Chapter V

European Political Union:
Transforming the Community into a Union

Introduction

The Single European Act's immediate aim was to establish the single common market by virtue of the free movements of people, goods and capital in the Community. Although it defined its purpose in its preamble vaguely as 'to achieve the ever closer union among the people of union', it was a compromise between the inter-governmentalists and supranationalists. The Act as a whole could not fulfil the aspirations of the federalists and fell far short of a European Union. Michael Burgess has noted, "taken as a whole it seem sensible in retrospect for the member state governments not to have equated the SEA with European Union".2

Nevertheless, the SEA was a step forward towards the realization of the European Union. For instance, the European Monetary System (EMS) and the European Political Cooperation for the first time became a part of the EC Treaty. To implement the move to establish the monetary union it was necessary to convene an inter-governmental conference (IGC) under Art. 236 of the EC Treaty. And it was inevitable that any talk of European Monetary

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Union (EMU) would remain incomplete without the corresponding European Political Union (EPU) if the leaders of the European Movement wished to establish the European Union.

Not only on the theoretical level but also on the empirical front, the events during 1988 and 1989 forced the Community to move towards the European Union at a fast pace. The European economy was robust and sound when the SEA came into force and it worked like a catalyst for setting up the EMU. On the other hand, by the end of 1989 the political scenario in Europe became highly volatile: communism collapsed almost suddenly in the Soviet Union and in Eastern Europe, and almost overnight Germany unified. Inevitably the Community had to gear up to face the fast changing situation and the answer was found in an ambitious, though vaguely defined EPU. The present chapter seeks to describe and analyze the ideas, forces, and history of the European Political Union which culminated in the formal signing of the treaty of the European Union by the Heads of States/Governments at Maastricht. The chapter is divided into two parts: part-I shall focus on the negotiations leading to the conclusion of the treaty and, part-II discusses the treaty provisions relating to the institutional reforms, analyzes the concept of subsidiary and examines the changes in the legislative process.
Part I

The plan for the Economic and Monetary Union (EMU) was in the pipeline soon after SEA came into force in July 1987, and the European Council meeting of Hanover on 27 and 28 June, 1988, recalled that in adopting the SEA the Member States confirmed the objectives of progressive realization of economic and monetary Union. Then the heads of Governments/States decided to examine, at the Madrid Council's Meeting in June 1989, the meaning of achieving this union and decided to constitute a committee headed by Mr. Delors which gave its report in April 1989.

This report had prepared the ground to convene a EMU and became the basis for the work of the Inter-Government Conference (IGC) on the EMU. Subsequently, the European Council's Madrid meeting in June 1989 considered the Delors Report and decided that its first stage would start from 1 July 1990 and the preparation for subsequent stages would require an IGC. Moreover, it placed the question of social dimension in the context of the implementation of all aspects of the SEA and placed environment as a priority issue, proposing to set up a European Environment Agency.

Then, the conclusions of the Strasbourg European Council meeting in December 1989 contained a declaration which had political implications. For

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3 See EC BULL. 6-1988, pt. 1.1.1 to 1.1.4 & 3.4.1.
4 See, EC BULL. 4-1989, pt. 1.1.1. to 1.1.5.
example, the conclusions of the Presidency called upon the Community to work together and formulate common policies for environment, free movement of persons making a people's Europe, social dimension and European Political Cooperation.  

And in April 1990, President Mitterrand and Chancellor Kohl proposed to the other Member States to start negotiations for a politician union. The reasons are not hard to find; Emile Noel has noted,

we were then on the eve of German unification. The Chancellor, like the French President, intended to underline Germany's commitment to the European frame work and unified Germany was to devote itself to the political strengthening of the Community.

Besides the question of German unification, the collapse of communism in Eastern Europe and reviewed the European Free Trade Association (EFTA) interest to join the Community were other pressing reasons. The Community leaders were not prepared for any widening of it before significant deepening, "without successful deepening, Community leaders have reasoned, no solid European entity could anchor the new post-socialist societies in the East".

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6 EC BULL 12-1989 pts 1.1.6, 1.1.9, 1.1.10 and 9.1.17.


Deepening vs. widening is the age old debate underlying the approach of the Community and always the widening of the EC had been backed by some amount of deepening. Delors' speech to the European Parliament\textsuperscript{10} in January 1989 also stressed the priority of deepening over widening: the Community could be a "house" while the European "village" should be built. On the basis of this approach, the Commission proposed to the EFTA countries for a European Economic Area,\textsuperscript{11} so that they remained linked to the Community, without actually joining it.

Thus the stage was all set for deepening the Community which necessary included a political union. The special European Council Meeting in Dublin (28 April 1990) discussed the Mitterrand - Kohl proposal on political union and decided that the foreign ministers would examine, analyze and prepare proposals to be discussed in the June European Council meeting with a view to hold a second IGC to work parallel to the IGC on the monetary union.\textsuperscript{12}

Subsequently, the Dublin European Council meeting agreed to convene a conference under Article 236 of the Treaty\textsuperscript{13} which would open on 14 Dec.

\begin{itemize}
  \item \textsuperscript{10} See, Bulletin of the European Communities, Supplement 1, 1989.
  \item \textsuperscript{11} The Council acted on this proposal from the Commission on the agreement between the EC and EFTA Countries. And the Parliament adopted a resolution welcoming it. See, OJC 158, 26.6.1989.
  \item \textsuperscript{12} EC BULL. 4-1990, point 1.12.
  \item \textsuperscript{13} Under Art. 236 of the EC Treaty unanimity is not required to convene a IGC.
\end{itemize}
1990, adopt its own agenda and conclude its work rapidly with the objective of ratification by Member States before the end of 1992.\textsuperscript{14}

After receiving the required mandate to convene the conference on the Political Union, the Community worked fast to build the base for such a conference. The special meeting of the European Council on Political Union was held in Rome on 27 and 28 October 1990 which confirmed the will of the Community to transform progressively into a European Union by developing its political dimensions, strengthening its capacity for action and extending its powers.\textsuperscript{15} It requested the Finance Ministers to continue the preparatory work leading to the opening of the IGC.

The preparation for IGC was undertaken by the Conference of Parliaments of the Member States which voted with a large majority to adopt a final declaration spelling out the desire of all the parliaments to pursue European integration towards political, economical and monetary union. It expressed the desire to see the Community remodelled into a European Union on a federal basis.\textsuperscript{16}

Subsequently, on 22 November 1990, the European Parliament adopted

\textsuperscript{14} See, EC. BULL. 6-1990, point, 1.11.

\textsuperscript{15} EC. BULL, 10-1990, pt. 1.4. The British delegation opted not to pre-empt the debate on the points of extension of powers of the proposed European citizenship and the objectives of a CESP including a consensus of going beyond security.

