty or from acts adopted in accordance therewith' but was in fact designed to avoid parliamentary control over the agricultural expenditure, which France saw as a major national interest; and the Parliament has indeed fought to limit the growth of that part of the budget. But while its power over the CE is limited, the Parliament has the edge over the Council for the NCE, which, along with the expansion of the structural funds, has grown until it now accounts for over half the total expenditure. One example of the Parliament's use of its powers was the increase in the aid for economic transformation in Central and East European countries after they emerged from Soviet control.

While the Parliament's share of power to determine the budget is an essential element of democratic control, its role

in supervising how the money is spent has had the greatest impact. As well as its power of scrutiny over the Commission's administrative and financial activities, the Parliament has the right to grant 'discharge': to approve – or not – the Commission's implementation of the previous year's budget, on the basis of a report from the Court of Auditors. If not satisfied, the Parliament withholds discharge until the Commission has undertaken to do what is required. Thus in 1992 it delayed the grant of discharge for the 1990 accounts until the Commission had agreed to allocate 50 members of its staff to an anti-fraud unit. In 1998, after the Parliament had withheld discharge for the 1996 accounts and was not satisfied with the Commission's response, it appointed a high-level expert committee to investigate in more detail. They produced a devastating report on mismanagement and some cases of corruption; and the Commission, anticipating the Parliament's use of its power of dismissal, resigned in March 1999.

The Parliament then used the powers it had gained in the Maastricht and Amsterdam Treaties over the appointment of the new Commission. First it made full use of its power over the appointment of the Commission's President, interviewing Romano Prodi to make sure he was a suitable choice for President, with acceptable policy orientations, then each of the nominated Commissioners, before approving the Commission as a whole. In 2004 it approved the nomination of José Manuel Barroso as President but refused to accept a Commission that included Rocco Buttiglione, because of the views he had expressed about women and homosexuals. Barroso then presented a list without him, and undertook, should Parliament withdraw its confidence from a Commissioner, either to require his resignation or formally justify a refusal to do so.

Having demonstrated its powers over both appointment and dismissal of the Commission, the Parliament is well placed to make clear to voters that it can in future use its influence to secure the appointment of a candidate for Commission President

who reflects the results of European elections; and it has been suggested that a commitment by Parliament to do so could enhance voters' interest in the elections and thus strengthen the Union's representative democracy.

The Parliament shares power equally with the Council for over half of the enacted legislation and of the budget; and it has proved much better able than the Council to control the Commission. So it can be said that the Parliament is more than halfway towards fulfilling the functions of enacting legislation and controlling the executive, which a house of the citizens in a federal legislature would perform. The Council for its part would be akin to a house of the states, save that the unanimity procedure still applies to one-fifth of the legislation, many of its legislative sessions are not held in public, and it has retained executive powers that ill accord with its legislative role.

The Economic and Social Committee and the Committee of the Regions

Alongside the Parliament and the Council, the Community has two advisory bodies: the Economic and Social Committee (Ecosoc) and the Committee of the Regions. The Commission and Council must consult them on certain subjects specified by the treaty; the Commission, Council, or Parliament may consult them on any subject; and they can issue their 'opinions' on their own initiative. Both have 344 members, nominated by the states and appointed by the Council.

The members of Ecosoc represent a wide range of economic and social interests. Those of the Committee of the Regions are representatives of regional and local bodies. Both produce reports that are useful, though not usually influential. But with the influence that the German Länder already exert in Community affairs, and the growing strength of regional representation in other member states, of which the Scottish Parliament and Welsh

Assembly are notable examples, the Committee of the Regions may well gain more influence in future.

The European Commission

While the Commission, as it stands today, is not the federal executive that Monnet envisaged, it is, with its right of 'legislative initiative' and its functions in executing Community policies and as 'watchdog of the Treaty', a great deal more than the secretariat of an international organization.

