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## EU Institutional Governance

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### MANUSCRIPT SENT TO THE PUBLISHER

#### Abstract

This chapter briefly presents the key institutions involved in EU governance (Commission, European Parliament, Council, European Council) and the way they interact in policy-making. It underlines the fundamental originality of the ‘Community method’ invented in the 1950s. It describes the main evolutions of the EU institutional system, taking into account both the formal changes that occurred and the development of informal practices. It focuses on and underlines the complex relations that have emerged with the institutionalisation of the European Council and the progressive empowerment of the European Parliament. Overall, the chapter highlights the three main logics that are at play in the EU institutional governance. First, it shows that the ‘Community method’ is not dead yet: the Commission still has a central role in the EU policy-making system, and various supranational competences have been reinforced by the treaty of Lisbon and since its entry into force (2009). However, the EU has also undergone a reinforcement of the intergovernmental logic that emerged in the 1960s, and that has been vivified by the various crises which hit the EU since the mid-2000. Those repeated crises have strengthened the intergovernmental bodies and have given birth to a new approach of the EU governance, that largely relies – at least for key-decisions – on the decisions taken within the member states capitals. Paradoxically, there is a third trend, that takes the form of a deep process of parliamentarization of EU governance. It has emerged as a consequence of the reinforcement of the EP, of the revised appointment procedure of the Commission, and the increasing importance of European elections. EU institutional governance is thus complex and ambiguous, but also efficient and resilient.

#### Keywords

Intergovernmentalism

Parliamentarization

Community method

European Governance

Democratic deficit

Policy-making

## INTRODUCTION

The institutional system of the European Union (EU) is the result of original choices made in the 1950s, tempered by 70 years of reforms and evolutions. The treaties of Paris (1951) and Rome (1957) have created a unique institutional set-up that is difficult to analyse and theorize, and that allows for various political and theoretical interpretations (Saurugger 2013; see Saurugger's and Bulmer's chapters in this volume). Overall, the objective of the Founding Fathers was to establish an institutional system that would be efficient, i.e., capable to propose functional solutions to concrete challenges, and to avoid political and national divisions. The treaties were thus driven by pragmatism: the system was called to pursue economic goals via legal tools, in other words, to propose technical solutions without normative impact. Hence, most of the competences (drafting and implementation of norms and the budget; relations with the stakeholders and member states; day-to-day management of European policies; international negotiations...) were devoted to the High Authority/Commission. The Council was created only at the request of the smaller member states (Benelux countries), that were concerned about a possible domination of the High Authority/Commission by the bigger ones. There was also a parliamentary assembly, but it was mainly symbolic and had very limited competences. Finally, a Court was instituted, in order to solve the potential conflicts between the member states and/or the Community institutions.

The European institutional system was thus not intended to be democratic and to ensure citizens' participation, and politics had no place at supranational level (Wallace and Smith 1995). The legitimation of the Communities was to be essentially legal and rational: legal, as a result of the implementation of treaties, negotiated and ratified at unanimity by the member states; and rational, as the outcome of a process giving much room to experts and stakeholders. This choice was not a surprise, as the drafter of the Paris and Rome treaties were not themselves politicians and were determined to avoid political and national divisions (Featherstone 1994). The European Communities (EC) institutional system faced several evolutions – but was never fundamentally challenged or reformed. In 2022, the main original institutions are still in place and the Commission is still at the heart of the system. It has nevertheless undergone a double process of 'inter-governmentalisation' and 'parliamentarization', in order to answer the expectations of national leaders and citizens, and to face the challenges of legitimation. On the one hand, the member States' leaders have claimed to better control the initiatives of the Commission (Hoffmann 1966). On the other hand, the EC have addressed the issue of the

‘democratic deficit’ (Robinson 1972), leading to the direct election of the EP (1979) and its progressive empowerment in the 1990s (Corbett 1998). The Commission and its supporters have however avoided the complete transformation of the European political system in a strictly intergovernmental organization – in which the Commission would have become a simple general secretariat – or in a parliamentary regime – through which it would have become a government. The institutional governance of the EU thus remains very specific, and subject to various theoretical and political interpretations.