\textsuperscript{16} EC.BULL, 11-1990, pt.1.1.1.
two resolutions,\textsuperscript{17} one giving a favourable opinion on the convening of the IGC; the second talked about its strategy for European union which contained declarations on fundamental rights and freedoms, institutional reforms and European citizenship.

By now the base, aims and objectives of such a political union was almost defined. Save Britain and Denmark, there was a minimal level of understanding among the Member States. The Rome European Council meeting which opened on the eve of the IGC (on 14 and 15 Dec. 1990) declared:

The Union shall be based on the solidarity of its Member States, the fullest realization of its citizens' aspirations, economic and political cohesion, proper balance between the responsibility of the individual States and Community and between the roles of the institutions, coherence of the overall external action of the Community in the frame work of its foreign security, economic and development policies and of its efforts to eliminate racial discrimination and xenophobia in order to ensure respect for human dignity.\textsuperscript{18}

One can easily find the declaration full of rhetoric that talks of lofty ideals which are also reflected by the two resolutions the EP adopted. The first resolution was adopted on the constitutional basis of the European Union;\textsuperscript{19} and the second resolution talked about the executive powers of the Commission and its role in the EC'S external relations.\textsuperscript{20}

\begin{itemize}
\item \textsuperscript{17} See, OJC 324, 23.12.1990.
\item \textsuperscript{18} EC.BULL.12-1990, pt.1.4.
\item \textsuperscript{19} OJC, 19, 18.1.1991.
\item \textsuperscript{20} OJC, 19, 28.1.1991.
\end{itemize}
The difference between the approaches of the Commission and of the Parliament was clear by the end of 1990. The Parliament had the high-flying vision of a federal Community modelled on the federal structure of the United States or Germany, whereas the Commission took a more cautious approach so that the IGC should not alter fundamentally the existing institutional balance. The set of proposals submitted by the Commission on the eve of the Rome Summit in October 1990 talked about more Community powers in social policy, free movement of people, health and environment; extension of majority voting in the Council; and a common (not 'single') foreign and security policy. 21

Overall the following spheres on which the proposed political Union was based could be deduced from the Community documents. 22

i) Democratic Legitimacy: When translated into a working definition, it means hierarchy of norms between the constitutional (treaty), national and administrative acts; executive powers vested in the Commission; and most importantly, the co-dicision or joint legislative powers for the Parliament, making it a genuine legislative body.


ii) Common Foreign and Security Policy: (CFSP) Such a CFSP shall be formulated by closely involving the EP which will enable the European Council to decide the area of joint actions by unanimity.

iii) European Citizenship: The citizens of the Member States should have a common European citizenship along with their national citizenship guaranteeing them the fundamental rights and freedoms;

iv) Extension and Strengthening of Community Action: In the spheres of social and environmental issues, health, transport, research and development, culture, information and energy etc, with a goal of establishing a common social policy; and

v) Effectiveness and Efficiency of the Union: It seeks the extension of the majority vote in the Council and arming of the Commission with effective implementation and management powers.

**Negotiating the Political Union**

The Intergovernment Conference (IGC) on the European Political Union (EPU) opened in Rome on 15 December 1990 and was chaired by Mr. De Michelis, the President of the Council.²³ It completed its work and culminated, at the close of the Maastricht European Council of 9 and 10 December, in an agreement between the Heads of States or Governments as

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²³ See. EC BULL. 12-1990, pt.1.1.7.
the draft treaty on European Union.\textsuperscript{24}

There were nine Ministerial Meetings of Foreign Ministers who were assisted by their personal assistants and five sessions of inter-institutional conferences. This IGC ran parallel to the first IGC on the European Monetary Union (EMU) and the results of the two IGCs were politically linked.

The different institutions of the Community and the Member States had their own aims and strategies to pursue their aims in the IGC. The Parliament in its resolutions stood for greater legislative powers and the Commission sought to maintain the institutional balance. Both wanted to make inroads into the spheres of action hitherto confined to intergovernmental cooperation such as foreign affairs, justice and internal problems. The inter-institutional conferences appeared to be working without a clear-cut strategy and consequently they failed to take a united position.

There was a clear-cut division between the intergovernmentalists and the supranationalists since the very beginning of the IGC. For instance, the issues of democratic legitimacy and the role of the Parliament with special reference to joint decision-making power and the appointment of the Presidents and Members of the Commission was discussed on the First Inter-institutional conference.\textsuperscript{25} Subsequently, the Ministerial Meeting failed to reach any conclusion owing to the reluctance of the Ministers on these accounts.

\textsuperscript{24} See, EC BULL, 12-1991, pt.1.1.1.

\textsuperscript{25} See, EC.BULL, 3-1991, pt.1.1.3.
The Luxembourg Presidency submitted the first draft of the new treaty, in April 1991, containing the formulation for a CSFP and a co-decision procedure in the form of draft articles.\textsuperscript{26} It was undoubtedly a very cautious set of formulations which were severely attacked. The EP passed two resolutions:\textsuperscript{27} one demanding a clearcut need for hierarchy of EC's legal acts by amending Articles 189 to 191 of the EC Treaty, and in the second resolution it threatened to reject any conference result which failed to apply the principle of democratic legitimation.

Clearly, there was need for some initiatives coupled with innovative ideas to produce a working document. But the Presidency was rather conservative which is evident by the conflict during the Second Inter-institutional Conference between the Commission which submitted a single union structure and the Presidency that favoured the three pillared structure.\textsuperscript{28} Consequently, the Members of European Parliament insisted on reinforcing the role of the Commission as against the President's proposal aiming to cut it down further. The EP in its resolution passed on 15 May 1991, favoured deepening of the Community before any attempt to widen it.\textsuperscript{29}

\textsuperscript{26} See, EC.BULL, 4-1991, pt.1.1.3.

\textsuperscript{27} See, OJC 129, 20.5.1991.

\textsuperscript{28} EC BULL, 5.1991, pt.1.1.3.

\textsuperscript{29} OJC 158, 17.7.1991.
Then the Luxembourg Presidency on 18 June 1991 published the second draft treaty which included some important innovations, especially in the realm of co-decision process and the CFSP. However, the structure of the future union remained that of a three pillared Greek temple, rather than of a tree structure as favoured by the supranationalists. The Luxembourg European Council Meeting of 28 and 29 June 1991 accepted the draft treaty as the basis for further negotiation.

During six months of intense negotiation on the Political Union, certain ideas backed by different Member States emerged. For instance, European citizenship was a Spanish idea, while Germany proposed a council of regional representatives and Britain backed the idea of the participation of national parliaments in the decision-making process of the Community.

