The European Union matters: structuring self-made offers and demands

Self-made demands from the EU: analysing the impact of Maastricht

The evolution of European integration since 1950 has been considerable. The European Union has gained in stature, taking on and aspiring to new functions across the policy spectrum and challenging the conceptualisation of the evolving structure for joint problem-solving, deliberation and decision-making.

The evolution of the Union: stages of constitution-building

To test different theory-led expectations and their impact on the Member States,¹ in view of the Maastricht Treaty, we proceed in two steps. First, we explore the evolution of EC/EU primary law, e.g. treaty provisions. With regard to the institutional and procedural design ‘before’ and ‘after’ the TEU we scrutinise forms of decision-making rules within the EC/EU from its foundation. More precisely, we look at the evolution of decision-making rules in the Council of Ministers and the decision-making procedures involving the Council and the EP. We thus sketch the evolution of our independent variables. As a second step, we take the legal output of the Council of Ministers, the EP and the European Commission as dependent variables in order to identify fundamental trends in the ‘demands’ made by political actors to use or to refrain from using the EU’s para-constitutional resources and opportunities.

When exploring the relationship between the European and national levels of governance,² we assume that one important variable is to be found in the creation and subsequent development of EU institutions as well as in the increasing differentiation of procedures within the policy-cycle of the Brussels arena. In addressing the specific interaction mechanisms between treaty reform and Member State adaptation to new European ‘opportunity structures’,³ this chapter investigates the latter’s fundamental nature.

We therefore try to offer answers to four sets of questions:

- What kind of essential features can we identify for grasping the EC/EU on the move? How do the ‘masters of the treaties’⁴ shape the ‘legal’ constitution of the EU? Which indicators permit an analysis of fundamental trends and structural evolutions?
- How do institutional actors use self-made structures for joint problem-solving? Do para-constitutional revisions such as treaty amendments matter – and how do they matter – for the set-up and evolution of the policy-making structures of the EU’s ‘living constitution’?⁵
- What are the EU-related challenges to national systems?
- How can the results be explained in terms of general, integration-related approaches? Do they support or dismiss some of the theoretical assumptions elaborated in the academic community?⁶

The shape of the Maastricht Treaty on European Union

The Maastricht Treaty of 1992 was designed to give a renewed contractual input into the West European multi-level and multi-actor machinery of common problem-solving and joint decision-making between Member States’ governments, their politico-administrative substructures and the EU’s institutions. Five years after the entry into force of the SEA⁷ and the accession of Portugal and Spain to the then European Communities, the ‘masters of the treaties’ agreed to a revision of the founding treaties as well as to the creation of two distinct pillars for intergovernmental co-operation in the fields of Foreign and Security Policy (CFSP)⁸ and Justice and Home Affairs (JHA).⁹ The result was a kind of ‘Russian doll’: a new TEU integrating the three existing Paris (1951) and Rome (1957) treaties. Encompassing EC-generated supranationalism and EU-related intergovernmentalism, the Maastricht Treaty committed the Member States as well as the European institutions to a ‘single institutional framework’ embodying a broadly defined set of aims and tasks as well as common procedures.¹⁰

The road to Maastricht¹¹ was marked by important, somewhat unintended and unpredictable circumstances. The treaty reform was originally aimed at a policy-based Intergovernmental Conference (IGC) on the three-phased movement towards Economic and Monetary Union (EMU).¹² But the end of the Cold War and German unification pushed the heads of state and governments towards other, though not completely new, themes of political union: policy and institutional reform – including CFSP, social policy and JHA – as well as a revision of rules governing the EC/EU policy-cycle from decision preparation to decision implementation and control.

Treaty revisions: creations and creators

Like its predecessor and successors – the SEA of 1986, the Amsterdam Treaty of 1997 and the Nice Treaty of 2000 – the Maastricht Treaty has

to be interpreted as but one ‘grand bargain’ decision¹³ among Member States along an uncharted path of European integration and co-operation. In this perspective, Maastricht needs to be read as a peak within a fluid landscape, moving with regard to time, the functional, institutional and geographical dimensions of supranational integration and interstate co-operation and co-ordination. Member States – governments, administrations, parliaments, parties and other ‘collective actors’¹⁴ – were and still are important but not exclusive players of the game: their preferences provide an input or a ‘voice’¹⁵ on the basis of experience gained while crossing the landscape between the ‘peaks’ of IGCs.

We then conceive of treaty revisions and amendments as initial ‘offers’ to actors working within the EU institutions. Placed within this multi-level and multi-actor framework for governance they create incentives and disincentives to use or to refrain from using treaty articles – legal empowerments provide the skeleton of a ‘living constitution’.¹⁶ Institutions and procedures provide arenas and rules for making binding decisions. One could therefore argue that treaty-building has a significant effect on the day-to-day output of the Union and thus on the evolution of the system in general; we therefore consider the evolution of para-constitutional patterns within the integration process over the Union’s whole history. Starting from this assumption, we expect to be able to identify five periods which are defined by historical decisions either to create, amend or redesign the treaties: the ECSC Treaty, the Rome Treaties establishing the European Economic Community (EEC) and the European Atomic Community (Euratom), the SEA, the Maastricht Treaty and the Amsterdam Treaty. As a concluding point we will refer also to the reforms of the Nice Treaty (2001).

It is our view that relations between treaty reform and treaty implementation are not uni-directional. Treaty reforms do not emerge from nowhere as a ‘*deus ex machina*’, rather they represent reactions to prior developments and trends, reflecting both the complex day-to-day machinery at all relevant levels of policy-making as well as the reaction of socio-political actors which do not or only rarely intervene during the ‘implementation’ of a given set of treaties. Quite often these contractual treaty foundations simply formalise institutional evolutions which have been developed either within existing treaty provisions, through inter-institutional agreements, institutional rules of procedure and codes of conduct, or outside of the treaties, through bilateral or multilateral agreements between EU members.¹⁷ Treaty amendments also attempt to address institutional and procedural weaknesses identified during the implementation of previous adjustments to the ‘rules of the game’. Treaty revisions are thus endemic parts of the process; they are not only independent variables affecting the nature and the evolution of the system but also become dependent variables themselves. Institutions and procedures

– ‘formal rules, compliance procedures, and standard operating practices that structure the relationship between individuals in various units of the Polity and economy’¹⁸ – are creations and creators at the same time. In this regard, one specific feature of the Union should be addressed: in negotiating and ratifying treaty amendments, Member States *challenge their own politico-administrative systems*. The effect of these challenges varies according to the nature of the political systems in the Member States.

*The EU: a multi-level and multi-actor system ... in process:
an institutional approach*

We assume that institutions do matter. Historical neo-institutionalist theories¹⁹ and the path-dependency approach²⁰ to policy preferences, institutions and procedures, policy outcomes and policy instruments offers a possible starting point. The institutional and procedural design of the EC/EU is subject to new circumstances, political and institutional changes over time – a ‘stickiness in movement along the continuum’.²¹ Accordingly, Member States seek not only functional, i.e. policy-based, but also institutional solutions to shared problems on the basis of what already exists. Critical junctures – revisions of the treaties or exogenous developments affecting the EC/EU or a major part of it – offer Member States and institutions the chance to adapt and re-design the existing arrangements.²² The logic of path dependency suggests that in such an institutionalised arrangement as the EC/EU, ‘past lines of policy [will] condition subsequent policy by encouraging societal forces to organise along some lines rather than others, to adapt particular identities or to develop interests in policies that are costly to shift’.²³ Institutions, rules and procedural routines at both the national and the European levels of governance therefore become able to ‘structure political situations and leave their own imprint on political outcomes’.²⁴ In other words, institutional arrangements affect the range of future developments insofar as they narrow down the areas for possible change and oblige Member States incrementally to revise existing arrangements.

Within these processes, national interests and preferences – as they are the articulated products of shared beliefs – ‘act as “focal points” around which the behaviour of actors converges’.²⁵ This process presupposes interest aggregation by national governments.²⁶ They are widely perceived as ‘unified actors’²⁷ and remain key interlocutors for the EC/EU institutions and arenas. They are important targets of Non-Governmental Organisations (NGOs) and other functional ‘demoi’.²⁸ They provide essential resources for the system not only with respect to the financial basis of the Union, but also with regard to the effective functioning of the institutional setting. Hence, Member States second civil servants to the Council of Ministers and the Commission, and provide important intellectual and managerial resources for Council Presidencies and coercive

resources for pushing the Council to reach agreements.²⁹ However, as with institutional and policy developments, national interest formation is 'locked in': the preference aggregators and articulators of the EC/EU system, especially national governments, use the channels which they have created themselves. Concomitantly, societal preference-builders – parliaments, political parties, NGOs, public opinion and the mass media – also become involved in the process. Some of them, such as parties and NGOs, may be fully aware of these interaction mechanisms because they are mirrored directly by similar or corresponding entities within the Brussels and Strasbourg arenas. Others, especially public opinion, may only react to European policy and institutional outcomes. In any case, the complex mechanism between institutions, interests and ideas needs to be taken into account.

As we are interested in the long-term trends of the EC/EU system and the respective impacts on EC/EU policy-making in the Member States, we look at the effective use of treaty provisions. For this purpose, we explore the real 'demand' for different procedural 'offers' or opportunity structures at hand.

We take the changes, which the architects of the treaties have included within primary law, as independent variables. Of course, we do not expect that the intentions of the treaty architects will be fully met. Fifteen national, aggregated interpretations of the treaties³⁰ produces a productive ambiguity³¹ which itself serves as a driving force behind subsequent reforms of the EU's para-constitutional setting. The 'masters of the treaties' might revise the formal rules through informal arrangement (at European Council level) or – together with the constitutive elements of the Union's 'single institutional framework' – by the adoption of inter-institutional agreements (between the Council of Ministers, the EP and the European Commission).³² Even if Member State governments are in full agreement about the respective interpretations of treaty implementation, they cannot guarantee a full and comprehensive use of new articles. The treaty provisions do not prescribe actors' subsequent behaviour; new governments and new political coalitions may prefer other areas and methods of co-operation to those used by their predecessors – thus one might expect to see the law of unintended consequences at work.