We will first present the logic and design of the institutional system instituted by the treaties of Paris and Rome that created the Communities. We will briefly describe the main EU institutions and the way they operate. We will then underline the duality that has always structured decision-making at European level, with the coexistence of an integrated, supranational approach and of a more intergovernmental one. The third section will turn to the centrality and resilience of the Community method, and to its difficult theorization. Next, we will discuss the two evolutions that have shaped the EU governance since the 1970, namely the inter-governmentalisation and the parliamentarization. To end, we will see that the EU institutional governance is animated by three distinct logics, which proves to be functional, but which is not very favourable to the intelligibility of the system, and therefore to its legitimization.

## **AN INSTITUTIONAL SYSTEM BASED ON A *SUI GENERIS* DESIGN**

The EU institutional system derives from the one instituted in 1951 by the treaty of Paris, for the European Coal and Steel Community (ECSC). It has often been qualified of ‘*sui generis*’, as it was (and still is) the only of its kind, and was not inspired by a pre-existing organization (Klabbers 2016). It is, today, a very crowded system, with a large set of institutions and organs. According to article 13 of the Treaty on European Union (TEU), the institutional framework comprises seven institutions: the European Parliament, the European Council, the Council of the EU, the European Commission, the Court of Justice of the EU (see Avril’s chapter), the European Central Bank (see Piroška’s chapter), and the Court of Auditors. The European Economic and Social Committee and the European Committee of the Regions are organs with an advisory function. We can also mention the existence of the European Ombudsman, the OLAF – the European Anti-fraud Office – and no less than 45 European Agencies.

The definition of the overall action of the EU and the development and management of its policies involve four main institutions.

The European Commission is the executive branch of the EU. It is composed of 27 members, including the President, who are appointed by the member states, with the approval of the European Parliament (EP) (Nugent and Rhinard 2015). It has an administration of around 35000 people. The Commission is supposed to act in the EU's 'general interest' and to be totally independent from the member states, but it is accountable to the EP. It has the right to draft most of EU norms and may be given the right to adopt delegated and implementing acts. The Commission also drafts and runs the EU's budget and oversees the good application of EU law. Finally, it represents the EU during international negotiations linked to the European policies, on the basis of a mandate from the Council.

The EP is composed of 705 members, who are directly elected by the EU's 450 million citizens every 5 years (Corbett, Jacobs and Shackleton 2019). Each state elects a number of members determined by its population – from 6 for Malta to 96 for Germany. Members of the EP (MEPs) are currently sitting in 7 political groups, and not in national delegations. The EP, that was originally deprived of competences, has today several key functions. It shares, for most legal acts, the legislative power with the Council through the 'ordinary legislative procedure'. It votes the budget, also together with the Council, and approves a wide range of EU international agreements. It has the power of control over the Commission and can ask questions to the Council. It can express its views on any topic related to the EU. It 'elects' the President of the Commission, approves the other members, and participates in the appointment of several EU organs.

The Council of the EU is composed by ministers from the 27 member states (Puetter 2014). Its sessions are convened and chaired by the six-monthly presidency exerted by one member state. It meets in 10 thematic configurations; the 'General Affairs' one is responsible for the overall coordination. The work of the ministers is prepared by the Committee of Permanent Representatives of the Member States (COREPER) and by working parties and committees composed of national civil servants and diplomats. The Council carries out, together with the EP, legislative and budgetary functions and is lead decision-maker for the Common foreign and security policy (CFSP). Depending on the subject, it takes its decisions by simple majority, unanimity or qualified majority – which has become the voting rule by default.

The European Council is composed by the heads of state or government of the member states (Werts 2008; Wessels 2011). It started to meet informally in 1974 and was fully institutionalized in 2009 only. It now has a full-time president, elected by its peers. Today, the European Council consists in the 27 heads of state or government, together with its President and the President of the Commission. It gathers at least 4 times a year, and whenever needed.