In June 1991, the German delegation submitted a proposal on Home Affairs and Judicial Cooperation and sought to bring the issues of asylum, immigration and aliens and the fight against international drug trafficking and organized crimes, which have traditionally been in the gambit of state action, under the competence of the Community.

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30 The Luxembourg draft represented as 'Draft Treaty on the Union' in Agence Europe (Documents), No.1722/1723, 5 July, 1991.

31 It stated interalia, 'the Union should be based on full maintenance and development of a aquis communautaire, or a single institutional framework... on the principle of subsidiarity and on the principle of economic and social cohesion', in EC BULL, 6.1991, pt.1.1.

32 The proposal is published in ibid, Annex I.
By now the Conference had clearly moved beyond the concept of subsidiarity on which the negotiation for the Political Union was excepted to be carried on. The concept of subsidiarity means the Community should seek to do only those activities which it can do better than the nation states and new fields of activities should be defined, although they would at least for the time being, remain in the realm of inter-governmental cooperation. Then fields of activities which the German delegation proposed were precisely the same new fields.

The issue of Community finance was not a new area of activity, but it proved to be a bone of contention. Spain wanted a provision of adequate public finance to compensate the poorer members against the adverse effect of greater integration. In other words, it demanded a social and economic cohesion. In May 1991 it submitted a proposal that the Community should develop a financial mechanism analogous to that of German Finanzausgleich. However, the Commission as well as the northern Member States decide to take the proposal coolly.

By now the Commission seemed to be satisfied with the approach of the conference but the EP maintained its resistance. On 10 July 1991 it passed a

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34 See, Agence Europe, of May 1991.
resolution\textsuperscript{35} in which it regretted that the Luxembourg European Council Meeting had postponed a number of crucial questions to the Maastricht Council and declared that the Political Union can only be \textit{acquis communataire} which must develop towards a federal-type Union.

In the second half of 1991, the Dutch took over the EC Presidency and they submitted a new draft treaty incorporating a more federalistic vision. They relied upon the support of more federal Member States, notably Germany. But there was a clear-cut preference for using the draft Union Treaty drawn up by Luxembourg during the 7th Ministerial Meeting on 30 September 1991.\textsuperscript{36} This draft was finally rejected in the 8th Ministerial Meeting on October 1991 as the main player, Germany, chose to oppose it.\textsuperscript{37} Now the negotiations continued on the basis of the Luxembourg draft.

Clearly, the Political Union was to be developed gradually along with the Economic Union, that is, without causing any major breach in the process. The Commission during the preparation of the Maastricht European Council Meeting in November 1991, discussed the two draft treaties on European Union and, "noted with satisfaction its own role and found the concept of United Europe as federal".\textsuperscript{38} The MEPs, however continued to voice their

\begin{footnotes}
\item[36] EC.BULL 9-1991, pt.1.1.4.,
\item[37] EC.BULL 10-1991, pt.1.1.1 to 1.1.4.
\item[38] EC.BULL 11-1991, pt.1.1.1.
\end{footnotes}
concern and during the 5th session of the Inter-ministerial Conference, they resolved their intention to 'secure genuine co-decision by the Council and Parliament over a much broader spectrum than that is provided in the Presidency Draft Treaty'.

Finally when the Maastricht European Council met on 9 and 10 December 1991 under the chairmanship of Mr. Rudd Lubbers, the President of the Council and the Prime Minister of the Netherlands, the result of the Summit was the agreement on draft Treaty on European Union, particularly on the European Monetary Union. It also noted that, "a qualitative step forward was taken in the field of political union with the inclusion of provisions for a common foreign and security policy in the Treaty on European Union."  

Thus, the Political Union remained attached to the European Community, devoid of any reference to the federal objective. However, the goal of a kind of federal Europe was well in sight because of the fact that, "there is a basic continuity of federal ideas in the European Community's political development", and the European Treaty is undoubtedly a significant step taken forward in the process of political development of the Community.

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39 Ibid., pt.1.1.6.
Part II

The Maastricht Treaty or the Treaty on European Union (EUT) seeks to establish 'a European Union (EU)'\(^{42}\) The EUT incorporates amendments to the EEC, the ECSC and the Eurotom treaties, thus establishing a single European Community which hitherto has technically been the plural European Communities. It also seeks to achieve a European Monetary Union (EMU) and when they finally merge into the EC, the EU would be realized.

This makes the treaty structure a three pillared Greek temple where the EC is at the centre itself and is flanked on each side by two new provisions:\(^{43}\)

- The provisions on a Common Foreign and Security Policy (CFSP);
- and the provisions on Cooperation in the sphere of Justice and Home Affairs.

These two weak pillars of the EUT along with the proposals on institutional reforms and the social chapter constitute the Treaty on Political Union which seeks to establish the European Political Union (EPU) which is the subject of the study in this Part of the present chapter.

The EPU essentially relates to the following spheres:

i) European Citizenship;

\(^{42}\) 'Art A' of the Treaty on European Union (EC COM: Luxembourg, 1992), [hereinafter referred as EUT].

ii) Institutional reforms including inter-institutional balance;

iii) Community competence;

iv) Common Foreign and Security Policy; and


Since the subject matter of this work is the decision-making process of the EU, the focus of study shall be: institutional reforms including inter-institutional balance; and the community competence including the concept of subsidiarity. The analysis of the concept of subsidiarity is important because it is the bedrock which the institutional reforms are based on.

Institutional Reforms

It will be pertinent to recall that the debate in the IGC was marked by a schism between the supranationalists and intergovernmentalists which could not be plugged in even at Masstricht, hence, "the lack of agreement about fundamental reform means most of the changes will be relatively minor alterations to the existing institution, designed to fine tune them rather than change their functions."\(^{44}\) Even so, these reforms affect all the institutions of the community in the following manner:

\(^{44}\) Jeremy Bradshaw, "Institutional Reforms in the European Community beyond Maastricht", *European Trend*, No.4, 1991, p.84.
The Commission

As recommended in the Commission's own paper, the Union Treaty has amended Art 158 and has inserted a new clause in to it. The sum result of these provisions are three fold. First of all, the Commission's term of office has been extended from four to five years to coincide with that of Parliament. Secondly, as per Art. 158(2), the government of the Member States shall nominate by common accord, after consulting the European Parliament, the President of the Commission and again in turn after consulting the President, it shall appoint other members of the Commission. Thirdly, these appointments will be subjected to a vote of approval by the European Parliament.

By an agreement reached before the Maastricht Summit, the number of commissioners was reduced to one commissioner per member, whereas presently the big five have two commissioners each (thus reducing the total number of commissioners from 17 to 12).

These changes have been received lukewarmly by many scholars. Bradshaw, for example, notes, "the EP will still not be able to appoint or sack individual commissioners - nor will the EP have more than a rubber stamp role in the choice of the Commission president."  