The evolution of the EU system

Incentives and disincentives for bringing the treaty rules into play do not exclusively depend on procedural and institutional opportunities but depend also on the political context of the day and the time. Preferences of Member States and other actors matter, although they cannot be taken as fixed. Time lags in making use of amended treaties are imposed by the treaty provisions themselves.³³ However, we argue that the usefulness of

new opportunities is proved either early or never. It is the period between the conclusion of an IGC and a rather short period afterwards where actors set precedents which set out the 'path'³⁴ or at least the range of possible behaviour for implementing the treaty. We assume therefore that during five years (November 1993–December 1998) of the application of Maastricht, possible effects should have become apparent.

The extension of scope and actors involved: trends and patterns of constitution-building

As a first step, we concentrate on the development of the EC/EU's rules between 1951 (ECSC Treaty) and 2001 (Nice Treaty). We observe that the total number of treaty articles dealing with specific competencies and decision-making rules – the *enumerative empowerments* – in an increasing amount of specific policy fields, has grown considerably from 86 (EEC Treaty 1957) to 254 (Nice Treaty 2001). Further illustrations of this broad scope can be seen in the expansion of the number of Commission Directorates-General (DGs) (from nine in 1958 to twenty-four in 1999) and of autonomous executive agencies (from two in 1975 to eleven in 1998);³⁵ the agendas of the EP at its plenary sessions and especially the presidency conclusions published after each session of the European Council.³⁶ The increasing number of sectoral forms of the Council of Ministers (from four in 1958 to twenty-three in 1998)³⁷ as well as the extension of the administrative sub-structure, indicates that governmental actors have become more and more involved in using their Brussels networks extensively and intensively.³⁸

As for the provisions governing the decision-making system within the Council of Ministers, Figure 2.1 shows the absolute proportion of the Council's internal decision-making modes between 1952 until 1999. It can clearly be seen that the total number of rules providing for unanimity and QMV has considerably increased over time. If we focus on the relative rates of the treaty-based provisions in the Council (Figure 2.2), we also notice an over-proportional growth in QMV voting up to Amsterdam.

The EP was not originally designed along the lines of national legislatures in the EU Member States. Given its original lack of legislative powers, Parliament's influence on important decisions in traditional policy areas remained limited, although MEPs engaged in trials of strength with the Council in the context of the budgetary procedures. Since 1979 Parliament has expanded its role as a watchdog by making intensive use of its right to ask questions, by keeping a close eye on EU expenditure (through the Committee on Budgetary Control) and by setting up temporary committees of inquiry. Since 1986–87, EC Treaty amendments have introduced important changes concerning the role and position of the EP. On the basis of the positive experiences gained with

the co-operation procedure after the entry into force of the SEA (1987), the Maastricht Treaty widened the procedure’s scope and in also created the so-called ‘co-decision procedure’. The EP obtained the right to block a proposed legislative act without the Council having the right to outvote

Figure 2.1 Decision-making modes in the Council of Ministers, 1952–2001, absolute numbers
Source: Original ECSC, EEC, EC and EU Treaties (by time of their entry into force).

Figure 2.2 Decision-making modes in the Council of Ministers, 1952–2001, per cent
Source: Original ECSC, EEC, EC and EU Treaties (by time of their entry into force).

it at the end of the procedure. The Conciliation Committee was to be the nucleus of the co-decision procedure. Apart from co-decision, Maastricht extended the assent procedure to a wide range of international agreements and other sectors of a legislative nature. As regards the implementation phase of the EC/EU policy-cycle, Parliament was given the formal right to set up temporary Committees of Inquiry in order to investigate maladministration in the implementation of EC law. Finally, and with a view to the early stages of European decision-making, Parliament gained the right to request the European Commission to submit legislative proposals.

Commentators on the Maastricht Treaty have argued that the EP 'was perhaps the largest net beneficiary of the institutional changes in the TEU'³⁹ and that the treaty 'marks the point in the Community's development at which the Parliament became the first chamber of a real legislature; and the Council is obliged to act from time to time like a second legislative chamber rather than a ministerial directorate'.⁴⁰ Understanding the slow but steady move to include the EP into the EU system therefore necessitates a perspective which departs from orthodox realism. On the other hand, the co-decision procedure could well be depicted as symptomatic of the 'general trade-off' between the 'problem-solving capacity'⁴¹ of EU decision-making on the one hand and parliamentary involvement on the other: 'Expanding the legislative ... powers of the European Parliament could render European decision processes, already too complicated and time-consuming, even more cumbersome'.⁴² As for the roles provided by the treaties for the EP, the relative dimension of its 'exclusion' from the EC/EU policy-making process has considerably diminished (Figure 2.3). However, in view of the absolute increase in treaty-based decision-making procedures (Figure 2.4), the growth in consultation, co-operation and co-decision procedures is balanced by a small augmentation of 'non-participation' in the Council's rule-making process. The main reasons for this development are the dynamics of subsequent treaty reforms widening the functional scope of European integration and co-operation into new areas. Of specific interest in this regard is the combination of both the respective powers of the Parliament and Council, which shows a remarkable increase in procedural complexity over time. There is no typical procedure which clearly dominates the political system, e.g. QMV and co-decision as the general rule.

An ideal three-step model towards communitarisation

To explain these trends we can construct an ideal type of a three-step evolutionary pattern by which governments create competencies and respective procedures in policy fields (Figure 2.5).

- *Intergovernmentalisation*: to achieve objectives of joint interest and to reduce transaction costs, Member States agree to pool resources in a

loose form which might be outside the E[E]C Treaty (e.g. European Political Co-Operation, the Exchange Rate Mechanism (ERM) of the European Monetary System (EMS),⁴³ the TREVI⁴⁴ network providing a collective intellectual capacity to combat international crime); or by referring to Article 308 (ex Article 235) ECT (the treaty establishing the European Community), which requires unanimous decision-making in the Council of Ministers.

Figure 2.3 Decision-making procedures in the European Parliament/Council, 1958–2001, absolute numbers

Source: Maurer (1999), new data added, based on original EEC, EC and EU treaties.

Figure 2.4 Decision-making procedures in the European Parliament/Council, 1958–2001, per cent

Source: Maurer (1999), new data added, based on original EEC, EC and EU treaties.

- ‘Treatyisation’ by ‘hard’ intergovernmental structures and procedures: In a second phase governments include the new policy area(s) *expressis verbis* into the treaty, perhaps with formulas limiting the roles of EC/EU bodies or securing Member States’ veto powers (such as unanimity in the Council), since they remain hesitant to cede too much power to non-national actors or to risk being outvoted by majority decisions and restrictive rule interpretations.
- *Communitarisation*: in a third phase of treaty amendment, governments then commit themselves to QMV instead of unanimity, for the sake of efficiency and effectiveness. As for the EP and the European Court of Justice (ECJ), Member States are, in the first phase of policy-building, rather reluctant to allocate powers to other actors. Only in the subsequent phases of treaty amendments has the EP been granted some powers – ideally consultation in the second phase and co-operation, co-decision or assent in the third phase of constitutional revision. As to the ECJ, similar empowerments evolve over time. In a first phase, judicial control is excluded, then narrowed down to some specific policy fields and/or behavioural settings. If trust in the system and the Court precedes compliance with its decisions, governments agree in subsequent phases to widen and/or to strengthen its powers.

Figure 2.5 Three steps towards communitarisation

Over recent decades, we thus witness a strong centripetal trend towards ‘communitarisation’: a push and pull of provisions towards the EC treaties or, within the treaties, towards supranational procedures,⁴⁵ or towards EC-like rules within the intergovernmental pillars of the Union⁴⁶ – even if it is with many derogations, such as the case of the area of ‘freedom, security and justice’ (Title IV ECT)⁴⁷ and even if, in terms of community orthodoxy, ‘dirty’ communitarisations⁴⁸ and institutional anomalies⁴⁹ take place.

Towards procedural ambiguities

The character of treaty provisions is reinforced by a specific legal feature: if we take a closer look at the treaties, we can identify a trend towards *procedural ambiguity* over time. Whereas the original treaties foresaw a restricted (clear) set of rules for each policy field, subsequent treaty amendments have led to a procedural differentiation with a variety of rule opportunities. As a result, the treaty provisions do not dictate a clear nomenclature of rules to be applied to specific sectors. Instead, since the SEA, Member States and supranational institutions can, in an increasing number of policy fields, select whether a given piece of secondary legislation – a regulation, a directive or another type of legal act – should be decided by unanimity, simple or qualified majority voting in the Council; according to the consultation, co-operation or (after Maastricht) the co-decision procedure; without any participation of the EP or with or without consultation of the Economic and Social Committee (ECOSOC), the Committee of the Regions (CoR) or similar institutions. In other words, different procedural blueprints and interinstitutional codes compete for application and raise the potential for conflict between the actors involved. From a national perspective, this growing variation of institutions and procedures means a mixed set of opportunity structures for access and participation in the EC/EU policy-cycle.

Patterns of participation: the policy-cycle

The resulting nature of the Union is characterised by a continuing extension of its responsibilities and authorities, which have enlarged the total range in which EC/EU institutions are active. In order to successfully reconcile the management of growing responsibilities with the demands for functional participation of the political actors involved, new institutions and procedures have been established and the institutional framework has been altered. The complexity of the Union is a result of the huge number of its duties, legislative processes and implementation procedures and, at times, the unfathomable nature of the procedures and the roles of those actors involved. For a closer look at the complex structure of the Union we use the policy-cycle as a scheme for observing fundamental patterns of the Union’s living constitution (Figure 2.6).