It provides the general political directions for the EU, but it also has a specific role regarding CFSP and the area of freedom, security and justice. It takes its decisions by consensus, and, exceptionally, by qualified majority – for instance to appoint its own President or the President-designate of the Commission.

One cannot understand the dynamics of decision-making in the EU without considering also the role of ‘non-institutional’ actors (Coen & Richardson 2009). Thousands of experts of various kinds – independent consultants, member states’ officials, researchers, academics, representatives of think tanks, etc. – participate in the development and implementation of EU policies. In Brussels, there are also over 10,000 lobbies, which employ around 30,000 people who develop contacts with EU actors (Mazey and Richardson 2006; Dialer and Richter 2018). They were part of the original ‘Community method’, that aimed at finding a consensus between the Commission (representing the Community general interest), the Council (expressing member states’ views), and the stakeholders (as the main recipients of European policies, and experts *de facto*). Non-institutional actors play a crucial role in the European decision-making, thanks to various peculiarities of the EU political system: polycentrism and absence of hierarchy; technicality of norms; weakness of European political parties; absence of a European public sphere; limitations of the logic of representation; governance by committees; importance of expertise, as a tool to overcome national and political conflicts. They take advantage of the openness of the Commission and EP, which are in search of expertise, feedback, and legitimation. Non-institutional actors form a European elite that follows closely the EU’s activities, understands them, and undertakes a whole range of lobbying practices. They also make a proficient use of the possibilities for action offered to citizens by the treaties (Alemanno 2017). Paradoxically, the more EU institutions try to be opened to the civil society, in order to ensure some pluralism in interest representation, the more they offer channels of influence for lobbyists.

## **THE DUALITY OF EU DECISION-MAKING**

The initial EEC treaty (1957) already held a dual logic of decision-making at Community level. Based on a Commission proposal, decisions could be taken by the Council either unanimously or (after a ten-year transition period and only in certain domains) by a qualified majority. In both cases, the EP had no real influence. The rationale was that the second option, called the ‘Community method’, would gradually become more widespread. The French President Charles De Gaulle however protested this method in 1965 by holding his country’s participation

in the Council. The ‘Luxembourg compromise’, which was adopted in 1966 to put an end to that situation, provoked a suspension of the use of the qualified majority rule until the late 1980s. As consequences, the Council became a central decision-making actor, where proposals were carefully reviewed and amended, and the Commission gradually favoured bland texts. The Community method was still applied to routine decisions and to the management of core policies (the so-called ‘low politics’), but the inter-governmental decision-making was relied upon for key decisions and less integrated policies (‘high politics’).

This duality was formalized by the Maastricht Treaty in 1993. Its objective was to transform the European Communities – created to conduct a limited number of market policies in partnership with the economic, political and administrative elites – into a European Union – i.e. a policy organization expected to develop activities in all areas and to establish direct relations with its citizens. In order to ease a consensus on the new treaty, negotiators proposed the creation, alongside the Community ‘pillar’, of a second and third pillar with a more intergovernmental form of cooperation. It was largely based on Council and European Council actions, with a very limited involvement of the Commission, the EP and the Court. In 2009, the Treaty of Lisbon has merged the three pillars, made co-decision the ‘ordinary legislative procedure’ applying to most texts, and extended the use of qualified majority voting in the Council. However, the EU still blends the Community method and the intergovernmental approach for the most sensitive issues.

The duality of decision-making logics at EU level is not fortuitous or insignificant: it reflects the enduring reluctance of national officials regarding the initial “Community” approach which they perceived to be too federal (see Bartenstein and Wessels’ chapter). Formally, the intergovernmental style seems to be limited to exceptions, but the management of the various recent crises (sovereign debt, refugees, tensions with Russia, Brexit, “illiberal” trends in some member states, Covid-19...) has shown that it can be very preponderant, and that the European Council has become the leadership organ in the EU – replacing the Commission (Schimmelfennig 2018).