See, "Contribution by the Commission to the IGC", n.21., p.78. Art.158, Title II of the EUT, n. p.66-67.

Bradshaw, n.48, p.84.
As far as the powers of the Commissions are concerned, they broadly remain intact. However, owing to the co-decision procedure (to be discussed latter), it no longer remains the sole institution to initiate legislation and further "it has lost much of its intermediary role in sorting out differences between the Council and the Parliament but this retreat it essential to allow genuine co-decision between these two institutions."\(^{47}\)

It would be pertinent to recall here that the Single European Act had burdened the Commission with a few unwelcomed committees, the most important of which was the regulatory committee.\(^{48}\) Then, in its decision of 13 July, 1987,\(^{49}\) the Council interpreted the Article 145 narrowly and set up a whole range of committees, giving rise to the question of 'comitology'. Committees like the regulatory committee had virtually abolished the executory powers of the Commission and transferred them to the Council.

The Commission, however, accepted three out of the seven committees proposed by the Council, including the regulatory committee.\(^{50}\) The EP had already voiced its opposition to the regulatory committee in its opinion.\(^{51}\) The Commission agreed to submit a report to the EP on the implementation of its


\(^{48}\) See, the SEA inducted the third indent to Article 145 of the EEC Treaty (SEA.) institutionalizing the Committee system.

\(^{49}\) OJ No. 197, 18.7.1987, p.33

\(^{50}\) OJ L 2-35, 7.7.d1987, p.59-60

\(^{51}\) See, the Hansck report, OJ C. 297/86, p. 94
undertaking of not accepting the most restrictive type of committee. It submitted the report on 28 September 1989, a year later than the stipulated time.

When the Parliament constituted its committee on institutional affairs, it decided to address this crucial question. In its working document the committee vigorously opposed the regulatory committed and declared that, "the 'comitology' procedure as implemented hitherto and even after the coming into force of the Single Act, results in a severe restriction of the Commission' powers."52

The Commission decided to play safe. Its composite working paper of 15 May 1991 does not mention the regulatory committees while discussing the executive powers of the Commission. The draft text refers to the fourth indent of Article 155, instead of third indent of Art. 145.53

However, the final text of the Maastricht treaty does not incorporate any such provision. Hence, the question of 'comitology' aroused by the Council decision of 13 July, 1987 remains largely unanswered, although in 1993, the EP had called for the Council and the Parliament to adopt a general decision for delegation of implementing powers to the Commission.54


53 See, Commission of the EC, "Initial contributing by the Commission to the IGC on the political Union", Composite Working Paper, p.62.

Secondly, the Commission has gained ground in the new fields of activity which the Community has been assigned to, and most important of them is the CFSP and the Union Treaty States that, "the Commission shall be fully associated with the work carried out in the common foreign and security policy."\(^{55}\) However, it is the presidency and not the Commission which is suppose to represent the Union and implement the common measures related to the CFSP.\(^{56}\) Then in the matters related to social policy, education, vocational training and youth (TITLE VIII), culture (TITLE IX); public health (TITLE X); consumer protection (TITLE XI); and trans-European network (TITLE XII), the Commission will be able to make extensive proposals. Most of these matters now need qualified majority to legislate, hence Commission will be able to influence the process. The environmental measures which need qualified majority also come under Commission's competence.\(^{57}\)

**The Council of Ministers**

The Council now has to share some of its law making powers with the Parliament, owing to the procedure of co-decision. But as noted by Jenkins, "there is no prospect, however, in the foreseeable future, of the Parliament's

\(^{55}\) EUT, Art. J.9., Title V.

\(^{56}\) See, Art. J.5 q. the EUT.

\(^{57}\) See, Art. 130s, Title XVI of the EUT.
powers being greater than those of the Council.\textsuperscript{58} Hence the Council will
remain the principal law-making body of the EC as favoured by
inter-governmentalist Member States such as Britain and France.

Secondly, the extension of the qualified majority voting which is treated
as 'modest'\textsuperscript{59} or 'limited'\textsuperscript{60} will improve the effectiveness of the institutions
as noted in the Commission's own paper.\textsuperscript{61} These are largely the issues which
have been mentioned earlier such as social policy, education, health,
trans-European network and some issues related to environment protection
and CFSP.

However, along with the attempted improvement in the decision-making
process (which evidently has become speedier since the SEA came into force),
two crucial issues remain unaddressed. First is the issue of "Luxembourg
compromise" where the EUT is silent as the SEA was, and in future, the
out-voted member vetoing the legislation to protect its 'vital national interest'
remains a possibility. Secondly, the treaty does not reform the secretive and
elitist character of the Council's functioning, its meetings will continue to be
held in camera with a secretive agenda. This certainly goes against the

\begin{footnotes}[58]\begin{itemize}
  \item Jenkins, "The Maastricht Treaty, n.43, p.13.
  \item Ibid.
  \item David Allen and Michael Smith, "The European Community in the new
    Europe bearing the burden of change", \textit{International Journal}, Vol, No.1,
  \item See, "Contribution by the Commission to the IGC", n.21, p.81.
\end{itemize}\end{footnotes}
declared objective of 'democratic-legitimacy'.

The European Parliament

The off-repeated co-decision procedure is the principal innovation of the EUT in the realm of institutional reforms which, for the first time, gives the Parliament legislative power. It would be pertinent to recall here that the SEA provided the EP a genuine role in the legislative process by the virtue of cooperation procedure. 62

The co-decision procedure which is not mentioned in the EUT as such is viewed as an extension of the cooperation procedure. 63 In line with the MEP's long quest for power, the Parliament also treated the conciliation procedure on the preparatory state in the introduction of genuine co-decision. 64 This will cover the issues which are to be decided by a qualified majority, namely: consumer protection, public health, education, trans-European networks, culture, environmental strategy, research and single market. 65

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62 See, Art. 149(2) of the EC Treaty as amended by Art.7 of the SEA.
63 See, "Contribution by the Commission to the IGC", n.21, pt. 3.3.1., p.123.
65 Bradshaw, "Institutional Reforms..." n.48, p.88.
The complex and cumbersome co-decision process as mentioned in the Union Treaty, 66 improves the cooperation procedure in a number of ways. Firstly, the Commission's role has been considerably reduced under co-decision procedure. Whereas under the SEA, the Commission had the right to veto the amendments proposed by the Parliament after the Council has taken the common position, 67 under the Union Treaty it can only give opinion. 68 Thus it has the right to negotiate directly with the Council the amendments it seeks to incorporate. Secondly, "the new co-decision process will remove the Commission's sole right of initiative throughout the legislative process." 69

The co-decision procedure will work through the Conciliation Committee. 70 This Conciliation Committee:

Which shall be composed of the members of the Council or their representatives and an equal number of representatives of the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the Council or their representatives and by majority of the representatives of the European Parliament. 71

66 Art. 189(b) and 189(c) of the EUT (Title II).
67 EEC Treaty Art. 149(2)(d), as amend by SEA Art.7.
68 EUT Art. 189(b) (2-d).
69 Bradshaw, "Institutional Reforms...", n.48, p.89.
70 EUT Art. 189(b)(3).
71 Ibid., Art.189(b)(4).
Needless to say, the Conciliation Committee shall be constituted only in the event of the Council failing to adopt the act or not approving the Parliament's amendments after reaching the common position.