Phase	I. Decision preparation		II. Decision-making			III. Decision implementation		IV. Control	
Level	(a) Initiation	(b) Preparliamentary deliberations	(c) Parliamentary deliberations	(d) Preparation	(e) Decision-making	(f) Transposition	(g) Implementation	(h) Execution	(i) Verification and Sanction
EC/EU Level	COMMISSION 20 members Cabinets (20) DGs (24) Other Services (12) Expert groups (around 700)	Committee of the Regions (222 members) ECOSOC (222 members)	EUROPEAN PARLIAMENT (626 members) Party Groups (7) Committees (17) European Political Parties	COUNCIL Secretariat General COREPER and Working Groups (around 250) Advisory Committees (Economic and Finance Committee, Employment Committee)	COUNCIL Presidency A + B Points EUROPEAN PARLIAMENT MEPs Committees Administration Commission DG's	COMMISSION Supervision of transposition calendars (for directives, recommendations and decisions)	COMMISSION Implementation 'Comitology' Committees (around 420)	COMMISSION Supervision of execution, continuous monitoring of application of EC law	COMMISSION Rule application divisions EUROPEAN COURT OF JUSTICE Jurisdiction EUROPEAN PARLIAMENT Temporary Committees of Inquiry
National level	Civil servants and interest groups Regions, European Associations / Federations		COSAC and Joint committee meetings National parliaments Political parties	National Ministries, Administrations and Parliaments		National Governments, Parliaments and Administrations	Civil servants for 'Comitology' committees	Execution through national (incl. regional) administrations	National Courts

Figure 2.6 The EC/EU policy-cycle, November 2001

Rules for decision preparation, decision-making, implementation and control differ both across the policy fields in which they are applied, and in terms of the institutions and bodies involved. Furthermore, Maastricht introduced new bodies such as the CoR and the European Central Bank (ECB). These developments – repeated in the Amsterdam Treaty by the creation of new institutions such as the Employment Committee, CFSP, the Policy Planning and Early Warning Unit within the second pillar, and procedures such as the closer co-operation clauses⁵⁰ – are an expression of the growth and differentiation of European integration. New institutions are established not for the purpose of furthering the institutional complexity of the Union, but because they are required to deal with the Union's new policy duties and tasks, to give it a single voice or interface for dealing with third countries and organisations, or to become its formalised feedback system towards the specific geographical or functional levels of governance. New institutions do not operate in a political vacuum but in a closely connected system and balance of power in which the architects of the treaty have positioned them. Whenever new institutions gain autonomy, they do not use it in isolation but in a framework of established rules and centres of political power. This process of institutional growth thus attains a higher degree of complexity, potentially mirrored by new structures and processes in the Member States.

Considering institutions as 'systems of rules', institutionalisation is the process by 'which rules are created, applied, and interpreted by those who live under them'.⁵¹ One characteristic of this institutionalisation is – as Figure 2.6 suggests – the comprehensive and intensive participation of national governments, parliaments and administrations in nearly all phases of the policy-cycle, the intensity of participation varying according to constraints which are to be found in EC/EU treaty law as well as in the rules governing the political systems in the Member States. The use of these bodies, as well as the tendency towards procedural differentiation, has increased significantly. The extension of the scope of trans-border co-operation has resulted in a growing number of separate and specialised arenas for interaction and law-making. New Council formats and related working groups have been created, new Commission services installed, new parliamentary committees set up and new consultative bodies placed within the existing 'institutional terrain' of the Union.⁵² If the various Council voting procedures are combined with the different forms of involvement and methods of the EP in the policy-cycle, it is possible to identify more than thirty distinct procedures for the process of decision-making⁵³ (this number excludes the roles foreseen for the ECB, the ECOSOC, the CoR and the new Employment Committee, as well as the non-treaty-based 'soft law' extensions and mutations such as the increasing number of interinstitutional agreements and codes of conduct).

Administrative involvement and interaction modes

However, the considerable and increasing role played by EC institutions has not automatically led to the substitution of national actors. Even 'exclusive EC competencies' in the fields of agriculture, fisheries and trade require meetings of the Council of Ministers or its working groups in which national civil servants shape the exact scope of the Commission's authority. Thus, the growing role of de-nationalised and supranational actors is leading to a more intensive and differentiated incorporation of national actors in the whole EC process.⁵⁴ In pursuing their strategies for access and influence, Member States have become intensively involved in those phases of the policy-cycle where the Commission enjoys rather exclusive prerogatives, such as the right of initiative. As part of the Commission's internal procedure for using this monopoly (see phase I of the policy-cycle), this 'epistemic community'⁵⁵ draws on some 700 expert groups. The involvement of national civil servants is important for the Commission in its tasks of identifying problems, collecting first-hand information and examining options for possible legislative proposals. Expert groups advise the Commission on the basis of the Member States' interest or perspectives. They act as 'early warning units' for the Commission. This growing network provides the Commission with extended and timely information. Expert groups indicate a Member State's willingness to incorporate a given issue into their national rolling agenda: will Member State X and its administration be able to transpose the directive within a given time period? Will the envisaged legal act have an effect on the administrative law of Member State Y?⁵⁶

The overall proportion of civil servants with immediate access to the EU cycle is considerable and probably even larger within smaller member countries and those with a federal system of shared competencies between different levels of governance (Belgium, Germany, Austria). To these agents directly participating in the Brussels arena we must add their colleagues who are indirectly involved in national preparation and implementation procedures. These domestic spillovers are difficult to calculate, not least because each country has different internal methods of co-ordinating EC/EU business.

National officials work closely together on preparing Council of Ministers' decisions in approximately 250 working groups under the Council and COREPER⁵⁷ (see phase II of the policy-cycle). These interaction patterns involve many sectors and levels of national administrative hierarchies.⁵⁸ The Council's working groups have a significant impact on the decision-making arena; around 90 per cent of EC legislation is prepared at this stage.⁵⁹ As for the implementation of EC regulations or directives (see phase III of the policy-cycle), the Council has created around 420 comitology committees involving national civil servants. There are more than ten different formulas for these committees characterised by

different rights of national civil servants to delay or to block operational decisions by the Commission.⁶⁰ These committees fulfil rule-interpreting, fund-approving or rule-setting functions. They therefore act both as 'regime-takers' and 'regime-makers'.⁶¹ Furthermore, the Brussels-based infrastructure is surrounded by consultative and advisory committees made up of non-governmental and sectoral specialists who provide expertise at both the decision-preparation and implementation phases. Reflecting the EC/EU's external policy activities, one can also find joint committees, bringing together administrators from the EU institutions, the Member States and third parties. The potential influence of committees differs largely according to the phase of the policy-cycle and the policy sector.

The involvement of national civil servants in the policy-cycle is not simply a 'watch-dog exercise' because for the Commission and the national institutions, the 'engrenage'-like⁶² interlocking of actors is an important part of the joint management of the policy-cycle. If any major element could be held responsible for the bureaucratisation⁶³ of Brussels, it is this network of multi-level administrative interpenetration. However, this bureaucracy is not an accidental product of personal mismanagement or just another example of Parkinson's Law which assumes that expansion takes place simply for the personal advantage of the civil servants involved. This trend is an ultimately unavoidable result of the intensive propensity of national politicians and civil servants to comprehensively participate in the preparation, making and implementing of those EC/EU decisions which directly affect them.

Empirical trends of the Union: divergent patterns

Policy-making in the Council: using opportunities and output production

After sketching the evolution of procedural opportunities and the basic structures of the involvement of national actors in the EC/EU policy-cycle, we now consider the patterns of their usage in an aggregated form. How have the actors within the institutions exploited the opportunities provided by the original treaties and their subsequent amendments? Can we identify any relationship between the stages of EC/EU constitution-building and the evolution of the Union's policy output?

Altogether, we can list a total sum of 52,799 legal acts adopted between 1952 and December 1998 (Figure 2.7).

Of course, the 52,799 legal acts are not of equal rank in terms of their legal relevance. Besides regulations, directives, decisions and recommendations authorised by the Council alone, the EP and the Council or the Commission, the Union's data bases also include a set of political events which are less binding (Council conclusions of a political nature,

Figure 2.7 Legal output of Council and Commission, per year, 1952–2000

Source: Maurer 2001 based on CELEX.

Note: Sums represent every legal event as noted by CELEX. Apart from ‘real’ secondary legislation, CELEX also refers to executive acts by either the Commission or the Council. Note that from November 1993 onwards, Council legislation also comprises legislative acts by the EP and the Council (co-decision procedure).

etc.). Figure 2.7 indicates a quasi-linear growth with regard to original secondary legislation and other legal events from 1961 until 1987 with some significant drops between 1964 and 1965 and between 1983 and 1984, but a constant stepwise decrease from 1987 onwards; the Council of Ministers’ output shows a steady decline from 1986–87. Furthermore the Maastricht provisions did not lead to an increase in output. Hence, the legal acts which arose from the new Maastricht pillars – CFSP and JHA – did not change the overall trend. Within the two intergovernmental pillars, the Council issued only 287 legal acts between 1993 and December 1998 (compared, for the same period, with 7,518 legal acts under Agricultural and Fisheries policy). The European Commission’s output began to grow from 1976 onwards, although the relative growth remained stable between 1980 and 1993. With the coming into force of the Maastricht Treaty, output decreased dramatically, thus reflecting the net decline in Council legislation after 1986–87.

Our interpretation of the fall in the Council’s output after 1987 is based on a consideration of three major policy areas of the EC – that of the Common Agricultural Policy (CAP) and Fisheries policy, external trade policy and customs policy, which together constitute 41,886 legal acts or 79.3 per cent of all measures produced up to December 1998. Given their age, one can assume a saturation of these policies; in fact, the

falling levels of EC legislation are almost exclusively due to these policy areas. The European Commission's autonomous activities to a large extent result from earlier Council (or since 1993, Council and EP) legislation. There is a significant gap from 1952 to 1979, which suggests that the relatively small amount of Council legislation required fewer Commission executive acts when compared with legislation passed from the 1980s onwards (Table 2.1).

One of the major features of the EC's legal output is the variation with regard to the binding nature of legal acts. From this perspective, the nature of the Council's legal acts is characterised by a decrease in the most binding measure – i.e. regulations outside the policy sectors of CAP and trade policy after 1987. On the other hand, the SEA apparently affected matters insofar as the number of directives per year increased between 1987 and 1993, i.e. during the final phase of the Single European Market (SEM) programme. Since 1993, the use of directives decreased slightly until 1996; subsequently, the number remained fairly stable. Interestingly, one can also witness an increase in decisions from 1961 to 1982 and then again from 1986 to 1998. The first phase concerns the Council's regulatory decisions in the strict sense of Article 249 (ex Article 189) ECT on the definition of the different legal instruments available within the EU system. The second phase includes another type of decision, so-called 'legislative decisions' in the framework of policy programmes (SOCRATES, Ariane, Research Framework Programmes, etc.).⁶⁴

Another issue concerning the production of binding EC/EU law needs to be addressed. So far, we have focused at the dynamics of the Council in the EU system. We referred to the total output of legal acts irrespective of whether the different items were still in force or not. A large proportion of these decisions are in force for relatively short time periods or are regularly replaced by new legislation. However, during the 1990s the *acquis communautaire* – the legislation in force at a given moment – more than doubled from 4,566 legal acts in 1983 to 9,767 in 1998.⁶⁵ Thus there has been a substantial increase in overall legal activity within the Union in recent years (Figure 2.8).⁶⁶

Voting procedures in the Council

When representing their interests, positions and preferences, national actors are faced with specific rules, of which QMV is considered the most significant. Statistical data on the use of QMV within the Council of Ministers have been published only since the coming into force of the Maastricht Treaty on 1 November 1993, but some raw data are available for earlier periods (Table 2.2).

