

# GOVERNANCE AND “EUROPEAN CONSTITUTION”

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## Abstract

The aim of this paper is to explain concepts like governance and good governance and to analyse to what degree can we talk about an efficient governance within the European Union. We have also analysed the treaty reforms performed within the EU (Nice Treaty and European Convention), necessary for correcting the democratic deficit and for reaching the objective of United States of Europe. The conclusion of this paper is that there is the need of a strong political will and states have to go beyond their national pride in order to reach an effective governance.



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In order to achieve an institutional balance able to face the rivalries between the member states and to cover the deficit of the Union's external image in international relations, it was necessary to accomplish an efficient governance which is connected to the inter-institutional relations, the European institutions relations with the member states, the share of votes within the council of Ministers, the majority vote and not last the more active participation of the European citizen to the community decision-making process.

The question which emerged was the definition of this concept meaning in the arena of the relations of power, either inside a State, a company or an international organization.

The term was borrowed from the science of economics, more exactly from the culture of the companies that wished to reach an increased efficiency on the world market arena.

In the document "Governance and development", the World Bank used the phrase "**good governance**", a crucial element on its list of criteria regarding the loans granted to the developing countries ( The World Bank Governance and development, 30.04.1992:1-2; Doornbos 2001:93-108).

In the opinion of the experts from the Bank the "good governance" "is synonymous with sound development management". "Good governance" was characterized by a politically predictable, transparent process, whose bureaucracy was professionally ethic and acted in view of promoting the public well – being, the rule of law, transparent processes, as well as for the support of the participation of a strong public society in public matters.

The concept of governance will be maintained in the thinking of the World Bank employees, as the art or manner of governing, different from the government as institution. The purpose of this international institution was and still remains that of promoting an innovative method in the management of public affairs, based on the involvement of the civil society at all decision levels: national, local, regional and international.

The related concept used the most, especially in the EU, was that of "multi-level governance".

Two distinguished annalists, Yves Cannac and Michel Gode highlighted the difference between the concepts of: "*governance*", meaning a relation of power, "*government*" as "the operational exercise of power" and "*governing*" as being the measurement of the influence of power within the systems in question (Cannac, Gode 2001:41-50).

As previously shown, the concept was widely used within the UNO and the World Bank. "Good governance" first of all refers to the constant efficiency of the political-administrative system, but also to the economic one and the participation of the civil society to the decision-making process.

According to the annalists, an efficient political-administrative process requires a permanent reform of the civil services and of the state-citizen relations, transparency and responsibility, participation etc. The ideas used by the two organizations also generated debates within the EU, especially because the European institutions were

often accused of the lack of dialogue with its citizens, of the lack of transparency and the difficult access to community documents that affected directly the European societies.

The scholarships like John McCormick considered that “it is common to see the term of governance used in conjunction with the system of authority in European Union” (McCormick 2004:26) The Governance of European Union, - said the same author -, “describes a system in which laws and policies are made and implemented without the existence of a formally acknowledged set of governing institutions, but instead as a result of interactions involving a complex variety of actors, including member state governments, EU institutions, interest groups, and other sources of influence”.

Willing to solve this growing problem, especially in the 90’s on the 25<sup>th</sup> of July 2001, the European Commission released (Brussels), the text of the *White Paper of the European Governance*, a document that defined governance and the principles it was based on from the EU point of view.

The Commission considered governance to be the “*rules, processes and behaviour that affect the way in which powers are exercised at European level, particularly as regards openness, participation, accountability, effectiveness and coherence*” (White Paper of European Governance 2001: 8-10). In the same document, the principles of “good governance” such as transparency, participation, responsibility, efficiency and the coherence of the European-community system were presented. These principles had to provide a better perception from the European public opinion on the Union’s decisions, as the Commission sought new ways of dialogue with the public opinion, especially after the launching of the “Dialogue on Europe” in 2000.

Transparency refers to the fact that the institutions must work in the most possible open manner, through the most direct possible information of the citizens as to the decisions taken, naturally associating the member states, in an accessible and intelligible language, meant to increase the trust in the European institutional system.