Now if within six weeks of being convened, the Conciliation Committee approves the text, the EP and the Council have a further six weeks to adopt it. If any institution fails to adopt it, the proposed act will be treated as not adopted.\textsuperscript{72}

If the Conciliation Committee fails to adopt the joint text, it is not the death of the proposed act, provided the Council by qualified majority reverts to the common position and agrees to the amendments then proposed by the EP. Again the proposed act will be treated as not been adopted if the EP rejects the Council's decision by an absolute majority.\textsuperscript{73}

The legislative process thus described gives the EP a genuine law making power along with the Council. However, to satisfy the inter-governmentalists, a lengthy process of \textit{third reading}\textsuperscript{74} that makes the Council the final arbiter in the legislative process is incorporated. In the event of the failure of the conciliation process, the Council's position shall prevail unless it is rejected by the EP, which in any case can be adopted by the Council with an unanimous vote. While this provision looks as the negation

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{72} \textit{Ibid.}, Art.189 (b)(5).
\item \textsuperscript{73} \textit{Ibid.}, Art.189(b)(6).
\item \textsuperscript{74} \textit{Ibid.}, Art. 189(c).
\end{itemize}
\end{footnotesize}
of the concept of co-decision, scholars are hopeful of it remaining a formal text. Emile Noel, for example, has noted, "it is to be hoped that the third reading will rather be an instrument of dissection which would induce the Council and the Parliament to agree during the negotiations."\(^{75}\)

Parliament's newly won co-decision power does not make it the key legislative body as national parliaments since it still lacks the power to initiate legislation. Then the EP was not satisfied with the complex process involving only 14 policy areas.\(^{76}\) Its resolutions demanding its complete involvement in matters related to economic and monetary union have not been met. As pointed out by Bradshaw, "the EP will gain a lowly consultative role in EMU and foreign policy, a right to approve appointments to the new European central bank and greater budgetary powers and control over the Commission and other EC institutions."\(^{77}\)

George Ross is even more sceptical:

Maastricht's decision on new powers for the European Parliament fell between stools... The Parliament gained new powers to co-decision to stop certain kinds of legislation. But this newly won veto over certain measures falls far short of ordinary

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\(^{75}\) Noel, "Reflections on the Maastricht Treaty", n. p.154.


\(^{77}\) Bradshaw, "Institutional Reform...", n.44, p.88.
parliamentary right to propose legislation, and the Parliament’s control over EC budget remains weak.\footnote{Ross, "After Maastricht: Hard Choices for Europe", n.9., p.500.}

Whatever view one might take according to his political idealism, it remains an undisputable fact that the co-decision process is a significant step towards making the EP a true European legislative body and the more federalist states, notably Germany will be able to get the EP’s powers further revised by 1996, the date agreed for the overall review of the treaty.

**Community's Competence and the Concept of Subsidiarity**

The Community’s competence should be understood in terms of increased power in new spheres coupled with improved effectiveness of its institutions. These are basically those fields in which a specific legal basis for Community action should be provided, such as, health, animal welfare, civil protection, cultural, education, energy, telecommunication and trans-European network. Other issues such as frontier control, visa policy, political asylum, immigration policy and fight against drug trafficking terrorism and organised crime remain under inter- governmental cooperation, but need to be codified in treaty form.

The community’s competence is realised through the extension of majority voting to a number of areas although, some key activities such as action related to CFSP, industrial policy, culture, environment laws related to...
planning, tax and energy sources remain within inter-governmental cooperation, so does the third pillar, namely, Justice and Home Affairs.

This competence of the Community is based on the concept of subsidiarity, which, ironically was used as a tool to limit the sphere of the Community's activities by some governments, most notably the Major Government.

Although difficult to define, subsidiarity can be understood as the principle for determining how power should be divided or shared between different levels of government. Broadly understood at the Community level, subsidiarity means that, the Community should have only a subsidiary function, performing only those tasks which cannot be performed effectively by the Member States.

Subsidiarity is not a new concept. It was the Tindemans Report on the European Union (1975) which argued that, "the tasks assigned to the Union will be only those which the Member States cannot effectively accomplish".79 Again, the Draft Treaty on European Union adopted by the EP in 1984 also argued the same.80 It found its legal expression for the first time when the SEA of 1986 authorized the EC to act in the field of environmental

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protection.\textsuperscript{81}

When the preparations to convene the IGC on the Political Union began in the early 1990, it became necessary to address the question of subsidiarity at the institutional level. The Committee on Institutional Affairs sought an authorization on January 26, 1990 to draw up a report on the principle of subsidiarity. On April 2, 1990 the President of EP announced the authorization. The Committee worked hard on the report which was tabled in the EP on October 31, 1990.

The Parliament had made its stand clear earlier by its resolution of September 17, 1990.\textsuperscript{82} It declared:

Parliament is aware of the importance of the principle of subsidiarity in the context of the EU and believes that it should be taken into consideration not only as a means of defining the respective competence of the Community and the Member States, but also in determining how these competences are exercised.\textsuperscript{83}

On November 21, 1990, the Parliament endorsed the resolution. It proposed that, "a definition of the principle of subsidiarity be inserted into the EEC Treaty.... indicating in terms of Community principles and action what tasks the Community may undertake."\textsuperscript{84} The EP sought to insert a new

\textsuperscript{81} See, Article 130 R of the EEC Treaty, as amended by Article 25 (Title VII) of the SEA.

\textsuperscript{82} For the complete text see, OJC 231, 17.9.1990.

\textsuperscript{83} EC BULL, 7/8 1990, pt. 1.1.3

\textsuperscript{84} EC DOC. PE 143.075/fin, p.4
Later, when Britain occupied the Presidency of the Council in July 1992, for a period of six months, one of its main objectives was to secure an agreement on the principle in the EC decision-making process. Subsequently, the Commission’s communication to the Council and the Parliament, adopted on October 27, 1992. It reiterated the earlier view that, "in areas which do not fall within its exclusive objectives of the proposed action cannot be sufficiently achieved by the Member States."  

The Edinburgh summit of December 11 and 12, 1992 endorsed the report from the Foreign Ministers and invited the Council to seek an inter-institutional agreement between the European Parliament, the Council and the Commission on the effective application of Art. 36 by all institutions.  

