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Youri Devuyst

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Professor Youri Devuyst teaches politics and institutions of the European Union at the Vrije Universiteit Brussel (Free University of Brussels), Belgium. Mr. Devuyst has served in the Cabinet of three successive Belgian Ministers of Foreign Affairs as well as in the Cabinet of European Commissioner for competition policy Karel Van Miert. His latest book in English is entitled *The European Union at the Crossroads: The EU's Institutional Evolution from the Schuman Plan to the European Convention*.

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Center for West European Studies
4200 Wesley W. Posvar Hall
University of Pittsburgh
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Fax: (412) 648-2199
E-mail: **cwes+@pitt.edu**

EU DECISION-MAKING AFTER THE TREATY ESTABLISHING A CONSTITUTION FOR EUROPE

Youri Devuyst[*]
Vrije Universiteit Brussel

Executive Summary:

This paper offers an institutional analysis of the Treaty establishing a Constitution for Europe. It identifies the Treaty-Constitution's main implications for the decision-making process in the European Union (EU). While the aim was to streamline EU decision-making in light of the expansion from 15 to 25 Member States, the Treaty-Constitution is characterised by numerous safeguard mechanisms. These are designed to preserve a high degree of Member State control over what is decided in terms of new constitutional, legislative or budgetary commitments in the EU. Veto-rights and blocking options have been retained, notably in procedures for the adoption and revision of the Treaty-Constitution as well as in a number of crucial policy fields. This is unlikely to foster a dynamic decision-making process in an expanded European Union of 25 Member States.

This paper offers an institutional analysis of the Treaty establishing a Constitution for Europe (henceforth called "the Treaty-Constitution"). The aim is to identify the Treaty-Constitution's main implications for the decision-making process in the European Union (EU). The subsequent paragraphs will, in particular, highlight the Treaty-Constitution's impact on five points of permanent tension in the EU's political system:

- veto-right versus efficiency in EU decision-taking (section 1);
- intergovernmental power-politics versus protection for the smaller Member States (section 2);
- national versus European representation (section 3);
- personalisation of EU politics versus impersonal institutionalism (section 4); and
- "Christian Europe" versus separation between European public policy and religion (section 5).

If the Treaty-Constitution is ratified and enters into force, its legal-institutional provisions are important for the EU's political process. As political scientists have rediscovered, institutions are significant notably because they contribute to "path dependence" (Bulmer, 1994; Pierson, 1996; Peters, 1999). This means that the outcome of political debates is shaped in large measure by earlier institutional choices such as the

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possibility of adopting decisions by majority rather than unanimity. In this context, the Treaty-Constitution must be seen as the outcome of a negotiation process in which a variety of policy actors have tried to shift the EU's institutional path in the direction that suits their substantive preferences.

However, to examine the real impact of the Treaty-Constitution, an analysis of its legal provisions is not enough. It is also necessary to look at the political climate in which the legal texts will be put into practice. The most important variable in this context is the manner in which the permanent tensions in the EU between solidarity and narrow self-interest are resolved (section 6).

In the framework of this paper, there is space neither for a detailed overview of the Constitution's negotiations, nor for an overall summary of its provisions. Suffice it to say that the Treaty-Constitution was drafted after earlier attempts to prepare the EU's institutions for the expansion in membership from 15 to 25 – in the form of the Treaties of Amsterdam and Nice – had failed to deliver the expected changes (for the historical background, see Dinan, 2004, 283-289). The revision of the EU Treaties at Amsterdam and Nice had taken place in the framework of Intergovernmental Conferences (IGCs) of representatives of the governments of the Member States. To provide for a broader and more transparent preparation of the Treaty-Constitution, the heads of state or government decided to convene a European Convention. It was composed of 15 representatives of the governments of the Member States (one from each Member State), 30 representatives of national parliaments (two from each Member State), 16 members of the European Parliament and two members of the European Commission. The candidate countries were represented in the same way.[1] In addition, the Convention was attended by observers of the Economic and Social Committee, the European social partners, the Committee of the Regions and the European Ombudsman. Former French President Valéry Giscard d'Estaing was appointed as Chairman of the Convention and former Italian and Belgian Prime Ministers Giuliano Amato and Jean-Luc Dehaene were chosen as Vice-Chairmen.[2]

The European Convention prepared, but did not replace the traditional intergovernmental process leading to formal EU Treaty reform.[3] The approval of the Treaty-Constitution still required a consensus at an IGC. This was achieved at the Brussels European Council of June 18, 2004. The Treaty-Constitution is expected to be formally signed in Rome on October 29, 2004. Following the signing, the Treaty-

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1 The candidate countries represented at the Convention included those that became Member States in 2004, as well as Bulgaria, Romania and Turkey.

2 The documents of the European Convention can be consulted via its website: http://european-convention.eu.int. See also http://www.europa.eu.int/futurum/index

3 On the European Convention process, see Closa, 2004; Magnette, 2004; Norman, 2003; Wouters, 2003. For an overview and analysis of the Draft Treaty establishing a Constitution for Europe, see Allen, 2004; Klabbers and Leino, 2003; Kokott and Rüth, 2003; Peters, 2004; Philip and Soldatos, 2004; Traguth and Wessels, 2004; Triantafyllou, 2003.

Constitution needs to be ratified by all the Member States before it can enter into force (Art. IV-8). The ratification process is likely to be extremely difficult.

One of the most significant results of the European Convention is the simplification of the EU's complex Treaty framework. As the fruit of fifty years of European integration, the EU's primary law is made up of a large number of Treaties and Protocols. Over 700 articles form a complex and not very coherent whole, including both fundamental principles and institutional and more technical provisions (Commission 2000, 2-3). The Treaty-Constitution replaces this set of earlier Treaties and provisions. It creates one European Union that has legal personality and absorbs the old European Community.[4]

1. Veto-right versus efficiency in EU decision-taking

For more than a decade, a series of committees, think-tanks and institutions have repeated that the EU's expansion in membership would have to go hand in hand with institutional change to protect the EU's decision-making capacity. In that context, the European Commission in particular has argued that veto-rights needed to make place for majority decision-making. As the difficulty of arriving at unanimous agreement was expected to rise exponentially as the number of Member States increased, adherence to unanimity was seen as a recipe for stalemate (see, for instance, Commission 1992; 1996).

At the start of the European Convention, veto-rights were influencing the EU's decision-making capacity at three levels:

- at Intergovernmental Conferences, notably for the revision of EU Treaties;
- at the European Council, the framework in which the EU's heads of state or government meet; and
- at the Council of Ministers, in a selected number of important policy areas where unanimity has not yet made way for qualified majority voting.