Table 2.1 Legal output per year of Commission, Council and Parliament, 1952–98, according to policy areas

<i>Policy domains as identified by CELEX</i>	<i>1952–86</i>			<i>1987–93</i>			<i>1994–98</i>			<i>Totals</i>	
	<i>Total</i>	<i>Acts per year</i>	<i>% of Legal output</i>	<i>Total</i>	<i>Acts per year</i>	<i>% of Legal output</i>	<i>Total</i>	<i>Acts per year</i>	<i>% of Legal output</i>	<i>Legal acts: total</i>	<i>% of Legal output</i>
General financial and institutional affairs	610	17.42	2.8	476	68	2.57	693	138.6	5.51	1779	3.36
Customs policy	4347	124.2	19.97	2496	356.57	13.50	1021	204.2	8.12	7864	14.89
Agriculture	9274	264.97	42.62	8435	1205	45.63	5310	1062	42.28	23019	43.59
Fisheries	798	22.8	3.67	1325	189.28	7.16	800	160	6.36	2923	5.53
External relations	3549	101.4	16.31	2963	423.28	16.03	1568	313.6	12.48	8080	15.30
Competition	384	10.97	1.76	474	67.71	2.56	854	170.8	6.79	1712	3.24
Industry and internal market	1004	28.68	4.61	528	75.42	2.85	582	116.4	4.63	2114	4.00
Taxation	80	2.28	0.36	84	12	0.45	63	12.6	0.51	227	0.042
EPC/CFSP	0	0	0	6	0.85	0.03	161	32.2	1.28	167	0.031
				(1 Nov. 1993)							
Justice and Home affairs	0	0	0	1	0.14	0.005	119	23.8	0.94	120	0.022
				(1 Nov. 1993)							
Freedom of movement and Social Policy	397	11.34	1.82	237	33.85	1.28	143	28.6	1.13	777	1.47
Right of establishment	119	3.4	0.54	89	12.71	0.40	67	13.4	0.53	275	0.52
Transport policy	258	7.37	1.18	186	26.57	1.01	139	27.8	1.10	583	1.10
Economic and monetary affairs	130	3.71	0.59	32	4.57	0.17	56	11.2	0.44	218	0.41
Regional and structural policy	126	3.6	0.57	439	62.71	2.37	256	51.2	2.03	821	1.55
Environment, consumer, health	248	7.08	1.13	379	54.14	2.05	358	71.6	2.85	985	1.86
Energy policy	284	8.11	1.30	116	16.57	0.62	118	23.6	0.93	518	0.98
Education, science, information	119	3.4	0.54	177	25.28	0.95	206	41.2	1.64	502	0.95
Law relating to undertakings	25	0.71	0.11	35	5	0.18	39	7.8	0.31	99	0.18
People's Europe	5	0.14	0.02	5	0.71	0.027	6	1.2	0.047	16	0.030
Sum	21757	621.62	100	18483	2640.42	100	12559	2511.8	100	52799	100

Source: CELEX data base as at 1 December 1999.

Figure 2.8 European legislation in force, 1983–98

Source: Directories of Community Legislation in Force (Luxembourg, 1984–99, December issues).

Table 2.2 ‘Real’ use of QMV, 1985–99

Item	1985	1986	1994	1995	1996	1999
Total sum of Council legal acts	615	731	561	458	429	327
Number of cases where ‘real voting’ occurred	approx. 70 ^a	approx. 100 ^b	64 ^c	54 ^d	45 ^d	31 ^e
Percentage: number of cases of voting/council legal acts	approx. 11.38	approx. 13.67	11.4	11.84	10.48	9.78

Notes: ^a Answer to Written Question No. 1121/86 by James Elles to the Council of the EC; *OJEC*, No. C 306/42, 1 December 1986. ^b Answer to Written Question No. 2126/86 by Nicole Fontaine to the Council of the EC; *OJEC*, No. C 82/43, 30 March 1987.

^c Answer to Written Question No. E-1263/96 by James Moorhouse to the Council of the EU; *OJEC*, No. C 305/71–75, 15 October 1996, and: Answer to Written Question No. E-858/95 by Ulla Sandbaek to the Council; *OJEC*, No. C 213/22, 17 August 1995.

^d Commission Européenne (Secrétariat Général): Analyse des décisions adoptées à la majorité qualifiée en 1996, Bruxelles, 14 July 1997. ^e Monthly Summaries of Council Acts, January–December 1999, <http://ue.eu.int/en/acts>. Data for 1997 and 1998 were not available.

Among the 561 legal acts of the Council in 1994, a total of 64 (11.4 per cent) was subject to real voting. Of the 458 legal acts adopted in 1995, the relative share of ‘real votes’ increased slightly to 54 (11.84 per cent). In 1996, the Council referred 45 times to having voted by QMV in a total of 429 cases (10.48 per cent). Altogether, the rather small share of ‘real

voting' indicates the underlying 'culture of consensus'⁶⁷ within the Council and its component members. However, the average rate of QMV also suggests a belief among national actors that, ultimately, the use of voting is an acceptable way out of a deadlock. In addition, the data on the real use of QMV are based on the total volume of the Council's legislative activity. Accordingly, the basis also includes legal acts where the treaties oblige the Council to act by unanimity.

Voting risks problems in the later stages of the policy-cycle. Given that since 1993 voting results have been published by the Council, the views of out-voted Member States are therefore visible to interest groups from all sides – governmental as well as non-governmental. Thus, Member States which find themselves in a minority position may come under pressure from domestic actors to oppose the legislation and then to block the timely enforcement of the legal act in question. However, one should not underestimate the impact of 'real voting', despite the small extent to which it is used. Hence, the idea behind QMV is not exclusively its routine practice but its potential power as a 'sword of Damocles'⁶⁸ that pushes Member State actors to concede in order to reach agreement. What QMV certainly implies therefore is the need for governments to clarify, at an early stage of the policy-cycle, the domestic 'common position' between the actors involved. QMV may thus increase the pressure on national administrations and their EC/EU-related policy co-ordination systems. If this argument holds, one would expect to see changes in such systems after the SEA and/or after the Maastricht Treaty, since both revisions induced a considerable transfer of unanimity rules into QMV opportunities. We will see in the chapters on the Member States in Part II, if and how governments, administrations and their related agencies have reacted to these potential challenges.

The efficiency of the Council: frequency of sessions and productivity

One way of observing behavioural patterns in the EC/EU policy-cycle is to analyse both the frequency with which national ministers and their representatives use the Council of Ministers and their capacity to reach agreement within the time they spend in the relevant institutional structure. The number of Council meetings per year has grown constantly from twenty meetings in 1967 to ninety-one in 2000. The relatively high number of Council meetings per year is related in particular to new Council formats rather than to higher frequencies of meetings among existing ones (Figure 2.9).

As we know from the well-documented agricultural sector, the frequency of meetings in the Council of Ministers, on the one hand, and its working groups, on the other, has grown considerably. Many civil servants meet twice monthly on average.⁶⁹ If one also includes unrecorded informal meetings, it becomes quite clear that the intensity with which

Figure 2.9 Productivity of the Council of Ministers, 1966–2000: legal acts per year against meetings per year

some civil servants deal with European affairs in their daily agenda is remarkable. This level of activity is not only a characteristic of the mid-1990s but has grown constantly over recent years. Has the frequency of meetings led to greater efficiency? Certainly not. Between 1976 and 1998, the Council's productivity – defined as the ratio between its legal output and its meetings per year – declined from ten legal acts per session in 1976 to three acts per session in 2000. In other words, the greater number of Council meetings has not led to a growth in the Council's output. The Internal Market programme (legislative proposals of the Commission prior to the SEA) led to a higher productivity from 1984 to 1986. However, after the entry into force of the SEA, not only the Council's overall output, but also its productivity per session, fell again.

Are we therefore witnessing the evolution of a growing 'participation bureaucracy',⁷⁰ whose major interest is to get involved at any expense without considering the potentially damaging effects of its size and complexity? Or is our observation of the Council's productivity mainly due to the constitution of new policy areas which, given their nature and technical specificity, cannot be dealt with by existing staff at the governments' disposal? Instead, new policy areas require new expertise and adequate personnel input, which thus leads to an ever-growing network of ministries and governmental agencies. Chapters on the Member States in Part II will thus address the question of under which circumstances national actors – located either in the permanent representations or at their home bases – have and will become involved in the EC/EU policy-cycle.

The evolution of the EP's involvement

Given that national governments and administrations have to co-operate with the EP as an established actor, we have also looked at the evolution of the different procedures which govern this special kind of a bicameral relationship (Figures 2.3 and 2.4). We note that between 1987 and December 1993, more than 30 per cent of Commission proposals which addressed the EP fell under the co-operation procedure (Figure 2.10).

Figure 2.10 Parliamentary involvement in EC legislation, 1987–98: real use of procedural empowerments

Source: Maurer (1999), based on the OIEL data base.