Article 3b as inserted in this Union Treaty covers three main spheres:  

(i) a strict limit on Community action (first paragraph);  
(ii) a rule (second paragraph) to answer the question, ‘should the Community act?’ This applies to areas which do not fall within the Community’s exclusive competence;  
(iii) a rule (third paragraph) to answer the question; ‘What should be the intensity of nature of the Community’s action?’ This applies whether or not

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85 EC BULL, 10/1992, pt. 1.1.4, p.17.  
not the action is within the Community's exclusive competence.\textsuperscript{87}

Besides the new articles 3b, the principle of subsidiarity also finds expression in Article of the Union Treaty. Under it, Member States resolve 'to continue the process of creating an ever closer union among the people of Europe, in which decisions are taken as closely as possible to the citizen in accordance with the principle of subsidiarity.'\textsuperscript{88}

These two definitions of subsidiarity mentioned in the Maastricht Treaty are not one and the same. It represents two sides of the coin. The Art. 3b is a \textit{procedural criteria}, "in determining the appropriate level at which particular powers should be rested in the governance structure of the EC".\textsuperscript{89} While in Art A, "subsidiarity is posed as a \textit{substantive principle} that should inform making of policies which are designed to move the EC towards a closer European Union".\textsuperscript{90}

Quite obviously, there is an inherent tension between these two aspects of subsidiarity. While Art. A requires the decisions should be taken with a view to create "an even closer union", which means the common goals such as the plan to have a common EC currency will be realised not by National Central

\textsuperscript{88} Art. A of the EUT.  
\textsuperscript{90} \textit{Ibid.}
Banks, but by a European Central Bank. These decisions should also be close to the citizens. This poses the question about democratic deficit at the EC level which demands the pooling of sovereignty to make with corresponding accountability. Translated into concrete terms it would make EP the real legislative body, reducing the Council to the executive organ of the EC government.

Contrary to it Art. 3 (b) poses subsidiarity as a criteria to judge the competence of the Community by a three-tier test. For countries such as Britain and Denmark it is a tool for limiting the EC's powers. In areas such as competition policy in energy, telecommunication and transport, the government could use this tool to block Commission's initiation since by the Edinburgh Declaration, "the burden of proof would fall on the Commission to demonstrate that its proposals met the three-stage set." Hence, Art. 3 (b) could be used to shift the inter-institutional balance in favour of the Council.

Thus, subsidiarity remains a vague and ambiguous concept, and "the Edinburgh declaration on subsidiarity does not mean that the political development of the Community can now proceed according to a clear plan illuminated by subsidiarity."91 Nevertheless, the following changes affecting the policy-making of the future Union can be visualised.

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First, the debate on subsidiarity has given the momentum to the demand for the democratic deficit at the EC level, involving citizens more closely to the policy-making. This has opened the possibility of involving subnational governments, especially in trans-border areas such as environmental protection, trans-Europe transport network and regional development. The Maastricht Treaty has recognised this cooperative regionalism by constituting the Committee of Regions,\(^{92}\) having an advisory role in the overall EC policy-making.

Secondly, this concept could further affect the inter-institutional balance of the EC. On the question between efficiency and democratic accountability, subsidiarity could be used as trade-off to shift the balance a little in favour of the Parliament.

Thirdly, the subsidiarity principle could be used for rationalization of the EC policies by reducing the load of the Commission. Because, now the fundamental questions about powers of the EC vis-a-vis Member States need to be answered, the future will see a shift of power from one tier of government to the other and vice-versa. This will help making Brussels more accountable to people, being more efficient at the same time.

\(^{92}\) *Ibid*, p.130
The Legislative Process after Maastricht

As we have seen, the Maastricht Treaty has not affected the institutional balance seriously, hence, the legislation process of the Union has not been greatly affected. The changes and modifications introduced by the EUT can be viewed as the continuous evolution of the decision-making process in a balanced way, not a break from it.

The Treaty has introduced reforms in all three principal institutions of the Union, and, thus, has affected the legislative process in a three-directional way. First, the Commission's role in the process is being altered. It no longer has the monopoly of initiating the legislative process. It has to bear the burden of carrying out the principle of subsidiarity; and its implementing powers remain diluted because of the continuing 'comitology'. Secondly, because of the extension of majority voting, the Council has to rely more on consensus and coalition building rather than on unanimity. Thirdly, the Parliament has become a key player in fourteen policy areas where the co-decision process, the major innovation of Maastricht, is being introduced.

In the prevailing post-Maastricht scenario, it has become important to analyze the outcome of the modification introduced by the EUT to the EC Treaty. The following analysis shall attempt to draw a sketch with the help of the primary documents containing modifications introduced by the EUT to the decision-making process of the Union.
Commission- Parliament Relation

Hitherto, the Parliament was almost excluded from the process of appointing the President of the Commission. The Maastricht Treaty has introduced a two tier investiture to this provision:

The governments of the Member States shall nominate by common accord, after consulting the European Parliament, the person being intended to appoint as President of the Commission. The President and the other members of the Commission thus nominated shall be subject as a body to a vote of approval by the European Parliament. 93

Here the EP has gained a leverage in the appointment of the person having the most important job in the Union. True, the governments can still circumvent the process and avoid the Parliament as they recently did when by choosing Jacques Santer, the successor of the current President, Jacques Delors. But, then, the Parliament too can flex its muscles. It had almost put the governments in an embarrassing situation when the socialists, the largest group in the newly constituted Parliament, threatened to oppose Santer's nomination. Although Santer sailed through, the outcome was close: 260 votes to 238 votes. Thus, the EP gave the clear warning that the governments cannot ignore it next time, enough to predict that it will not remain 'a mere rubber stamp', as an analyst had feared. 94 Then the Commission loses its monopoly

93 Title II, Art. 158 (2) of the EUT
94 See, for instance, Bradshaw, "Institutional Reforms in the European Community beyond Maastricht", n.44, p.84.
on the right to initiate legislation owing to the co-decision process. Also, the seemingly innocuous provision of the inserted Article 138 (b) also undermines the Commission's role in initiating the legislation. If reads, "the European Parliament may, acting by a majority of its members, request the Commission to submit any appropriate proposal on matters on which it considers that a Community act is required for the purpose of implementing this Treaty."95

It can be argued here that, the Commission is under no legal obligation to initiate the proposal so requested because the Parliament's request has no binding force on the former. But, while it may be easy for the EP to make such a request because it requires just a simple majority which is not very difficult to obtain, the Commission will find it difficult to overlook such requests owing to the fact that it now consists of twelve members only, and, it requires just seven affirmative votes to reach a decision.96 Thus, in the ever evolving balance between the Commission and the Parliament, the letter appears to have gained a few ounces.