Intergovernmental Conferences for Treaty revision

In their report on *The Institutional Implications of Enlargement*, former Belgian Prime Minister Jean-Luc Dehaene, former German President Richard von Weizsäcker

[4] Readers interested in the legal-philosophical debate on constitutionalism in the EU and on the "nature" of the Treaty-Constitution as a "contractual constitution" versus a "constitutional contract," see Dehousse, 2003; Grimm, 2004; Lenaerts and Gerard, 2004; Piris, 1999; Weiler and Wind, 2003. The distinction between a "contractual constitution" and a "constitutional contract" was drawn by Lenaerts, 2004.

and former UK Minister David Simon (1999, 12) suggested a division of the EU Treaties in two separate parts:

> The Basic Treaty would only include the aims, principles and general policy orientations, citizens' rights and the institutional framework. These clauses ... could only be modified unanimously, through an IGC, with ratification by each Member State. Presumably such modifications would be infrequent.
>
> A separate text (or texts) would include the other clauses of the present treaties, including those which concern specific policies. These could be modified by a decision of the Council ... and the assent of the European Parliament.

The Convention did not really follow this suggestion. A clear division of the Treaty-Constitution in two parts was believed to be too difficult: it would open a fierce debate between the Member States on the subjects to be put in the Basic Treaty. Instead, the European Convention decided to maintain the basic principle that any amendment to the provisions of any part of the Treaty-Constitution should remain subject to a unanimous agreement, followed by the ratification in all Member States (Art. IV-7). The negotiators foresaw, however, the extreme difficulty of changing the Treaty-Constitution in this manner with 25 Member States. They devised two (non-)solutions. First, the European Council would by unanimity be able to amend the provisions on each of the EU's specific internal policy areas without an IGC. Still, such a decision would not come into force until it had been approved by the Member States in accordance with their respective constitutional requirements (Art. IV-7b). Second, if two years after the signature of a revision, one or more Member States still encounter ratification difficulties, the matter would be referred to the European Council (Art. IV-7.4).

The fact that the Treaty-Constitution can only be changed by unanimity is significant. The Treaty-Constitution systematically defines the objectives to be reached in each of the EU's policy areas and prescribes the policy instruments to be used for attaining those objectives. Thus, the scope of EU action in such areas as the internal market, competition policy, consumer protection and environment are fixed. This is not what one would traditionally find in a national constitution. It is rather what – at national level – would be included in a policy declaration at the start of a coalition government.

As these provisions are – at the EU level – part of the Treaty-Constitution, adapting the objectives or instruments in any specific policy area to new societal needs or new political insights will remain subject to veto-right. This is likely to foster stagnation. With 15 Member States, adopting EU Treaty amendments was an almost impossible task (Smith, 2002). With 25, the greater number of Member States and their increasing heterogeneity will only increase the level of difficulty.

Decision-making at the European Council

The European Council is composed of the heads of state or government and the President of the Commission. It was created in 1974 to replace the irregular Summits which existed before. In the course of time, the European Council has gradually become directly involved in all important questions on the EU's agenda (de Schoutheete and Wallace, 2002; Picod, 2002). According to the Treaty-Constitution, the European Council "shall provide the Union with the necessary impetus for its development, and shall define its general political directions and priorities" (Art. I-20.1). In practice, the European Council "instructs" and "directs" the Council of Ministers (Extraordinary European Council, September 21, 2001, 2).

The European Council is an intergovernmental body that has traditionally worked by consensus (Dashwood, 2001). Its functioning is therefore easily blocked. Following the chaotic and unproductive European Council meeting leading to the Treaty of Nice, even the British government argued that the intergovernmental working method needed adaptation. In a joint letter, Prime Minister Tony Blair and Chancellor Gerhard Schröder (2002) suggested a move away from systematic decision-taking by consensus in the European Council: "Decisions referred to the European Council under Treaty bases subject to qualified majority voting should be decided by qualified majority voting. Failure to do so can impede progress in key areas," they argued. Jack Straw (2002), the British Foreign Secretary, had earlier emphasised the necessity of finding a way to avoid paralysis in the European Council. He referred in particular to the failure of the Laeken European Council in December 1999 to achieve a decision on the sites of several Community agencies. To avoid the repetition of such a blockage, Straw stated: "No one needs a repeat of the unedifying and unproductive stalemate we saw at Laeken. It would be absurd to require 25 or more countries to reach consensus on issues like these." Still, that is precisely what the Treaty-Constitution does by specifying that the European Council generally takes its decisions by consensus (Art. I-20.4).

Decision-making at the Council of Ministers

The EU's day-to-day decisions are taken by the Council of Ministers. Together with the European Parliament, the Council of Ministers decides on new EU legislation and on the annual budget. The Council of Ministers is also the crucial institution with respect to EU efforts at policy coordination in such areas as economic and employment policies. Decisions on the common foreign and security policy always take place in its framework.

According to the Treaty-Constitution, decisions of the Council of Ministers shall generally be taken by qualified majority, except where provided otherwise (Art. I-22.3). Qualified majority voting in the Council of Ministers has traditionally functioned as follows: each Member State received a number of votes on the basis of a political

deliberation.[5] A decision was adopted by qualified majority when a certain threshold was reached. In the EU-15, the total number of votes was 87. The threshold of the qualified majority was set at 62. This threshold has been changed with each enlargement. In relative terms, however, the threshold always turned around 71% of the votes.

The Treaty-Constitution adopted an entirely new method to arrive at a decision by qualified majority. The idea was to simplify matters. According to the European Convention's draft, a qualified majority would consist of the majority of the Member States representing at least three-fifths of the population of the Union. Following lengthy discussions at the IGC, the heads of state and government decided to add a series of "safeguards" to the new mechanism, making decision-taking much more difficult than proposed by the Convention. As specified in the final version of the Treaty-Constitution (Art. I-24), a qualified majority necessitates support by:

- at least 55% of the members of the Council;

- at least 15 Member States; and

- Member States comprising at least 65% of the EU's population.

Two further new rules were added. First, in order to prevent blockage by a limited coalition of large Member States, the Treaty-Constitution makes clear that a blocking minority must include at least four Council members, failing which the qualified majority shall be deemed attained. Second, where a group of Member States somewhat less than a blocking minority is opposed to the adoption of a particular measure, the Council would be obliged to do all in its power to reach a satisfactory solution to address the concerns raised by the minority group. The Council's attempt to find a solution must be achieved within a reasonable time and without prejudicing obligatory time limits.[6] The result is all but a simplification or streamlining of decision-taking in the Council.