Following the Maastricht Treaty, the share of legislation falling under co-operation declined to 13.6 per cent (1995) whereas the share under co-decision rose to 21.8 per cent. The main reason for the substitution of co-operation by co-decision lies in the procedural change applied to Article 95 (ex Article 100a) ECT which was and still is the general legal basis for harmonisation measures in the framework of the Internal Market.⁷¹ Hence, around 66 per cent of all co-decision procedures concluded between November 1993 and December 1998 fell under Article 95. In spite of the fact that co-decision was to apply to only 9.25 per cent of all EC treaty provisions containing procedural specifications (see Figures 2.3 and 2.4), nearly 25 per cent of the European Commission's initiatives submitted to both the Council and the Parliament up to December 1998 fell under this procedure.⁷² This is not only the result of an EP-friendly attitude but is also due to the fact that these provisions are mainly ruled by QMV (except for cultural policy and research policy programmes). The demand for this kind of legislation was thus much

higher than the original – treaty-based – supply would have suggested. The Maastricht Treaty clearly led to a strengthened legislative role for the EP regarding the internal market and the areas of environment, research and education policy. This trend will continue under the Amsterdam Treaty as most co-operation procedures (except for four related to EMU) have been replaced by a simplified and shortened co-decision rule.⁷³

Has the slow but steady inclusion of the EP affected the national systems? The participation of Parliament in co-decision may induce new institutional settings within those national ministries which are directly concerned: ministries of economics and/or industry, environment, consumer protection and health policy, telecommunications, transport, education and youth. Alternatively – or even in parallel to the national EP-related bodies – the permanent representations of the Member States may reinforce their contacts with the EP by setting up special units or by providing civil servants to act as ‘points of contact’ for MEPs. It may be that there are no formal changes owing to the ‘parliamentarisation’ of the EC/EU but a smooth *de facto* inclusion of EP-related concerns within existing ministerial or parliamentary departments. However, we may also identify similar evolutions at the level of national parliaments. Do they view the EP as a new or familiar but stronger ally or alien? Or do they perceive their European colleagues as illegitimate intruders? Have they introduced new means of digesting the growing role of the EP in EC/EU politics, such as involving themselves in a meaningful dialogue, at the very least with their respective national party’s MEPs?

The speed of policy-making: the learning curve of the Council and the EP

One major indicator of the demands made of national and supranational actors in the EC/EU policy-cycle is their performance in terms of time needed to adopt binding legislation, i.e. the *procedural efficiency* of the system. In operational terms, we concentrate on the application of the co-decision procedure and analyse the speed of decision-making over time. With regard to the EP’s increased powers following Maastricht, and therefore its contribution to the ‘output legitimacy’⁷⁴ of the EU’s multi-level governance framework, co-decision was expected to be a complex, lengthy, cumbersome and protracted procedure.⁷⁵ Indeed, the procedure could well be depicted as symptomatic of the ‘general trade-off’ between efficiency and the ‘problem-solving capacity’⁷⁶ of EU decision-making on the one hand and parliamentary involvement on the other. This argument is also stressed by the fusion theory.⁷⁷

However, in contrast to these predictions, co-decision does not appear to have led to serious delays in the final adoption of EC legislation. The average total duration of the 152 procedures concluded prior to April 1999 was 737 days. In contrast, the average length of time taken for acts

adopted under the co-operation procedure was 734 days. In other words, co-decision has exceeded the time length of co-operation by only three days on average (Figure 2.11).⁷⁸

Figure 2.11 Co-decision procedure, 1991–2000: time periods between Commission proposal and final adoption of the legal act, December 2000
Source: Maurer (1999, 2001).

How can we explain the shortening of these time spans and the fact that the time needed for co-decision does not differ as much from co-operation, as was expected in the aftermath of Maastricht? One explanation could be that the two chambers directly involved in co-decision act not as adversaries but as problem-solvers who are interested in de-dramatising political conflict. Another – less idealistic – suggestion would be that there is an aim simply to produce some output, to attain public attention and to gain legitimacy. That is to say that either the EP or the Council prefer the adoption of second-best solutions rather than exhausting their negotiations and battling for long periods in order to reach a joint agreement. If this argument holds we would expect a decrease in the number of meetings of the conciliation committee in relation to the adoption of joint legislation over time. However, the empirical reality shows an increasing number of conciliation meetings in relation to legal acts completed between 1994 and 2001.⁷⁹ Thus, the time efficiency of co-decision is not rooted some kind of low-level confrontation between the institutions involved. Both the Council and the Parliament have learned to negotiate and develop a specific type of communitarian ‘*Streitkultur*’.⁸⁰

We offer a different explanation for the trend towards efficiency. The most important delays in co-decision occur owing to lengthy procedures before the adoption of Parliament's first reading and the Council's common position where the treaty provisions do not set any deadlines. Even before the Commission's formal proposal, the actors involved aim to achieve substantial influence over the Commission's proposed text. The various groups of Member States' civil servants and private industry meet within a highly elaborate network of working groups where the substance of the Commission's drafts is fine-tuned by a wide range of civil servants and lobbyists. MEPs meet with Council of Ministers and COREPER representatives, Commissioners, Commission cabinet members and other officials to indicate their potential amendments and ideas on the draft. Moreover, MEPs are contacted to a growing extent by members of national parliaments who aim to draw their colleagues' attention to the potential consequences of European legislation and to possible EP amendments.⁸¹ Once the Commission has officially published and submitted its proposal to Parliament and the Council, informal meetings take place in which EP rapporteurs and civil servants, COREPER members, Member State representatives and interest groups deliberate on the draft.⁸² Hence the EP's first reading and the subsequent adoption of the Council's common position are subject to informal deals between the institutions on matters such as the legal basis, the financial resources necessary or available for implementing the act, or some its major aspects. In line with governance approaches we identify the effects of a growing and rather effective set of networks in an 'iron quadrangle'⁸³ between the Commission's services, national administrations, lobbyists and EP committees.

Theoretical and operative conclusions

Revisiting expectations: controversies surrounding an emergent system

Through negotiating and ratifying para-constitutional treaty amendments, Member States affect their own politico-administrative systems. For that purpose we have looked back over the last fifty years in order to identifying the relevant features of an emergent system. Some are counterintuitive especially in view of historical accounts of the EC/EU's developments. However, the empirical results do not point in one clear direction. We observe divergent trends, between both indicators and policy fields. The institutional and procedural opportunities on the European level are employed to differing degrees. The impact of these challenges varies according to the nature of Member States' political and administrative systems. According to this assumption our question is: do para-constitutional revisions matter – and how do they matter – for the set-up and functioning of national, sub-national and non-governmental policy-making structures?

Following theory-led expectations we can observe different degrees of validity. Thus we identify some spillover processes when looking at the para-constitutional dynamics of the Maastricht Treaty. However, they have not operated convincingly according to the expansive logic in neo-functional assumptions: the real use of the new treaty-based competencies has not lived up to the prediction of a quasi-exponential ('spillover'-related) exploitation. For neo-federalist approaches, the EP has used its powers rather effectively but undramatically and in a business-like way. However, there are insufficient cross-institutional and cross-policy field indications of a clear, linear shift towards the strengthening of a supranational state-like and purely parliamentary system. Finally, the observations concerning efficiency point to methods of collective bargaining *and* learning processes which could be interpreted as steps towards a new kind of bicameral system at the EU level.

(Neo-)realist views of a decline of the Union following the demise of superpower bilateralism have been falsified by the revisions to the ECT, including those at Amsterdam and particularly the measures increasing the EP's powers. When considering only the Council's output, this school of thought might claim that the overall 'use' of EC/EU institutions by governments has declined. However, a closer look reveals that this decrease is mainly caused by a 'saturation' in traditional EC fields such as agriculture and trade policy and where new legislation is short-lived (e.g. price-fixing regulations).⁸⁴ Governments have even used the articles for taking politically and – at least with regard to the third pillar – legally binding decisions in the new pillars although the procedures are clearly intergovernmental. The net decline in productivity could be interpreted as reflecting an increasing difficulty in balancing interests between Member States, but this school of thought might have difficulties in explaining the increasing role of the EP.

The observed macro-political patterns resemble most clearly the expectations deduced from governance approaches. In the overall figures the 'pendulum' metaphor might be useful in capturing general impressions. For many of the indicators we do not find a significant impact which could be attributed to the procedural revisions and amendments of the Maastricht Treaty. The treaty revisions of 1987 and 1993 – at least those concerning the EC Treaty – provided for more efficient procedures, but the exploitation of these provisions was mainly concentrated in some policy fields. In this view, the extension of the number of policy areas in which the Council may act by QMV has not resulted in more 'real' voting in the 1990s. Although the treaty revisions provided for more parliamentary procedures, the day-to-day inclusion of the EP remains an issue of controversial debate. Therefore, governance analyses might need to take greater account of the role of this institution. The increase in the EP's power, however, is linked to a rise in procedural complexity, leading to

an erosion of the traditional cornerstones of democratic legitimacy, the national parliaments of the Member States. European parliamentarians are therefore becoming an active part of the highly specialised interaction that takes places within informal non-hierarchical networks.

As to the fusion view, the empirical record is also mixed. Overall figures point to national governments' decreasing interest in using EC/EU instruments. However, we need to qualify this assessment in view of the limits of quantitative analysis. We would draw attention to a non-linear relationship between para-constitutional developments and the exploitation of treaties. On the other hand, we identify a dynamic process of treaty modification and change brought to the institutional and procedural set-up of the Union – a regular pattern of remodelling institutions, procedures and competencies.⁸⁵ A closer look also indicates that the new provisions of the Maastricht Treaty have been used across the board; as an explanation we could point to the saturation in traditional fields like agriculture policy. The increasing role of the EP fits the expectation of a dual legitimacy of European decision-making and the execution of sectoral authority in the name of the citizenry. The creation of the Conference of European Affairs Committees of the national parliaments (COSAC) in 1989 and its formal recognition by the Amsterdam Treaty, the instalment of national parliament liaison officers within the EP buildings and the increasing importance of meetings between corresponding committees of both the national parliaments and the EP indicate a trend towards an embryonic kind of multi-level parliamentarism.

Increasing demands: trends of growth and differentiation

What are the operative challenges to the Member States and their politico-administrative systems? We might point to a set of trends from the Brussels arenas which need to be analysed in terms of their potential effects on national systems. Of particular relevance are:

- The dynamic evolution of new and refined treaty provisions leading – in a typical pattern – to an ever-increasing set of communitarised frameworks for policy-making: para-constitutional communitarisation with a growing role for all Community institutions.
- The subsequent widening of the functional scope of integration: sectoral differentiation concerning an increasing variety of policy fields and thus involving more and more actors.
- The creation of institutions by subsequent treaty amendments: institutional differentiation, which increases the range of interaction styles among relevant actors in the policy-cycle.
- The creation and cross-institutional combination of different kinds of procedures, which provide actors with opportunities to take binding decisions: procedural differentiation, which increases complexity and

the need for national actors to improve their procedural skills; with majority rule as an acceptable method of decision-making and given the speed of the co-decision procedure, national actors cannot adopt an attitude of 'wait and see'.