To sum up, the turbulent history of European integration has led to the crystallisation of two main approaches of decision-making. When member states agree on clear priorities (the single market and the policies related to it), decision is governed by qualified majority voting at the Council and involves the supranational institutions (Commission, Parliament), as well as the stakeholders. When there is no strong consensus on the objectives and the urgency of action (foreign policy, cooperation in criminal matters, fiscal policy...), the EU uses

intergovernmental mechanisms, leaving little influence to the main EU institutions and non-institutional actors.

The dynamics of decision-making in the EU are very different from what they are in a classic international organisation or in a parliamentary regime. They are closer to the latter, but there is no systematic political support to the Commission emanating from the Parliament and the Council: each proposal is the subject of intense negotiations between the three institutions, that promote their own views. In short, there is no situation of ‘fusion’, like at national level, where the party or the coalition that won the general elections holds the executive power and enjoys a stable majority in the low chamber. The EU has nevertheless experienced a process of gradual pacification of the relations between the institutions. It takes the form of inter-institutional negotiations on the budget (Hagemann 2012) and on legislative matters – via the so-called ‘trilogue’ negotiations, that involve a limited number of representatives of the Council, the Commission, and the EP (Héritier 2012). This approach of policy-making has led to a spectacular reduction of conflictuality; during the 8<sup>th</sup> EP term (2014-2019), the EP and the Council were able to adopt 99% of the legislative texts subjected to the ordinary legislative procedure at an early stage: 90% during the first reading, and 9% during the early second reading (Marié 2019). However, this is not the result of a partisan logic, but of the capacity of the three institutions to negotiate in a constructive way. There is a tendency of pro-European political parties and parliamentary groups (Christian-democrats, socialists, liberals and, to some extent, the Greens) to work together, especially to limit the influence of their Eurosceptic counterparts, but there is no stable coalition.

### **THE COMMUNITY METHOD: STILL ALIVE, BUT DIFFICULT TO LEGITIMIZE**

Today the EU decision-making is mainly governed by the Ordinary legislative procedure, that applies to 80% of the legislation; the EU budget is adopted through a procedure that is quite similar. The Community method is thus very much at play. It was originally focussed on the relationship between the Commission and the Council; the Parliament only gradually came into the frame in the late 1980s. This scheme resulted in the neo-functionalist interpretations of the Community experience (see Saurugger’s chapter) that emphasized the autonomy of the Commission and described European integration as a process beyond the reach of member states, gradually depriving them of their sovereignty (Haas 1958; Lindberg 1963).

As said, the legitimacy of the Community method resulted primarily from duly negotiated treaties ratified by the member states. The Council could also rely on the legitimacy of its



members, and the Commission became gained confidence from the political, administrative, and economic elites as it was capable to design and implemented effective policies meeting their interests. In breaking down the barriers of the Luxembourg Compromise (1966), and therefore of the systematic search for unanimity, the Single European Act (1987) expanded the scope of the Community method. The following treaties (Maastricht, Amsterdam, Nice, and Lisbon) have generalized the Ordinary legislative procedure and qualified majority voting in the Council: today, the Community method is the EU's principal method of decision-making (Dehousse 2008, 2011).

This approach of decision-making has nevertheless been impacted by a double evolution: the emergence of an intergovernmental leadership and the parliamentarization of the EU regime. The Commission has thus mobilized itself to preserve the centrality of the Community method. It has, for instance, taken advantage of the Single European Act (1987) to rebuild a supranational network of stakeholders able to support its action, by developing a strategy of 'co-option' (Wallace et al. 2005; Vandermeersch 2017). In the context of negotiations on a possible institutional reform, the Commission has also adopted a 'White Paper on European Governance' (July 2001) (Georgakakis and de Lassalle 2012). Implicitly, this document was advocating for the preservation of the existing system and of the Community method. The communication was also an attempt to theorize the functioning of the EEC: by calling it a system of 'European governance' (Shore 2011), the objective was to account for several of its peculiarities (institutional complexity; absence of hierarchy and centrality; role of expertise...), and to assume them. In short, the European 'governance' – a concept borrowed from social sciences – was supposed to be more efficient and more adapted to the challenges of the time than the traditional 'government' (Hooghe 2001; Foellesdal 2003; Kohler-Koch and Eising 1999; Smith 2001). The Commission considered that this approach to public action was desirable and searched to improve it by promoting various internal reforms and defining norms of 'good governance'. The Commission also claimed the concept of 'multilevel governance' used by social scientists to describe the emergence of a system adopting and implementing policies as the result of the interaction of multiple actors belonging to public institutions, private companies and civil society organizations, positioned at different levels (local, regional, national, European, global) and structured in informal networks of negotiations (Marks and Hooghe 2001).

