The Treaty of Amsterdam: Towards a New Institutional Balance

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Abstract

This paper analyses the so-called 'Draft Treaty of Amsterdam' of 19 June 1997, focusing on the changes concerning the institutions and the decision-making procedures. It is argued that the sum of envisaged changes will considerably alter the institutional balance between the three main actors, i.e. the Commission, the Council and the European Parliament. The latter, in particular, will have an increased influence vis-à-vis the Commission (via the investiture procedure) and a greater say vis-à-vis the Council (in the codecision procedure). With regard to the internal organisation of the three institutions, too, remarkable changes are on the horizon. The roles of the Committee of the Regions and of the national parliaments in EC policy-making have been consolidated and clarified respectively. We conclude with an overall assessment of the results of the IGC 1996/97. The paper includes a synopsis of all Treaty changes in the procedural field, and a graph presenting the new codecision procedure.

Kurzfassung

Dieser Artikel analysiert den sogenannten Vertragsentwurf von Amsterdam vom 19. Juni 1997, wobei die Neuerungen im institutionellen und Verfahrensbereich im Mittelpunkt stehen. Wir argumentieren, daß die Gesamtheit der geplanten Veränderungen das institutionelle Gleichgewicht zwischen den drei Hauptakteuren, also der Kommission, dem Rat und dem Parlament, wesentlich verändert. Insbesondere das Parlament wird größeren Einfluß auf die Kommission ausüben können (und zwar über das Bestellungsverfahren) und wird an Einfluß gegenüber dem Rat gewinnen (über das Mitentscheidungsverfahren). Auch hinsichtlich der internen Organisation der drei Organe stehen Veränderungen an. Die Rolle des Regionalausschusses und der nationalen Parlamente in der EG-Entscheidungsfindung wurde konsolidiert bzw. geklärt. Wir schließen mit einer Bewertung der Ergebnisse der Regierungekonferenz 1996/97. Teil des Papiers ist eine Synopse aller Vertragsänderungen im Verfahrensbereich und ein Schaubild des neuen Mitentscheidungsverfahrens.

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Contents:

I. Introduction

In this paper, we shall analyse the so-called 'Draft Treaty of Amsterdam' of 19 June 1997(1), focusing on the changes concerning the institutions and the decision-making procedures. It will be argued that the sum of envisaged changes will considerably alter the institutional balance between the three main actors, i.e. the Commission, the Council and the European Parliament. The latter, in particular, will have an increased influence vis-à-vis the Commission (via the investiture procedure) and a greater say vis-à-vis the Council (in the codecision procedure). With regard to the internal organisation of the three institutions, too, remarkable changes are on the horizon. The roles of the Committee of the Regions and of the national parliaments in EC policy-making have been consolidated and clarified respectively. We conclude with an overall assessment of the results of the IGC 1996/97.

II. The New Codecision Procedure: Towards an Equal Footing

The reform of the codecision procedure is to be considered as one of the major results of the IGC. The following changes were agreed on (see also the Figure 1):

- If the Council agrees to the EP's amendments in the 1st reading already, it may adopt the act at this very early stage. Given the fact that carrying the procedure on to the (cumbersome and time-consuming) conciliation procedure stage is rather unpopular among the MEPs as well as the ministers, officials from the EP consider this a major change in so far as the MEPs will be inclined to draft their amendments carefully, trying to anticipate the Council's views on the issue in order to get its approval already at this early stage(2).
- If, in turn, the EP approves the Council's common position in the 2nd reading, the act is deemed to be adopted without being referred back to the Council.
- If, in the 2nd reading, the EP does not take a position within three months, the act is also deemed to be adopted in the version of the Council's common position; this is the last remaining imbalance between the two 'chambers' since the decision finally taken would in this case not necessarily reflect a jointly agreed text.
- The EP can reject the common position right away during the 2nd reading, i.e. it has not to notify to the Council its intention to reject in advance.
- If, in the 2nd reading, the Council agrees to the EP's amendments, the act is also deemed to be adopted without any further formal decision.
- There is still a 3rd reading, but it was changed in such a way that the Council may no longer resume its original common position after the failure of the conciliation committee; this was one of the main criticisms to the original codecision procedure.
- Various new time limits were introduced to assure that the period between the EP's 2nd reading and the outcome of the whole procedure may not take longer than 9 ½ months; only the 1st reading will be without time limits(3). Nevertheless, the experience of codecision tells us that due to the existing time limits it is already the shortest procedure available, despite the possibility of three readings in both chambers(4).

These changes show that the EP came very close to what it had asked for in the IGC. In fact, the *changes eliminate the procedural imbalances* between the two major players, i.e. the Council and Parliament, to a very large extent. Remaining differences can be assimilated to a useful distribution of roles, while the overall political weight of the two institutions within the codecision procedure may now be considered equal. Furthermore it can be argued that the last formal inequality, i.e. the need for Parliament to pronounce itself on the Council's common position within a reasonable period, is only a 'whip in the window' with a view to an effective internal organisation.(5) It is however noteworthy that the new wording of Article 189b [= 251 new](6) TEC still lacks a similar provision in the case of the Council not acting within the time limit of three months in the second reading: if the Council fails to reach a decision on the EP's amendments in time, the procedure simply comes to an illegal halt(7), but the legislative act is not deemed to be adopted in the EP's version. One has to admit, however, that at this stage of the legislative procedure the Commission's opinion has a role to play. Therefore, it would not be obvious what the latest version of the text would be, either that of the EP or possibly an amended version by the Commission. In this perspective, strict equality between the two legislative chambers would not offer an adequate solution to the peculiarity of the triangular institutional balance.

Against this background, we conclude that the reform of codecision finally puts the Euro-Parliament on an essentially equal footing with the Council (as far as this procedure is concerned). Considering that this procedure will be applied in many more cases than before, the 1996/97 IGC is indeed a *major step towards a system based on bicameral parliamentary democracy at the EC level*. It is interesting to note that the Treaty language did not take into account this gradual change from a Council centred to a bi-cameral system: While in the Single European Act the formula „the Council shall ... in cooperation with the European Parliament adopt" was used, the Maastricht Treaty does not mention the EP in most cases: „the Council shall, acting in accordance with the procedure referred to in Article 189b ..., adopt...."(8). The Amsterdam Treaty is thus not going to change the remaining imbalance in the Treaty language although the titles of the legislative acts on the basis of Article

189b [= 251 new] TEC already include the EP (e.g. „Directive ... of the European Parliament and the Council of Ministers on ....").

2

III. The EP's New Competences: Towards Parliamentary Democracy

The EP started out as a purely consultative body composed of representatives delegated from the national parliaments. Over the last decades, it saw its powers extended with each major Treaty reform. In the aftermath of the first direct election in 1979, the EP itself gave an important impetus for the 1986 Single European Act which introduced both the cooperation and the assent procedures with its 'Draft Treaty on European Union' (although the latter was not as such accepted by the governments). Nevertheless, pure consultation was kept as an alternative modus of EP involvement for many areas of European policy-making. The Maastricht Treaty continued along these lines by adding yet another procedure. 'Codecision' under Art 189b [= 251 new] TEC gave further-reaching (although not yet: *equal)* powers to the parliamentary EC chamber, but was far from representing the one and only standard procedure. Resulting from this incremental reform process was a patch-work style landscape of EC decision-making: for each and every single case, one out of approx. 20 variants(9) of the four main procedures would apply. Neither of them, however, fulfilled the criteria of putting the EP on an equal footing with the governments represented in the Council. Therefore, the EP's demands for the 1996/97 IGC focused not only on improving codecision (see above II.) but also on making it the single standard procedure in all EC law-making.

Table 1

With a view to the extension of EP competences (and other procedural changes), our synopsis in Table 1 presents an overall picture of the IGC output as agreed in Amsterdam. In short, no uniform decision procedure was established, yet again. Among the numerous specific changes, we would like to highlight the following points:

In the *TEU*, the new Article Fa gives the EP an additional right to assent, i.e. when the Council determines a breach of the Union's principles by a member state. By contrast, there is still mostly no involvement, or only consultation, in the 2nd and 3rd pillars of the Union: With regard to some areas of the 3rd pillar(10) a special consultation procedure will apply that is already known from one case in the 1st pillar, namely the conclusion of international agreements(11): the Council may lay down a time limit (which shall be no less than three months) for the delivery of the EP opinion; in contrast to the ordinary consultation procedure, the Council may act without this opinion if not delivered in time(12). In those areas which will be 'communautarized', i.e. transferred from the 3rd to the 1st pillar(13), the EP will not be involved at all or only on a consultative basis during the five years after the entry into force of the new Treaty. After five years, the competence to harmonise the rules and procedures concerning visa will automatically be transferred to codecision, whereas for the rest of the decisions taken under the new title on free movement of persons this transfer has to be decided unanimously by the Council after consultation of the EP(14).

In those areas which are *already covered by the TEC*, the reform did not bring about a single legislative procedure, either. The state of affairs after Amsterdam can be summarised in the following five points:

(1) In some central issues where the Amsterdam Treaty introduces new provisions or amends existing

ones, there is still only *consultation* of the EP: this concerns e.g. the authorisation to closer cooperation(15); measures against discrimination(16); most decisions on asylum/immigration(17); also parts of the social and R&D policies.

3

With regard to such articles which remained unchanged by the Amsterdam Treaty, three provisions should be pointed out: (i) The main legal basis for action in the field of agricultural policy, Article 43 [= 37 new] TEC, will also in the future provide for EP consultation only. However, the provision on public health(18) was changed to encompass areas which were previously ruled under Article 43 TEC, i.e. veterinary medicine and phytosanitary measures. Since those decisions are already being taken according to the codecision procedure, we may conclude that the EP has now at least 'a foot in the door' to become a decisive co-legislator in the agricultural field. Still, in the important area of the common agricultural market organisations, the Council acts after having consulted the Parliament only(19). This is particularly deplorable since in this area, neither the EP nor the national parliaments(20) have a say with regard to the content or the budget of the policy. (ii) Another important area where the EP is still involved on a consultative basis only is the harmonisation of legislation concerning indirect taxes, such as turnover taxes and excise duties(21). (iii) Finally, Article 235 [= 308 new] TEC remains unchanged. It allows the Council to adopt legislation that cannot be based on more specific competences but nevertheless is „necessary to attain, in the course of the operation of the common market, [if] one of the objectives of the Community and this Treaty has not provided the necessary powers". This is the so-called 'subsidiary competence' provision which has been the legal basis for many important legislative acts, such as the 1976 Equal Treatment Directive(22).

(2) The *cooperation procedure* has been replaced by codecision in most cases, but not for EMU. It should be reminded here that 'cooperation' gives the EP no veto power.

(3) Although codecision applies to only 8 out of 36 new competences attributed to the EC by the Amsterdam Treaty (see Table 1), there are 22 (23)(23) new *issues under codecision* which come in addition to the 15(24) set out in the Maastricht Treaty. In future, the EP will thus be a co-legislator under 37 provisions altogether; among those areas are central legislative powers of the Union such as most common market related provisions and at least some types of decisions within the majority of all other policy areas [see however pt. (1) and (2) above as well as (4) and (5) below].

(4) There are, however, also *new cases of non-involvement* of the EP: e.g. when decisions are taken on further member states joining a 'closer cooperation' among others(25); on emergency measures related to immigration(26); on recommendations on employment policy(27); on the implementation of social partner agreements in social affairs(28); on adaptation or supplementing of R&D programmes(29); on the suspension of rights deriving from TEC for a Member state which is in breach of fundamental principles of the Union(30). In particular, international agreements are an area where the EP has only a limited role to play in the day-to-day decision-making: except for association agreements under Article 238 [= 310 new] TEC, the EP's consultation is not formally based on the Treaty when the Council concludes (Article 228 [= 300 new] para. 2 TEC) or suspends(31) an agreement(32), but on a voluntary basis (the so-called Luns/Westerterp procedure). Also in the field of economic policy, Parliament is often only informed of decisions taken by the Council(33).