**Commission - Council Relationship**

There are three main provisions of the Maastricht Treaty which have affected the relationship between the two key institutions of the Union. First,

95 Article 138 (b), Title II of the EUT.

96 Article 163 of the EUT reads, "The Commission shall act by a majority of members provided in Article 157."
the principle of subsidiarity has put the onus on the Commission to answer the question, "should the Community act?" Now the Commission is obliged for a much more wider consultation with Member States, interest groups and national bureaucrats before submitting it to the Council. It has to, "justify in a recital the relevance of its initiative with regard to the principle of subsidiarity, and whenever necessary the explanatory memorandum accompanying the proposal will give details in the consideration of the Commission in the context of Article 3b."97

Now the Council, working through Coreper's report which will be the deciding factor, will examine whether the provisions of Article 3 (b) (which themselves are not so clear) have been applied in the Commission's proposal or not. At this juncture, the Council might find it legally appropriate and politically convenient to kill an ambitious proposal although the Edinburgh Presidency had concluded, "care should be taken not to impede decision-making in the Council and to avoid a system of preliminary or parallel decision-making."98

Secondly, the Commission has been deprived of having much say in the formation and execution of new areas of joint action in foreign policy, internal security, and justice and home affairs - the two new pillars of the European

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97 Conclusions of the Presidencies (Edinburgh), EC BULL, 12-1992, p.15-16.
98 Ibid, p.16
Union. Although, the treaty declares that, "the Commission shall be fully associated with the work carried out in common foreign and security policy fields", 99 it loses the ground of initiation and implementation of Community acts to the European Council. 100 The Council has, thus, gained an important point vis-a-vis the Commission, though indirectly. Even regarding the EMU related matters, the back-bone of Maastricht, the Commission's role is not very vital since it, "will not have the sole right to make proposals on the setting of the external exchange rate or in policing macroeconomic policy." 101

On the other hand, the Commission has gained considerable power to initiate proposals on the extended spheres of the Community, namely: education, national training and youth; culture and public health and on consumer protection. 102 In the matters of trans-European networks, the Commission will propose guidelines and means of financing such networks. 103 Recognizing the vital importance of environmental protection and its cross-border nature, the treaty has brought the issue into the Community's sphere. The Commission is the sole authority to make proposals, and those concerning planning tax and choices between energy sources shall

99 Article, J.8, Title V of the EUT.
100 Art. J.5 of Ibid
101 Bradshaw, p.85.
102 See, Articles 126, 127, 128 and 129 (a), Titles VIII, IX, X and XI of the EUT.
103 See, 129 (c) 8 (d), Title XII of Ibid.
be decided by unanimity. Most of the proposals, in this extended sphere of Community's competence, however, will be decided on the basis of qualified majority, hence, the Commission will surely try compensating the losses it has to make to the Council in the fields of foreign policy, justice and home affairs and EMU related matters. However, the overall balance sheet appeared to be in favour of the Council.

Thirdly, the Commission has lost much of its intermediary role in sorting out the differences between the Council and the Parliament. By the virtue of the SEA, the Commission had the power to accept or reject the amendments introduced by the Parliament. Those amendments it had approved required only the qualified majority of the Council, and those not accepted by the Commission required unanimity in the Council to be adopted. Now, under the co-decision process, the Parliament can directly negotiate with the Council, bypassing the Commission because after the appointment of the conciliation committee, the Council can adopt a text by qualified majority even if the Commission objects.

Although it was vital for the genuine co-decision process to empower the Parliament to negotiate directly, it has robbed the Commission of having a bargaining power in cases the process applies to. The usual

104 Art. 130 (s) of Title of the Ibid.

105 See, Art. 149 (2) (a) of the EEC, as amended by the SEA.

106 Art. 189 (b) (6) of the EEC, as amended by the EUT.
Council-Commission dialogue, thus appears to be shifting here in favour of the Council because, "once the conciliation procedure comes into operation, it is possible for the Commission's proposal to be amended by the qualified majority in the Council, even if the Commission objects".\textsuperscript{107}

\textbf{Council - Parliament Relationship}

By virtue of the co-decision process introduced by the Maastricht Treaty, the Parliament has entered into the traditional Council Commission dialogue. At least in the fourteen policy areas the process applies to, the decision shall be taken by the process of 'trilogue' between all the three key institutions of the EU. In fact, "there are now three institutions which can adopt regulations, directives or decisions: the Parliament and Council acting jointly, the Council acting alone and the Commission acting alone."\textsuperscript{108}

The requirements of the co-decision process until the formation of the conciliation committee are almost the same as under the SEA. Thus, Article 189 (b) clause 2 (a) and (b) is almost a verbatim copy of Article 149 (2) (a) and (b) of the EEC Treaty, as amended by Article 7 of the SEA, except a few minor variations of the language. The important difference, however, is that, in the EUT, the Article, 189 (b) (2) clearly mentions that, "the Commission shall


\textsuperscript{108} Ibid, p.222
submit a proposal to the European Parliament and the Council," the SEA does not say anything about the Commission submitting its proposal to the EP, perhaps it was taken for granted that it would do so, but, nevertheless, the founding fathers of the SEA chose not to mention it under the 'cooperation-procedure.'

In both the provisions, the EP has three months to approve the composition. If it approves the common position, or has not taken any decision, the Council acting by a qualified majority, adopts the text.\textsuperscript{109}

Now, under the co-decision process, if the Parliament rejects the common position by an absolute majority of its members, it immediately has to inform the Council, who, in turn, may convene a meeting of the Conciliation Committee.\textsuperscript{110} The Committee has an equal number of members from the Council and the Parliament.\textsuperscript{111} The two sides vote separately and have to agree to take a decision. If the Parliament rejects the Common Position, again, by an absolute majority of its members, the proposed act is deemed not to have been adopted.\textsuperscript{112}

The Parliament can also propose amendment to the common position which should be adopted by an absolute majority of its members. The

\textsuperscript{109} Article, 149 (d) of the EEC Treaty as amended by Article 7 of the SEA and Article 189 (b) (2) of the EUT.

\textsuperscript{110} Article 189 (b), cl. 2 (c), Title II of the EUT.

\textsuperscript{111} Article 189 (b) (4) of \textit{Ibid}.