- The activation of networks and procedural mechanisms which allow a growing set of interest and preference articulators outside the official array of institutions, to participate in EC/EU policy-making: actor differentiation, which leads to the need to take into account political sensitivities in broader coalition games.
- The increasing scope and density of legal obligations: the doubling in size of the *acquis communautaire* from the early 1980s to 1998 (see Figure 2.6) also indicates both the rise of the para-constitutional set-up as well as the invasion of the 'legal space' of Member States.

In view of these trends, does the Union require governments, parliaments and administrations to adapt at the national level? Given the evolution of the functional scope of EU policy-making over time, do new policy areas, altered instruments and reformed institutions mobilise national actors and lead to adaptation at the national level? Is the evolution of the EP viewed as a challenge which must be dealt with, or are Member States' systems immune to such a group of new players?

In the following chapters we will scrutinise the roles and behaviour of institutions at the national level, i.e. from the perspective of the national capitals. The focus will be on the extent and intensity of participation by national institutions in the process of preparing, making, taking, implementing and controlling EC/EU-generated decisions. Given the features and the dynamics of the EC/EU evolution, we expect to find generally discernible trends in the ways national institutions react and adapt to the challenges of the EC/EU. In line with the fusion approach, we look for trends of 'Europeanisation' defined as shifts in the attention of national institutions caused by the growth and differentiation of the para-constitutional and institutional set up of the EC/EU. We are curious as to how we can witness emergent or convergent patterns.

Notes

- 1 See Wolfgang Wessels, Andreas Maurer and Jürgen Mittag, 'The European Union and Member States: Analysing Two Arenas over Time', Chapter 1 in this volume, pp. 8–14.
- 2 See e.g. Tanja Börzel and Thomas Risse, 'When Europe Hits Home: Europeanisation and Domestic Change', in: *European Integration online Papers*, No. 15/2000 <http://eiop.or.at/eiop/texte/2000-015.htm>; Simon Bulmer, 'Domestic Politics and EC Policy-Making', in: *Journal of Common Market Studies*, No. 4/1994, pp. 349–363; Werner Feld, 'Two-Tier Policy-Making in the EC: The Common Agricultural Policy', in: Leon

- Hurwitz (ed.), *Contemporary Perspectives on European Integration* (Westport, Conn.: Greenwood, 1980), pp. 123–149; Klaus Goetz and Simon Hix (eds), ‘Europeanised Politics? European Integration and National Political Systems’, *West European Politics*, Special Issue, Vol. 23, No. 4/2000; Johan P. Olsen, ‘Europeanization and Nation-State Dynamics’, in: Sverker Gustavsson and Leif Lewin (eds), *The Future of the Nation-State* (London: Routledge, 1996), pp. 245–285; Johan P. Olsen, ‘Organising European Institutions of Governance. A Prelude to an Institutional Account of Political Integration’, ARENA Working Paper, No. WP 00/2 (Oslo: Arena, 2000); Robert D. Putnam, ‘Diplomacy and Domestic Politics: The Logic of Two Level Games’, in: *International Organisation*, No. 3/1988, pp. 427–460; Jarle Trondal, ‘Integration through Participation – Introductory Notes to the Study of Administrative Integration’, in: *European Integration online Papers*, No. 4/1999 <http://eiop.or.at/eiop/texte/1999-004a.htm>; William Wallace, ‘Collective Governance’, in: Helen Wallace and William Wallace (eds), *Policy-Making in the European Union*, Fourth Edition (Oxford: Oxford University Publishers, 2000), pp. 523–542.
- 3 Christoph Knill and Dirk Lehmkuhl, ‘How Europe Matters. Different Mechanisms of Europeanization’, in: *European Integration online Papers*, No. 7/1999 <http://eiop.or.at/eiop/texte/1999-007a.htm>, p. 1.
- 4 German Constitutional Court, Judgement of October 12, 1993, in: Andrew Oppenheimer (ed.), *The Relationship between European Community Law and National Law: The Cases* (Cambridge: Cambridge University Press, 1995).
- 5 See Olsen, 2000, *op. cit.*, p. 6; and Johan P. Olson, ‘Europeanisation and Nation-State Dynamics’, ARENA Working Paper, No. 3/1996 (Oslo: Arena, 1996).
- 6 See for the identification and analysis of these approaches: Wessels, Maurer Mittag, *op. cit.*
- 7 See for a comprehensive analysis of the SEA: Jean de Ruyt, *L’Acte Unique Européen* (Bruxelles : Bruylant, 1987).
- 8 See on the evolution of CFSP: Martin Holland (ed.), *Common Foreign and Security Policy, The Record and Reforms* (London: Pinter, 1997); Simon Nuttall, *European Foreign Policy* (Oxford: Oxford University Press, 2000); Elfriede Regelsberger, Philippe de Schoutheete de Tervarent and Wolfgang Wessels (eds), *Foreign Policy of the European Union, From EPC to CFSP and Beyond* (Boulder, Co.: Lynne Rienner, 1997); Ramses A. Wessel, *The European Union’s Foreign and Security Policy, A Legal Institutional Perspective* (The Hague: Kluwer Law International, 1999).
- 9 See on the evolution of JHA: Malcolm Anderson, Monica de Boer, Peter Cullen and William C. Gilmore, *Policing the European Union* (Oxford: Clarendon Press, 1996); Serge A. Bonnefoi, *Europe et Sécurité intérieure. TREVI – Union Européenne – Schengen* (Paris: Delmas, 1995); Elspeth Guild (ed.), *The Developing Immigration and Asylum Policies of the European Union* (The Hague: Kluwer Law International, 1996); Jörg Monar and Roger Morgan (eds), *The Third Pillar of the European Union* (Brussels: European Interuniversity Press, 1994).
- 10 See Article 3 (ex Article C) TEU.

- 11 See Finn Laursen and Sophie Vanhoonacker (eds), *The Intergovernmental Conference on Political Union* (Maastricht: EIPA, 1992); Richard Corbett, *The Treaty of Maastricht* (London: Cartermill Publishers, 1993).
- 12 See Kenneth Dyson and Kevin Featherstone, *The Road to Maastricht, Negotiating Economic and Monetary Union* (Oxford: Oxford University Press, 1999); Daniel Gros and Niels Thygesen, *European Monetary Integration, From the European Monetary System to European Monetary Union* (London: Longman, 1992).
- 13 See Andrew Moravcsik, 'Taking Preferences Seriously: A Liberal Theory of International Politics', in: *International Organisation*, No. 4/1997, pp. 513–553.
- 14 See Helga Haftendorn, 'Zur Theorie außenpolitischer Entscheidungsprozesse', in: Volker Rittberger (ed.), *Theorien der Internationalen Beziehungen: Bestandsaufnahme und Forschungsperspektiven* (Opladen: Westdeutscher Verlag, 1990), pp. 401–423.
- 15 See Albert O. Hirschmann, *Exit, Voice and Loyalty: Responses to Decline in Firms, Organisations and States* (Cambridge, Mass.: Harvard University Press, 1970), p. 19; Joseph H.H. Weiler, 'The Transformation of Europe', in: *The Yale Law Journal*, No. 8/1991, pp. 2403–2483.
- 16 See Olsen, 2000, *op. cit.*, p. 6; and Olson, 1996, *op. cit.*
- 17 See Thomas Christiansen, 'Bringing Process Back In: The Longue Durée of European Integration', in: *Journal of European Integration*, No. 1/1998, pp. 99–121; Thomas Christiansen and Knud E. Jorgensen, 'The Amsterdam Process: A Structurationist Perspective on EU Reform', in: *European Integration online Papers*, No. 1/1999 <http://eiop.or.at/eiop/texte/1999-001a.htm>.
- 18 Peter Hall, *Governing the Economy: The Politics of State Intervention in Britain and France* (Cambridge: Polity Press, 1986), p. 19. David R. North offers a similar definition. Institutions are 'the rules of the game in a society or, more formally ... the humanly devised constraints that shape human interaction'. See David R. North: *Institutions, Institutional Change and Economic Performance* (Cambridge: Cambridge University Press, 1990), p. 3. See also: James G. March and Johan P. Olsen, *Rediscovering Institutions: The Organisational Basis of Politics* (New York: Free Press, 1989), p. 167.
- 19 See Guy Peters, *Institutional Theory in Political Science. The 'New Institutionalism'* (London, New York: Pinter) 1999; Peter A. Hall and Rosemary C.R. Taylor, 'Political Science and the Three New Institutionalisms', in: *Political Studies*, No. 5/1996, pp. 936–957; March and Olsen, 1989, *op. cit.*; Paul J. DiMaggio and Walter W. Powell, 'Introduction', in Walter W. Powell and Paul J. DiMaggio (eds), *The New Institutionalism in Organizational Analysis* (Chicago: University of Chicago Press, 1991), pp. 1–38; Bulmer, 1994, *op. cit.*; Wayne Sandholtz, 'Membership Matters: Limits of the Functional Approach to European Institutions', in: *Journal of Common Market Studies*, No. 3/1996, pp. 403–429; Mark Pollack, 'The New Institutionalism and EC Governance: The Promise and Limits of Institutional Analysis', in: *Governance*, No. 4/1996, pp. 429–458; Simon Hix, 'The Study of the European Union II: The "New