(5) It is noteworthy that no changes were agreed on the EP participation in the *budgetary procedure*, although this issue had been explicitly put on the IGC agenda by the Interinstitutional Agreement of 1993.(34) Thus, in financial matters, the EC system remains quite *sui generis*.

For an overall assessment of the extension of EP competences in the Amsterdam Treaty, one should remind that few had expected the IGC to result in a 'land slide' regarding EP competences in EC/EU decision-making. Nevertheless, significant improvements were agreed. In our view, codecision will from now on be perceived *as the standard procedure*, consultation or cooperation will be considered as the exception of the rule only. This will most likely not only change the public perception of the EP's powers vis-à-vis the Council but also make it easier to switch to codecision as the single legislative procedure in the next IGC.

Just as many national parliaments, the EP is involved to a lesser extent in foreign policy (e.g. international agreements and CSFP in general); monetary policy (e.g. when defining the statute of the European Central Bank); classic governmental activities (e.g. emergency measures, amending programmes during execution); and where corporatist patterns prevail (e.g. social policy). But still, there are also matters where the Council acts as a genuine legislator without Parliament as a co-legislator (e.g. in the field of agricultural policy; in the area of the 3rd pillar, whether 'communautarized' or not; and with regard to some decisions in the field of social policy). One of the major stakes of the EP, namely that Article 189b TEC applies wherever the Community institutions act as legislators(35), was thus not fulfilled entirely but to a very large extent.

4

In sharp contrast to national parliaments, however, the Euro-MPs have only a limited say in quasi-constitutional matters just as decisions regarding flexible cooperation and the suspension of rights deriving from the Treaties. Most strikingly, the EP is not involved at all in amendments to the 'constitution', i.e. Treaty reforms(36). On the one hand, the political system of the EC/EU thus resembles national systems in many instances. On the other, some very specific features still prevail. Might there be a coherent hypothesis to explain these countervailing evidences? It seems plausible to argue that with every IGC the EC/EU decision-making structure comes a little closer to a federal state model with a parliamentary and a state chamber. But this statement needs the qualification that it is a so far unique type of federal decision-making structure which results in the European case.

IV. The Future of the Commission: Towards a European Government?

The Amsterdam Treaty deals with the Commission in two instances, i.e. the reform of its internal structure (A.) and the investiture procedure (B.). This prompts the question whether the intended changes will affect the political position of the Commission in a way that transforms its role into the direction of a supranational government.

A. The New Internal Structure: Towards Personalisation?

There was much debate about how to make the European Commission more efficient, more coherent, and able to meet the challenges of a further enlarged Union. In particular the reduction of the size of the college of Commissioners was widely discussed(37). The issue was 'settled' by postponement: Article 1 of the Protocol 'on the institutions with the prospect of enlargement of the European Union', annexed to the Treaty of Amsterdam, envisages that, at the date of entry into force of the first enlargement of the Union, the Commission will comprise *only one national per Member state*. This new distribution of seats in the Commission is, however, conditional: the five larger states would give up their 2nd Commissioner only if the issue of the reweighting of votes in the Council of Ministers was settled by the same date. Furthermore, this 'agreement' is also qualified by the words „notwithstanding Article 157 (1) of the TEC" [= 213 new]. This paragraph fixes the number of 20 for

the size of the Commission and includes the competence of the Council to alter this number by unanimous decision. In our view, this clause may be interpreted in a way that the present size may be kept or even increased by a decision of the Council, e.g. when only a small number of countries (up to five) will join the EU in the first wave . Article 2 of the same Protocol envisages a new IGC with a view to carry out 'a comprehensive review of the provisions of the Treaties on the composition and functioning of the institutions', 'at least one year before the membership of the European Union exceeds twenty'. In this perspective, the 'agreement' on one Commissioner per Member state is indeed no agreement but a simple *postponement of the decision* on the size of the Commission.

In the eyes of many, the key question had been less the sheer number of Commissioners than the internal organisation of the Commission. In this respect several changes were decided:

- A new first subparagraph of Article 163 [= 219 new] TEC strengthens the role of the Commission President. It reads: „The Commission shall work under the political guidance of its President." In the second subparagraph of the Declaration to the Final Act 'on the organisation and functioning of the Commission', this leading role of the President is further qualified: „... the President of the Commission must enjoy broad discretion in the allocation of tasks within the College, as well as in any reshuffling of those tasks during a Commission's term of office."
- The Conference acknowledges and supports the Commission's intention to prepare a 'reorganisation of tasks within the College' 'in order to ensure an optimum division between conventional portfolios and specific tasks'.(38) This reorganisation is scheduled for the year 2000, i.e. when the next Commission will come into office.
- This reorganisation will also include a corresponding restructuration of the Commission's sub-divisions(39). The sole explicit target set by the IGC in this respect is that there should be a vice-president responsible for all external affairs matters (so far, foreign policy and external commercial relations are split up between six(40) Commissioners)(41).

5

Apart from its probably undisputed effects with respect to the institution's efficiency and the coherence of its policies, both strengthening the Commission President by giving him/her organisational prerogatives and reorganising the Commission's structure with a view to possibly centralising specific policy areas in the hands of a few higher-order Commissioners (vice-presidents) might lead to a more personified perception of the Commission. Just as the heads and senior ministers of national governments are paid more attention to than other members of a government, this might, in the medium term, result in more public awareness for some Commissioners and thus the whole Commission as a central political actor of the Union. In this context, it is noteworthy that the Commission gained the right of initiative in the 3rd pillar and in the new title on the free movement of persons – areas which are of particular interest to the citizenry at large.

B. The Nomination of the Commission: Towards Party Politics?

The Maastricht Treaty reform gave the EP the right to be consulted when the Commission President is designated by the member state governments, and the right to give its assent to the investiture of the whole collegiate. According to the Amsterdam Treaty, assent of the EP will be needed for the designation of the Commission President(42), in addition to the approval of the new *team* of Commissioners. Furthermore, the nominee for President will be given a greater say in the choice of the members of the College. While so far, the nominee was only 'consulted' by the appointing Member states, the Amsterdam Treaty gives him/her a right to assent(43). This acknowledges the enhanced status of the President-to-be who, at that point, has already passed a vote of confidence in

the directly elected Parliament.

Considering on the one hand this new investiture procedure and, on the other, the enhanced role of the President vis-à-vis his/her fellows in the college, we conclude that the character of the 'appointing-the-Commission game' might change in the medium run. Most likely, the candidate will be invited to a hearing at the EP before the formal designation. His/her political programme will in the future be under parliamentary scrutiny. Due to this shift from secret diplomatic negotiations to a more open and public procedure the terms of the debate on European policy-making might be reshaped along party political lines. This might, in turn, prompt the design and public marketing of alternative ideological designs of the European agenda.

Recently, *Simon Hix*(44) rightly pointed out that such a shift towards a truly parliamentary model of the investiture procedure rests on two premises: (1) that in EP elections, voters are able to choose between rival platforms for European level action; and (2) that the investiture of the President will be determined by a majority in the EP which reflects an electoral majority. Based on data from the 1994 European elections and the 1995 investiture procedure, *Hix* shows that „the elections were still fought by national parties on the performance of national executives", and that „the winning coalition was not a majority from the European elections but an 'artificial' majority of national governments and (minority) partisan allies of their nominee". He acknowledges, however, that (only) further institutional reform may rectify this situation, and goes on to make proposals in this direction(45). In our perspective, this view might underestimate the dynamics of European level politics because of the gradual increase of powers of the EP. In this respect, as was outlined in other chapters of this paper, the new Treaty contributes a lot. The politicisation along party lines might therefore be less a matter of a uniform electoral procedure, as he suggests, nor a question of breaking the link of the European and the national party systems, but rather one of a gradual shift of focus from the national to the European level. We would argue that the point might be less that the European parties have to emancipate from national politics but rather that the national parties will 'go Europe' because of the growing importance of this level in politics. Although his proposal to let the Parliament choose the candidate for the President first and to submit this choice only afterwards to the Council for approval would accelerate this dynamic, we are convinced that the system set in place by the Amsterdam Treaty will give a forceful impetus with a view to politicising and Europeanising the selection of the European executive.

The envisaged changes of the Commission's internal structure together with this new political relationship between the Commission and the EP will at least bring the Commission closer than it ever was before to our traditional image of a 'government' which cooperates with a parliamentary majority.

6

V. The EP and Future Enlargement: Towards Representativeness

The EP can hardly be called the 'anchor of democracy in the EU' without resting on solid democratic representation. Fact is that European elections cannot be considered 'equal' because the weight of the votes differs considerably among member states: while one German MEP represents more than 800.000 citizens, one Belgian MEP represents only some 400.000, and one of the six Luxembourg MEPs just 66.000 citizens.

In an institutional perspective, the EP's main goal has always been and still is to become one of two

'legislative chambers' in the EU. Within this model, the EP wanted to be the representative of the peoples of Europe whereas the Council should represent the states. In its report with a view to the IGC in May 1995, the EP made this perfectly clear when discussing the issue of reweighting the votes in the Council: "... it is in the Parliament that population is represented. Council represents States"(46).

Therefore, proportionality should not be aimed at in the Council but strengthened in the EP. As for the Council, the model 'one minister – one vote', similar to the US Senate, was proposed. This US-style approach, however, does not fit into the picture the European top politicians have of their 'sui-generis-federal-type' polity. The Protocol on the institutions with a view to future enlargement, annexed to the Treaty of Amsterdam, affirms once again that the system of weighted votes in the Council will not be abandoned (but rather strengthened) in the near future.

As for the EP, the Amsterdam Treaty points at the issue of proportionality: Article 137 [= 189 new] TEC will be amended by a new second paragraph fixing the maximum number of 700 MEPs. Article 138 [= 190 new] para. 2 new TEC(47) which includes the table of the number of MEPs per member state will be complemented by a new subparagraph:

„In the event of amendments to this paragraph, the number of representatives elected in each Member State must ensure *appropriate representation* of the peoples of the States brought together in the Community." (emphasis added)

Although it does not seem that the distribution of seats in the EP will be an issue before the next enlargement, the setting of a ceiling combined with the need to secure appropriate representation sets a tricky agenda for the enlargement IGC: applying the present system, Poland's MEPs alone (representing some 38m citizens) would occupy almost all of the remaining available offices in Strasbourg and Brussels. Since it is most likely that at least three countries will be part of the 'first wave', already the negotiations starting „as soon as possible after December 1997"(48) will have to tackle the issue.

How can 'appropriate representation' be interpreted? Two principles might be applied in order to achieve this goal. (1) First of all, the vote of each European should be of approximately equal weight. Because of the enormous differences in size of the member states, this maxim cannot be applied systematically under the condition that only 700 seats are available: the proportion between the populations of Luxembourg and Germany is approx. 1:205; since there are also other large Member states, the number of 205 MEPs for Germany is out of question (because the maximum of 700 MEPs would be exceeded); consequently, the number for Germany has to be lower than 205 and Luxembourg would not get a single MEP (and there are several other similarly small states among the applicants, in particular Cyprus); the larger the Union gets, the more states would share the 'Luxembourg destiny' of not getting a single representative in the EP.

