

RESEARCH NOTE

THE CONSTITUTIONAL DEVELOPMENT OF
EUROPEAN INTEGRATION

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The institutional structure of European politics often seems impenetrable, since the application of each procedure is defined on the basis of specific legislative articles or paragraphs. Moreover, the complex institutional setting of European politics consisting of varying decision rules and of different types of actors in specific voting bodies linked by different procedures has recently been changed by constitutional reforms (König, 1996: 95f.). Here an overview of material competencies and specific institutional provisions for supranational legislation is provided. The constitutional development of material competencies is shown in Table 1; Table 2 presents the complex decision rules for European legislation. Both tables are starting points for analysing European decision-making to determine whether the institutional and the material development characterize European integration.

The remarkable changes in the Union's complex institutional structure and the continued accession of new Member States draw attention to recent and potential problems of supranational decision-making. However, the history of the European Communities with their different institutional forms has shown that the phenomenon of European integration cannot simply be reduced either to a strategy for undermining the nation-state or to a multilateral bargaining system. The institutional structure of the European Union has not established an independent system to replace the European nation-states. Moreover, it has not done away with conventional international politics (König et al., 1996: 2). On the one hand, the dominance of the Council of Ministers still ensures that European politics maintain their intergovernmental nature. On the other hand, the participation of supranational actors such as the Commission, the European Parliament (EP), the European Court of Justice (ECJ), and the liability of European legislation points to the unique phenomena of European integration with regard to transnational institution-building.

Table 1 maps the expansion of material competencies by the Common European Act (SEA) and the Maastricht Treaty (EU) which have strongly affected the constitutional basis for the adoption of European legislation. The treaties are divided into parts, titles and chapters. Except for the introduction of European citizenship, the Economic Community (EC) remained unchanged in its first and second parts concerning the provisions for the Common European Market. The titles of Part Three, the former section on policies, were heavily affected by the SEA. Besides including economic policy (article 102a), articles 130a–130t were added (economic and social cohesion, research and technical development, environment). As Table 1 shows, the Maastricht Treaty not only transferred many policy competencies to the supranational level; it also created a title on commercial policy and brought the European Investment Bank into the institutional section. Finally, the former economic community of a common market has become a political union with many legislative competencies.

Table 1. The Constitutional Material Competencies

EC Treaty (EC)		Single European Act (SEA)		Maastricht Treaty (EU)	
Domain	Article	Domain	Article	Domain	Article
Part One		Part One		Part One	
Principles	1–8	Principles	1–8	Principles	1–7c
Part Two		Part Two		Part Two	
				Citizenship	8–8e
				Part Three	
Policies	9–84	Policies	9–84	Policies	9–130y
Title I: Free Movement of Goods	9–37	Title I: Free Movement of Goods	9–37	Title I: Free Movement of Goods	9–37
Chapter 1: Customs Union	12–29	Chapter 1: Customs Union	12–29	Chapter 1: Customs Union	12–29
Chapter 2: Elimination of quantitative Restrictions	30–37	Chapter 2: Elimination of quantitative Restrictions	30–37	Chapter 2: Elimination of quantitative Restrictions	30–37
Title II: Agriculture	38–47	Title II: Agriculture	38–47	Title II: Agriculture	38–47
Title III: Free Movement of Persons, Services and Capital	48–73	Title III: Free Movement of Persons, Services and Capital	48–73	Title III: Free Movement of Persons, Services and Capital	48–73
Chapter 1: Workers	48–51	Chapter 1: Workers	48–51	Chapter 1: Workers	48–51
Chapter 2: Right of Establishment	52–58	Chapter 2: Right of Establishment	52–58	Chapter 2: Right of Establishment	52–58
Chapter 3: Services	59–66	Chapter 3: Services	59–66	Chapter 3: Services	59–66
Chapter 4: Capital and Payments	67–73	Chapter 4: Capital and Payments	67–73	Chapter 4: Capital and Payments	67–73h
Title IV: Transport	74–84	Title IV: Transport	74–84	Title IV: Transport	74–84
Part Three		Part Three			
Policies	85–130	Policies	85–130		
Title I: Common Rules on Competition, Taxation and Approximation of Laws	85–102	Title I: Common Rules on Competition, Taxation and Approximation of Laws	85–102	Title V: Common Rules on Competition, Taxation and Approximation of Laws	85–102
Chapter 1: Rules on Competition	85–94	Chapter 1: Rules on Competition	85–94	Chapter 1: Rules on Competition	85–94
Chapter 2: Tax Provisions	95–99	Chapter 2: Tax Provisions	95–99	Chapter 2: Tax Provisions	95–99
Chapter 3: Approximation of Laws	100–102	Chapter 3: Approximation of Laws	100–102	Chapter 3: Approximation of Laws	100–102
Title II: Economic Policy	103–116	Title II: Economic Policy	102a–116	Title VI: Economic and Monetary Policy	102a–116
Chapter 1: Policy	103	Chapter 1: Economic Policy	102a	Chapter 1: Economic Policy	102a–104c
Chapter 2: Balance of Payments	104–109	Chapter 2: Policy	103	Chapter 2: Monetary Policy	105–109
		Chapter 3: Balance of Payments	104–109	Chapter 3: Institutional Provisions	109a–109d
				Chapter 4: Transitional Provisions	109e–109m
Chapter 3: Common Commercial Policy	110–116	Chapter 4: Common Commercial Policy	110–116	Title VII: Common Commercial Policy	110–116