- Governance” Agenda and Its Rival’, in: *Journal of European Public Policy*, No. 1/1998, pp. 38–65.
- 20 See Paul Pierson, ‘The Path to European Integration: A Historical Institutional Analysis’, in: Wayne Sandholtz and Alec Stone Sweet (eds), *European Integration and Supranational Governance* (Oxford: Oxford University Press, 1998), pp. 27–58; see also Pierson’s recent article, ‘Increasing Returns, Path Dependence, and the Study of Politics’, in: *American Political Science Review*, No. 2/2000, pp. 251–267.
- 21 Alec Stone Sweet and Wayne Sandholtz, ‘Integration, Supranational Governance, and the Institutionalization of the European Polity’, in: Wayne Sandholtz and Alec Stone Sweet (eds), *European Integration and Supranational Governance* (Oxford: Oxford University Press, 1998), p. 19; and Alec Stone Sweet, Wayne Sandholtz and Neil Fligstein (eds), *The Institutionalization of Europe* (Oxford: Oxford University Press, 2001).
- 22 See Pierson, 1998, *op. cit.*, p. 131.
- 23 Hall and Taylor, 1996, *op. cit.*, p. 941.
- 24 Bulmer, 1994, *op. cit.*, p. 356.
- 25 Geoffrey Garrett and Barry R. Weingast, ‘Ideas, Interests and Institutions: Constructing the European Community’s Internal Market’, in: Judith Goldstein and Robert O. Keohane (eds), *Ideas and Foreign Policy. Beliefs, Institutions and Political Change* (Ithaca: Cornell University Press, 1993), p. 176.
- 26 See Robert D. Putnam, ‘Diplomacy and Domestic Politics: The Logic of Two Level Games’, in: *International Organisation*, No. 3/1988, pp. 427–460; Andrew Moravcsik, ‘Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach’, in: *Journal of Common Market Studies*, No. 4/1993, pp. 473–524; David Skidmore and Valerie Hudson (eds), *The Limits of State Autonomy: Societal Groups and Foreign Policy Formulation* (Boulder, Co.: Westview Press, 1993).
- 27 See Joseph M. Grieco, ‘Anarchy and the Limits of Co-Operation: A Realist Critique to the Newest Liberal Institutionalism’, in: *International Organisation*, No. 3/1988, p. 494.
- 28 See Heidrun Abromeit and Thomas Schmidt, ‘Grenzprobleme der Demokratie: konzeptionelle Überlegungen’, in: Beate Kohler-Koch (ed.), *Regieren in entgrenzten Räumen* (Opladen: Westdeutscher Verlag, 1998), pp. 293–320 (on the concept: pp. 301–303); Heidrun Abromeit, *Democracy in Europe – Legitimizing Politics in a Non-State Polity* (Oxford, New York: Bergahn, 1998)
- 29 See, with further references on the theory of leadership in international negotiations, David Metcalfe, ‘Leadership in European Union Negotiations: The Presidency of the Council’, in: *International Negotiation*, No. 3/1998, pp. 413–434.
- 30 See Moravcsik, 1993, *op. cit.*, p. 483.
- 31 See Heinrich Schneider, ‘Europäische Integration – die Leitbilder und die Politik’, in: Michael Kreile (ed.), *Die Integration Europas*, *Politische Vierteljahresschrift*, Sonderheft No. 23 (Opladen: Westdeutscher Verlag, 1992), p. 11.
- 32 See Jörg Monar, ‘Interinstitutional Agreements: The Phenomenon and its

- New Dynamics after Maastricht', in: *Common Market Law Review*, No. 4/1994.
- 33 Note that in this respect, the treaty provisions of the co-decision procedure (Article 251, ex Article 189b) permitted a scenario involving three Council and three parliamentary readings, plus two conciliation procedures. If all possible additional months and weeks were agreed throughout, the procedure could take up to fifteen months from the date of the transmission of the Council's common position (= approx. 475.5 days); see Andreas Maurer, *What Next for the European Parliament?* (London: Kogan Page, 1999).
- 34 See Pierson, 1998, *op. cit.*; Hall and Taylor, 1996, *op. cit.*, pp. 941–942.
- 35 See Alexander Kreher (ed.), *The EC Agencies between Community Institutions and Constituents: Autonomy, Control and Accountability, Conference Report* (Florence: European University Institute, 1998).
- 36 See, for example, the Presidency conclusions of the Cologne (June 1999) and Helsinki (December 1999) summits <http://ue.eu.int>.
- 37 See Martin Westlake, *The Council of the European Union* (London: Cartermill, 1995), pp. 164–167.
- 38 See also: Wolfgang Wessels, *Die Öffnung des Staates. Modelle und Wirklichkeit grenzüberschreitender Verwaltungspraxis 1960–1995* (Opladen: Leske & Budrich, 2000), pp. 195–260.
- 39 Helen Wallace, 'Politics and policy in the EU: The Challenge of Governance', in Helen Wallace and William Wallace (eds), *Policy-Making in the European Union*, Third Edition (Oxford: Oxford University Press, 1996), p. 63.
- 40 Andrew Duff, 'Building a Parliamentary Europe', in: Mario Télo (ed.), *Démocratie et Construction Européenne* (Bruxelles: Bruylant, 1995), pp. 253–254.
- 41 Frank Schimmelfennig, 'Legitimate Rule in the European Union. The Academic Debate', *Tübinger Arbeitspapiere zur Internationalen Politik und Friedensforschung*, No. 27 (Tübingen, 1996), p. 19.
- 42 Fritz W. Scharpf, 'Community and Autonomy: Multi-Level Policy-Making in the European Union', in: *Journal of European Public Policy*, No. 1–2/1994, p. 220.
- 43 See Kenneth Dyson, *Elusive Union. The Process of Economic and Monetary Union in Europe* (London, New York, Longman: 1994).
- 44 On a joint Dutch and UK initiative, the Heads of States and Governments meeting at the Rome European Council in 1975 decided to hold regular meetings between the ministers for the interior in order to discuss common concerns with regard to police co-operation against international terrorism. The ministerial meetings of this 'TREVI' network were prepared and co-ordinated by a set of six different working groups at a high administrative level (state secretaries and senior officials). See Serge A. Bonnefoi, *Europe et Sécurité intérieure. TREVI – Union Européenne – Schengen* (Paris: Delmas, 1995); Tony Bunyan (ed.), *Key Texts on Justice and Home Affairs in the European Union, Vol. I (1976–1993): From TREVI to Maastricht* (London: Statewatch, 1997).
- 45 QMV instead of unanimity; co-decision instead of co-operation for the EP.
- 46 See, for example, Article 34 TEU on JHA instruments and procedures as amended by the Treaty of Amsterdam.

- 47 See Jörg Monar, 'Justice and Home Affairs in the Treaty of Amsterdam: Reform at the Price of Fragmentation', in: *European Law Review*, No. 4/1998, pp. 320–335; Monica den Boer and William Wallace, 'Justice and Home Affairs. Integration through Incrementalism?', in: Helen Wallace and William Wallace (eds), *Policy-Making in the European Union*, Fourth Edition (Oxford: Oxford University Press, 2000), pp. 493–519.
- 48 See Wolfgang Wessels, 'Der Amsterdamer Vertrag – Durch Stückwerksreformen zu einer immer effizienteren, erweiterten und föderalen Union?', in: *Integration*, No. 3/1997, pp. 117–135.
- 49 'Institutional anomaly' was the term used by the Portuguese Council Presidency within the framework of the 2000 IGC. See Conference of the Representatives of the Governments of the Member States, Presidency Note on 'IGC 2000: Possible Extension of Qualified Majority Voting – Articles which could Move to Qualified Majority Voting as they Stand', CONFER 4706/1/00, Brussels, 11 February 2000.
- 50 See Helen Wallace and William Wallace, 'Flying Together in a Larger and More Diverse European Union', Working Documents (The Hague: Netherlands Scientific Council for Government, Working Documents, No. W 87, 1995); Eric Philippart and Monica Sie Dhian Ho, 'From Uniformity to Flexibility – The Management of Diversity and its Impact on the EU System of Governance', in: Gráinne de Búrca and John Scott (eds), *Constitutional Change in the EU: From Uniformity to Flexibility* (Oxford: Hart Publishing, 2000); Wolfgang Wessels, 'Flexibility, Differentiation and Closer Cooperation. The Amsterdam Provisions in the Light of the Tindemans Report', in: Martin Westlake (ed.), *The European Union beyond Amsterdam. New Concepts of European Integration* (London: Routledge, 1998), pp. 76–98; Christian Deubner, *Enhanced Cooperation of EU Member States after Amsterdam. A New Tool to be Applied or to be Avoided?* (Ebenhausen: Stiftung Wissenschaft und Politik, 1999); Eric Philippart, and Monica Sie Dhian Ho, *The Pros and Cons of 'Closer Cooperation' within the EU* (The Hague: Netherlands Scientific Council for Government, Working Documents, No. W 104, March 2000).
- 51 Stone Sweet and Sandholtz, 1998, *op. cit.*, p. 16.
- 52 See Neil Fligstein and James A. McNichol, 'The Institutional Terrain of the European Union', in: Wayne Sandholtz and Alec Stone Sweet (eds), *European Integration and Supranational Governance* (Oxford: Oxford University Press, 1998), pp. 59–91.
- 53 See Wolfgang Wessels, 'The Growth and Differentiation of Multi-Level Networks: A Corporatist Mega-Bureaucracy or an Open City?', in: Helen Wallace and Alasdair R. Young (eds), *Participation and Policy-Making in the European Union* (Oxford: Oxford University Press, 1997), pp. 17–41.
- 54 Wessels, 2000, *op. cit.*, pp. 251–252.
- 55 Peter Haas, 'Introduction: Epistemic Communities and International Policy Co-Ordination', in: *International Organization* No. 1/1992, pp. 1–35 (here p. 3).
- 56 See Christoph Sasse, Edouard Poulet, David Coombes and Gérard Deprez, *Decision Making in the European Community* (New York, London: Praeger, 1977).