(2) The building of new trans-national electoral districts for the purpose of European elections being out of question for the foreseeable future, the only alternative solution is a minimum threshold rule: in order to ensure representation of all (still separated and partly quite small) peoples of the Union, at least one MEP would have to be attributed to each state. This rule, however, does not seem to ensure *appropriate* representation. A single MEP cannot represent the whole political spectrum of her or his country of origin. Therefore, *at least three seats per country* seem appropriate in order ensure representation of the centre, the right, and the left political movements of a country.

Applying these two principles (strict proportionality with a minimum of three MEPs per state) the distribution as presented in Table 2 would follow. We applied two different systems of calculations with different outcomes. Not surprisingly, the results in *both* cases show that only the five major member states would gain from these changes, whereas all other countries would lose seats, ranging from 3 to 7 in the first variant, and from 3 to 9 in the second. Most striking is Germany's enormous gain in seats (32 or 38). When applying these new rules to a further increased number of member states, not only one single country but a growing proportion would fall within the group of countries with three MEPs only.

Table 2

To conclude: the direction of the indicated but not yet implemented reform corresponds to the EP's preferred option. However, the Protocol 'on the institutions with a view to further enlargement' annexed to the new Treaty indicates that no corresponding reform in the Council will take place in the foreseeable future: the system of weighted votes is – in political reality – still beyond any doubt and will probably even be further adapted towards more proportionality. In our view, strengthening proportionality in the EP as foreseen by the Amsterdam Treaty is a favourable option in terms of European democracy. However, one has to acknowledge that the practical winners will only be the largest countries and in particular Germany. Reweighting the votes in the Council in the direction which was indicated by the Treaty of Amsterdam would again be in the interest of the large countries only. Even when taking into account the 'special case theorem' (the EU as a *sui generis* system), it might therefore be difficult to put the indicated reforms into practise, i.e. to modify the traditional federal principle of representing the populations in one and the states in the other chamber in a way that unilaterally strengthens the big. At least as a statement on empirics, *Joseph Weiler*(49) is certainly right: as long as there is no redefined integrated *European polity* the *social* legitimacy of the European system remains precarious and, thus, it seems difficult to convince the members of the still separated polities of Europe to give up power (here: seats in the European Parliament) even if for the sake of the overall principle of representativeness.

VI. National Parliaments: No Co-Decision-Powers

For some, giving the national parliaments a greater if not decisive say in European politics was not only an additional means to improve the status of democracy in the IGC, but even the better alternative route for democratic reform as compared with the strengthening of the EP. In particular, some proposed a European Senate, i.e. a third chamber consisting of representatives of the national parliaments(50). The debates with a view to the IGC focused on the relationship between (and possible hierarchy of) the then two parliamentary chambers at the EU level, and the possible negative effects on the efficiency of the decision-making structure of adding yet another institution to it. Already in the so-called Dublin-II-paper, a summary of the negotiations at the IGC's half-term(51), a rather minimal reform along the traditional paths was suggested.

The Amsterdam Treaty will include a Protocol 'on the role of national parliaments in the European Union' which states in its preamble that the Conference desires to encourage greater involvement of national parliaments in the activities of the EU. However, 'greater involvement' is a relative term and does not, as the Protocol shows, refer to formal participation, but only an exchange of views. In sharp contrast to proposals to give the national parliaments explicit and formal priority over their governments in the Council, the preamble explicitly 'recalls' „that scrutiny by individual national parliaments of their own government in relation to the activities of the Union is a matter for the particular constitutional organisation and practice of each Member state". In sum, the European 'constitutional' law implicitly rejects *direct and formal* involvement of the national parliaments in the EU polity and explicitly denies to regulate the relationship between the national parliaments and the members of the Council of Ministers.

The Protocol has two parts. The first aims at improving the transfer of information, in particular of all Commission consultation documents and proposals for legislation, from the European to the national level. This is of great importance for the (at least theoretical) ability of the national parliaments to scrutinise the activities of their governments at the European level. The Protocol distinguishes between two types of documents: while green and white papers and communications shall be directly sent to the national parliaments, the legislative proposals continue to be forwarded to the national legislature via the national governments. This again underlines the indirect character of the involvement of the national parliaments in EU decision-making. However, the Protocol aims at ensuring timely information by, first, providing that the Commission proposals „shall be made available in good time so that the ... national parliament receives them as appropriate". In addition, the Protocol stipulates that a *period of six weeks* shall elapse between a proposal being made available in all languages to the EP and the Council by the Commission and the date when it is first placed on a Council agenda for decision. This aims at ensuring that the national parliaments after having received the proposal in due time have at least a couple of weeks to form their opinion and to possibly influence their ministers' voting behaviour in the Council. There is, however, an exception to this rule: in cases of urgency, the reasons for which shall be stated in the Council's decision, the latter may decide before the end of the six week period.

The second part of the above mentioned Protocol deals with the future role of COSAC, the Conference of European Affairs Committees(52). COSAC is recognised as a body with the right to make any contribution it deems appropriate for the attention of the EU institutions, either on its own initiative or when a specific legislative proposal was forwarded to it. In particular, the Protocol envisages commentating activity of COSAC with respect to (1) proposals and initiatives in relation to the establishment of the so-called 'area of freedom, security and justice'(53) which might have a direct bearing on the rights and freedoms of individuals; (2) the application of the principle of subsidiarity; and (3) questions regarding fundamental rights. The contributions made by COSAC will be forwarded to the institutions but shall neither bind the latter nor prejudge the position of the national parliaments.

For practical reasons, these provisions will not change the relationship between the national parliaments and the Union a great deal. Although receiving relevant information well in advance of actual decisions is a necessary condition, it is nevertheless not sufficient to allow monitoring and influencing of EU politics by national actors. The struggle with a huge amount of documents which the national parliaments receive already under the present less formalised system(54) establishes that it is very doubtful whether national parliaments will ever be able to fulfil two 'full time jobs' at a time: controlling both national legislation and implementation of EU legislation as well as watching over the European activities. This is the main reason why many observers see the European Parliament much better in place to supply parliamentary legitimacy in the European decision-making process. The drafters of the Amsterdam Treaty unequivocally declared their preference for the 'European' solution by reinforcing the role of the EP instead of including the national parliaments to a larger extent then hitherto. Thus, there will be no co-decision role for the national legislatives at the EC level.

VII. The Regional Committee: No Europe of the Regions

The Committee of the Regions (CoR) was only just set up by the last Treaty reform. Nevertheless, relevant proposals put forward with a view to the IGC 1996/97 were partly far-reaching: it was even proposed to transform the CoR into a third legislative chamber with veto powers, in particular with regard to the principle of subsidiarity(55). The new Treaty, however, will *only moderately reinforce*

the status and institutional position of the CoR:

- The *organisational structure* of the CoR: the secretariat (and budget) was so far annexed to the Economic and Social Committee (ECS). Now its structure will be separated from the ECS(56);
- The CoR will have the power to adopt its own *rules of procedure* without approval of the Council(57);
- The CoR may be consulted by the Council, the Commission, and also the EP if those institutions consider it appropriate(58);
- Consultation will be compulsory in a couple of additional cases such as in environmental and transport policies (see Table 1);
- Although it had been discussed to restrict the membership of the CoR to persons elected at the local or regional level, the Treaty of Amsterdam includes no solution to the problem of lacking direct democratic legitimacy of a number of members of the CoR. Worth mentioning in this context is only the new incompatibility rule regarding both membership in the EP and the CoR(59).

Summarising the new provisions regarding the CoR in the notion of 'consolidation', we come to the conclusion that7 the Treaty of Amsterdam will not bring about a 'Europe of the regions'. It is not even a small step in that direction. Although its position will certainly be reinforced in some respects, the CoR remains a purely consultative body and the issues of representativeness and legitimacy of its members are still unsettled. It is obvious that the formal decision-making structure gives the CoR only a very weak voice. The EU remains centred around the state level, either via the delegation of national ministers to the Council, or via elections to the European Parliament held – although at the same time – within the boundaries of the 15 Member states, and not in transnational (regional) electoral districts.

As we have already argued elsewhere(60), this has good reasons: Considering that the quasi-federal structure of the Union is already a very complicated and delicate construction, and that decision-making by a two-chamber system with unanimity requirements is already a lengthy process susceptible to deadlocks, a third chamber would not seem advisable. Looking at the considerable differences in size, organisation and competences of the various 'regions' represented in the CoR, the idea of a third chamber to enhance the power of the regions of centralised states might even be considered at odds with the principle of subsidiarity.

VIII. Decision-Making in the Council: Towards More Efficient Policy-Making

The Amsterdam Treaty tackles the issue of more efficient policy-making by the extension of the scope of qualified majority voting (A.) which also includes a peculiarity, i.e. a provision reminding of the famous 'Luxembourg Compromise' (B.).

A. More Qualified Majority Voting

(1) Unanimity is often considered as *the* stumbling block for further integration. Therefore, the IGC aimed at extending the scope of qualified majority voting under the label of 'enhancing the efficiency of the decision-making process'. Although by no means all items of various 'letters to Santa Claus' circulated in advance of the IGC were finally agreed on, we may conclude that some steps forward were made at Amsterdam (see Table 1): among others, the implementing decisions in the 2nd (CSFP)

and 3rd pillars (Justice & Police); on the setting-up of joint undertakings in R&T development(61); and on some social policy issues(62) were moved to majority voting.

By contrast, unanimity was again chosen for a series of new competences: the implementation of the Schengen acquis(63); the determination of a breach of the Union's principles(64); measures against racial etc. discrimination(65); the extension of the competence in the common commercial policy (CCP) to services and intellectual property(66); the regulation of the conditions governing the performance of duties of the MEPs(67); the suspension of international agreements and the establishment of a Union's international position(68). Because most of these new cases may be categorised as quasi-constitutional matters unanimity may be considered appropriate because in conformity with the present system. Exceptions without an obvious reason are, however, the measures against racial discrimination and the provision regarding international agreements as well as some existing competences such as industrial policy. Others among the unanimous decisions, although not constitutional in character obviously touch the very core of national sovereignty (cultural policy and basic or framework decisions in foreign policy and in justice and police affairs).

(2) The transfer from unanimous to majority voting has to be analysed not only in terms of enhanced efficiency of decision-making but also in terms of democracy. The argument that unanimity gives veto power to a minister in the Council and thus establishes a link of democratic control via the national parliaments is spurious(69). If qualified majority voting is not accompanied by codecision rights for the EP, however, this leads to a structural gap of parliamentary control.

The Amsterdam Treaty still provides for cases where the Council acts under the qualified majority rule without the EP being involved and having a democratically legitimised veto power (e.g. with respect to employment policy guidelines and recommendations(70); to the implementation of social partner agreements(71); and to the setting-up of joint undertakings in R&T development(72)). By contrast, Article G/73o [= 67 new] of the new Title on the free movement of persons allows for a transfer from unanimity to majority voting in the Council only when the EP is involved via Article 189b [= 251 new] TEC.

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(3) Another point to raise in this respect is the persisting irregularity that the codecision procedure is combined with a unanimity requirement in the Council(73). This makes some stages of the codecision procedure (in particular the conciliation procedure) almost useless because it restricts the Council's room for manoeuvre (and thus its capacity to reach a compromise with the EP) drastically.

To sum up: by transferring some areas from the unanimity rule to qualified majority voting, the Amsterdam Treaty provides for selective improvements in this area only. It does not solve highly salient issues such as the weak involvement of the EP in some areas where the Council decides with majority, and the combination of codecision with unanimity in the Council. Whether these changes will bring about a significantly improved decision-making efficiency in the Council remains to be seen.