Table 1 (Continued)

Title III: Social Policy	117–128	Title III: Social Policy	117–128	Title VIII: Social Policy	117–127
Chapter 1: Social Provisions	117–122	Chapter 1: Social Provisions	117–122	Chapter 1: Social Provisions	117–122
Chapter 2: The European Social Fund	123–128	Chapter 2: The European Social Fund	123–128	Chapter 2: The European Social Fund	123–125
				Chapter 3: Education, Vocational Training and Youth	126–127
Title IV: Investment Bank	129–130	Title IV: Investment Bank	129–130	Title IX: Culture	128
				Title X: Public Health	129
				Title XI: Consumer Protection	129a
				Title XII: Trans-European Networks	129b–129d
				Title XIII: Industry	130
		Title V: Economic and Social Cohesion	130a–130e	Title XIV: Economic and Social Cohesion	130a–130e
		Title VI: Research and Technical Development	130f–130q	Title XV: Research and Technical Development	130f–130p
		Title VII: Environment	130r–130t	Title XVI: Environment	130r–130t
				Title XVII: Development Cooperation	130u–130y
Part Four		Part Four		Part Four	
Association of the Overseas Countries and Territories	131–136	Association of the Overseas Countries and Territories	131–136	Association of the Overseas Countries and Territories	131–136a
Part Five		Part Five		Part Five	
Institutions of the Community	137–209	Institutions of the Community	137–209	Institutions of the Community	137–209
Title I: Provisions Governing Institutions	137–198	Title I: Provisions Governing Institutions	137–198	Title I: Provisions Governing Institutions	137–198
Chapter 1: The Institutions	137–188	Chapter 1: The Institutions	137–188	Chapter 1: The Institutions	137–188
Chapter 2: Common Provisions	189–192	Chapter 2: Common Provisions	189–192	Chapter 2: Common Provisions	189–192
Chapter 3: The Economic and Social Committee	193–198	Chapter 3: The Economic and Social Committee	193–198	Chapter 3: The Economic and Social Committee	193–198
Title II: Financial Provisions	199–209	Title II: Financial Provisions	199–209	Chapter 4: The Committee of the Regions	198a–198c
Part Six		Part Six		Chapter 5: European Investment Bank	198d–198e
General and Final Provisions	210–248	General and Final Provisions	210–248	Title II: Financial Provisions	199–209
Setting up of the Institutions	241–246	Setting up of the Institutions	241–246	Part Six	
Final Provisions	247–248	Final Provisions	247–248	General and Final Provisions	210–248
				Setting up of the Institutions	241–246
				Final Provisions	247–248