- 57 The German Presidency of the Council (January–June 1999) listed 351 operating working groups. See Andreas Maurer, ‘Germany: Fragmented Structures in a Complex System’, Chapter 5 in this volume; Andreas Maurer, ‘The German Presidency of the Council: Continuity or Change in Germany’s European Policy’, in: *Journal of Common Market Studies*, The European Union. Annual Review of the EU 1999/2000, pp. 43–47. In its November 2001 summary, the Antici group of the Council lists 257 working groups. See Council of the European Union: Council Preparatory bodies, Document No. 14132/01, Brussels, 16 November 2001.
- 58 See the individual chapters on the Member States in Part II of this volume.
- 59 See Sasse *et al.*, 1977, *op. cit.*; Peter van der Knaap, ‘Government by Committee: Legal Typology, Quantitative Assessment and Institutional Repercussions of Committees in the European Union’, in: Robert Pedler and Günther Schäfer (eds), *Shaping European Law and Policy: The Role of Committees and Comitology in the Political Process* (Maastricht: EIPA, 1996), pp. 83–116 (here p. 114). The Council itself notes that some two-thirds of its rolling agenda is closed by COREPER, out of which 70 per cent are agreed at the working groups level. See Rat der EG, Der Rat der EG (Luxembourg: Amt für amtliche Veröffentlichungen, 1990), p. 22; See also Wessels, 2000, *op. cit.*, pp. 228–229.
- 60 See Robert Pedler and Günther Schäfer (eds), *Shaping European Law and Policy: The Role of Committees and Comitology in the Political Process* (Maastricht: EIPA, 1996); Christian Joerges and Ellen Vos (eds), *EU Committees: Social Regulation, Law and Politics* (Oxford: Hart Publishing, 1999); Thomas Christiansen and Emil Kirchner (eds), *Committee Governance in the European Union* (Manchester: Manchester University Press, 2000). The structure of the Comitology network was amended and simplified by Council Decision 1999/468/EC of 28 June 1999. Following the Decision, the Commission published, on 8 August 2000, the list of existing Comitology committees according to the policy fields in question, and their dates of creation. See *Official Journal of the EC*, No. C 225, 8 August 2000, pp. 2–18.
- 61 See Stephan Haggard, ‘Integrating the Two Halves of Europe: Theories of Interests, Bargaining, and Institutions’, in: Robert O. Keohane, Joseph S. Nye and Stanley Hoffmann (eds), *After the Cold War: International Institutions and State Strategies in Europe, 1989–1991* (Cambridge, Mass.: Harvard University Press, 1993), p. 191.
- 62 See Sasse *et al.*, 1977, *op. cit.*
- 63 See Guy Peters, ‘Bureaucratic Politics and the Institutions of the European Community’, in: Alberta Sbragia (ed.), *Euro-Politics: Institutions and Policymaking in the ‘New’ European Community* (Washington, DC: Brookings, 1992), pp. 75–122; Wolfgang Wessels, 1997, *op. cit.*, pp. 17–41.
- 64 We base these observations on ongoing research by Armin von Bogdandy, Felix Arndt and Philipp Dann, University of Frankfurt and their interim report ‘Strukturen des Unionsrechts’, mimeo (Frankfurt, 1999).
- 65 According to the annual reports of the Commission the number of legal acts adopted by the EC institutions per year is much higher. The reason for this discrepancy is that the annual reports also list all internal administrative acts

including appointments, decisions regarding salaries, etc. On the other hand, if we refer to the Community legislation in force, the overall number is much smaller. Calculating on the basis of different times of publication of the Directory of European Community Legislation in Force (DECLIF), we find 5,127 legal acts for the period between 1952 and December 1986, 7,621 for the period until 1993 and 9,767 for the period until December 1998. These numbers are well below the total sum of EC/EU legislation across the period 1952–99. The difference between these rather low numbers and the overall legal output is rooted in different statistical methods. Whereas studies based on the DECLIF are mainly interested in the structure of the EU legal corpus, counting the legislative activity over time provides us with the necessary data for exploring the dynamics of the system. Therefore, we organise our data basis on the overall amount of legislation produced over time. The methodological problem is that ‘legislation in force’ does not take into account the very process of decision-making and legal output over time. Since the DECLIF is updated twice a year, it has to be understood as a snapshot of EC/EU output at a given time. What cannot be derived from these data is the dynamic of the system which produces legislation across time. See also Edward C. Page and Dionyssis Dimitrakopoulos, ‘The Dynamics of EU growth. A Cross-Time Analysis’, in: *Journal of Theoretical Politics*, No. 3/1997, pp. 365–387; Mark Pollack, ‘The End of Creeping Competence? EU Policy-Making since Maastricht’, in: *Journal of Common Market Studies*, No. 3/2000, pp. 519–538.

- 66 Special thanks go to Astrid Krekelberg for the compilation and initial analysis of the raw data.
- 67 See Hix, 1998, *op. cit.*, p. 73.
- 68 See for this kind of Council policy-making ‘in the shadow of the majority vote’, Fritz W. Scharpf, *Games Real Actors Play, Actor-Centered Institutionalism in Policy Research* (Boulder, Co.: Westview Press, 1997), pp. 191–193.
- 69 See Josef Falke, ‘Comitology and other Committees: A Preliminary Empirical Assessment’, in: Robert Pedler and Günther Schäfer (eds), *Shaping European Law and Policy: The Role of Committees and Comitology in the Political Process* (Maastricht: EIPA, 1996), pp. 117–165; Ellen Vos, ‘The Rise of Committees’, in: *European Law Journal* No. 3/1997, pp. 210–229; Wessels, 2000, *op. cit.*, pp. 200–221, 225–229 and 232–240.
- 70 Thanks for this specification to the members of the Friedrich-Ebert-Foundation Study Group on European integration and Klaus Suchanek. The term is a free translation of the German term ‘Mitwirkungsbürokratie’.
- 71 See Maurer, 1999, *op. cit.*; Andreas Maurer (Co-) *Governing after Maastricht: The European Parliament’s Institutional Performance 1994–1999*, European Parliament, Working Paper, No. POLI 104/rev. EN, Brussels 1999, pp. 24–31.
- 72 See Maurer (Co-) *Governing*, 1999, *op. cit.*, p. 26.
- 73 See e.g. Simon Hix, ‘How MEPs Vote’, ESRC One Europe or Several? Programme, Briefing Note 1/00 (London, April 2000); Amie Kreppel, ‘What Affects the European Parliament’s Influence?’, in: *Journal of Common Market Studies*, No. 3/1999, pp. 521–535; Michael Shackleton, ‘The Politics

- of Codecision', in: *Journal of Common Market Studies*, No. 2/2000, pp. 325–342; Amie Kreppel, *The European Parliament and Supranational Party System: A Study in Institutional Development* (Cambridge: Cambridge University Press, 2002).
- 74 Fritz W. Scharpf, 'Introduction: The Problem-Solving Capacity of Multi-Level Governance', in: *Journal of European Public Policy*, No. 4/1997, pp. 520–538; Fritz W. Scharpf, *Governing in Europe: Effective and Democratic?* (Oxford: Oxford University Press, 1999).
- 75 See David Earnshaw and David Judge, 'From Co-Operation to Co-Decision: The European Parliament's Path to Legislative Power', in: Jeremy Richardson (ed.), *Policy Making in the European Union* (London: Routledge, 1996), pp. 96–126; Martin Westlake, *A Modern Guide to the European Parliament* (London: Pinter, 1994); Neill Nugent, 'Decisionmaking Procedures', in: Desmond Dinan (ed.), *Encyclopaedia of the European Union* (Boulder, Co.: Lynne Rienner 1998).
- 76 Scharpf, 1997, *op. cit.*
- 77 See Wessels, 1996 and 1997, *op. cit.*
- 78 The total average duration of co-decision varies considerably, depending on the legal bases applied for. See: Maurer, 1999, *op. cit.*
- 79 See Andreas Maurer, '(Mit)-Regieren nach Maastricht: Die Bilanz des Europäischen Parlaments nach fünf Jahren Mitentscheidung', in *Integration*, No. 4/1998, pp. 212–224.
- 80 See Wolfgang Wessels and Udo Diedrichs, 'The European Parliament and EU Legitimacy', in: Thomas Banchoff and Mitchell P. Smith (eds), *Legitimacy and the European Union. The Contested Polity* (London: Routledge, 1999), pp. 134–135.
- 81 See Andreas Maurer, 'National Parliaments in the European Architecture: From Latecomers' Adaptation towards Permanent Institutional Change?', in: Andreas Maurer and Wolfgang Wessels (eds), *National Parliaments on their Ways to Europe: Losers or Latecomers?* (Baden-Baden: Nomos, 2001), pp. 27–76; Andreas Maurer, *Perspectives for Co-Operation between the European Parliament and the National Parliaments*, European Parliament, Working Document: Political Series W-19 (Brussels/Luxembourg, 1996).
- 82 See Beate Kohler-Koch and Christine Quittkat, *Intermediation of Interests in the European Union*, Working Papers, Mannheimer Zentrum für Europäische Sozialforschung, No. 9/1999 (Mannheim: MZES, 1999).
- 83 See in this respect on the concept of the 'iron triangle': Guy Peters, 'The European Bureaucrat: The Applicability of Bureaucracy and Representative Government to Non-American Settings', in: Andre Blais and Stéphane Dion (eds), *The Budget-Maximizing Bureaucrat. Appraisals and Evidence* (Pittsburgh: University of Pittsburgh Press, 1991), p. 313; Wolfgang Wessels, 'Comitology: Fusion in Action. Politico-administrative Trends in the EU System', in: *Journal of European Public Policy*, No. 2/1998, pp. 209–234 (here p. 223).
- 84 On the issue of the longevity of EU legislation see especially Page and Dimitrakopoulos, 1997, *op. cit.*
- 85 In the words of the Report of Richard von Weizsäcker, Jean-Luc Dehaene and David Simon to the European Commission on 'the institutional implications

of enlargement': 'The present [1999] situation is typical: the treaty of Amsterdam entered into force on May 1st, and, on June 4th, the Cologne European Council called for a new intergovernmental conference.' See this report of 18 October 1999, p. 12.

Select bibliography

- Hix, Simon (1999) *The Political System of the European Union* (London: Macmillan).
Jachtenfuchs, Markus and Kohler-Koch, Beate (eds) (1996) *Europäische Integration* (Opladen: Leske & Budrich).
Maurer, Andreas (1999) *What Next for the European Parliament?* (London: Kogan Page).
Maurer, Andreas (2001) 'National Parliaments in the European Architecture: From Latecomers' Adaptation towards Permanent Institutional Change?', in: Andreas Maurer and Wolfgang Wessels (eds), *National Parliaments on their Ways to Europe: Losers or Latercomers?* (Baden-Baden: Nomos).
Olsen, Johan P. (1996) 'Europeanization and Nation-State Dynamics', in: Sverker Gustavsson and Leif Lewin (eds) (1996) *The Future of the Nation-State* (London: Routledge).
Wessels, Wolfgang (2000) *Die Öffnung des Staates, Modelle und Wirklichkeit grenzüberschreitender Verwaltungspraxis 1960–1995* (Opladen: Leske & Budrich).