B. The 'Amsterdam Compromise'

In order to facilitate the shift to majority voting, various models were put forward – in particular the idea of a super-qualified majority(74). The Amsterdam Treaty is successful in shifting at least some areas right away to qualified majority voting(75). In one case, i.e. for basic decisions in CFSP(76), unanimity is still kept as a general rule, but a new and highly sophisticated rule applies: in case a member state is against the decision which is about to be taken, it may abstain from the vote and thus

does not hinder the decision to be taken; if the state issues a formal declaration to this effect, it is, however, not bound by the decision, and does not have to participate in its financing (so-called '*constructive abstention*'). Thus the unanimity requirement is still applicable but decisions can be taken without the explicit assent of all members of the Council. Only up to one third of the member states may however abstain in this qualified manner. If more than five states do not wish to participate, the otherwise unanimous vote cannot be taken.

In two other cases, the new Treaty replaces unanimity by the 'extra-qualified' majority already known from those cases where the Council hitherto acts without a proposal from the Commission (at least *ten member states* have to be in favour of a measure). This system will apply to a series of decisions taken under the 3rd pillar regarding Justice and Police Cooperation (JPC)(77).

But the negotiators of the Amsterdam Treaty were even more creative. In three cases [authorisation to closer cooperation (flexibility) in the areas covered by the TEC(78) and in the 3rd pillar (JPC)(79); implementing measures in CFSP(80)] the new Treaty provides for a formula which reminds of the old 'Luxembourg Compromise'(81):

„If a member of the Council declares that, for important and stated reasons of national policy, it intends to oppose the granting of an authorisation by qualified majority, a vote shall not be taken. The Council may, acting by a qualified majority, request that the matter be referred to the European Council for decision by unanimity."

Following the blueprint from the 1960ies, a special kind of veto is therefore established. Any blockade must however be qualified. Only important reasons of *national* policy may be invoked by a member state.(82) As opposed to the 'Luxembourg Compromise', the '*Amsterdam Compromise*' requires that the reasons are stated openly. It is not sufficient to refer simply to important national interests in general to prevent the decision to be taken by a qualified majority. While the 'Luxembourg Compromise' was not quite precise as to the consequences of such a declaration, the new formula may lead to the matter being referred to the highest Union level. This is quite remarkable because it seems to be the very first time that the European Council acts as a formal 'appellate body' for the Council. Since its decisions are always taken by unanimity, the opposing state gets back its veto which was, in principle, just given up during the IGC, at least on a case to case basis.

11

The formal introduction of the basic idea of the Luxembourg compromise into the Treaties might have consequences for the legal value of the old 'Luxembourg Compromise'(83). Although the wording is not exactly the same the ideas behind the two versions are, with the Amsterdam version being more precise though. Therefore, one may argue that, as the formula is now written into the primary law of the Union for three cases only, the 'Luxembourg Accords' are finally 'dead': invoking national policy grounds in order to prevent a decision to be taken by qualified majority is – legally and politically – not possible any longer, except in the three cases explicitly mentioned.

To conclude: the 'Amsterdam Compromise' model and the extension of the extra-qualified majority system may indeed facilitate the decision process. However, the Amsterdam Treaty did not extend these models to the majority of those cases where unanimity was required. Therefore, it does not seem to us that the Treaty reform reached the goal to make the Council a more efficient decision-making body: stalemates will characterise its negotiations also in the future. Nevertheless, a path is found which might be continued in the next IGC.

IX. The New Rules on 'Transparency': Towards More 'Open' EU Politics

Transparency and openness of the EU were, at least formally, high on the IGC agenda. The issue is twofold: first, it relates to the openness of the decision-making processes (A.); second, it refers to the accessibility of the Treaty framework and of the texts of the Union legislation (B.). Especially the first aspect, i.e. increased transparency, can affect the institutional balance because the more information is available the more actors like the EP and the Commission can selectively put public pressure on the Council or on single delegations.

A. Less Secrecy in the Council of Ministers

One of the main arguments in the debate on the democratic deficit of the Union has for a long time been the fact that the European legislature acts in secrecy: Until very recently, no Council meetings were open to the public, and neither were the specific results of Council deliberations. The situation changed slightly after the debate on transparency was boosted in the aftermath of the ratification problems with the Maastricht Treaty. However, due to the reluctance of most governments, reforms have not, so far, fundamentally changed the state of affairs. According to the Council's 1993 Rules of Procedure(84), the meetings of the Council remained non-public in general; however, after a specific decision by unanimous vote, it is possible that individual meetings be broadcast. Furthermore, the Council started to systematically publish the voting results when it acted as a legislator(85). Since a request by the British newspaper Financial Times to be informed of the existing number of qualified majority votes created considerable turmoil during summer 1994, the Secretariat of the Council also keeps a register of votes on legislation(86). But still, the Council is an institution which prefers to keep politics behind closed doors. This is prominently shown by the fact that according to its rules of procedure(87) the consultations of the Council are subject to secrecy. Thus, there is no access to the minutes of the meetings of the major legislative actor at the European level. The Decision of 20 December 1993 concerning public access to Council documents(88) gave rise to differing interpretations, with Denmark and the Netherlands arguing that there should at least be an appreciation of the secrecy of a requested Council document on a case-to-case basis. The other governments, however, opted for the version that as soon as the communication of minutes is requested, refusal is automatic(89).

Against this background, it was widely expected that the IGC would come up with a more far-reaching solution to this central issue with respect to the state of democracy at the EU level.(90) The main significance of the respective texts agreed at Amsterdam is that the rules previously contained in mere interinstitutional agreements and rules of procedure are *now part of the primary law* of the Union. Thus, their implementation will in the future be checked by the ECJ on the basis of the following standards:

12

- The very first Article of the European Union Treaty will be amended to acknowledge that decisions in 'the ever closer Union' are taken 'as openly as possible'(91);
- A general(92) 'right to access to European Parliament, Council and Commission documents' is established(93);
- This right to access is, however, subject to the principles and the conditions to be defined by codecision of the Council and the EP within two years of the coming into force of the new Treaty(94); based on this basic decision, the three institutions shall elaborate in their own rules of procedure specific provisions regarding access to their documents(95);

- With respect to the Council, the Amsterdam Treaty includes three qualifications which restrict its room of manoeuvre when adapting its rules of procedure(96): (1) the Council will have to define the cases in which it is to be regarded as acting in its legislative capacity(97); (2) in these cases the Council is obliged to allow „greater access to documents ... while at the same time preserving the effectiveness of its decision-making process"; since the right balance of the two interests (greater access vs. effectiveness) seems difficult to find, the Amsterdam Treaty provides (3) that, when acting as a legislator, the following three categories of documents shall be made public 'in any event', i.e. regardless of the publication's possible negative effect on the effectiveness of the Council's procedures:
  - the results of the votes;
  - explanations of votes;
  - the statements in the minutes.

Although the framework decision on the general principles and conditions of the right to access to document will only be taken by the EP and the Council after the Amsterdam Treaty comes into force, we may draw some preliminary conclusions:

(1) A detailed comparison between the new conditions and the present situation reveals that the Council will have to adapt its *rules of procedure*:

- the explanations of votes will have to be published *eo ipso*, i.e. without the request of the respective Member state, as is the case now(98);
- the possibility to deny access to the results of the votes by a respective decision has to be drooped since all results of the votes taken by the Council in its capacity as legislator have to be released(99);
- it is doubtful whether the present definition of 'legislative action' is compatible with the new rules; in particular, the exception with regard to 'discussions leading to indicative votes or to the adoption of preparatory acts' seems incompatible: first, it would prevent the publication of many results since there are often indicative or 'test' votes, but only seldom formal votes [see below point (2)]; second, the term of 'preparatory acts' also encompasses e.g. common positions adopted during the codecision procedure; these acts are of particular interest and maybe, e.g. in those cases where the EP agrees in the 2nd reading with the position adopted by the Council in the 1st reading, the only formal decision taken by the Council during the whole procedure.

(2) As already mentioned, detailed results of the votes in the Council rarely exist because most decisions are not taken by a formal vote; rather, the Presidency states informally that „the necessary majority is given"(100). Therefore, the publication of *voting results* in itself will not allow to trace the actual voting behaviour of the members of the Council in each and every case. This represents however an important precondition for the national parliaments' capacity to hold their ministers accountable for their behaviour at the European level. In short, an important step with a view to improving the indirect democratic legitimacy of the Council as a legislative chamber of the EC is still not taken.

(3) As regards the publication of the *statements in the minutes*, it seems doubtful whether this will actually lead to more transparency (or rather to the contrary). The ECJ only recently established that these statements are insignificant in legal terms since they are currently not being published(101). When published in the future, one cannot exclude that they might gain interpretative value for the legislative act in case. If so, it seems likely that there will be even more statements of this kind: those Member states not in accord with the interpretative statement of another state will feel obliged to post a counter statement in order to be able to refer to it in case of a later dispute. Therefore, the unfortunate practise that problems of interpretation already known at the time of adoption of an act are shifted to the sphere of statements in the minutes rather than solved might even gain in weight. In

this case, the situation for the citizen with respect to EU decision-making would be even more intransparent then before: s/he would certainly wish to rely on the text of the proper legislative act, unaware of the fact that there is a second layer with a set of further or even different rules. In this scenario, the EP's role seems crucial in insisting on precise legal texts. All in all, it seems necessary to reconsider the status of the statements in the minutes in principle and the problematic consequences of their publication in particular.

13

(4) It is noteworthy that there is no provision obliging the Council to keep and to publish the whole of the minutes (proces verbal) as known from the national legislative chambers.

To sum up: The new provisions on transparency and openness have some merits, especially the fact that the rules enjoy a higher legal value than previously and that the Council will not have the possibility to prevent the publication of certain types of documents when acting in its legislative capacity. However, the Amsterdam Treaty also raises some tricky questions about the practise of decision-making in the Council (the rarity of formal votes; and the legal status of statements in the minutes).

B. The Related Issue of the Accessibility of the Treaty framework

From a realistic viewpoint, one could not expect this IGC to draft a well structured 'constitutional document' which could serve as a point of reference and identification for the citizens of the European Union(102). However, a major effort to simplify the Treaty structure was explicitly on the agenda. This issue has to be considered one of the great failures of the IGC:

(1) The pillar structure will be kept and even diversified since one may argue that the partial 'communautarization' of the 3rd pillar creates a pillar '1a', at least for the first five years.

(2) The provisions for the inclusion of the Schengen Agreement with their numerous exceptions and counter-exceptions as well as those providing for closer cooperation among a subgroup of Member states (differentiated integration) add further complexity to the Treaty framework.

(3) The agreed renumbering of all Articles regardless the fact that no consolidation of the Treaties will take place only superficially serves the interest of more transparency. Most probably, the new Article numbers will only be valid for a short period of time since the next Treaty revisions are already scheduled: before enlargement, at the latest when the number of Member states exceeds 20, the whole institutional and procedural framework will be subject of new revisions; the destiny of the ECSC Treaty will have to be tackled before the year 1999; the inclusion of the Euratom Treaty seems to be only a matter of time, too. While even experts will have a hard time adapting to the renumbering, the uninitiated will not profit from this superficial change: the mixing of procedural and material provisions will persist. Thus, there is still no easily accessible Treaty structure on the horizon.

(4) Finally, the Amsterdam Treaty even beats its predecessor when it comes to the number of protocols and declarations annexed.

X. An Overall Assessment

Our conclusion will proceed in three steps: first, we shall measure the outcome of the IGC 1996/97

against the yardstick of the official mandate for the IGC (A.); second, we shall take a more general view on the Treaty of Amsterdam considering the new institutional balance (B.); to conclude, we raise the question whether the state of democracy in the Union shall be improved by this new institutional balance (C.).