Table 2. The Constitutional Institutional Competencies

Policy Domain	EC	SEA	EU	Remarks	Policy Domain	EC	SEA	EU	Remarks	Policy Domain	EC	SEA	EU	Remarks
Principles					44,4	q	q	q		Common Rules				
6	-	-	z		44,6	q*	q*	q*	Add. Minority	Competition				
7,p2	q	z	-		FM of Persons					87,1,p1	q	q	q	
7,3,p2	-	-	u		Workers					92,3d	-	q	-	
7,3,p3	-	-	u		49	u	z	m		92,3e	-	-	q	
7,3,p4	-	-	q		51	u	u	u		93,2,p3	u	u	u	
7,5	-	-	u		Establishment					94	q	q	q	
7b,p2	-	-	q		54,1	u	u	u		Tax Provisions				
8,3,p2	u	u	-		54,2	q	z	m	1. Step u	98	q	q	q	
8,3,p3	u	u	-		55	q	q	q		99	u	u	u	
8,3,p4	q	q	-		56,2,s1	u	u	u	Transitory	Approximation				
8,5	u	u	-		56,2,s2	q	z	m	1./2. Step u	100,p1	u	u	u	
8b,p2	-	q	-		57,1	q	z	m	1. Step u	100a,1	-	z	m	
8b,2	-	q	-		57,2,s2	u	u	u	Transitory	100b,1	-	z	m	
Citizenship					57,2,s3	q	z	m	1. Step u	100c,1	-	-	u	
8a,2	-	-	u		Services					100c,2	-	-	q	
8b,1	-	-	u		59	u	q	q		100c,3	-	-	q	
8e	-	-	u		63,1	u	u	u	1. Step	101	q	q	q	1. Step u
FM of Goods					63,2	q	q	q	1. Step u	Economic Policy				
Customs Union					Capital					Common Econ.				
14,2c	q	q	q		69	q	q	q	1./2. Step u	103,2	u	u	q	
14,5	q	q	q		70,1,s2	u	q	q		103,3	q	q	q	
14,7	u	u	u		70,1,s4	-	u	u		Economic Policy				
20,p3	q	q	q	1./2. Step u	70,2	q	q	q		103,4	-	-	q	
21,1	q	q	q	first 2 Year	73,1,p2	q	q	q		103,5	-	-	z	
21,2	q	q	q		73c,2,s1			q		103a,1	-	-	u	
28,s1	u	-	-		73c,2,s2			u		104a,2	-	-	z	
28,s2,3	q	-	-	1./2. Step	73f			q		104b,2	-	-	z	
28	-	q	q		Transport					104c,14,p2	-	-	u	
Qua.Restrictions					75,1	q	q	z	1./2. Step u	104c,14,p3	-	-	q	to 1.1.94
33,8	q	q	q	1. Step u	75,3	u	u	u		Monetary Policy				
Agriculture					76	u	u	u		106,5	-	-	q	ECB
38,3	q	q	q	first 2 Year	79,3	q	q	q	first 3 Year	106,6	-	-	q	
43,2	q	q	q	1./2. Step u	84,2,p1	u	q	z		Balance of Paym.				
43,3	q	q	q		84,2,p2	u	u	u	first 3 Year	108,2	q	q	-	
44,3	u	u	u	first 3 Year						108,3,p2	q	q	-	

Table 2 (Continued)

109,3	q	q	q		130e,p2,s1	-	q	q		196,p2	u	u	-	
Commercial Pol.					130e,p3,s2	-	q	z		Finance				
112,1	q	q	q	1./2. Step u	Research Pol.					200,3	u	u	-	n.u since 71
113	q	q	q		130i,1	-	u	mu		201	u	u	u	
114	q	q	-	1./2. Step u	130i,4	-	z	q		203,3	q	q	q	
116	q	q	-		130o,p1	-	-	u		203,5	-	q	q	
Social Policy					130o,p2	-	-	z		203,9	-	q	q	
Social Provision					130q,1	-	u	-		204	q	q	q	
118a,2	-	z	z		130q,2	-	z	-		206,p1,s2	u	-	-	
121	u	u	u		Environment					206,p1,s3	q	-	-	
Social Fund					130s	-	u	-		206,p1,s4	q	-	-	
125	-	-	z		130s,1	-	-	z		206,p4	-	u	-	
126a	q	q	-		130s,2	-	-	u		206,4,p1	-	u	-	
126b	u	u	-		130s,3	-	-	m		206,9	-	q	-	
127	q	q	-		Development					206b	-	q	-	
128	s	s	-		130w,p1	-	-	z		209	u	u	u	
Vocat. Education					Association					Final Provisions				
126,4	-	-	m		136,p2	u	u	u	first 5 Years	212	q	q	q	first 4 Years
127,4	-	-	z		Inst. Provision					217	u	u	u	
Culture Policy					Institutions					223,2	u	u	u	first Year
128,5	-	-	mu		138,3,p2	u	u	u		223,3	u	u	u	
Health Policy					145,p1	u	-	-		227,2,p2	u	u	u	first 2 Years
129,4	-	-	m		145,p1,s3	-	u	u		228,1	u	u	q	
Consumer Policy					149,p1	u	-	-		228,2,s1	-	-	q	
129a,2	-	-	m		149,1	-	u	-		228,2,s2	-	-	u	
Trans. Networks					159,p2	u	u	u		228a	-	-	2	
129d,p1	-	-	m		160,p2	u	-	-		235	u	u	u	
129d,p3	-	-	z		165,p4	u	u	u		237,p1	u	u*	-	Consent of EP
Industrial Policy					166,p3	u	u	u		238	u	-	-	
130,3	-	-	u		168a,2	-	u	u						
Economic Cohesion					168a,4	-	u	u						
130b	-	-	u		188	u	u	u						
130d	-	u	u		ECS									
130e,p1	-	z	z		194,p2	u	u	u						