The achievement of “good governance” requires at the same time, an active participation both of the European institutions and of the member states, and not last, of the European citizens. It is not by chance that the principle of subsidiarity, stated by the Single European Act (1986) has witnessed a development in the community discourse, starting from the idea that its application allowed the European citizens to participate in all the decision levels, especially in the local ones, that affect them directly.

The legislative and decision-making process of the Union has to be as transparent as possible, the European institutions having to explain and take the responsibility for what goes on at the Union level (Telò 2001:1-7). The responsibility also refers to the member states, which are called upon to elaborate and implement the European policies. They must have precise objectives, a strict evaluation of their impact and have to be accomplished in the set period of time (De Schutter, Lebessis, Paterson 2001:129-167).

This requirement supposes greater efficiency and respect of the proportion principle in the decision-making process, according to the levels it functions in.

In an enlarged Europe, coherence is necessary in the conditions in which diversities need to be undeniably accepted, as the regions and local authorities are asked to play an ever increasingly important role in the implementation of the European policies.

The five principles presented were and still are theoretically accepted, but difficult to put into practice, especially because the Union is not a State as such, it does not yet have institutions totally adequate to the principle of subsidiarity, while States are more and more proud to preserve the attributes of their sovereignty (Héritier 2001).

Moreover, the text that we have analyzed represents a counter-example due to the technical vernacular used, difficult to perceive by the European public opinion, containing a sort of 'metal language' of the European construction. Nevertheless, the ideas of the *White Paper of the European Governance* have had an important impact on the launching of the European debates regarding the Union status. We can find them mostly in the project of the European Convention.

The application of these principles was consequently monitored by the European Commission between 2001 and 2007. For instance, a "Report on governance within the Union", from the 22<sup>nd</sup> of September 2004 shows us that the document presented before, the White Paper of the European Governance became an important guide to the actions of the European institutions (Rapport sur la Gouvernance européenne 2004:4-5).

The main concern of the Commission regarding governance could be found as well in the debates of the European Convention and in the Treaty instituting a Constitution for Europe in June 2004, especially in what the delimitation of each community institution was concerned.

Before passing to the presentation of the European Convention project, we consider necessary to point out that the Treaty of Nice, functioning since 2003, contained many institutional changes meant to respond to the efficiency and coherence requirements within an enlarged Europe. At the same time, the Treaty objectives are the Union approach to its citizens and rendering its decision-making process more flexible. One of the institutions which enjoyed special attention from those who drafted the text of the treaty was the European Parliament, whose co-legislator role was strengthened (Adrian Ivan, Emil Ivan 2001:148-149). Nonetheless, the EP did not become a concrete legislative institution, its role resuming to the active participation in some of the legislative documents of the Council of Ministers, by the co-decision procedure. Without altering the Council of Ministers' role, a few modifications in what the share of votes in the decision-making process were made at Nice, at the same increasing the number of domains in which the decisions of qualified majority could be taken: civil judicial co-operation, agreements regarding services or the intellectual property (Adrian Ivan, Emil Ivan 2001:146-150).

The Commission did not escape the reformers' attention either, thus, starting with 2005 the commissioners' number would be limited, without stating their exact number. The rotation system, which the Treaty wanted to be equal for all the member states, was introduced. Considering the role of the Commission in the application of the community measures on strengthening of the president of the Commission's input

it was agreed that he or she could decide on the repartition of portfolios and equally on the commissioners' responsibilities during their mandate. With the approval of the College, the president could ask a commissioner to resign, a necessary measure in order to avoid a possible blame vote of the EP.

The need of the Union to get closer to its public opinion within the community states required changes in what the Economic and Social Committee was concerned, which would represent different components of the civil society in the future. However, the Treaty did not bring changes to the consultative role of this organism.

In order to serve the European citizen's interests, the Treaty of Nice advanced a better repartition of the competencies within the Court of Justice, between this Court and the Court of First Instance, introducing the possibility to establish jurisdictional chambers specialized in different domains.