\textsuperscript{112} Article 189 (b) (5) of \textit{Ibid}.
Commission delivers an opinion on it.113 If the Council approves these amendments, acting by a qualified majority (and with unanimity on the amendments on which the Commission has delivered a negative opinion), the common position is deemed to have been adopted with amendments.114

However, if the Council does not approve the text in question, the Conciliation Committee is convened which has to take a decision within six weeks. Again the Parliament side acts by an absolute majority of its members and Council side with a qualified majority. If both sides agree, the text is adopted with amendments, otherwise it falls.115

Again within six weeks if the Council does not act, the act is deemed not to have been adopted. But if it confirms its original position, the act is deemed to have been adopted, unless it is rejected by the Parliament, acting by an absolute majority of its members.116

The question of attaining majorities in different situations by the two institutions is crucial in the Council-Parliament relation under the co-decision process. The Council usually acts by the qualified majority except to approve those amendments on which the Commission has delivered a negative

\[113\text{ Article 189, cl. (2) of Ibid.} \]
\[114\text{ Article 189 (b) (3) of Ibid.} \]
\[115\text{ Article 189 (b) (5) of Ibid.} \]
\[116\text{ Article 189 (b) (6) of Ibid.} \]
opinion.\textsuperscript{117} Even in this case, if the Council finds itself divided, it has to just wait for three months, after which the Conciliation Committee is being convened, and, then, the Council needs to act only by a qualified majority.

On the other hand, to approve a joint text, it the Parliament has to act by a simple majority, Article 189 (b) 2 (a) does not describe the nature of this majority, hence it should be presumed that the EP has to approve the common position by just a simple majority. But if the EP wishes to introduce amendments to the joint text, or wishes to reject the common position, it must act with an absolute majority of its members.\textsuperscript{118} This majority, sometimes, because of the varied composition of the EP may not always be easy to obtain, although usually the Parliament has been successful in obtaining a quorum.

In the entire process, the position of the Commission has weakened considerably and it has lost most of its intermediary role to sort out differences between the Council and the Parliament, as it was provided in the SEA. Once the Conciliation Committee has been convened, the Commission hardly has any role to play. Even before this, although the Commission is given a chance to cast its veto (it can deliver negative opinion on the amendments introduced by the EP on the common position), the effect of this veto is only a delay. Hence, "the Council still cannot itself amend the Commission's proposals unless it is unanimous, it can adopt the Parliament's

\textsuperscript{117} Article 189 (b) (3), Title II of \textit{Ibid.}

\textsuperscript{118} Article 189 (b) cls. 2 (c), (3), (4), (5) and (6) of \textit{Ibid.}
amendments by a qualified majority even if the Commission objects.\textsuperscript{119} Effectively, the Commission is excluded from the deal.

Conclusion

The treaty on the Political Union, "is a mixed bag, bearing the hallmark of too many compromises".\textsuperscript{120} This is no surprise because the Community's history has been that of a workable compromise between the inter-governmental and supranational forces. And the negotiation in the IGC too was not cut-off from this tradition. As a result, the proposed institutional changes remain technical and the reforms piecemeal, which will not enhance the 'democratic deficit' of the Community in any major way.

The codecision process introduced here has made decision-making process of the Community more complicated which will put additional burden on the Members of European Parliament to employ skill and manoeuvres to use this cumbersome process for their advantage. Not only this, the Parliament is excluded from the two new pillars, the CFSP and Justice and Home Affairs, and its control on the Budget remains weak.

But co-decision process has also made the Parliament a genuine partner in the legislative process of the Union in the fourteen policy areas the process applies to. Then, this co-decision process, even after nine months of hard

\begin{itemize}
\item[\textsuperscript{119}] Hartley, n. p.224.
\item[\textsuperscript{120}] Bradshaw, "Institutional Reforms........"n.44, p.93
\end{itemize}
bargaining and skillful negotiations empowers the Council with 'third reading.' The Council could override the EP on the basis of a qualified majority which, of course, the EP could reject, acting by an absolute majority of its members. The EP could be reluctant to do it because of the fear of being termed 'obscurantist.' Hence, the complicated and ponderous co-decision process has made the decision slower and less efficient, negating the benefits of the SEA.

The concept of subsidiarity is vague and ambiguous and open to interpretations. There are three views of the concept. First is the christian democratic version underlying the Catholic social philosophy; second view is close to the principles of German federalism; and third is the British conservative ideology. Different Member States or groups of States could interpret subsidiarity to suit their own interests. While nations like France and Germany may use it to extend the Union's spheres into new areas, Britain and Denmark might use it as a tool to restrict it.

Obviously, the substantive and procedural aspects of subsidiarity could clash with each other and the former, when translated into concrete language, becomes a means to prevent the Union working effectively. As a scholar opined, "In order to prevent subsidiarity from becoming exclusively a potentially powerful defensive mechanism of individual Member States and therefore of national interests, one has to abandon the myth that the principle embodies
The extension of majority voting in the Council has a wider implication in the post-Maastricht era. During the negotiation for the enlargement of the Community with four EFTA countries, Austria, Sweden, Norway and Finland, the question of 'blocking minority' in the Council proved to be a thorny one. The current weighting system is applied to the new Member States. Accordingly, "Sweden and Austria will have a vote each, Finland and Norway will have 3 votes each", and, "the threshold necessary for a qualified majority shall be fixed at 6, which maintains approximately the current percentage." 122

Thus the blocking minority rose from 23 votes to 27. In an era when decisions are being increasingly taken by the qualified majority based on the weighted vote system, achieving 27 votes is certainly more difficult since it involves a stupendous effort to build a coalition of two big and two small members. Not surprisingly, Britain insisted the blocking minority remain at 23 so that it could have a better chance of blocking a supranational legislation with the help of another big member and a small member. Understandably, other Member States pressed for 27 votes as the blocking


minority and the negotiation on the accession of the four EFTA countries to the EU reached a deadlock.

After a series of negotiations among the Member States, the Council on 29 March 1994, in a typical 'middle of the two extremes' fashion decided a compromise solution:

If Members of the Council representing a total of 23 to 26 votes indicate their intention to oppose the adoption by the Council of a Decision by qualified majority, the Council will do all in its power to reach, within a reasonable time and without prejudicing obligatory time limits laid down by the Treaties and by secondary law, such as in Articles 189 B and 189 C of the Treaty establishing the European Community, a satisfactory solution that could be adopted by at least 68 votes. During this period, and always respecting the Rules of Procedure of the Council, the President undertakes, with the assistance of the Commission, any initiative necessary to facilitate a wider basis of agreement in the Council. The Members of the Council lend him their assistance.\(^{123}\)

The result is that, if in future, a situation arises where 23 to 26 votes are against a Council decision, the President will achieve a greater significance because he will have to act as an honest broker to facilitate a wider base of agreement. It means a great deal of pressure will be put on small states. But, even if it does not materialise, the act will be deemed as adopted. And, the possibilities of modifying the text are not too high because the EP has to agree for the same if the decision is to be taken on the basis of co-decision procedure. It could be concluded that Britain could not gain what it wanted to in spite of the ambiguous language of the Council Decision.

\(^{123}\) Art. 1, Council Decision (94/c d105/01), OJC 105/1, 13.4.1994.