The Treaty of Rome gives the Commission the sole right of legislative initiative, that is, to propose the texts for laws to the Parliament and the Council. The aim was to ensure that the laws would be based more on a view of the general interest of the Community and its citizens than would result from initiatives of the member state governments, and that there would be more coherence in the legislative programme than they or the Councils with their various functional responsibilities could provide. Armed with this power, the Commission was in its early days often called the 'motor of the Community'. After it had been weakened by de Gaulle's assault in the 1960s, the balance of power swung towards the Council and, since its establishment in 1974, the European Council. But the Commission still performs the essential role of initiating both particular measures for the Council and Parliament to decide, and general policy packages that the President-in-Office steers through the European Council. Outstanding examples of the latter were the 'Delors package' of budgetary reform that the European Council adopted in 1992 under British presidency, and the *Agenda 2000* reforms of Community policies to prepare for the Eastern enlargement that were agreed under German presidency in 1999; while the part played by the Commission in driving through the massive 'Bolkestein Directive' for completing the internal market for services demonstrated the essential part it continues to play in promoting the Union's development.

The Commission has also been called the 'watchdog' because it has to ensure that the Community's treaty and laws are applied, notably by the member states. If it has evidence of an infringement, it has to issue a 'reasoned opinion' to the state in question. Should the latter fail to comply, the Commission can take it to the Court of Justice. This is what happened in 1999 when the French government refused to accept the Community's decision that British beef was by then safe to eat and its import should be allowed. The Court found in the UK's favour in late 2001, although it was not until 2006 that the other member states agreed to lift restrictions, and fines were imposed on France by the Commission in excess of €10 million. The Commission is also responsible for executing Community law and policy, though much of it is delegated to member state governments and other agencies.

In order to ensure that the Commission works in the general interest of the Community, the treaty requires that its independence of any outside interests be 'beyond doubt'; and the Commissioners, on taking up office, have to make a 'solemn undertaking' to that effect. Although the treaty provides for their nomination by 'common accord' among the governments, each government has in the past made its own nomination and this has been accepted by the others. But this can no longer be taken for granted, because the accord of the Commission's newly appointed President is now also required before the Parliament's approval of the Commission as a whole.

Until 2005 there were two Commissioners from each of the larger and one from each of the smaller states. But the impending enlargement caused concern that a larger Commission would be less effective, so the Nice Treaty limited the number of Commissioners, as from 2005, to one from each member state. Proposals for a smaller number were stoutly resisted by smaller states such as Ireland. But the Treaty's Protocol on Enlargement

provided that the number of Commissioners in the first Commission appointed after the accession of the 27th member state was to be fewer than the number of member states; and they were to be chosen with 'a rotation system based on equality'. So there will be tough negotiations between 2007, when Bulgaria and Romania joined, and the second half of 2009 before the next Commission starts work.

Reducing the number of Commissioners to fewer than one per state is by no means the only way to secure effectiveness. The top tier of governments, such as the British Cabinet, usually has over 20 members, in some cases over 30; and this has worked because a Prime Minister has the power to control the other members. The Amsterdam and Nice Treaties moved the Commission some way in that direction by giving the President the power not only to share in the decisions to nominate the other Commissioners, but also to exercise 'political guidance' over the Commissioners, to allocate and 'reshuffle' their responsibilities, to appoint

12. First meeting of the new Commission, 1999: President Prodi enjoys a laugh

Vice-Presidents, and to sack a Commissioner 'after obtaining the collective approval of the Commission'.

In treaty terminology, the Commission is the whole body of Commissioners. In common usage, it also refers to the Commission's staff. But it is usually clear whether reference is being made to the Commissioners or the 23,000 employees; and despite loose talk of a bloated bureaucracy, this is fewer than the numbers employed by many local authorities.

Since QMV now applies to the bulk of legislation, the Commission's sole right of initiative has given it a strong position in the legislative process. The Council can amend the Commission's text, but only by unanimity, which here works in the Commission's favour instead of against it, for while the Commission normally prefers to accommodate governments' wishes, it is better placed to resist their pressure on points it regards as important.