Equally, those who wrote the treaty had in mind a better activity of the Court of Accounts, an institution called to check the budgetary exercise of the community system. Its role was increasingly crucial if we take consider the scandals tied to the onerous spending of some community funds. This institution had to collaborate with the specialized national institutions through a *committee of contact*, following the subsidiarity principle, but also that of an increased efficiency in the analysis of the Union budget.

For a better distribution of competencies within the Union, "the fathers" of the Treaty carefully considered the *Committee of the Regions*, a consultative organism of the European Union. Currently made up of the representatives of the regional and local collectivities, it was the expression of the affirmation of the community identities at this level. Strengthening the principle of subsidiarity, the Treaty of Nice forced the members of the Committee to be connected to the collectivities they represented through the political mandate. A greater role for this organism was determined by the necessity to render the administrative management act more efficient, which according to the *White Paper of Governance*, had to be as close as possible to the European citizen. At the same time, the reform of the public services needed to insure "good governance", and to be extended to all levels of competence, respecting the functionalist principles of *de facto solidarity* invoked by Jean Monnet.

### **The Treaty establishing a Constitution for Europe**

"The Convention For the Future of Europe" was conceived as a follow-up of the "Declaration on the future of the European Union" of the European Council in December 2000 (Nice) and of the European Council in Laeken (the 14<sup>th</sup> –15<sup>th</sup> of December 2001) (Conclusions of Nice Council 2000, Déclaration de Laeken – L'avenir de l'Union Européenne, Conclusions of Laeken Council 2001).

Reuniting 28 states (Turkey included), 105 members and equal number of suppliants, representatives of the parliaments and governments of the member states and candidate countries, of the Commission and of the EP, chaired by the former French president, Valéry Giscard D'Estaing, the Convention opened its works on the 28<sup>th</sup> of February 2002 and closed them on the 10<sup>th</sup> of July 2003.

Europe was offered a constitutional project, meant to strengthen its political and economic unity and most of all, to set up the basis of an increasingly debatable European identity, after a few international conflicts on the world stage, such as the one in Iraq. Its project had to correspond to an enlarged European Union, which became more and more visibly, a global actor of the 21<sup>st</sup> century.

As shown by its membership, it enjoyed legitimacy trying to bring both the member states and their citizens to the negotiation table, thus having a federal European vocation.

The outcome of its proceedings was debated at the European Council in Salonic, on the 19<sup>th</sup>-20<sup>th</sup> of June 2003, where it was concluded that the Constitutional Treaty would mark an important stage in the achievement of the objectives of the European integration and the increase of the international role of the Union. It decided to convene an Intergovernmental Conference that should adopt a new EU Treaty, in line with the enlargement process and the new international and European contexts.

The convoking of this Intergovernmental Conference, the negotiation organism of every EU Treaty was decided by the Council of General Affairs and Foreign Relations, on the 29<sup>th</sup> of September 2003. It opened its works on the 4<sup>th</sup> of October 2003 (Jinga 2004:7). The Treaty was signed in Rome, on the 29<sup>th</sup> of October 2004, after having been previously adopted by the European Council in Brussels on the 17<sup>th</sup>-18<sup>th</sup> of June 2004.

The idea of a *European Constitution* that would transform the European Union created in Maastricht in 1993 into a confederation or even into a European federation, as its founding fathers wanted it, was much older and it had been expressed by the European federalists, at the Hague Congress in May 1984 as well as by collective or individual projects such as that of the EP in 1984, inspired by Altiero Spinelli or Joschka Fischer's speech in Berlin, in May 2000 (Preda 2003).

Early in the year 2000, there was much talk about a European Constitution or a Single Treaty that had to regroup all the articles of the four previous treaties in a sole judicial form.

The representatives of the EU member states split into three categories: the maximalists - led by Germany- who wanted a redefinition of the forces at European level and the inclusion of the Charter in the Treaty of Nice, conceived after the model proposed by the Florence European Institute- Benelux and Italy; the minimalists - grouped around the United Kingdom - opposed to any form of supranationalism- the Nordic states, Austria and Spain and the conciliators - led by France.