One of the purposes of the negotiations leading to the Treaty-Constitution was the extension of decision-making by qualified majority to the remaining areas under unanimity. The Treaty-Constitution did, indeed, extend qualified majority voting, but did

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[5] In the EU-15, the votes were weighted as follows: Belgium 5; Denmark 3; Germany 10; Greece 5; Spain 8; France 10; Ireland 3; Italy 10; Luxembourg 2; the Netherlands 5; Austria 4; Portugal 5; Finland 3; Sweden 4; the United Kingdom 10.

[6] This procedure is inspired by the commitment made in Ioannina in March 1994 on the occasion of the discussions on the institutional aspects of the EU's enlargement with Austria, Finland and Sweden. The technical aspects of the procedure are included in a Declaration re Article I-24 that is annexed to the Final Act of the Treaty-Constitution's IGC. According to the Declaration, the renewed Ioannina procedure can be requested if members of the Council representing (a) at least three-quarters of the level of population, or (b) at least three-quarters of the number of Member States necessary to constitute a blocking minority indicate their opposition to the Council adopting an act by qualified majority.

not generalise it to all aspects of ordinary legislative work.[7] For decision-taking on taxation and social security, for instance, unanimity remains the rule. This also applies to the adoption of the EU's multi-annual financial perspectives and the common foreign and security policy. To allow for a further movement in the direction of qualified majority voting, the Treaty-Constitution specifies that the European Council may in the future authorise the Council of Ministers to act by qualified majority in certain types of cases currently governed by unanimity (Art. IV-7a.1). This decision itself is, however, subject to veto-right as the European Council must act by unanimity. Furthermore, each national parliament can block such a decision (Art. IV-7a.3).

In a significant development – added during the IGC under the Italian and Irish Presidencies – the Treaty-Constitution on three occasions includes a provision that incorporates the most restrictive interpretation of the infamous compromise of Luxembourg of 1966 (for the background on this compromise, see Dinan, 2004, 104-108; Camps, 1966; Lambert, 1966). With regard to social security for migrant workers and in the field of judicial cooperation in criminal matters, any Member State can block the normal legislative procedure by stating that the proposed EU framework law would infringe the fundamental national principles of social security or of the legal system. In that case, the matter goes for discussion to the European Council and the legislative procedure is suspended (Art. III-21.2, III-171.3 and III-172.3).

To overcome the tendency towards paralysis that is connected with veto-rights and consensus decision-making, the Treaty-Constitution includes updated provisions on enhanced cooperation (Art. I-43, III-322 – III. 329). This allows Member States wishing to go further in the integration process to establish closer cooperation among themselves. Those refusing the proposed way forward can stay on the side. However, the provisions on enhanced cooperation, as included in the Treaty-Constitution, provide no guarantee against paralysis. Enhanced cooperation is, indeed, subject to strict conditions and limitations. As such, one may wonder with Traguth and Wessels (2004) whether it will not remain "an inactive device confined to the realm of theoretical possibility." In any case, enhanced cooperation provides no solution if the purpose is to build a Union with policies including all 25 Member States. Instead of providing the EU with efficient decision-making methods, the Treaty-Constitution establishes a possibility for "selected separation." This seems to signal a strong doubt on the part of the negotiators as to whether the EU with 25 can work.

2. Intergovernmental power-politics versus Community protection for the smaller Member States

The original Communities of the 1950s were built on mechanisms to ensure that reconciliation between the larger countries would not be at the expense of the smaller

[7] According to Traguth and Wessels (2004), the Draft Treaty-Constitution, as produced by the European Convention, increased the number of cases where qualified majority could be used by 24, to 156 articles.

countries (see, for instance, Magnette and Nicolaïdis, 2003; de Schoutheete, 1997, 103). Avoiding the dominance of the smaller by the larger Member States was therefore an essential characteristic of the so-called Community method. Two institutional elements were particularly important in this context:

- The European Commission was created as the guardian of the Union's general interest, both in the initiation and supervision of EU law. The Commission was to safeguard the smaller Member States from the pressures that are inherent in traditional intergovernmental frameworks;

- The division of the votes in the Council of Ministers was advantageous to the smaller Member States.

The European Commission as the guardian of the Union's general interest

The Commission's role as the defender of the Union's general interest has two main components: the Commission has the exclusive right to take the initiative for EU legislation and it is in charge of enforcing respect of Community rules by all Member States. The Commission's exclusive right to take the initiative in the EU's legislative process was designed to ensure that the starting point for legislative discussions would be the general interest of the EU, not that of individual Member States. As a corollary, it was to help protect the smaller Member States against the dominance of the larger Member States.

Since the 1990s, the Commission's role as the engine of the European integration process has been gradually taken over by the European Council. In practice, the heads of state or government have become the main agenda-setters for the EU: it is the European Council that decides which initiatives are to be taken with any chance of success. The European Council's dominant role has changed the nature of EU decision-taking. Unlike the European Commission, the European Council is intergovernmental in nature. Not only does it work by consensus, but the European Council also functions without the Community mechanisms designed to protect the smaller Member States. Like most traditional diplomatic conferences, it is dominated by the larger Member States. This was illustrated at the Nice European Council in December 2000. The French Presidency's initial proposal at Nice on the re-weighting of the votes in the Council took the form of a tripling of the votes of the larger Member States and a doubling of those of the smaller Member States. This immediately put the latter on the defensive. According to Portuguese Prime Minister Antonio Guterres, the change amounted to nothing less than "an institutional *coup d'état* in favour of the big Member States" (*European Report*, December 13, 2000, I-5). In a comment made after Nice, veteran EU-observer Ferdinando Riccardi (*Agence Europe*, March 7, 2001, 3) expressed the following view:

> … the increasingly pre-eminent role of the European Council is … dangerous, because the European Council could slide towards a 'G8'-type mechanism, in which some essential elements of a Community are

> lacking: the largest powers dominate, and no independent institution prepares decisions basing itself on the 'general interest', nor manages the follow-up to directions decided upon. To slide along that path would be the end of Community Europe.

The Treaty-Constitution confirmed the intergovernmental pre-eminence of the European Council as the real engine of the European integration process, notably by giving it the formal status of an EU institution (Art. I-18.2). In addition, its role is extended. For example in the field of justice and home affairs, it is the European Council that has the right to define the strategic guidelines for legislative and operational planning (Art. III-159). It thus seems that, in the area of freedom, security and justice, the Commission will have to work *within* the legislative planning established by the European Council. Still in the area of freedom, security and justice, the Commission's right of initiative is accompanied by the right of initiative of a quarter of the Member States (Art. III-165). The Treaty-Constitution also creates the possibility for a citizens' initiative. It prescribes that one million citizens may invite the Commission to submit a proposal for a legal act (Art. I-46.4).