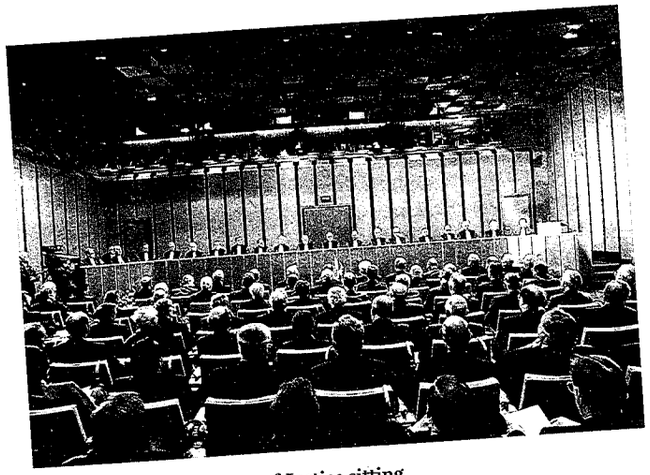
The Commission has performed its legislative role well. But its performance as an executive has been heavily criticized. Much of the criticism has been unfair, where the execution is in fact delegated to the member states. This is a good principle, which works well in Germany's federal system where the Länder administer most of the federal policies. But there the federal government has more power to ensure adequate performance from the Länder, whereas member states tend to resist the Commission's efforts to supervise them. The answer is surely not more direct administration by Brussels, but enough Commission staff to undertake the supervision and stronger powers to ensure proper implementation by the states.

The Commission has a good record in fields such as the administration of competition policy, where it was given the power to do the job itself and has done it well despite a shortage of officials. But there have been serious defects when it has been

required to administer expenditure programmes without the staff who can do this properly, resulting in defects either in its own work or in that of consultants hired to do it, with sometimes bad and in a few cases fraudulent consequences.

Such defects, as well as those due to inadequate administrative practices and sense of financial responsibility, were among the criticisms of the report that led to the Commission's resignation in 1999 and to insistence that the new Commission must carry out radical administrative reform. The result included changes in recruitment, training, promotion, and disciplinary procedures; a new audit unit in the Commission to ensure funds are spent properly; and an 'inter-institutional committee' to oversee standards of behaviour in the Commission, the Council, and the Parliament.

Prodi was bold enough to suggest that the Commission is a European government. How far could this be this an accurate description? Within the fields of Community competence, its right of legislative initiative resembles that of a government, and even exceeds it in so far as the Commission's is a sole right. But its use of the right is constrained by the Council, particularly where the unanimity procedure applies, though also by the use of QMV rather than a simple majority. The difference is, however, greater in comparison with Britain than with states that practise a consensual style of coalition government. The Commission's executive role is constrained by the Council and the comitology but is otherwise not, in principle, far different from that of the German federal government, apart from the German government's more effective means of enforcing proper implementation by the Länder. A crucial distinction between the Commission and a government is, indeed, that the Commission does not control any physical means of enforcement. It has moreover only a minor role in general foreign policy, and very little in defence. Along with the differences, however, there are significant similarities.



13. Rule of law: the Court of Justice sitting

The Court of Justice

The rule of law has been key to the success of the European Community. Increasingly, in its fields of competence, a framework of law rather than relative power governs the relations between member states and applies to their citizens. This establishes 'legal certainty', which is prized by business people because it reduces a major element of risk in their transactions. Politically, it has helped to create the altogether new climate in which war between the states is deemed to be unthinkable.

At the apex of the Community's legal system is the Court of Justice, which the treaties require to ensure that 'the law', comprising the treaties and legislation duly enacted by the institutions, 'is observed'.

There is one judge from each member state, appointed for six-year terms by common accord among the member states and whose

independence is to be 'beyond doubt'. The Court itself judges cases such as those concerning the legality of Community acts, or actions by the Commission against a member state or by one member state against another, alleging failure to fulfil a treaty obligation. But the vast majority of cases involving Community law are those brought by individuals or companies against other such legal persons or governments; and these are tried in the member states' courts, coming before the Court of Justice only if one of those courts asks it to interpret a point of law.