The European Parliament supported the maximalists, placing itself in favour of a new balance of power in the Parliament - Council of Ministers relation, the expansion of co-decision to all the EU policies.

The Commission, more cautious, insisted mainly on the success of the enlargement, the coherence of the community *acquis* and a better-shaped legal framework (Prodi 2000).

Experts in the European integration have agreed that it is very difficult to define what the European Union truly is today.

It is an organization based on the voluntary association of states that contains in its structure elements of *federalism* such as: common citizenship, a single currency,

a common flag. It has its institutions (the Commission is negotiating with the United States of America and other countries within the World Trade Organization), it has a Parliament elected by universal suffrage (without legislative power in itself), laws prevail over those of the member states, the shared competencies with the member states based on subsidiarity, the power of decision in domains such as agriculture, environment, competition policies etc, but the lack of governmental structures of the federal type, as well as of *confederalism*: the Council of Ministers is the main legislative and decision-making institution which has made unanimous decisions for a long time, in many domains of the integration process; the European Council, an intergovernmental organism that tends to become its main political institution, and in the domain of common foreign and security policy, the member states have maintained most of the attributes of sovereignty (McCormick 2002:2-11; McCormick 2004:28-29; Schwok 2005; Zorgbibe 2005:256).

Unfortunately, the European Convention did not take any major steps in this direction, merely attempting to give a constitutional shape by its project to what was accomplished at the community level up to the present.

As shown by John McCormick, the confederation started as an emphasized conservation of the member states sovereignty, as it emerged from a temporary conventional agreement, which generally created a “*union of sovereign states*” whose core role was taken by the governments that maintained their authority over their citizens (McCormick 2002:6-8; McCormick 2004:11). Among the confederate states we can enlist countries such as the United States of America between 1781 and 1789, the Swiss Confederation until 1784, the German Confederation between 1815 and 1871 etc.

*The Federation* is a union of states whose authority comes from its citizens, and it is the result of a supreme construction; all the powers derive their authority from it. Moreover, the central government has the control over some important fields like defence, foreign policy, common currency and general taxes. It is also the expression of general elections that take place on the entire territory of the federation. The most well known examples of federations are the United States after 1789, Switzerland after 1848, the Soviet Union, the Russian Federation, the former Yugoslavia, etc.

If we make a brief analysis of the EU, starting from the previous premises, we can say that this is a supranational organizations, which has con-federalist elements (treaties, a Council of Ministries, which has legislative and decision making powers, a European Council, the main political authority, the unanimity rule in the decision making process) federalist ones (common citizenship, a single currency, the primacy of the Union law over the law of the member states, supranational institutions, etc.).

In order to become a federal state the European Union needs a Constitution.

Two well known American specialists, Robert Keohane and Stanley Hoffmann, think that we can consider the EU a confederal model because the central institutions are strongly intergovernmental, interested in creating a common framework and networks of detailed regulations and they are tolerant towards national diversity (Keohane, Hoffmann 1990:279). The analysis of the two authors takes into consideration the intergovernmental negotiations on which the integration process was based; more

important than the spill-over theory is for them the fact that the member states are separate entities, that unanimity is required when the treaties are revised, the priority of the states versus the European citizens, etc.

The debates that took place at the end of the 20<sup>th</sup> century and in the beginning of the 21<sup>st</sup> century seemed to favour the idea of a European federation. We can thus mention J. Fischer's discourse, the debates over the Nice Treaty and those of the European Convention.

But the Nice Treaty was a deception, especially because the European Parliament did not receive clear legislative powers and thus advised the national parliaments not to ratify the treaty.

Fisher's discourse from May 2000 brought up again the debate over the idea of the United States of Europe, but the negotiations over the Nice Treaty, which began in December 2000, showed that the European leaders were not very anxious to respond to the German Minister's message. Lionel Jospin, the French prim-minister gave an answer only in May 2001.

The debates on the institutional reform that took place in Nice split the European politicians in three groups: the federalists, the intergovernmentalists and the co-federalists (the consociationals).