In addition to its role as initiator of the legislative process, the original Treaties put the European Commission in charge of supervising respect of EU rules by all Member States. As guardian of the Treaties, the Commission's task is to ensure that EU law applies equally to all, large or small Member States. Here too, the Commission's function has come under attack. A significant example concerned the application of the Stability and Growth Pact. In November 2003, while the negotiations on the Treaty-Constitution were ongoing, the Council of Ministers refused to follow the Commission's recommendation for a decision against France and Germany, in accordance with the procedures of the Stability Pact. The Council recognised that the Commission's economic analysis was correct and that France and Germany were maintaining an excessive budget deficit. Still, there was no qualified majority in the Council to draw the legal consequence that is laid down in the Stability Pact. France and Germany, which had been lobbying intensely to overturn the Commission's recommendation, succeeded in blocking the proper application of Community law, with the help notably of the United Kingdom and Italy. The smaller countries (Belgium, Denmark, Greece, Spain, the Netherlands, Austria, Finland and Sweden) had supported the Commission. The Commission immediately declared that it deeply regretted that the Council had not followed the spirit and the rules of the Pact. It explicitly added that "only a rule-based system can guarantee that commitments are enforced and that all Member States are treated equally" (Council, 2003, 15 and 18). For the smaller Member States, the episode signalled not only the political inequality of the Member States. It also focused their attention on the simultaneous debate on the re-weighting of the votes in the Council of Ministers in the framework of the Treaty-Constitution.

The method of qualified majority voting in the Council of Ministers

The discussion on the re-weighting of the votes in the Council of Ministers was the most divisive issue during the negotiation of the Treaty-Constitution. It concerned a key question in the relationship between larger and smaller Member States. According to the original Community method, the smaller Member States had been allocated a relatively higher share of votes than the larger Member States. For instance, in the EU-15, Belgium with ten million inhabitants had five votes. Germany with its 82 million inhabitants had only ten votes. During the negotiations over the Treaty of Amsterdam, France in particular had argued that, following the accession of several smaller Member States, the original distribution of Council votes was causing an exaggerated over-representation of the smaller countries. In consequence, France was asking for a re-weighting of the votes to the advantage of the large Member States. The issue was discussed, but not settled at Amsterdam (Devuyst, 2003, 63-67).

During the negotiation of the Treaty of Nice, a complex political compromise was reached that was designed to accommodate France and the other larger Member States.[8] Germany, the United Kingdom, France, and Italy went from 10 to 29 votes. Spain and Poland, though having 20 million fewer inhabitants than a country like France, nevertheless received 27 votes. Smaller middle-sized countries (like Greece, Belgium and Portugal) went from 5 to 12 votes. In other words, the number of votes of the larger Member States was almost tripled. The votes of the smaller Member States somewhat more than doubled. As a result, the overrepresentation of the smaller Member States was – in relative terms – somewhat reduced. In addition, the Treaty of Nice made it more difficult to adopt a decision without the support of the larger Member States. It stipulated that any member of the Council would be able to request verification that the qualified majority comprises at least 62% of the total population of the Union. Should that condition not be met, the decision would not be adopted.

During the European Convention, the negotiators were striving for a simplification of this mechanism. As indicated above, they proposed that a qualified majority would consist of the majority of the Member States, representing at least three-fifths of the population of the Union. As described in section 1 of this paper, the end-result is significantly more complex. Several factors played a role in the final compromise:

[8] Nice Protocol on Enlargement of the European Union, art. 3: Germany 29 votes (82 million inhabitants); United Kingdom 29 (59 million); France 29 (59 million); Italy 29 (58 million); Spain 27 (39 million); Netherlands 13 (16 million); Greece 12 (11 million); Belgium 12 votes (10 million); Portugal 12 (10 million); Sweden 10 (9 million); Austria 10 (8 million); Denmark 7 (5 million); Finland 7 (5 million); Ireland 7 (4 million); Luxembourg 4 (400,000 thousand). For the new Member States, the weighting of the votes was fixed as follows: Poland 27; Czech Republic 12; Hungary 12; Slovakia 7; Lithuania 7; Latvia 4; Slovenia 4; Estonia 4; Cyprus 4; Malta. 3.

- *The population threshold*: Spain and Poland insisted on preserving the blocking capacity they had obtained in the Treaty of Nice.[9] France insisted that the Member States that choose to block a decision must represent a significant percentage of the EU's population to prevent a faction of small states stopping the decision-making process. This explains why the threshold in terms of population was increased to 65%;

- *The Member State threshold*: the smaller Member States wanted the gap between the population and the Member State thresholds to be small. This was to protect their position in comparison with the larger Member States. The Irish Presidency proposed to stick to the Convention proposal for a 10% gap as a reasonable balance. As a result, the Member State threshold was set at 55%. In addition, the negotiators agreed to add that a qualified majority would need support of at least 15 Member States. This was intended to convince the smaller countries that they could accept the compromise;

- *A blocking minority requires at least four Member States*: this provision was intended to prevent a blocking coalition composed of France, Germany and Belgium (i.e. "old Europe" opposed to the war in Iraq);

- *The renewed Ioannina clause*: Poland, in particular, was worried about a loss of blocking power in comparison with Nice. Poland therefore insisted on further safeguards for the minority. This resulted in the Declaration allowing a group of Member States (below the minority necessary to prevent the qualified majority) to invoke a conciliation phase during which a satisfactory solution would be sought.

In spite of the many safeguards, the qualified majority system proposed in the Treaty-Constitution puts the smaller Member States on the defensive in comparison to what they were used to under the Community method. Indeed, as it abolishes the traditional distribution of the votes in exchange for a decision-making method based on real demographic weight, the Treaty-Constitution shifts the equilibrium between larger and smaller countries to the advantage of the latter. Using the Member States' full demographic weight in Council voting is not as obviously justified as it might seem. The population factor already plays its role in the decision-taking of the European Parliament. Representation of the European citizens in the European Parliament follows the logic of degressive proportionality, ensuring a minimum representation for the smallest Member States (Art. I-19.2). In most federal systems, population weight is the dominant factor in one, but not in both chambers of parliament. The most explicit example is the United States Congress. The U.S. House of Representatives is composed in a proportional manner. The U.S. Senate consists of two representatives of each State, whatever its size. Each Representative and Senator has one vote only. In the European Union after the Treaty-Constitution, a different logic is followed, giving a particularly strong position to the larger Member States: one vote for each Member of the European Parliament and

[9] For the background of the Spanish and Polish position, see Roig Moles, 2003; Parzymies, 2003.

voting power proportionate to a Member State's population (albeit with safeguards) in the Council of Ministers.