A. Was the Official Mandate Fulfilled?

A couple of official tasks was attributed to the IGC either by the Maastricht Treaty or the (European) Council(103). Our analysis shall proceed along this list as far as the institutional and procedural aspects are concerned:

> „...considering ... to what extent the policies and forms of cooperation introduced by this Treaty may need to be revised with the aim of ensuring the effectiveness of the mechanisms and the institutions of the Community." (Article B [= 2 new] 5th indent TEU)

In this regard, the IGC did precisely what it had been asked for. With respect to some of the (in 1991) new policies, the Amsterdam Treaty brings about procedural innovations (public health, vocational training, environmental policy, transeuropean networks; cf. Table 1). No changes will take place in training of the youth, cultural, consumer and cohesion policies. With regard to the co-operation in the field of justice and home affairs, the Conference came to the conclusion that only a few of the areas are suitable for the standard procedures of the 1st pillar (asylum, visa, immigration); accordingly only those areas were 'communautarized'; for others, the new Treaty allows a transfer into the 1st pillar by a Council decision at a later time.

> „The scope of the procedure under this Article may be widened, ..., on the basis of a report to be submitted to the Council by the Commission by 1996 at the latest." (Article 189b [= 251 new] para. 8 TEC)

The scope of the codecision procedure was significantly widened, not least by the near abolishment of the co-operation procedure. The procedure was furthermore simplified and, on the basis of the experience since its coming into operation, improved. In this respect, too, the Conference carried out its mandate.

> „improvement of the budgetary procedure" (Interinstitutional Agreement 29/10/1993)

The budgetary procedure is not mentioned in a single line of the new Treaty.

> „In adopting the institutional provisions of the Accession Treaty, the Member States and the applicant countries agree that,... the Intergovernmental Conference to be convened in 1996 will consider the questions relating to the number of members of the Commission..." (European Council, Brussels 10-11/12/1993)

Although indeed relevant in the wider context of efficiency as well, the issue of the size of the Commission was postponed.

> „...and the weighting of the votes of the Member States in the Council." (European Council, Brussels 10-11/12/1993)

That the reweighting of the votes was postponed, too, must be seen in the context of the decreasing likelihood of a fast enlargement. Considering the open divergences between the smaller and the larger states, it was a pragmatic choice to postpone a solution which will probably not be crucial within the next six years.

> „... any measures deemed necessary to facilitate the work of the institutions and guarantee their effective operation." (European Council, Brussels 10-11/12/1993)

Without doubt, some progress has been made in this area: the upgrading of the directly elected European Parliament through the reform and extension of the codecision procedure; the legal upgrading of the transparency rules in the Treaty; and the new organisational structure for CFSP(104) are the main achievements of this IGC. On the other side of the coin the reform of the Commission was postponed; the variety of decision-making procedures is still confusing; and last but not least, there is only limited transfer from unanimity to majority voting.

15

> „... any other measure deemed necessary to facilitate the work of the institutions and guarantee their effective operation in the perspective of enlargement" (European Council, Corfu 24-25/6/1995)

It is obvious that the Conference did not succeed in putting in place the necessary institutional changes that would allow the adhesion negotiations to concentrate on the policy issues. Neither distribution of the seats in the EP, nor the future size of the Commission, nor the future weighting of votes in the Council was tackled in a precise manner. Although the Protocol on the institutions with the prospect of enlargement of the EU indicates possible solutions, these remain rather vague and open for new deliberation. In other words, the preparation for enlargement was postponed.

Looking at the Amsterdam results from this 'official' perspective, we are bound to draw the conclusion that the IGC was *both successful and a failure*; it was successful by agreeing on at least some important reforms, but a failure with respect to the preparation of the next enlargement. Let us now turn to an account of the institutional reforms in a wider and more political perspective.

B. A New Institutional Balance Is in Sight

One may easily overlook the true significance of the new institutional arrangements because they seem hardly spectacular if looked at separately. Viewed from some distance, the Amsterdam Treaty brought to an end what the Single European Act began and the Maastricht Treaty continued: making the European Parliament a co-legislator, equally powerful than the Council. So far, codecision was biased in favour of the Council and it was the exception rather than the rule in EC policy-making. In both regards, the Amsterdam Treaty marks a seachange. To be sure, *there are still instances where the Community legislates without the EP being involved on an equal footing with the Council. These cases will however be the exception and codecision the rule.* The EP involvement in the investiture of the Commission, too, were reformed. The genuine political role of the Commission (notably its President) will in the future be acknowledged, at least at the time of its investiture, when the envisaged activities of an incoming Commission will be the matter of parliamentary and thus public debate.

In our view, the incremental change of the EC institutional balance during the two decades from 1979 (the first direct European elections) to 1999 (the likely date of the entry into force of the Amsterdam Treaty) in sum made up for a fundamental reform which is now in principle completed.

This does not imply that incrementalist reform will no longer take place. To the contrary: adaptations such as e.g. the extension of codecision to the legislative areas that are not yet covered seem necessary and likely further steps. The new underlying institutional balance as established by the Amsterdam Treaty will nevertheless basically remain the same: a much more politicised Commission drawing legitimacy from the way it came into office; a European Parliament that is able to play a decisive role in the day-to-day legislative business; and a Council of Ministers that is not in a position any longer to impose its views on the other institutions.

This new balance, and in particular the role of the EP, seems to represent the '*largest*' *common denominator* among the Member states: at least in the medium term, there are no signs that this compromise will lead to a fundamentally different relationship between the main institutions. This statement may be substantiated by the following considerations:

(1) It seems very unlikely that the EP will ever acquire predominance over the Council; keeping in mind that all further Treaty changes will have to be negotiated by the governments sitting in the Council, the now equal position of both institutions (under codecision) is certainly the limit.

(2) Parliament itself dropped its demand to get a genuine right of initiative which would have broken the relevant monopoly of the Commission. Evidently, a right of initiative would alter the institutional balance considerably since the Commission would be almost 'out of the game' whenever the EP takes the initiative. However, in order to actually make it more than a formal right, Parliament would have to change its working structure fundamentally with a view to elaborating detailed draft law. As far as we can see, there is no such political will, not even on the side of the MEPs. The present division of labour between an agenda setting Commission and two decision-making bodies seems widely accepted and will therefore hardly be changed in the near future.

(3) The envisaged reforms of the Commission's internal structure will not affect its external role as a supranational body. In particular, the issue of adjusting the size of the Commission to the challenges of future enlargements may only further its supranational character, especially if at any point the number of Commissioners is lower than the number of Member states, or if an hierarchy of Commissioners should be introduced.

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(4) The external position of the Commission, too, is not going to change in the foreseeable future. Since the independence of this supranational body seems to be a very successful characteristic of the Union's political system, it is hard to imagine why and how this should be changed. The demand of the EP for a motion of no confidence against single Commissioners was, by the way, not included any longer in its latest resolutions. It seems also improbable that the internal restructuring of the Commission along the lines of the Amsterdam Treaty might eventually lead to the President's right to dismiss his/her colleagues. This might fill the gap of political control over single Commissioners between the investiture and the end of term of the Commission. Even without a right to censure individual Commissioners, the EP might then put political pressure on the Commission President and the latter would be able to react accordingly. We do not expect, however, this change to be put into practice in the near future. It should be mentioned that at least, the Amsterdam Treaty improves the President's position with regard to the allocation of portfolios. S/he might in the future take away responsibilities from a Commissioner who does not perform adequately.

(5) Still on the agenda is the problem of how to reweight the votes in the Council. Whatever the outcome of the coming negotiations, it may neither fundamentally change the Council's position within the institutional triangle nor will it alter the character of that institution to such an extent that

it affects the Union's decision-making system as a whole. The two poles of the debate are making the Council either a fully representative or an US-Senate-like body with equal weight for all states. Neither of these extreme variants will be set in place since the first is strictly opposed by the smaller and the second by the larger Member states. Therefore, only minor changes in the middle ground without fundamental consequences for the status and function of the Council are to be expected.

(6) A much stronger role for the European Parliament in the budgetary procedure would indeed affect the present institutional balance. A consensus to change this seems, however, unlikely to emerge. This IGC was again instructed to discuss the issue but did not come up with a reform. Keeping in mind that the next enlargements deeply affect the Union's financial order, we venture the prediction that a shift of power with respect to the budget will not take place at least before the next enlargements are financially 'digested'.

(1) To sum up, the arguments presented above strongly underpin our case that the new Treaty outlines an interinstitutional balance which will be *refined* rather than fundamentally *challenged* in the foreseeable future.

C. Outlook: Towards Democracy?

As has been pointed out by numerous writers, we should not try to directly compare the institutional setting at the EU level with the traditional image of policy-making structures in the national context. If we would, it became obvious that the weak role of the EP in the budgetary procedure and the near absent role in constitutional matters makes it quite different from its national counterparts. When associating the Commission with the national executive function, the EP's control is not comparable to the national systems of parliamentary scrutiny over government. Obviously, this approach misses the point: the EU is a 'sui generis' polity. It is less common but important to note that nevertheless (or: even more so), the EU has to be measured against standards of democratic governance which are independent from the actual institutional setup. In fact, representative as well as direct democratic models in their various forms, all aim at assuring that government is both responsive and responsible. Without going into details here, a responsive government features efficient instruments that link citizens' needs and priorities to policy outcomes; and a responsible government can be controled and recalled by the electorate.

Therefore, we should look at the new institutional balance emerging from the Amsterdam Treaty in a perspective that measures it against these basic democratic principles instead of comparing it to the traditional national models. In this respect, our assessment will be hybrid: on the one hand, it seems obvious that the balance was altered in favour of the EP which is the directly legitimated body of the Union; the Commission's new investiture procedure is finally drawn out of the mists of secret intergovernmental bargain into the light of public hearings; the principle of openness and transparency has at least been introduced in primary law. This leads to the conclusion that the EU will be somewhat more democratic after the Treaty of Amsterdam comes into force.

17

On the other hand, the de facto modes of governance are quite different at the end of the 20th century from the time when the principles of representative democracy were first implemented. At the EU level, too, a series of agencies fulfil tasks that previously were under direct control of the democratic institutions (notably ESCB). Much of the implementation of EU policies is done without any control by the EP, as the issue of comitology remained again untouched in the 1996-97 IGC. Furthermore, most of the political decisions tend nowadays to be taken 'in the shade' of the representative institutions only. The Union nevertheless represents an extreme case with 85% of all decisions de

facto decided in working groups(105). Making transinstitutional and transnational policy networks subject of democratic accountability is an open question at all layers of the European multi-level system. European governance incrementally departs from the citizen, both at the Member state and the European level. Transparency in the sense of making public the votes on decisions already taken might be a precondition, but is far from being a sufficient means of bringing politics back to the people. As one of us has argued elsewhere(106), the European Union is particularly remote from its citizens and only provides for indirect and informal opportunity structures for citizen participation. The attempt by the Italian and Austrian governments to trigger discussion in the IGC on direct involvement of the citizens in EU politics(107) remained without success. Although these are crucial questions of a 'post-national democracy'(108), the Amsterdam Treaty did not touch them at all.

All in all, the state of democracy of the Union was indeed improved by shifting the balance towards the EP, but only in a rather formal sense. Democracy at both the national and the European level has still a long way to go.

Endnotes

(*) An earlier and much different version of this paper – which was restricted to the analysis of those Treaty changes affecting the EP – was presented at the *IPSA seminar „Amsterdam and Beyond: The European Union Facing the Challenges of the 21st Century"*, July 9-12, 1997, at the European Parliament, Brussels; this paper also draws on our contribution made to *Stefan Griller/Dimitri Droutsas/Gerda Falkner/Katrin Forgó/Michael Nentwich*, Regierungskonferenz 1996: Der Vertrag von Amsterdam in der Fassung des Gipfels vom Juni 1997, *Working Paper of the Forschunginstitut für Europafragen* n· 27, July 1997 (available by email order to david@fgr.wu-wien.ac.at).