Among the federalists (supranationalists) we can mention J. Fisher, Gerhard Schroeder, Johannes Rau, Guy Verhofstadt, Michel Barnier, François Bayrou, Costas Simitis, Romano Prodi, etc. They thought that the European Union had to go beyond the functionalist method by creating a European federation in order to have a political dimension. The idea was that the reform of the Union had to include the creation of a Constituent Assembly, whose purpose was to draft a Constitution. Based on the idea of state power division, the Constitution - as Schroeder thought - had to give more power to the Commission, "a powerful European executive". Its president had to be elected by the representatives of the member states, after the American or German model, or through a direct universal election, as J. Fischer preferred.

The European Parliament had to get more legislative and budgetary powers, while the Council of Ministers could become a sort of Senate that would represent the member states. Romano Prodi went even further, wishing to create a European army, the first step being the creation of a "European Quick Reaction" force. The President of the Commission also wanted that the second pillar, CFEP, to be handled by the Commission, thus creating a unitary structure for the foreign representation of the EU (Prodi 2001).

As the EU had a single currency and supranational institutions, a common defence was seen as the last step towards a complete European integration, in order to create a European federation. The ideas of the previous mentioned leaders were shortly retrieved in the European Governance White Paper, July 2001. The document clearly stated that the "communitarian method" (functionalist method) had to be more open, transparent and responsible (White Paper, European Governance 2001:8).

The federalist points of view were hard to accept, especially by the British and the French, who were the supporters of intergovernmentalism. They thought that the integration process must not be seen as an alternative to national states, as the

federalists stated, but a way to strengthen them. For example, Jacques Chirac, a strong supporter of the role the Franco-German nucleus had to play in the European construction, did not oppose the idea of the United States of Europe, but, contrary to his German partners, he wanted a Union that respected the European nations, their identities, their cultural and linguistic traditions (Chirac 27 June 2000).

Chirac and Blair wanted to strengthen the EU, even to transform it into a superpower, but not into a super-state (Hill 2001).

Respecting the British parliamentary tradition, Tony Blair proposed, in 2001, the creation of a Chamber of the National Parliaments and an increase of their role, which was a disguised type of intergovernmentalism (Tony Blair 2001).

The two political leaders supported the increase of inter-state cooperation, giving special attention to the European Council, the expression of the role of the national political leaders in the integration process. The Convention's Project transformed the European Council into the most representative institution, and its president into the most important political figure of the future Union.

They also insisted on the increased role of the ministerial councils and the exclusion of the supranational institutions from the economic decision making process and from other fields of public policies, especially defence. In the European Parliament they had the support of "the Europe of the Nations" group, which accepted the idea of a confederation, which may include as many European states as possible, but did not have supranational institutions.

The Convention presented the project on the 18<sup>th</sup> of July 2003 in Rome, in front of the European Council. Its title was "Draft Treaty establishing a Constitution for Europe".

In the above mentioned Declaration, the Laeken European Council instructed the Convention to make suggestions on three fields: bringing the citizens closer to the European project and the European institutions; reforming the European political area in an enlarged Europe; transforming the Union into a stability element and an important global player.

Thus the Convention proposed a better division of competences between the Union and the member states, recommended the merger of all the treaties and the Union to be provided with legal personality, the increase of the democracy and the efficiency of the EU, the simplification of the decision making process, a reinforcement of the role of the national parliaments and an institutional reform.

Respecting the principle "united in diversity", the text proposed by the Convention created a Union "whose member states give the Union all the competences necessary in order to achieve the common objectives". This Union was provided with legal personality (Art. 6) in order to reinforce its role when dealing with the member states, but also when dealing with third countries or organizations.

From our point of view the present Union had an indirect **legal personality**; through the Maastricht Treaty it received all the legal competences and the international representation of the European Communities (Ayberk 1978: 40-44).

For example, the present European Union was represented by the Commission in the negotiations with the candidate countries as well as in the WTO, even if it is often said that the legal representation was with the Communities.

Moreover, the present Union is based on a treaty, which expresses the free agreement of 15 member states, and is governed by the principles of the international public law, which implied the existence of a subject and of a legal personality.