The concept of European governance failed to clarify the functioning of the EU and to legitimize it among citizens; it has even acquired a negative connotation (Ritleng 2019). However, it certainly help to save the Community method. Despite the many crises experienced

by the EU and its constant treaty reforms, the Commission has remained in a central position in the European political regime, and has even expanded its scope of activities and competences (Bauer and Becker 2014; Fabbrini 2013). The Community method is, nevertheless, questioned by a double and somehow contradictory evolution: inter-governmentalisation and parliamentarization.

## **THE RELENTLESS PROCESS OF INTER-GOVERNMENTALISATION**

Very early, the Community method was challenged by a more intergovernmental approach of European integration, initiated by the *de facto* suspension of qualified majority voting after the Empty chair crisis (1965-1966) and, in 1974, by the creation of the European Council. After its institutionalization (2009), the European Council has played a key role in the management of multiple crises that have hit the EU. It has developed the habit to give precise instructions to the Commission regarding decision-making, not only in intergovernmental matters. The institutional triangle has thus become a square (Costa and Brack 2017), and the Commission appears now as a kind of government placed under the authority of the European Council (Bressanelli et Chelotti 2016). This evolution has challenged the EU institutional governance, and has led to complaints, for instance by Martin Schulz, then President of the EP (2014): ‘The Community institutions are increasingly being marginalized as a result of this trend towards ‘summitization’, the fixation with meetings at which the heads of state and government, in a clear breach of the spirit of the treaties, take more and more decisions themselves and seek to put their stamp even on the fine print of legislation.’<sup>1</sup>

Those developments have also led to a new theorization of the EU and its functioning, with the emergence of the concept of ‘liberal intergovernmentalism’ in the 1990s (Moravcsik 1998) and ‘new-intergovernmentalism’ in the 2010s (Bickerton, Hodson, and Puetter 2015; see Saurugger’s chapter in this volume). The proponents of new-intergovernmentalism consider that, despite its centrality in the decision-making process, the Community method has been called into question, especially with the economic and financial crisis (2008). Because it was touching sensitive issues, national leaders have favoured intergovernmental decision-making methods, giving a central role to the European Council and the Eurogroup – an informal body gathering the 19 ministers of the Eurozone. Many decisions have also been decentralized within the member states capitals.

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<sup>1</sup> M. Schulz, President of the EP, Speech to the Parliamentary Assembly of the Council of Europe, 30.01.2014.

In sum, there has been a form of integration without ‘supranationalisation’, relying on an intergovernmental approach, at the expense of the Community method. This applies to EU’s areas of intervention in which legislative and non-legislative mechanisms are mixed, such as foreign policy, energy, economic regulation, internal affairs (Fabbrini and Puetter 2016) and, today, public health (Wolff and Ladi 2020). The rise of Euroscepticism within EU institutions (Brack and Costa 2012) and in most member states (De Vries 2018) has made it difficult to develop new initiatives within the EU frame, thus leading to a reduction in the number and scope of EU legislative activities, and to the development of other forms of cooperation. Some researchers have hence argued that the crisis is not about European integration itself, but about the Community method (Majone 2014; Fossum and Menendez 2014).