(1) CONF/4001/97 final of 19. 6. 1997; on 8. 7. 1997 a revised version was published (CONF/4002/97) where typing errors and some language inconsistencies are rectified and some missing declarations inserted; on 25. 7. 1997, the 'final version' was published (CONF/4004/97): here the reuslts of the IGC are already presented in a treaty format, prepared for signature at the special summit in Amsterdam in October 1997; the latest document is best available through the WWW: http://ue.eu.int/Amsterdam/en/treaty/treaty.htm. In this paper, we refer to document CONF/4004/97.

(2) Thanks to *Michael Shackleton*, EP, for this argument.

(3) But see chapter VI.

(4) Information given by *Andrea Pierucci*, European Commission.

(5) It seems furthermore plausible that cases of parliamentary non-decision in the 2nd reading will in fact rather point at an overall positive than to a hostile appreciation of the common position by the EP: those MEPs who are definitely against the measure as shaped by the Council will rather ask for far-reaching amendments than block EP decision-taking – since the blockade directly leads to the adoption of the unwanted act. The only realistic scenario in which no decision might be taken in the EP seems when an overwhelming majority of MEPs is either for an approval right away or for amendments. Then, neither the absolute majority of votes cast (for the approval) nor the absolute majority of MEPs (for the amendments) might be reached because those who fully agree know that their preferred outcome is the default solution. They might therefore not be ready to compromise. In addition, it is quite likely that there will be a majority for at least some (minor) amendments and thus a decision. The EP's practise during the last few years shows that it was always successful in rendering opinions in due time. The pressure put on the EP is obviously big: its reputation is at stake! The EP can hardly press for participation in the legislative process when it fails to fulfil its attributed

tasks.

(6) *Note:* The COREPER decided on 10. 7. 1997 that *all* numbers of Articles in the TEC and TEU will be renumbered; in document CONF/4004/97 from 25. 7. 1997, this decision was already put into effect: Article 12 para. 1 of the Treaty of Amsterdam reads as follows: „The articles, titles and sections of the Treaty on European Union and of the Treaty establishing the European Community, as amended by the provisions of this Treaty, shall be renumbered in accordance with the table of equivalences set out in an Annex to this Treaty, which shall form an integral part thereof." In this paper, we shall indicate the new article number in [square brackets] after the current number.

(7) Which might eventually be challenged before the ECJ, either via the Article 173 [= 230 new] TEC procedure by challenging the final result for procedural shortcomings, or via Article 175 [= 232 new] (failure to act in infringement of the Treaty).

(8) There are, however, a few exceptions of this rule (see Articles 189 [= 251 new] para. 1, 172 [= 229 new], 184 [= 241 new], and 190 [= 253 new] TEC). All of those cases, however, contain no specific power to act but are general provisions.

(9) The exact number depends on the way one counts; the sub-categories mainly accounted for variations in the majority applicable in the Council and the various bodies consulted.

(10) See Article K.6 [= 34 new] para. 2 TEU.

(11) Article 228 [= 300 new] para. 3 TEC.

(12) See the new Article K.11 [= 39 new] para. 1 TEU.

(13) See the new title in the TEC on 'Visas, asylum, immigration and other policies related to free movement of persons' which includes the Community's competence e.g. to take limited emergency measures against immigration or to decide on uniform visa rules; see Articles D/73l [= 64 new] and G/73o [= 67 new] of the new title.
Note: In the document CONF/4001/97 the articles of new titles of the EC-Treaty did not have their final number yet, but were numbered with *capital letters* (e.g. „Article D") or numbers beginning with „1" (e.g. „Article 4" of the new title on employment); in the latest document, CONF/4004/97, these new provisions were inserted at the appropriate place in the EC-Treaty and received a *number followed by a small letter* (e.g. „Article 73l"); in this paper, we also give the „old" capital letter for those who have the document 4001 only, followed by a slash and the „intermediate" number; As announced in footnote , you find the final „new" number in [square brackets].

(14) See Article G/73o [= 67 new] para. 2 of the new title on the free movement of persons in the TEC.

(15) New Article 5a [= 11 new] para. 2 TEC.

(16) New Article 6a [= 13 new] TEC.

(17) Articles D/73l [= 64 new] and G/73o [= 67 new] of the new title on movement of persons; see above in the text close to footnote 13.

(18) Article 129 [= 152 new] para. 4 TEC.

(19) The EP's position during the IGC as formulated by its two representatives, *Elisabeth Gigou* and *Elmar Brok*, seemed to have been that at least decisions in principle, but not the day-to-day business

of agricultural legislation, would have to be taken according to the codecision procedure.

(20) This is because the agricultural policy is an exclusive competence of the Community, financed *in integrum* by the EC budget; furthermore, the decisions in the Council are taken by qualified majority; therefore the national parliaments wishing to influence the decision taken at the EC level by binding their agricultural minister may be unsuccessful in case their minister is being outvoted in the Council (on this point see below Chapter IV).

(21) Article 99 [= 93 new] TEC.

(22) Directive 76/207/EEC, OJ 76/L 39/40; in its Report on the Operation of the Treaty on European Union of 6.4.1995, Annex VIII, the Council counted 86 cases in the period 1992 to spring 1995 where Article 235 [= 308 new] TEC was used, in areas such as the establishment of a number of bodies; in financial issues; and in other areas as varied as the consolidation of existing Community legislation and the Community trade mark, and budgetary discipline.

(23) *Note:* The number one gets when looking at the list included in the draft version of the Amsterdam Treaty (in document CONF/4001/97 as well as in the revised version CONF/4002/97) is 23; however, in one case mentioned in that list, namely Article 56 [= 46 new] para. 2 TEC on the co-ordination of provisions for special treatment for foreign nationals with regard to their right of establishment, it seems that the new Treaty does indeed not change anything with respect to the procedure: codecision as well as qualified majority voting were already introduced by the Maastricht Treaty. If one includes Article G/73o [= 67 new] para. 3 of the new title on the free movement of persons which will apply in five years only, one has to add another case (thus the number 23 in brackets).

(24) See the list in Annex V(b) of the 1995 Council report (footnote 22).

(25) New Article 5a [= 11 new] para. 3 TEC.

(26) Article D/73l [= 64 new] new title on movement of persons.

(27) Article 4/109q [= 128 new] para. 4 new title on employment.

(28) New Article 118b [= 139 new] para. 2.

(29) Article 130i [= 166 new] para. 2.

(30) Article 236 [= 309 new] new.

(31) New Article 228 [= 300 new] para. 2.

(32) As an exception from this general rule, Article 228 [= 300 new] para. 3 subpara. 2 TEC provides for a right of assent of the EP in cases of the conclusion of agreements with international organisations, or other agreements establishing a specific institutional framework by organising cooperation procedures, agreements having important budgetary implications for the Community and agreements entailing amendment of an act adopted under the procedure referred to in Article 189b [= 251 new].

(33) See e.g. Articles 103 [= 99 new], 103a [= 100 new], 104c [= 104 new], and 109c [= 114 new] TEC.

(34) OJ 93/C 331/1 of 7/12/1993; see also the EP Resolution 17 May 1995, PE 190.441, pt. 34.

(35) See EP Resolution (footnote 34), pt. 29.

(36) It should be mentioned, however, that the EP has to give its assent to the admission of a new member and therefore, indirectly, to those Treaty changes that are necessary in order to incorporate the new member in the Treaty framework (see Article O TEU).

(37) See e.g. *Gerda Falkner/Michael Nentwich, European Union: Democratic Perspectives After 1996*, Service Fachverlag: Vienna 1995, 79 ff, with further references. (abstract)

(38) Subpara. 1 of the Declaration on the Commission mentioned in the text.

(39) Subpara. 3 of the Declaration on the Commission mentioned in the text.

(40) *Santer*: CFSP; *Broek*: CFSP; *Pinheiro*: Lomé, ACP; *Marin*: Mediterranean states, Near and Middle East, Latin America, parts of Asia; *Brittan*: Commonwealth, foreign commercial relations; *Bonino*: humanitarian aid.

(41) This has to be seen in the context of the envisaged new Troika between the Presidency, the High Representative for the CFSP, and the external affairs Commissioner, see below footnote 104.

(42) Article 158 [= 214 new] para. 2 subpara. 1 new TEC.

(43) Article 158 [= 214 new] para. 2 subpara. 2 new TEC: „The governments of the Member States shall, by common accord with the nominee for President, nominate...".

(44) *Simon Hix*, Executive Selection in the European Union: A Critical Reflection on the Commission President Investiture Procedure, Paper prepared for the *IPSA seminar „Amsterdam and Beyond: The European Union Facing the Challenges of the 21st Century"*, July 9-12, 1997, at the European Parliament, Brussels.

(45) He proposes to either prevent national parties from controlling the selection of MEPs or, alternatively, to allow the EP to 'go first' in the investiture process.

(46) EP Resolution 17 May 1995, PE 190.441, pt. 22.iii.

(47) Now Article 2 of the Decision 76/787/ECSC/EEC/Euratom of the Council, 20/9/76, OJ 76/L 278/1, last amendment: OJ 94/C 241/22.

(48) Presidency conclusions of the Amsterdam Summit, 16/17 June 1997.

(49) In his solemn piece The European Parliament, European Integration, Democracy and Legitimacy, published e.g. in *J.V. Louis/D. Waelbroeck*, Le Parlement Européen dans l'Evolution Institutionelle (Etudes Européennes, 1988).

(50) For a complete review of these proposals (mainly from French politicians) see *Falkner/Nentwich* (footnote 37), 94 ff.

(51) CONF/2500/96, 5/12/1996; for an analytical summary of the Dublin-II-Paper see *Griller/Droutsas/Falkner/Forgó/Nentwich*, Regierungskonferenz 1996: Der Vertragsentwurf der irischen Präsidentschaft, *Working Paper of the Forschungsinstitut für Europafragen* n· 25, January 1997 (available by email order to david@fgr.wu-wien.ac.at).

(52) Since 1989, delegations of national and European MPs have met at least twice a year to debate specific matters of common interest. The meetings used to be prepared on the basis of a questionnaire sent by the organising parliament in order to broaden available information and focus the debate. More recently, this body has also held for debates with the Ministers of the country presiding over the Council of Ministers, thus offering a unique opportunity to many national representatives. The number of such meetings increased substantially (to 25 between 1991-1994), as did the number of bilateral meetings between specific rapporteurs or committees [a Commission Report gives the number of 44 meetings between different bodies belonging to national and European parliaments in 1993, see SEC(95) 731, 16].

(53) This includes the Schengen acquis and rules on visa, asylum, and immigration.

(54) A declaration (n° 13) to the Maastricht Treaty already envisages timely forwarding of the legislative proposals; expanding this text and transforming it into a Protocol with a higher legal value than a Declaration may be seen as a symbol of recognition of the more far-reaching debates that preceded the IGC.

(55) On this discussion see e.g. *Falkner/Nentwich* (footnote 37), 89 f.

(56) To that effect, Protocol 16 annexed to the TEU will be repealed.

(57) Article 198b [= 264 new] para. 2 new TEC.

(58) Article 198c [= 265 new] subpara. 1 new and new subpara. 4 TEC.

(59) Article 198a [= 263 new] subpara. 3 new TEC.

(60) *Falkner/Nentwich* (footnote 37), 90 f.

(61) Article 130o [= 172 new] para. 1 new TEC.

(62) Before under the Social Agreement only in force for 14 Member states.

(63) Articles B para. 1, c, and E of the Schengen Protocol annexed to the Amsterdam Treaty.