The future Union will be based on a European citizenship with all the rights and duties conferred by it - the right to move and reside freely within the territory of the Union, the right to vote and to stand as a candidate in elections to the European Parliament and in municipal elections; diplomatic and consular protection in third countries; the right to petition the European Parliament and to apply to the European Ombudsman (Treaty Draft 2003: 8-11).

The authors of the project "Treaty establishing a Constitution for Europe" thought that it was necessary to mention, in Art. 9, the principles that determined the competences of the Union, taking into consideration that the Union would receive new members.

The principles governing the relationship between the Union and the member states were the principles of subsidiarity and proportionality (Conclusions of Working Group 2002: 1-11).

The two principles were in accordance with the characteristics of "good governance", allowing all communitarian actors (national, regional and local) to participate in the administrative management of the Union.

Moreover, the role of the Union was reinforced by *the principle of conferral*- the Union should act within the limits of competences conferred to it by the member states in the Constitution. Some of these competences were shared with the member states, others were exclusive - rules on competition for the internal market, monetary policy relating to the Euro, common trade policy, customs union, protection of the sea biological resources, etc.

One of the much debated issues in the European Convention was the *Common Foreign and Security Policy*, due to the sensitivities of the member states to these two matters (Convention Bulletin 2003: 9-13). From this point of view, we think that the Union took a step forward, especially that in Art. 15 it stated that the Union had competences in all the areas of the foreign and security policy of the Union. The Union had also the mission to define gradually a common defence policy, which might lead to a common defence. In this area, the relationship between the Union and the member states was based on the "*loyalty and solidarity principles*", the actors themselves refraining from any action that was opposed to the common interests or that could jeopardize the efficiency of the organization.

The Working Group chaired by Jean-Luc Dehaene (former Belgium prime-minister) was supposed to elaborate a project that would strengthen the Union external coherence, taking into consideration even the possibility of introducing the Community method in the area of foreign affairs. They also discussed the necessity to accept the qualified majority voting system when decisions were taken in these areas, and the reinforcement of parliamentary control. They also suggested the unification of the responsibilities of the External Relations Commissioner and of the High Representative for Common Foreign and Security Policy, thus creating the post of Minister for Foreign Affairs. He would be the vice-president of the

Commission, appointed by the Council with qualified majority. His powers would be double: one representing the intergovernmental area of the Union external policy - he chairs the Foreign Affairs Council - and the other one for the economic and commercial relations, thus representing the communitarian areas (Convention Bulletin 2003: 10).

This group came up with three proposals: 1. to maintain the two positions separately (Great Britain), 2. to merge the two positions and to express them into a communitarian logic, 3. to create the post of Minister for Foreign Affairs, who would take over the tasks of the Commission in the external policy and who would belong only to the Council of Ministers (the French government). We shall see that the proposed institutional system combined the first and the last proposal, creating a sort of confusing *mélange* concerning the responsibilities of the Union's Minister for Foreign Affairs.

In the defence field, the Working Group chaired by Michel Barnier had to answer a few important questions related to the operational capacity of the EU, the inclusion of the military dimension, the coherence of the EU in the management of international crises, the EU possibility to develop efficient research policies for defence.

The group proposed the reinforcement of the capacity of crises management by strengthening the role of the HRCFSP, ensuring unity of command and making the defence budgetary procedures more flexible. There was also a proposal to give political personality to the Council of Ministers, which must have the role of coordinating the efforts of the member states. By suggesting to place defence area under parliamentary control, they suggested to subordinate it to the communitarian method, an idea that was difficult to accept by the member states, more preoccupied to defend their military sovereignty. Another idea was that of communitarian solidarity in the defence field, the creation of the European Service of Civil Protection and the modernization of the Petersberg instruments (1992).

Finally, the group suggested the creation of the *“European Agency for Armaments and Common Capabilities”*. The sensitivity of states to the defence problem will still be an important point on the European agenda, because it was very difficult to reach a consensus, especially when we consider the American pressure.

The project of the Convention brought some changes also to the European institutions. Having to ensure the coherence, efficacy and continuity of the Union's policies, the institutional system was made up of five institutions: European Parliament, European Council, Council of Ministers, European Commission and the Court of Justice (Art. 18).