The formation of "directoires"?

An additional point of friction during the negotiation of the Treaty-Constitution was the complaint by the smaller Member States against the perceived tendency towards the formation of big power *"directoires"* (Ash, Mertes and Moïsi, 2003; de Bresson, 2004; Stark, 2002-2003). In the wake of the terrorist attacks on New York and Washington, D.C. in September 2001, for instance, Chirac, Blair and Schröder found it necessary to discuss matters repeatedly in a restricted circle. In 2003-2004, after all formal EU meetings had been expanded from 15 to 25, Germany, France and the United Kingdom again held a series of bilateral and trilateral mini-summits. The smaller Member States reacted with virulence against the *"directoire"* tendency. Austrian Chancellor Wolfgang Schüssel, for instance, stated that "the European idea [was being] undermined" by the mini-summits and that all EU Member States had the right to be treated as "equal members" (*Agence Europe*, November 11, 2001, 4).

3. National versus European representation

During the negotiations over the Treaty-Constitution, two important discussions took place regarding national or European representation in EU decision-making. The first debate concerned the composition of the European Commission. The second dealt with the role of national parliaments in EU decision-shaping.

The composition of the European Commission

During the negotiations over the Treaty-Constitution, one of the most difficult discussions concerned the composition of the European Commission, given the expansion to 25 Member States. Traditionally, the Commission always included at least one national from each Member State, with a second Commissioner from Germany, France, Italy, Spain and the United Kingdom. Continuing this system after the enlargement of 2004 would imply a college of 30 members or more.

France in particular insisted on the need to reduce the number of Commissioners. The idea of an "efficient and small Commission" was, however, viewed with great suspicion by the smaller Member States (CONFER/VAR 3951/00 ff). They insisted on the right to keep a national Commissioner. For the Austrian Minister for Foreign Affairs, it was crucial to maintain the information flows between the Commission and each Member State through direct representation of all states in the college (*Agence Europe*, January 18, 2001, 3). The Portuguese State Secretary for European Affairs argued that reducing the number of Commissioners meant that the Commission would *de facto* be run at the level of the senior officials where the large Member States are better "represented" than the smaller Member States (*Agence Europe*, November 11, 2000, 6; *European Report*, October 18, 2000, I-7). The Finnish Prime

Minister feared that by eliminating the link between the college of Commissioners and each Member State, the Commission's legitimacy would be undermined (Lipponen, 2000).

During the negotiations over the Treaty of Nice, the final compromise formula was that the Commission would be composed of one national for each Member State until the EU consisted of 27 Member States. At that time, the number of Commissioners would be reduced to less than the number of Member States. The European Convention had another approach. According to the Convention, the European Commission would consist of 15 persons selected on the basis of a system of simple rotation between the Member States. In addition, the Commission President would appoint non-voting Commissioners coming from all other Member States. Several of the smaller Member States expressed their objection to the idea of a Commission that would include "second class" Commissioners.

In the end, the heads of state or government decided in June 2004 that the first Commission to be appointed under the provisions of the Treaty-Constitution shall continue to consist of one national of each Member State (I-25.5). Thereafter, the number of Commissioners was fixed at two-thirds of the number of Member States. The selection among the nationals of the Member States would take place on the basis of a system of equal rotation between the Member States (I-25.6).

The main significance of this discussion is not so much the exact number of Commissioners to be appointed, but rather the importance that the Member States attach to this issue. According to the Treaties, Commissioners must act in a completely independent manner and shall neither seek nor take instructions from any government or other body. However, the Member States continue to see the Commissioner of their nationality as "their own" national representative. Several Member States feared that, without a "national representative," the Commission would neglect their interests. This explains why they insisted on a Declaration to be incorporated in the IGC's Final Act, which underlines that the Commission should liaise closely with all Member States, whether or not they have a national serving as Commissioner. In addition, the Declaration states that the Commission should take all the necessary measures to ensure that political, social and economic realities in all Member States, including those which have no national serving as a Commissioner, are fully taken into account.

The role of the European Parliament and the national parliaments

To the Community's founders, its democratic nature seemed self-evident since it was based on democratic Member States (Featherstone, 1994). Moreover, the ECSC Treaty provided for a Common Assembly composed of delegates from the national parliaments of the Member States. Upon the entry into force of the EEC and Euratom Treaties, the powers of the Assembly were extended to the new Communities. The Assembly changed its name to European Parliament in 1962. The first direct elections of the European Parliament took place in 1979.

In the 1950s, the Assembly's powers were largely consultative. This is no longer the case: the European Parliament now exercises crucial budgetary and legislative powers, on an equal footing with the Council of Ministers. The Treaty-Constitution continued the logic of increasing the European Parliament's co-decision powers. Simultaneously, another institutional development seemed to be undermining Parliament's newly-gained legislative powers: this development was the EU's tendency to coordinate national practices through the non-legislative open method of coordination. In the open co-ordination method, the Member States define certain policy objectives by common accord in the Council. The European Parliament, however, is largely absent in decision-shaping on matters falling under the open method of coordination. Parliament has therefore warned explicitly that the open method of co-ordination "must under no circumstances lead to hidden parallel legislation by circumventing the legislative procedures established in the EC Treaty" (European Parliament, 2001, para. 37). The Treaty-Constitution is silent on this issue.

Since the first direct elections for the European Parliament in 1979, members of the European Parliament are no longer appointed by the national parliaments. The organic link that existed between national parliaments and the European integration process before 1979 thus disappeared. However, proposals for the creation of a second EU chamber representing the national parliaments have traditionally received a negative reaction from the European Parliament, which sees itself as the legitimate representative of the European population in EU decision-making.

Still, only national parliaments can effectively exercise political control over the positions taken by their national ministers in the Council. The European Parliament is unable to do this, as it cannot sanction national governments. The degree to which national parliamentary institutions are actually exercising this control differs greatly from one Member State to the next. In a large number of Member States, national parliaments hardly discuss the positions taken by their national ministers in the Council.