The Court's most fundamental judgments, delivered in the 1960s, were based on its determination to ensure that the law was observed as the treaty required. The first, on the primacy of Community law, was designed to ensure its even application in all the member states; for the rule of law would progressively disintegrate should it be overridden by divergent national laws. The second, on direct effect, provided for individuals to claim their rights under the treaty directly in the states' courts. Then in 1979 a judgment on the 'Cassis de Dijon' case laid a cornerstone of the single market programme, with the principle of 'mutual recognition' of member states' standards for the safety of products, provided they were judged acceptable; and this radically reduced the need for detailed regulation at the Community level. In 1985 the Court required the Council to fulfil its treaty obligation, outstanding since 1968, to adopt a common transport policy; and the Council duly complied.

The Court has by now delivered some 7,200 judgments, and cases continue to come before it at a rate that makes it hard to reduce the delays of up to two years before judgments are reached. A 'Court of First Instance' was established to help deal with this problem, hearing almost all cases brought by individuals or legal persons, which relate mainly to competition policy and to disputes between Community institutions and their staff. But this has stemmed, not turned, the tide of cases awaiting judgment.

While litigants can appeal from the Court of First Instance to the Court of Justice on points of law (hence the words 'first instance'), there is no appeal beyond the Court of Justice, which is the final judicial authority on matters within Community competence. To enforce its judgments, however, it depends on the enforcement agencies of the member states. The fact that the large majority of judgments under Community law are made by the states' own courts has instilled the habit of enforcing it; and there has been no refusal to enforce the judgments of the Court itself, even if there have sometimes been quite long delays before member states have complied with judgments that went against them.

The Court's jurisdiction is almost entirely confined to the fields of Community competence and, to some extent, the 'pillar' dealing with police and judicial cooperation. But within these limits, and apart from the almost total reliance on the member states' enforcement agencies, the Community's legal system has largely federal characteristics.

Subsidiarity and flexibility

In a speech delivered in Bruges in 1988, Mrs Thatcher famously evoked the spectre of a 'European super-state exercising a new dominance from Brussels'; and a 'slippery slope' leading towards a 'centralized super-state' has become a favourite metaphor for British eurosceptics. From a different starting point, German Länder have looked askance at proposals for Union competence in fields that belong to them in Germany's federal system. Indeed many federalists find the treaty objective of 'an ever closer union' too open-ended, and most support the principle of 'subsidiarity' as a guide to determine what the Union should do and what it should not do. That principle, which has both Calvinist and Catholic antecedents, requires bodies with responsibilities for larger areas to perform only the functions that those responsible for smaller areas within them cannot do for themselves. Following this principle, the treaty requires the Community to 'take action ... only

if and insofar as the objective of the proposed action cannot be sufficiently achieved by the Member States', and can, 'by reason of its scale or effects, be better achieved by the Community'.

The Rome Treaty implicitly recognized this principle in distinguishing between two kinds of Community act: the Regulation, which is 'binding in its entirety' on all the member states; and the Directive, which is binding only 'as to the result to be achieved', leaving each state to choose the 'form and methods'. But this was a very partial application of the principle; and Directives were sometimes enacted in such detail as to leave little choice to the states. So the Maastricht Treaty defined subsidiarity and the Amsterdam Treaty laid down detailed procedures aiming to ensure that the principle would be practised by the Community institutions. Some federalists, finding this an insufficient safeguard against over-centralization, have proposed that the treaty should list competences reserved to member states. As a result of German pressure in particular, the constitutional Convention was required to propose a 'more precise delimitation' of powers between the Union and the states.