A first possible remark is that the “Constitution” transforms the European Council into a political institution, which was not the case with the Community Treaties and the EU Treaty. The reason for this change is the need for a compromise between those who wanted a reinforcement of the role of states and those who wanted an assertion of the internal and external political authority of the Union, this institution gathering the heads of state and government.

Furthermore, the new institution will be a guarantee that the sovereignty of the member states will be consolidated in terms of the supranational projects, the European Council being the expression of the intergovernmental logic.

The president of the European Council is elected for a period of two and a half years, renewable once. He will represent the Union in the area of common foreign and security policy, without overlapping the responsibilities of the Minister for Foreign Affairs. This new function is proposed in the Treaty in order to strengthen the unity and the political identity of the member states (Draft Treaty 2003:16).

The idea of transforming the European Council into an institution belonged to the Franco-German group; especially France wanted to ensure a strong image of the Common Foreign and Security Policy of the Union (Convention Bulletin 20.01.2003: 17-18). *The European Council*, made up of the heads of state or government of the member states, its president and the president of the Commission, “define the general political directions and priorities” of the Union. Its president is elected by the members of the Council with a qualified majority; he can not have also a national mandate, thus being an independent person from the member states. The president works to facilitate the cohesion and the consensus within the European council and presents a report to the European Parliament after each of its meetings.

One of the most debated institutions was, of course, *the Commission* - if we take into consideration also the previous institutional debates, which proposed the limitation of the number of commissioners.

The Franco-German group proposed the reinforcement of its role through the simplification of the *comitology* procedures, giving a more important role to the commissioners in establishing the guidelines and giving the EP the right to elect the president, approved by the European Council with qualified majority voting.

This group also insisted on delimitations between the commissioners with a sectional portfolio and those with specific missions.

Actually, France and Germany wanted the Commission to be politically responsible in front of the European Parliament (supranational institution, without clearly defined legislative powers) and the European Council (intergovernmental institution, interested to control any possible attempt to exceed the limits of the national mandates).

The project drafted by Valéry Giscard d'Estaing and his colleagues preserved some of the ideas of the Franco-German group: they maintained the present functions of the Commission, especially those of legislative initiative; overseeing the application of community law under the control of the Court of Justice; execution of the budget; programme management; the external representation of the Union, outside its borders, except in the case of Common Foreign and Security Policy (Draft Treaty 2003: 20-22).

The number of commissioners had to be reduced, but only from 2014. Till then the Commission would select one national from each member state. However, the Treaty stipulated that from 2009 the number of commissioners would drop to two-thirds, namely 18 members from 27, if the European Council, acting unanimously, did not decide to alter this number. The commissioners will be selected according to the principle of equal rotation, which will also reflect the geographical balance of the member states- “each member state will have its own national representative in two out of every three Commissions”.

*The President of the Commission* is elected by the EP, after a nomination made by the European Council with qualified majority (Draft Treaty 2003, Art. I-27:63).

Another proposal was a Commission of 15 members: a president, the Minister for Foreign Affairs, who would be also one of the vice-presidents, and 13 European commissioners selected according to a system of equal rotation among member states. The membership of the Commissions will reflect satisfactorily the demographic and geographic sections of all the member states.

The “Constitutional Project” specified that the states would be equally treated concerning the establishment of the succession order and the period of time in which they would be present in the Council. It was also underlined that the difference between the number of mandates held by two member states could never be more than one.

The President of the Commission will appoint the other commissioners, in order to reflect the range of all the member states. The commissioners are independent and the Commission, as a body, will be responsible only to the EP, which can adopt a motion of censure against it. If the motion is approved the Commission is collectively dismissed, keeping its prerogatives only until a new body is appointed.

The appointment of the commissioners is based on the system of equal rotation, each state giving in a list of 3 persons of both genders, the President selecting one person from each list. The selected persons have to offer independence guarantees and they have to be known for their competence and European involvement. The Commission, as a collegial body, needs the approval of the EP, and in the case of a favourable answer they have a five year-term. These stipulations will come into force from 2009 onwards if the present text of the project is ratified.