Table 2 refers to this standard procedure, in which the Council votes by unanimity (u), qualified majority (q) or simple majority (s). For some provisions, a transitory period of a first or a second step is defined. Since the beginning of the EC, the numerical share of the standard procedure has only decreased to about 80 percent. Nearly half of the standard procedure articles still provide unanimity for Member States. The large degree of unanimous rule and the continuous process of a material supranationalization provide for two conclusions: first, a re-nationalization on the subsidiarity principle, which promotes decision-making at the national or regional level; and second, a strengthening of the EP in European multichamber legislation, which may not only offset the charge of bureaucratic European supranationalism but also legitimate supranational majority voting. Seen from this angle, the first direct elections to the EP in 1979 prepared the way either for the supranational transfer of material competencies or the parliamentary participation in European legislation set for the SEA in 1987.

Although greater parliamentarism of European legislation offers a way out of the present dilemma of Council majority voting, scepticism towards the 'travelling' EP still prevails in most Member State governments. Here, a precondition for the transformation of intergovernmental into societal conflict is a European party system which is still lacking. Nevertheless, the formation of parliamentary groups within the EP is an important step towards transforming the supranational consensus bargaining system into a majority system, whilst the formation of national parliamentary coalitions would only shift the decision-making dilemma from the Council of Ministers to the parliamentary arena. And there is a trend towards more parliamentary rights: important modifications to Parliament's power position were made in relation to the budget treaties of 1970 and 1975, the introduction of the budgetary conciliation procedure in 1975, the direct elections to the EP in 1979, the ruling of the ECJ concerning the unavoidable consultation of Parliament in 1980, the introduction of the cooperation procedure in 1987 and of the codecision procedure in 1993. In most cases, however, European legislation originates with the Commission, the EP gives its opinion and the Council of Ministers adopts the proposal by simple, qualified majority or unanimity. Both central European actors, the Council and the Commission, explain their positions to the EP, but they do not operate through Parliament. Table 2 shows the 'stepwise' integration of the EP in supranational legislation since the SEA. The SEA introduced the cooperation procedure (z), and, for the first time, the EP is able to change a legislative winning coalition. The EP has conditional veto power by rejecting a bill, since the Council must then adopt the bill unanimously (König, 1995: 18). Under the codecision procedure (m) introduced by the Maastricht Treaty, the EP has an unconditional veto, and a conciliation committee is established in cases of disagreement, comprising an equal number of Council members and delegates from the EP. In this sense, the conciliation committee symbolizes a loss of Commission power in European legislation. However, the legislative competencies of the EP are limited to certain selected policy areas as shown in Table 2. Some policy domains, such as agriculture or commercial policy, were not affected by treaty reforms, whereas in other domains, e.g. the social policy domain, parliamentary participation was increased. Moreover, parliamentary actors are obliged to resort to absolute majority building if they wish to participate in some policy areas – regardless of whether a Commission proposal be finally

amended, adopted or rejected. This is an important difference from most parliamentary systems where the failure to build parliamentary consent implies the rejection of a bill. Here, the European procedural logic interprets the lack of an absolute majority in the EP as parliamentary consent to a Commission proposal.

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