There are of course disagreements about the fields in which integration is justified. These left their mark on the Maastricht Treaty, in the British opt-outs from the social chapter and the single currency, and those of Denmark on the single currency and defence. Since the treaty can be amended only by unanimity, the other governments had to accept the opting-out if these items were to be included in it; and this led to growing interest in the idea of 'flexibility', enabling those states wanting further integration in a given field to proceed within the Community institutions or, to put it the other way round, letting a minority opt out. One purpose was to circumvent the veto of the UK or Denmark, where there was strong resistance to further integration. Although British policy changed somewhat after Labour's election victory in 1997, there is still British and Scandinavian resistance to some reforms which most other

governments regard as necessary; and it is also feared that some of the new member states may prove unwilling or unable to proceed with further integration.

The concept of flexibility emerged in the Amsterdam Treaty under the heading of 'enhanced cooperation': a term preferred by federalists because it implied a deeper level of integration among a group of states, whereas eurosceptics tended to see flexibility as a way of loosening bonds in the Community as a whole. The Amsterdam Treaty provided for enhanced cooperation within the Community provided that a number of conditions were met, including unanimous agreement that it be applied in any given case, and the Nice Treaty allowed any group of eight or more states to proceed within the Union framework if a qualified majority consent.

Citizens

The concept of citizenship of the Union was introduced in the Maastricht Treaty, which provided that all nationals of the member states are also citizens of the Union; and the Amsterdam Treaty added that the two forms of citizenship are complementary. The Maastricht Treaty included a few new rights for the citizens, such as to move and reside freely throughout the Union subject to specified conditions, and to vote or stand in other member states in local and European, though not national, elections. This short list comes on top of specific rights already guaranteed by the treaties, such as protection for member states' citizens against discrimination based on nationality in fields of Community competence, and equal treatment for men and women in matters relating to employment. The Union's institutions are also required to respect fundamental rights, as guaranteed by the European Convention on Human Rights and Fundamental Freedoms. The Amsterdam Treaty affirmed that the Union is 'founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are

common to the member states'; and it went on to provide that, in the event of a 'serious and persistent breach' of these principles, a member state could be deprived of some of its rights under the treaty, including voting rights.

In response to concerns that the Union needs to do more to attract the support of its citizens, a Charter of Fundamental Rights was also drafted, in parallel with the IGC which prepared the Nice Treaty, by a Convention that set the precedent for the Convention which drafted the Constitutional Treaty. But the European Council, while 'welcoming' the Charter, did not include it in the Treaty, though the Court of Justice has referred to it in some of its judgments. The Treaty did, however, provide for the Parliament to appoint an Ombudsman to investigate citizens' complaints about maladministration by Community institutions and report the results to Parliament and the institution concerned.

Apart from the question of rights, the system for governing the Union, with its complex mix of intergovernmental and federal elements, makes decision-making difficult and a satisfactory relationship between the institutions and the citizens hard to achieve. Yet unless the citizens develop sufficient support for the Union alongside that for their own states, the states' electorates could become a centrifugal force leading to disintegration; and the enlargement to 27, probably eventually over 30, states presents additional problems. There has been lively academic discussion on the need for a Union demos to sustain a Union democracy, which has encouraged scepticism regarding its possibility. The Union has, however, been able to benefit from its growing democratic elements such as the powers of the European Parliament, and it is unduly pessimistic to assume that the process cannot continue, along with the development of the Union as a whole. The solidarity among citizens remains far short of what would be necessary for a federal state. Substantial further reform is, indeed, envisaged in the Reform Treaty approved by the IGC in October 2007.

Reform Treaty

Much of the comprehensive reform proposed in the Constitutional Treaty remains in the Reform Treaty approved by the European Council in October 2007 in a way that took account of the objections of member states; and even if not ratified by all of them, it may still indicate the direction of subsequent reforms, whether of the Union as a whole or of a substantial group of states such as the eurozone. The relationships between the institutions are to be simplified by abolishing the three-pillar structure introduced in the Maastricht Treaty; and this would be reflected in the Treaty structure, with a Treaty on the Functioning of the Union, based on parts of the Union's first pillar, alongside a Treaty on the European Union, the two together being designated the Reform Treaty.