In order to enable them to exercise their right of control, the Member States agreed in the context of the Treaty of Amsterdam that national parliaments had to be informed in a timely fashion of proposals for EU legislation. The European Convention decided to go further down this road. In a Protocol on the role of national parliaments in the EU, the Treaty-Constitution envisages encouraging a greater involvement of national parliaments in the activities of the EU and enhancing their ability to express their views on legislative proposals. The Protocol stipulates *inter alia* that all Commission consultation documents and legislative proposals sent to the European Parliament and the Council of Ministers shall be simultaneously forwarded to the national parliaments. To allow for debate in the national parliaments, the Protocol adds that a six-week period shall normally elapse between the receipt of the legislative proposals by the national parliaments and their inclusion in the agenda of the Council of Ministers. National parliaments receive a particular role in the application of the principle of subsidiarity. According to the Protocol on the application of the principles of subsidiarity and proportionality that was added to the Treaty-Constitution, any national parliament can address a reasoned opinion to the EU institutions stating why it considers that a

Commission proposal does not comply with the principle of subsidiarity. When at least one-third of the national parliaments object, the Commission will be obliged to review its proposal and decide whether to maintain, amend or withdraw it. This "safeguard" was added to protect the national legislatures against the "threat" of a further erosion of their powers to the EU level.

While the European Parliament has traditionally opposed the creation of a second parliamentary chamber composed of national parliamentarians, it has never objected to the so-called "Conference of Community and European Affairs Committees of Parliaments of the European Union" (generally known under its French abbreviation COSAC). COSAC is a cooperation framework between committees of the national parliaments dealing with European affairs as well as representatives from the European Parliament. It was created in 1989. At the biannual meetings of COSAC, six members represent each parliament. COSAC was formally recognised in the Amsterdam Protocol on the role of National Parliaments (para. 4). According to this Protocol, COSAC is allowed to address any "contributions" to the EU institutions that it deems necessary, in particular on the EU's legislative proposals. This is confirmed by the Treaty-Constitution.

4. Personalisation of EU politics versus impersonal institutionalism

While trying to achieve their economic and political objectives, the Community's founders repeatedly emphasised that the success of the European integration effort would depend to a large extent on getting the institutional framework right (Monnet, 1976, 373; Duchêne, 1994, 205). Monnet, in particular, had a strong belief in the cumulative sagacity of institutions.[10] The negotiators of the Treaty-Constitution, instead of focusing on the strengthening of the EU institutions as such, concentrated especially on the creation and reinforcement of individual functions within the institutions. The Treaty-Constitution notably creates the new functions of President of the European Council and of Union Minister for Foreign Affairs. In addition, it reinforces the role of the President of the European Commission.

The President of the European Council

Before the Treaty-Constitution, the Presidency of the European Council was occupied by the Member State holding the Presidency of the Council of Ministers. The office of President was thus held, in turn, by each Member State for a term of six months. The Presidency of the European Council could therefore not be seen as a personal mandate. Each Member State had as such, the duty of performing this task as its turn came.

[10] Jean Monnet was fond of quoting Swiss philosopher Henri Frédéric Amiel: "Each man begins the world afresh. Only institutions grow wiser; they store up their collective experience; and, from this experience and wisdom, men subject to the same laws will gradually find, not that their natures change but that their behaviour does" (Duchêne, 1994, 401).

Over the years, the Presidency of the Council of Ministers and of the European Council gradually adopted the central political role in the EU's decision-making system (Tallberg, 2003). While the Treaties only gave a very incomplete picture of the Presidency's powers, in practice, the rotating Presidency fulfilled the following functions:

- it was the central agenda-setter for all European Council and Council of Ministers meetings;

- it prepared and chaired every European Council and Council of Ministers meeting as well as the preparatory working parties and committees;

- it drew the conclusions after each meeting;

- it was expected to lead whenever political compromise formula and new initiatives needed to be invented;

- and it represented the European Council and Council of Ministers in contacts with the other institutions, third countries and the media.

The Council Presidency thus exercised the EU's central political functions, in particular in intergovernmental domains such as the common foreign and security policy. At the same time, the task of the Presidency was becoming ever more difficult because of the larger number of subjects to be dealt with and the greater diversity among the expanding number of Member States. Even for the most capable national administration, the Presidency constituted an exhausting experience.

The Presidency of the European Council constituted an important element in the debates during the European Convention. British Prime Minister Tony Blair (2002, 4) was one of the most outspoken critics of the rotating Presidency system. In Blair's words:

> The six-monthly rotating Presidency was devised for a Common Market of 6: it is not efficient nor representative for a Union of 25 and more. How can the Council, with constantly shifting leadership, be a good partner for the Commission and Parliament? How can Europe be taken seriously at international Summits if the Chair of the Council is here today, gone tomorrow? The old system has reached its limits. It creates for Europe a weakness of continuity in leadership: a fatal handicap in the development of an effective common foreign and security policy.

Blair, as well as Chirac and Schröder, emphasised instead the need for a full-time President of the European Council (*Agence Europe*, January 17, 2003, 24). But several of the smaller Member States and the Commission saw the proposals for a permanent President of the European Council as a threat to the Community system. They

asked what the permanent European Council President would be doing for the other 360 days of the year when the European Council would not be meeting and when the American President would not be searching for the mythical single phone number for "Europe". They feared that a permanent chairperson of the European Council might become a duplicate or rival of the Commission President, create his own staff and open up a rift in the EU's institutional system (Prodi, 2002; Verhofstadt, 2002).

Still, the Convention adopted the proposal for a permanent chair. According to the Treaty-Constitution, the European Council shall elect its President, by qualified majority, for a term of two and a half years, renewable once. The President may not simultaneously hold a national mandate. In addition to the chairing of meetings, the tasks of the President include driving forward the European Council's work, ensuring its proper preparation and continuity, facilitating cohesion and consensus within the European Council and ensuring the external representation at his or her level (Art. I-21). Whether the new function will lead to a real rivalry with the Commission is uncertain. However, with a job description that includes driving forward the European Council's work, ensuring its proper preparation and continuity, and facilitating cohesion and consensus, it is clear that the Presidency of the European Council could be developed into the EU's leading permanent political position.

The Union Minister of Foreign Affairs

The Treaty-Constitution established the new post of Union Minister of Foreign Affairs (Art. I-27). The Minister will take up the functions that were held before by two persons: the European Commissioner for external relations and the High Representative for the common foreign and security policy (who was at the same time Secretary General of the Council secretariat).

The general feeling throughout the Member States, the European Commission and the European Parliament was that the existence of the office of High Representative in the Council in tandem with the Commissioner for external relations was inefficient and unsuited to the integrated nature of international affairs (CONV 459/02). To remedy this situation, it was proposed that the tasks of the High Representative and Commissioner for external relations be entrusted to one person (European Parliament, 2000, para. 68; Prodi, 2001).