(64) New Article F.1 [= 7 new] para. 1 TEU.

(65) New Article 6a [= 13 new] TEC.

(66) Article 113 [= 133 new] para. 5 new TEC.

(67) Article 138 [= 190 new] para. 4 new TEC.

(68) Article 228 [= 300 new] para. 2 supara. 2 new TEC.

(69) National parliaments de facto do not have the capacity to control the supranational decision-making because of the sheer amount of EU legislation to 'digest' in addition to their national 'home work'; furthermore, even decision-making under the unanimity requirement is often supranational in nature (package deals and strong pressure to comply with an overwhelming majority) and cannot be sufficiently controlled at distance; see e.g. *Falkner/Nentwich* (footnote 37), 100 ff and 120.

(70) New Article 4/109q [= 128 new] of the new Title on employment in the TEC.

(71) New Article 118b [= 139 new] para. 2 TEC.

(72) Article 130o [= 172 new] para. 1 new TEC.

(73) Namely the old case of the cultural policy (Article 128 [= 151 new] TEC) and three new provisions: measures facilitating the exercise of the right to move (Article 8a [= 18 new] para. 2 new TEC); in the field of social security of migrant workers (Article 51 [= 42 new] new TEC); and the co-ordination of national provisions with respect to activities of the self-employed (Article 57 [= 47 new] para. 2 new TEC).

(74) See e.g. *Falkner/Nentwich* (footnote 37) 123 f, with further references.

(75) See above A.; cf. Table 1.

(76) Article J.13 [= 23 new] para. 1 new TEU.

(77) Article K.6 [= 34 new] para. 2 lit. C new TEU.

(78) New Article 5a [= 11 new] para. 2 TEC.

(79) New Article K.12 [= 40 new] para. 2 TEU.

(80) Article J.13 [= 23 new] para. 2 new TEU; these decisions are thus secured twice: by the double-qualified majority and by the 'Amsterdam Compromise'.

(81) The relevant part of the Council conclusions of the 28-29.1.1969 special meeting in Luxembourg reads as follows: „Where, in the case of decisions which may be taken by majority vote on a proposal of the Commission, very important interests of one or more partners are at stake, the Members of the Council will endeavour, within a reasonable time, to reach solutions which can be adopted by all the Members of the Council while respecting their mutual interests and those of the Community, in accordance with Article 2 of the Treaty." There was however disagreement on the consequences of not reaching a compromise – the Accords continue: „With regard to the preceding paragraph, the French delegation considers that where very important interests are at stake the discussion must be continued until unanimous agreement is reached. The six delegations note that there is a divergence of views on what should be done in the event of a failure to reach complete agreement." See e.g. *Anthony L. Teasdale*, The Life and Death of the Luxembourg Compromise, 31 *Journal of Common Market Studies* (1993), 567-579.

(82) It is plausible that these might e.g. be anticipated popular resistance, or international obligations specific to e.g. a neutral Member state.

(83) This was always a much debated question in legal circles. It seems that, in the end, the mainstream of European lawyers agreed that the Compromise never had any legal value and that in case of a decision taken despite the opposition of one member state the latter could not challenge the decision before the ECJ; see e.g. *Teasdale* (footnote), 578 citing the ECJ ruling *UK vs. Council*, Case 68/86 (from 23/2/1988, [1988] ECR 855) that „the rules regarding the manner in which the Community institutions arrive at their decisions are laid down in the Treaty and are not at the disposal of the Member states or of the institutions themselves" (pt. 38).

(84) OJ 93/L 304/1 as amended by OJ 95/L 31/14.

(85) See Article 7 (5) of the Rules of Procedure and the Annex defining when the Council acts as a

legislator.

(86) See Agence Europe, 6 July 1994, 9.

(87) See Article 5 (1).

(88) OJ 93/L 340/41.

(89) See e.g. Agence Europe, 25 May 1994, 12.

(90) See e.g. in *Falkner/Nentwich* (footnote 37), 132 ff.

(91) Article A [= 1 new] subpara. 2 new TEU.

(92) „Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member state" are entitled to this right.

(93) New Article 191a [= 255 new] para. 1 TEC.

(94) In a Declaration to the Final Act it is provided that these principles and conditions will include a rule that allows a Member state to request the Commission or the Council (but not the EP) not to communicate to third parties a document originating from that state without its prior agreement.

(95) New Article 191a [= 255 new] para. 2 and 3 TEC.

(96) See Article 151 [= 207 new] para. 3 subpara. 2 new TEC.

(97) This only reaffirms what the Council has already done in the annex to its 1993 rules of procedure (see footnote 84).

(98) Article 5 para. 1 and Article 9 para. 1 3rd intent of the Council's rules of procedure.

(99) Article 7 para. 5 of the Council's rules of procedure.

(100) See e.g. *Wolfgang Wessels*, The EC Council: The Community's Decision-making Center, in: *Keohane/Hoffmann* (Eds.) *The New European Community*, Westview Press 1991, 147.

(101) Joint cases C-283/94, C-291/94 and C-292/94, *Denkavit Internationaal B.V. et al vs. Bundesamt für Finanzen*, ruling of 17.10.1996, pt. 29.

(102) But see the 1994-96 discussions with a view to the IGC, summarised in *Falkner/Nentwich* (footnote 37), 37 ff.

(103) See e.g. the White paper on the 1996 intergovernmental conference, Vol. 1: Official texts of the European Union institutions, by the EP's IGC Task Force, January 1996 (Political Series W-18).

(104) With a view to a more efficient and coherent action in the field of foreign policy, the Amsterdam Treaty replaces the old Troika (i.e. the former, the present, and the next Presidency of the Council) by a new team: the present Council Presidency, the Commissioner responsible for foreign affairs (see above chapter IV.A.; according to the new Article J.17 [= 27 new] TEU the Commission shall be 'fully associated' with the work carried out in the CFSP field), and the new High Representative for the Common Foreign and Security Policy (i.e. the Secretary-General of the Council). The latter shall assist the Council in matters of the CFSP, „in particular through

contributing to the formulation, preparation, and implementation of policy decisions, and, when appropriate and acting on behalf of the Council at the request of the Presidency, through conducting political dialogue with third parties" (new Article J.16 [= 26 new] TEU). Furthermore, the new Troika will be assisted by a new CFSP 'policy planning and early warning unit' within the Council General Secretariat. It remains to be seen whether these new institutional arrangements will make CFSP more efficient and coherent. Again, it seems that a first step only has been taken at Amsterdam.

(105) Cf. *M.P.C.M. van Schendelen*, 'The Council Decides': Does the Council Decide, *JCMS* 4/1996, 531-548 (542).

(106) *Michael Nentwich*, Opportunity Structures for Citizen Participation – The Case of the European Union, Essex Occasional Papers in Government, N· 116, January 1997, also: *European Integration online Papers (EIoP)* Vol. 0 (1996), N· 1996-001, http://eiop.or.at/eiop/texte/1996-001a.htm.

(107) See CONF/3941/96 of 3.10.1996.

(108) *Edgar Grande*, Demokratische Legitimation und europäische Integration, *Leviathan* 3/1996, 339-360; cf. also *Michael Zürn*, Über den Staat und die Demokratie im europäischen Mehrebenensystem, *Politische Vierteljahresschrift* 1/1996, 27-55.

Table I

List of the new or altered EU decision-making procedures according to the Draft Treaty of Amsterdam (CONF/4001, 4004/97)

Article		Competence	MS Right to pro-pose	Majority in COUNCIL		Involvement of EP			Consultation		Changes
CONF/ 4004/97	CONF/ 4001/97			qual.	unan.	Cons.	Cod.	Ass.	ESC	RegC	
EU-Treaty											
7 I	F.1 I	Breach of Union's principles: determination	● 1/3		● –			● +			new
7 II	F.1 II	Breach of Union's principles: Suspension of rights deriving from TEU		● –							new
7 III	F.3 III	Breach of Union's principles: Alteration or revoking of measures		● –							new
34 II a & b & d.1	K.6 II a & b & d.1	Justice & Police: Com. positions; framework decisions (approx. of laws); conventions	● 1		●	● ~					new / prev. K.3/K.4; EP different
34 II c	K.6 II c	Justice & Police: all other decisions	● 1	● 10		● ~					prev. K.3/K.4; Council unanimity, EP different
34 II d.2	K.6 II d.2	Justice & Police: Implementing measures to conventions	● 1	● * –		● ~					new / prev. K.3/K.4: EP different
40 II	K.12 II	Justice & Police: Authorisation to closer cooperation	● 1 COM-C	●	AC						new / prev. K.7; see Art [2] Flexibility
40 III	K.12 III	Justice & Police: Joining of closer cooperation	● J COM-O	● x							new
41 III	K.13 III	J&P: Charging of operational costs not to EU budget or not accord. to GNP-scale	woCOM		●						procedural as K.8, but changed competence
42	K.14	Justice & Police: Transfer to TEC	● 1		●	●					prev. K.9; role EP new
23 I	J.13 I	CFSP: Basic decisions and other decisions than implementing measures	● 1		● q	● ¢					prev. standard unanimity

23 II	J.13 II	CFSP: Implementing measures	● 1	● 10	AC					prev. unanimity
24	J.14	CFSP: Opening of negotiations; agreements with third countries or Int. Organisations	● 1	●						new
28 III	J.18 III	CFSP: Charging of operational costs not to EU budget or not acRegCd. to GNP-scale	woCOM		●					procedural as J.11, but changed competence
Prot. Schengen 2 I	Prot. Schengen B I	Implementation; choice of legal base for Schengen acquis; entry into force			● --					new
Prot. Schengen 3	Prot. Schengen C	Participation of UK and Ireland	● J		● -- #					new
Prot. Schengen 5 I	Prot. Schengen E I	Agreement with Norway and Iceland			● --					new
Prot. Schengen 5 II	Prot. Schengen E II	Agreement EU with N/Ice/UK/Irl								new
Prot. Schengen 6	Prot. Schengen F	Transfer of Schengen secretariat		●	●					new
EC-Treaty										
11 II	5a II	Authorisation to closer cooperation TEC		●	AC	●				new
11 III	5a III	Joining closer cooperation TEC	● J COM-O	● ex						new
12 II	6 II	Prohibition of discrimination		●			●			prev. cooperation
13	6a	Measures against racial etc. discrimination			●	●				new
18	8a II	Facilitating exercise of right to move			●		●			prev. assent
42	51	Social security of migrant workers			● a		●			prev. EP not involved
47 II	57 II	Activities of self-employed (co-ordination)			●		●			prev. consultation
64 II	[Pers. D] 73l II	Limited emergency measures against immigration		●						new
67 I	[Pers. G] 73o I	Decisions Asylum/Immigration/ control of persons except Visa	●1		●	●				new, only for 5 years
67 II 1	[Pers. G] 73o II 1	Decisions Asylum/Immigration/ control of persons	COM-D		●	●				new, applicable in 5 years

		except Visa									
67 II 2	[Pers. G] 73o II 2	Transfer of decisions to Art 189b			●	●					new, applic. in 5 years
67 III and 62 II b ii & iv	[Pers. G] 73o III and [B] 73j II b ii & iv	Uniform visa rules; uniform visa issuing procedures in member states		●			●				new, applicable in 5 years
71 I	75 I	General transport policy		●			●		● x	●	prev. cooperation; consultation RegC new
80	84	See and air transport		●			●		● x		prev. cooperation
128 II	[Employment 4] 109q II	Guidelines		● a		●			●	●	new
128 IV	[Employment 4] 109q IV	Recommendations to member states	COM-R	●							new
129	[Employment 5] 109r	Incentive measures; pilot projects		● a			●		●	●	new
130	[Employment 6] 109r	Setting-up of employment committee	woCOM	● e		●					new
133 V	113 V	Extension of competence in CCP to services and intellectual property			●	●					new
135	[Customs] 116	Strengthening customs cooperation		●			●				new
137 II	118 II	Directives in the social field according to Art 118 I; combat social exclusion		●			●		●	●	Social Agreement Art 2; RegC new
137 III	118 III	Directives in the social field according to Art 118 III			●	●			●	●	Social Agreement Art 2; RegC new
139 II 1	118b II 1	Implementation of social partners' agreements according to Art 118 I		●							Social Agreement Art 4
139 II 2	118b II 2	Implementation of social partners' agreements according to Art 118 III			●						Social Agreement Art 4
141 III	119 III	measures to ensure equal opportunities etc.		●			●		●		new
148	125	Implementing decisions relating to ESF		●			●		● x	●	prev. coop.; RegC new
150 IV	127 IV	Vocational Training		●			●		● x	●	prev. coop.; RegC new