## **PARLIAMENTARIZATION, AT LAST**

The parliamentarization of the EC/EU regime is the second trend that has impacted the Community method. European institutions and member states’ leaders were indeed constrained to take into account the needs for more legitimation and the growing criticisms about the EC democratic deficit. This led them to agree, in 1976, on the direct election of the EP. Once elected, MEPs have claimed for more power, and obtained it through evolutions of the day-to-day operations of EC institutions and more ambitious treaty reforms. Those were not intended to overhaul the EC regime, but to answer to the denunciations of the democratic deficit, by streamlining the institutional system and clarifying its objectives and values (Magnette 2005). Nevertheless, there was a cumulative evolution over time: today, after 45 years of constant developments, there is obviously a process of deep ‘parliamentarization’ (Héritier 1999; Rittberger and Schimmelfennig 2007).

There has been a shift towards a more political functioning of the EU, with the increased powers for the EP, the institution of a European citizenship, the strengthening of European political parties, and the ‘governmentalisation’ of the Commission (mode of appointment, composition, style of governance). The parliamentary model has been an implicit reference for treaty reforms – even if not the only one. In 2009, the treaty of Lisbon has confirmed this trend by devoting a title to ‘democratic principles’: article 10 TEU now provides that ‘the functioning of the Union shall be founded on representative democracy’ and establishes the concept of the dual representation of citizens within the EP, on the one hand, and the Council and European Council, on the other. Article 10 TEU has allowed the leaders of the five main European

political parties to impose the logic of ‘*Spitzenkandidaten*’ in 2014 (Hobolt 2014), and thus to favour a parliamentary interpretation of the EU political system.

Two meta-theories can account for this evolution. The first one is post-functionalism, a theory that aims at integrating the recent developments of European integration and the rise of Euroscepticism (Hooghe and Marks 2018). It underlines the growing tensions that exist between the functional needs for integration expressed by European leaders and the concerns that EU raises among citizens (Hobolt and De Vries 2013 ; Hooghe and Marks 2009), especially as a result of austerity (Streek and Schafer 2013). Post-functionalists observe that European integration now includes sensitive issues such as defence, justice, migration, and taxation, and that debates on the Union refer to issues as fundamental as religion, culture, sovereignty and identity. EU affairs generate strong political divisions and national tensions, both at domestic and European levels. European elections are becoming more successful – with a massive rise of participation in 2019 – thus increasing the legitimacy and influence of the EP. Federalism is a second theory accounting for the parliamentarization of the EU (see Foret’s chapter; Sbragia 1993; Beaud 2018). It predicts the emergence of a European-level public and political arena, its growing interconnections with national spaces, and the deepening of European citizenship (Borriello and Crespy 2015; Navari 2019). The parliamentarization of the EU can be seen as the result of those combined tendencies.

## **CONCLUSION**

EU’s institutional governance is characterised by a triple neo-functional, intergovernmental and parliamentary logic. It is still guided, to a large extent, by the original pursuit of efficiency, and the balance of multiple interests through decentralized decision-making and intense contacts of supranational institutions with stakeholders and civil society representatives. Nevertheless, it is more and more governed by the key decisions taken within the European Council and in national capitals in a strictly intergovernmental logic. At the same time, it is also driven by a parliamentary rationale: today, the EU is a political system based on citizens’ participation and parties interactions, and the EP is a powerful and independent legislature. The Commission can no longer be described as an autonomous body or an agency: it looks like a government, appointed and controlled by the EP, and instructed by the European Council.

The double-trend of governmentalisation and parliamentarization, combined with the persistence of the Community method, does not make the EU political system very readable for citizens. Its ambiguities and ambivalences lead to misunderstandings and an often negative

assessment of its functioning, and to the questioning of its legitimacy. The EU is reputed to be obscure and distant, disconnected from the concerns of citizens and hermetic to the principles that underpin democratic systems. However, it is functional and resilient, has proven its capacity to surmount crises and tensions, and allows for the conciliation of various conceptions of the European integration – neo-functional, federal and intergovernmental.

Thus, it is unlikely that major institutional reform will occur in a foreseeable future. By default, the relative consensus that exists about its current architecture is an obstacle to change. Adaptations will be made at the margins, in an incremental and selective manner, while respecting the current complexity of the system. This is undoubtedly the price to be paid for the political integration of 27 nation states, which are considered sovereign, very jealous of their prerogatives and not ready for the Union to become the main political arena.

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