The Treaty-Constitution stipulates that the European Council, acting by qualified majority with the agreement of the President of the Commission, shall appoint the Union Minister for Foreign Affairs. The Union Minister shall at the same time be one of the Vice-Presidents of the Commission. His or her essential task will be to coordinate the EU's external action. On the one hand, the Union Minister will carry out the common foreign and security policy as mandated by the Council of Ministers. On the other hand, (s)he shall be responsible within the European Commission for handling external relations. Only for the responsibilities thus exercised within the Commission will the Union Minister be bound by Commission procedures. The status of the Union Minister is therefore somewhat ambiguous. It seems that s(he) is in the first instance an agent of the

Council. It is the European Council that can end his or her tenure at any moment. Furthermore, the Union Minister will chair the Council of Ministers for Foreign Affairs. As such, the chair of the Council for Foreign Affairs will be represented directly in the Commission.

The President of the European Commission

During the negotiations for the Treaty of Nice, attempts to drastically reduce the number of Commissioners had been resisted. To, nevertheless, maintain efficiency in the Commission's functioning, the Treaty of Nice opted for a strengthening of the Commission President's powers. The Treaty-Constitution further consolidates the President's leading role within the Commission. From a role of *primus inter pares*, the President has gradually become the real *chef*. The Treaty-Constitution notably stipulates that the President shall lay down guidelines within which the Commission will work and will decide its internal organisation, ensuring that it acts consistently, efficiently and on a collegial basis. The President selects the members of the European Commission upon proposal of the Member States and appoints the Vice-Presidents. Members of the Commission must resign if the President so requests (Art. I-26).

5. "Christian Europe" versus separation between European public policy and religion

A new dimension, explicitly introduced in the EU's decision-making system by the Treaty-Constitution, is the principle of participatory democracy. According to the Treaty-Constitution, the EU's institutions shall give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of the EU's action. The institutions shall "maintain an open, transparent and regular dialogue with representative associations and civil society" (Art. I-46). In addition to this general provision, the Treaty-Constitution contains a specific article in which the EU recognises the identity and specific contribution of churches, religious associations and non-confessional organisations (Art. I-51). The article specifies that the Union shall maintain an open, transparent and regular dialogue with these churches and organisations (for the context, see Hölscheidt and Mund, 2003).

The article on churches in the Treaty-Constitution did not appear out of the blue. During the earlier negotiations over the Treaty of Amsterdam, German Chancellor Helmut Kohl had suggested inserting a paragraph in the Treaty emphasising Europe's Christian values and the role of the churches in European construction. This resulted in a non-binding Declaration on the status of churches and non-confessional organisations. It simply underlined that the EU respects and does not prejudice the status under national law of churches and equally respects the status of philosophical and non-confessional organisations (Marcus-Helmons, 1998; van Bijsterveld, 1999). The churches were disappointed by this Declaration. They also complained when the EU's Charter of Fundamental Rights, proclaimed in December 2000, failed to include an explicit

reference to God or to recognise the EU's Christian origins. Instead, the Charter's preamble referred to the EU's "spiritual and moral heritage."

Following several statements by Pope John Paul II, the churches continued their offensive during the negotiation of the Treaty-Constitution, notably through the activities of the Conference of European Churches and the Commission of the Bishops Conferences of the European Community (Triebel, 2003a and 2003b). They received strong political support from Catholic countries such as Poland and Italy, as well as from the European People's Party and several members of the Convention (see, for instance, CONV 480/03, January 10, 2003). France and Belgium strongly disagreed with references to religion in the Treaty-Constitution, which in their opinion would be contrary to the tradition of secularism in public policy.

In the end, the Convention and the IGC rejected appeals for an explicit recognition of Europe's Christian roots in the Treaty-Constitution's preamble. Instead, it refers to "the cultural, religious and humanist inheritance of Europe." However, in a major concession to the churches, the European Convention did lift the Amsterdam Declaration into the Treaty-Constitution itself, including the new paragraph on the dialogue with the churches and philosophical organisations. The article on the dialogue with churches continues to create controversy. The European Humanist Federation (2004), for instance, rejects the article as it seems to give religious institutions a right of interference in the exercise of European public powers.

The fact that the issue emerged as a major political topic during the European Convention is firstly indicative of the fact that the EU is currently dealing with practically all aspects of life, including ethical questions on which the churches wish to influence EU policy. Secondly, the political intensity with which this issue was discussed was closely linked to the debate about a possible Turkish accession. Thirdly, the debate on the place of religion in the EU was also stimulated by the participation in the Convention of the new Member States from Central and Eastern Europe. Poland in particular sees Christianity as its main national characteristic and symbol of resistance against atheist Communism.

6. Community solidarity versus narrow self-interest

The paragraphs above have put the emphasis on the Treaty-Constitution. However, the legal provisions of the Treaty-Constitution as such do not provide the full picture of the developments in EU decision-making. One of the most important aspects is the political climate in which the legal provisions will be interpreted and implemented. In this respect, one of the crucial questions is the degree to which the 25 Member States will balance their legitimate national interests with a degree of EU solidarity and Community spirit.

The Treaty-Constitution made the concept of solidarity in the EU more conspicuous, notably by adding an explicit "solidarity clause" in which the Union and its

Member States commit themselves to act jointly, in a spirit of solidarity, if a Member State is the victim of terrorist attack or natural or man-made disaster (Art. I-42). In addition, the Treaty-Constitution foresees the possibility of introducing closer cooperation as regards mutual defence in case one of the Member States is the victim of armed aggression (Art. I-40.7).

Even before the Treaty-Constitution, solidarity played an important role during EU decision-making. The process of drafting EU law is characterised by constant attempts to avoid the marginalization of particular Member States (Nickel, 1998). In this context, the EU's legislation is often accompanied by assurances in the form of transition periods and – less frequently – specific derogations for Member States facing particular problems (for examples, see de Schoutheete, 103).

EU solidarity also takes a financial form through the transfer of financial means from the rich countries to the needier regions via the Community's budget allocations from the Structural Funds and the Cohesion Fund. While representing less than 5% of the budget in 1975, cohesion spending increased to 35% in 2004. However, financial solidarity is also very much under pressure. During the negotiation of the so-called Agenda 2000 regarding the EU's financial perspectives for the period between 2000 and 2006, Germany, backed by the Netherlands, Sweden and Austria, called for a mechanism to correct budgetary imbalances. Their purpose was to obtain a cut in their net contribution to the EU budget. At the start of the debate, German Chancellor Schröder declared that it had become necessary to change traditional German policy. "In the past," he said, "many of the necessary compromises could be achieved because the Germans have paid for them. This policy has come to an end" (*Der Spiegel*, January 4, 1999, 44). The view that the budget returns should be equivalent to budget contributions – the so-called "*juste retour*" theory – was strongly condemned in the European Parliament. Jutta Haug (1999, 17), the Parliament's *rapporteur* on the issue, underlined that the "*juste retour*" attitude was "contrary to the indivisible nature of the financial and non-financial rights, benefits and obligations deriving from Union membership and from the principle of solidarity between the Member States." The most significant result of this discussion was the overall reduction in EU funding. In 1999, the ceiling for total appropriations for EU payments stood at 1.24% of the EU's combined GDP (Commission, 1999, table 16). The financial perspectives agreed at the Berlin European Council aimed at reducing this level from 1.13% in 2000 to 0.97% in 2006. This caused sharp criticism by the European Parliament (1999, para. 4-5), which regretted that – at times when more action is expected from the EU in a host of areas – EU solidarity risked ending up as mere rhetoric in view of the Member States' tendency to retreat behind their own budget walls.