152 IV a&b	129 IV a&b	Standards of organs, blood etc.; veterinary medicine and phytosanitary measures		●			●		●	●	prev. Art 43, consultation; ESC, RegC new
156 III	129d III	Transeuropean networks: other measures		●			●		● x	● x	prev. cooperation
162	130e	Regional Fund: implementing decisions		●			●		● x	● x	prev. cooperation
166 I	130i I	Research framework programmes		●			● x		● x		prev. unanimity
166 II	130i II	Adapting or supplementing programmes		●							new
172 I	130o I	Setting-up of joint undertakings in R&T development		●		● x			● x		prev. unanimity
172 II	130o II	Research cooperation		●			●		● x		prev. cooperation
175 I	130s I	Environmental policy in general		●			●		● x	●	prev. cooperation; RegC new
175 II	130s II	Environmental policy: taxes, development plans etc.		●			●		● x	●	RegC new
175 III	130s III	Environmental policy: action programmes		●			●		●	●	RegC new
179	130w	Development cooperation		●			●				prev. cooperation
190 IV	138 IV	Regulation of conditions governing performance of duties of MEPs			●			● ><			new (prev. Art 141 EP rules of procedure)
214 II	158 II	Nomination of Commission President			(●)			●			prev. consultation
255 II	191a II	Determination of right to access to documents		●			●				new
262 I	198b II	Rules of Procedure of Regional Committee								●	prev. unanimity in CL, now RegC alone
280	209a	Measures countering fraud		●			●		CA		new
285	213a	Measures for the production of statistics		●			●				new
286	213b	Setting-up of data protection supervisory body		●			●				new
299 II	227 II	Application of TEC to outermost regions		●		●					prev. unanimity, no involvement

											of EP
300 II 2	228 II 2	International agreements: suspension; establishment of a Union's internat. position		●	●						new
309 II	236 II	Suspension of rights deriving from TEC		● =							new
309 III	236 III	Alteration or revoking of measures		● =							new

Legend:

Article:

[ ]
: number of article will be changed in final version of the Treaty of Amsterdam. This Table will be updated as soon as the new numbering system is known.

Pers.
: New Title „Free movement of persons, asylum and immigration"

Prot.
: Protocol

Right to propose:

1
: Right to propose by single member states

1/3
: Right to propose of one third of the member states

J
: Application of the joining member state

COM-C
: Commission has no right to propose but is invited by the Council to give an opinion

woCOM
: Commission has no right to propose

COM-R
: not „proposal" but „recommendation" of the Commission

COM-D
: Commission has to deal with demand for proposal by MS

COM-O
: Commission issues opinion

Council of Ministers:

–
: vote of state concerned does not count in the Council

*
: majority of two thirds of High Contracting Parties to the convention

10
: at least 62 votes in favour, cast by at least 10 members

e
: simple majority of members

AC

'Amsterdam Compromise': veto right similar to Luxembourg Compromise

--
only participating member states may vote

#
applying member state may also vote

q
abstention qualified to the effect that MS is not bound by decision (only if max. 1/3 of all MS)

( )
not Council as organ but „Governments of the Member states" decide

European Parliament:

+
two third majority of votes cast and majority of MEPs

~
Council may lay down time limit for opinion of the EP (not less than 3 months); In the absence of an opinion within that time-limit, the Council may act

¢
Consultation by Presidency on the main aspects and basic choices

><
EP decides with simple majority after unanimous assent of the Council and after opinion of the Commission

Others:

CA
opinion of the Court of Auditors

x
not clear on the basis of the Draft Treaty because final wording of the text lacks

Table II

Proportional distribution of seats in the EP with a minimum of three seats (EU 15)

				I.		II.	
Member State	**Population**	**% of EU-Popu-lation**	**present # of MEPs**	**new # of MEPs**	**Diff.**	**new # of MEPs**	**Diff.**
Germany	81.600.000	21,98	99	3 + 128 = 131	+32	137	+38
United Kingdom	58.000.000	15,63	87	3 +91 = 94	+7	97	+10
France	58.000.000	15,63	87	3 +91 = 94	+7	97	+10
Italy	57.200.000	15,41	87	3 +90 = 93	+6	96	+9
Spain	39.600.000	10,67	64	3 +62 = 65	+1	67	+3
Netherlands	15.500.000	4,17	31	3 +24 = 27	–4	26	-5
Greece	10.500.000	2,83	25	3 +16 = 19	–6	18	-7
Belgium	10.100.000	2,72	25	3 +16 = 19	–6	17	-7
Portugal	9.800.000	2,64	25	3 +15 = 18	–7	16	-7
Sweden	8.800.000	2,37	22	3 +14 = 17	–5	15	-7
Austria	7.800.000	2,10	21	3 +12 = 15	–6	13	-8
Denmark	5.200.000	1,40	16	3 + 8 = 11	–5	9	-7
Finland	5.100.000	1,37	16	3 + 8 = 11	–5	9	-7
Ireland	3.600.000	0,97	15	3 + 6 = 9	–6	6	-9
Luxembourg	400.000	0,11	6	3 + 0 = 3	–3	3	-3
Total	*371.200.000*	*100,00*	*626*	*626*		*626*	
average # of citizens per MEP according to state (w/o Lux.):				623.000-400.000		613.000-591.000	
total average # of citizens per MEP:				593.000			

Rules:

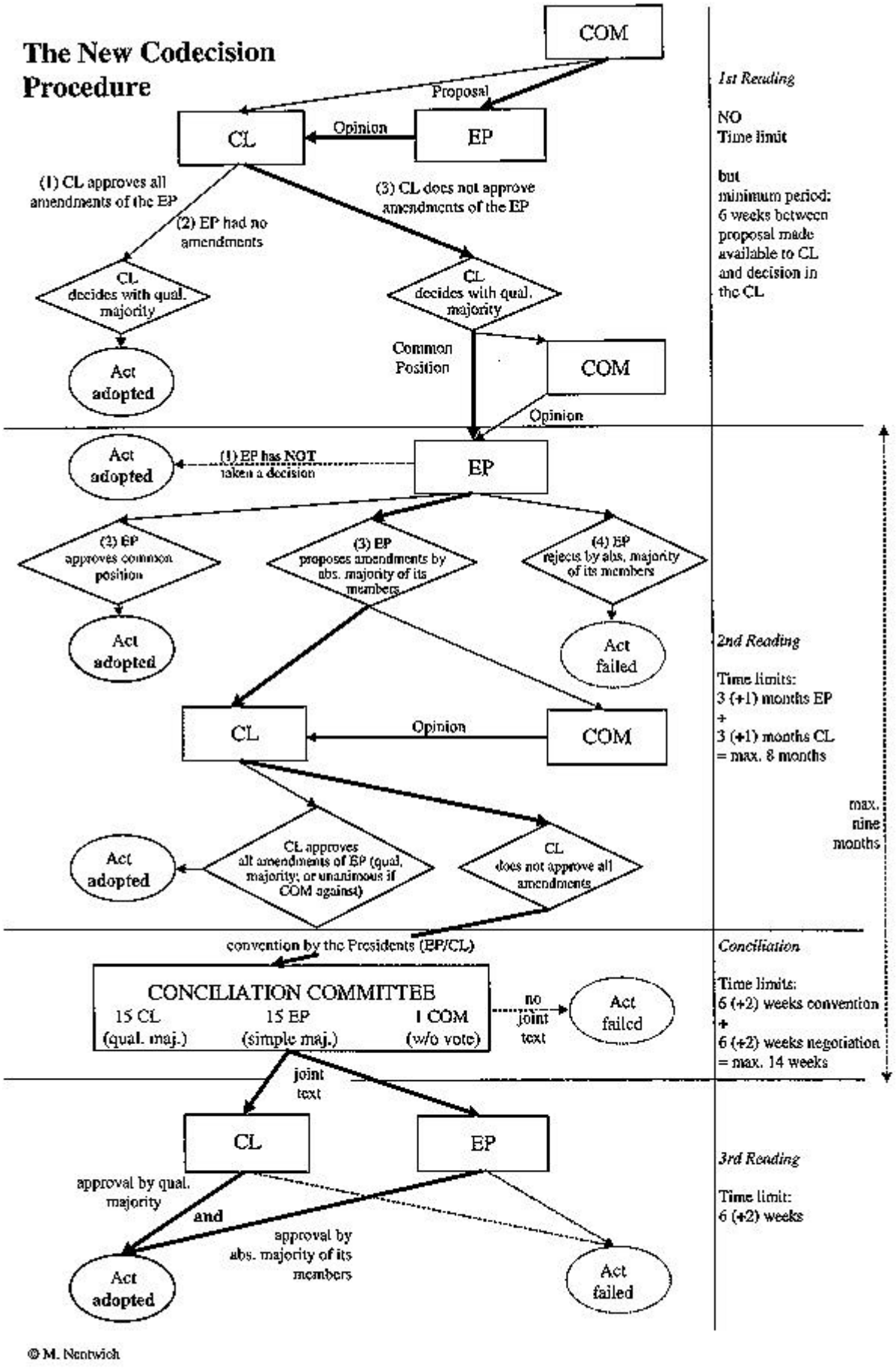
I.

„give every country 3 seats and distribute the remaining seats (581) among all according to population"

II.

„give Luxembourg 3 seats and distribute the remaining seats (623) among the other 14 according to population"

Figure 1


The New Codecision Procedure
COM
Proposal
CL
Opinion
EP
1st Reading
NO
Time limit
but
minimum period:
6 weeks between
proposal made
available to CL
and decision in
the CL
(1) CL approves all amendments of the EP
(2) EP had no amendments
(3) CL does not approve amendments of the EP
CL decides with qual. majority
CL decides with qual. majority
Act adopted
Common Position
COM
Opinion
Act adopted
(1) EP has NOT taken a decision
EP
(2) EP approves common position
(3) EP proposes amendments by abs. majority of its members
(4) EP rejects by abs. majority of its members
Act adopted
Act failed
2nd Reading
Time limits:
3 (+1) months EP
+
3 (+1) months CL
= max. 8 months
CL
Opinion
COM
max. nine months
Act adopted
CL approves all amendments of EP (qual. majority; or unanimous if COM against)
CL does not approve all amendments
convention by the Presidents (EP/CL)
Conciliation
Time limits:
6 (+2) weeks convention
+
6 (+2) weeks negotiation
= max. 14 weeks
CONCILIATION COMMITTEE
15 CL (qual. maj.)
15 EP (simple maj.)
1 COM (w/o vote)
no joint text
Act failed
joint text
CL
EP
3rd Reading
Time limit:
6 (+2) weeks
approval by qual. majority
and
approval by abs. majority of its members
Act adopted
Act failed
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