The European Council is to fulfil its political responsibility for the strategic course of Union policy more coherently by electing a President for a two-and-a-half year period, renewable once, instead of rotating the post among the government heads of 27 or more member states. Nor would the President be distracted by holding any national office.

The Presidency of the Council is also to be reformed, though less radically, by the introduction of presidential trios of member states for 18-month periods, each holding the office for 6 months. The President of the Foreign Affairs Council would be appointed by the European Council, would be called the High Representative of the Union for Foreign Affairs and Security Policy, and would also serve as a Vice-President of the Commission in the interests of coherence for the Union's external policy as a whole. Qualified majority would be the Council's 'normal' legislative procedure, applying to over two-thirds instead of less than one-third of items. The allocation of a voting weight to each member state would be replaced by a general rule that a majority comprises 55% of the states containing 65% of the Union's population, though, in order

to overcome Polish objections, that would not apply until 2014, with a minor exception until 2017.

The European Parliament is to be strengthened by extending co-decision to become, like QMV, the norm for Union legislation; and the distinction between 'compulsory' and 'non-compulsory' expenditure, which undermined the Parliament's control over agricultural spending, would be abolished. While the European Council is to continue to nominate the President of the Commission, it would be required to take account of the results of the European elections, and its nominee would be subject to election by the Parliament, which could help to give citizens a sharper sense of the political significance of voting in European elections. Along with the citizens' role in the Union's representative government, an element of direct democracy is to be introduced in the form of a requirement for the Commission to prepare a legislative proposal in response to a demand signed by a million citizens. The member states' parliaments could moreover object to a draft law on the grounds that it infringes the principle of subsidiarity, and if one-third of them did so, the Commission would have to reconsider its proposal.

The number of Commissioners is to be reduced to two-thirds that of the member states, by giving each state the right to nominate one for each of two Commissions out of three. Consonant with the abolition of the pillars, the role of the Commission in Justice and Home Affairs would be enhanced. Its power to ensure, together with the Court of Justice, that the member states comply with Union law would be strengthened. The Charter of Fundamental Rights is to be legally binding, save that it would not apply to UK domestic law; and the citizen's access to the Court would be improved. The Union's external role is to have a sounder juridical basis through giving it a single legal personality.

Along with the expanded role of the High Representative, the capacity for external action is to be augmented by a more explicit

treaty base regarding climate change and energy solidarity, and by providing that a group of member states with the necessary military capability may establish permanent structured cooperation within the Union in the field of defence. Among the concessions to secure member states' acceptance to the mandate were those providing that the UK could opt into or out of policies concerning frontiers, asylum, and judicial cooperation, together with exemption from application of the Charter of Fundamental Rights to UK domestic law. The UK Independence Party should be pleased with the provision for negotiated secession from the Union.

Taken as a whole, the Reform Treaty comprises a broad agenda for making the Union more effective and democratic: a necessary counterpart for effective and democratic government in member states.

Chapter 4
Single market, single currency

While peace among the member states remained at the heart of the Community's purpose, from the second half of the 1950s a large common market became the focus for its action. The strength of the US economy was a striking example of the success of such a market; the Germans and the Dutch wanted liberal trade; and the French accepted the common market in industrial goods provided it was accompanied by the agricultural common market that would favour their own exports.

The idea of a large common market had a dynamic that endured through the subsequent decades, because it reflected the growing reality of economic interdependence. As technologies developed, and with them economies of scale, more and more firms of all sizes needed access to a large, secure market; and for the health of the economy and the benefit of the consumers, the market had to be big enough to provide scope for competition, even among the largest firms. So as the European economies developed, the EEC's original project, centred on abolition of tariffs in a customs union, was succeeded in the 1980s by the single market programme, then in the 1990s by the single currency.

There were both economic and political motives for each of the three projects: the benefits of economic rationality; and the consolidation of the Community system as a framework for