Financial solidarity reappeared on the agenda with the start of the debate for the multi-annual financial perspectives from 2007 to 2013. At Nice, the heads of state and government had made sure that each Member State retained its veto with respect to the adoption of those multi-annual perspectives. During the negotiations of the Treaty-Constitution, the Dutch Finance Minister insisted that the Netherlands would never give up the right to veto the financial perspectives. In his words, the Netherlands was "not going to allow our public treasury to be pillaged due to a decision made by a majority"

(*Agence Europe*, April 23, 2004, 7). In the end, the Dutch position was accepted by the other Member States. The Treaty-Constitution stipulates that the multi-annual financial framework shall be laid down by unanimity in the Council of Ministers (Art. I-54).

The spirit in which the budgetary negotiations would take place was further clarified by a letter of December 2003 from Germany, France, the United Kingdom, Austria, the Netherlands and Sweden. These net contributors asserted that the EU budget should be frozen at the level of a maximum of 1% of the EU's combined GDP. The Commission reacted immediately to the common letter, stating that under those circumstances it would no longer be possible for the EU to fulfil its solidarity mission. The debate revealed the degree to which the heads of state and government were reasoning in terms of their narrow self-interest rather than in the EU's general long-term interest. While the Treaty-Constitution tended – in formal terms – to increase the importance of the solidarity concept, it did not always translate into political practice.

7. Conclusion

The Treaty-Constitution confirms the hybrid, *sui generic* nature of the EU political system. On the one hand, the EU goes beyond what can be expected from a traditional international organisation. In particular, it will continue to create secondary legislation that is approved through co-decision with the European Parliament and the Council of Ministers, often deciding by qualified majority rather than unanimity. The Treaty-Constitution stipulated that EU law established in this manner has primacy over national law (Art. I-5a). On the other hand, the EU's supranational competences have been strictly limited. This is confirmed by the Treaty-Constitution which lays down that the EU shall have exclusive competence only with respect to monetary policy (for the Member States that have adopted the euro), competition rules (only in so far as necessary for the functioning of the internal market), the common commercial policy, the customs union, and the conservation of marine biological resources under the common fisheries policy (Art. I-12). In addition, the EU may issue legislation in areas where the Union shares competence with the Member States such as the internal market, environment, consumer protection and agriculture (Art. I-13).

Following the Treaty-Constitution, the EU's institutional set-up will remain what Alberta Sbragia (1993) has correctly called "a balancing act" (see also Jacqué, 2004). To produce policy, institutions with the task of defending the EU's general interest (such as the European Commission) have to work together with institutions where the starting point is the national interest (such as the Council of Ministers). During the negotiations over the Treaty-Constitution, the balance tilted in favour of those mechanisms strengthening the protection of the national interests. The Member States have tried to create an EU polity where they remain the masters of the game. First, the veto-right remained prominently present, notably in procedures for the revision of the Treaty-Constitution as well as in a number of crucial policy fields. Secondly, negotiations about decision-making in the Council of Ministers were overshadowed by the battle between larger and smaller Member States for the maintenance or reinforcement of their

respective national power. Thirdly, a new post of President of the European Council was created, strengthening the weight of the heads of state and government vis-à-vis the European Commission. Finally, discussions on the composition of the European Commission were dominated by the attachment of several Member States to their "national representation."

That the Member States have actively tried to protect their own institutional powers in the negotiation of the Treaty-Constitution is not surprising. Since the Community's beginning in the 1950s, governments have regularly formulated objections to the supranational elements in the Community method. This can be easily understood: EU law adopted by qualified majority in the Council of Ministers, decisions by the Commission (for instance in the field of competition policy) and judgements by the Court of Justice can all bring effective societal change in Europe, even against the will of some of the Member States. This implies that the governments have – to a certain degree – lost direct control over their European creation and explains why they have been creative in inventing often complex decision-taking techniques that allow them to remain at least partially in charge (for a more detailed formulation, see Devuyst, 2003, 27-29).

In addition, the EU's enlargement has not facilitated advancement to a federal or more supranational structure. The United Kingdom, which joined the European Communities in 1973, has been a constant obstacle to such an evolution. The accession of ten new Member States on May 1, 2004 has not been a factor favoring greater federalism either. According to the theory of "institutional spillover" as formulated by Robert O. Keohane and Stanley Hoffmann (1991, 22), enlargement, first appearing as an antithesis to effective decision-making, could in a dialectic manner become the decisive element that provokes institutional reform aimed at greater decision-making efficiency. This theory, however, hasn't been borne out in practice. While the larger number of Member States has produced the expected centrifugal effects, it did not lead to a significant strengthening of the EU's decision-making capability and of those institutions defending the Community's common interest. The federal vision of Europe is generally rejected by the new Member States. Former Polish Minister of Foreign Affairs Bronislaw Geremek, for instance, has emphasised that the idea of developing a European federation is "contrary to the way of thinking of the candidate countries which have just regained their independence and sovereignty" (*Agence Europe*, May 19, 2000, 4). Jan Zielonka (2000, 152) has reached a similar conclusion: "political federation within an enlarged Union is no longer possible."

This is the context that can help clarify the final version of the Treaty-Constitution. During the negotiations, the Member States seemed to approach decision-making in the EU as traditional "foreign policy," where each state must fight for a place at the table to ensure the defence of its own national interests. Apparently, the Member States have grave doubts about whether the EU political system can produce "fair" political solutions in the absence of their direct representation. This indicates that the EU is far from developing into a federation-like polity, where the members are connected by mutual trust and community spirit. In this sense, the negotiations over the Treaty-Constitution have hardly differed from the creation of the previous EU Treaties.

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Center for West European Studies
4200 Wesley W. Posvar Hall
University of Pittsburgh
Pittsburgh, PA 15260, USA

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