We can see that the role of the President of the Commission is reinforced - he defines the guidelines of the Commission, appoints the vice-presidents from the members of the College.

The presence of the Minister for Foreign Affairs in the College seems to strengthen the political identity of this institution, at the same time keeping all its prerogatives as the main economic and commercial negotiator of the EU.

Some changes were also made in respect with the Council of Ministers, which maintains its legislative, budgetary and coordination functions. Made up of one national from each member state, the Council will use qualified majority voting, unless the Constitution says otherwise (Draft Treaty 2003:17).

The structure of the Council was slightly modified. There is a *General Affairs Council*, which together with the Commission prepares the meetings of the European Council, a *Legislative Council*, which may gather one or two representatives of the member states at ministerial level, with competence on the agenda; a *Foreign Affairs Council*, which elaborates the external action of the Union on the basis of the guidelines laid down by the European Council, and it is chaired by the Minister for Foreign Affairs of the Union. The Presidency of the Council, other than the Foreign Affairs, is to be held by representatives of the member states on the basis of equal rotation and for at least one year. The rotation rules will be established in a European decision adopted by the European Council.

The main changes brought by this text refer to two aspects: imposing the qualified majority voting rule in the decision making process of the Council and establishing a direct relation between the Council and the European Council.

As we can see, the European Council will be the institution that decides some of the Council colleges and it can also adopt a decision that can authorize the approval of some European laws or European framework laws.

The regulations, important acts, elaborated by the Council of Ministers in order to put into practice the Treaties of the European Union and which were fully binding in all their elements, will have a non-legislative character, mentioning that they can be binding in all their elements and they can have direct applicability. The national authorities will have the last word, to choose the way and the means to implement them.

The project of the Constitutional Treaty imposes a hierarchy of the European laws, which will have a binding character and direct applicability. This hierarchy comprises also European framework laws, which replace the directives in some ways. They are binding, but the national authorities, just like in the case of the of the European regulations, may decide the way and the means to put them into practice (Draft Treaty 2003:27).

Another institution on the Convention agenda was the European Parliament. This body, too, was important as the Union was accused of lack of democracy and of an image deficit, especially because the EP did not have the legislative power (Brigot 2005:260-261; Duff 2005:69-70;Blanc 2006:101).

The Convention did not make a major progress in this area, keeping the co-legislator role of the Parliament. The members of the Convention could not go beyond the advantage of the intergovernmental method represented by the Council of Ministers.

The EP preserved its budgetary and political control and the advisory functions. The EP will be elected by direct universal suffrage for a five-year term. Each member state will have at least four members, the election being made on the basis of a “digressive” system (Draft Treaty 2003:16).

*The Court of Justice* will remain a community institution, it will interpret the community law and it will rule over cases brought to the Court by member states, institutions and the natural and legal persons from the Union.

For a smooth running of the institution, the text introduced a specialization of the institution components. Thus, the EU will have a European Court of Justice, a Court of First Instance and specialized courts.

The authors of the Treaty did not want to upset the governments of the member states, so they charged the states to decide the necessary ways of attack for an effective jurisdictional protection of the Union law (Draft Treaty 2003 Art 28:24).

As for the other institutions and bodies (The European Central Bank, The Court of Auditors, The Committee of the Regions and The Economic and Social Committee) the Constitutional Treaty does not bring major changes in comparison with the Nice Treaty. The role of the two bodies (The Committee of the Regions and the Economic and Social Committee) will remain a consultative one. The two committees have representatives of local and regional authorities, who do not answer in front of an elected assembly, representatives of the employers, trade unions and the civil society.

Although the role of these bodies is mainly consultative they will always be able to put some pressure on the national governments and implicitly on the community institutions taking into consideration their composition (interest groups, lobby).

At the same time, their point of view in different matters may help the Union to implement its policies, respecting the subsidiary principle, which allows the role of the Union local and regional authorities to be transparent and effective in certain fields.

This was the text proposed by the 2003 CIG. The European Council in Brussels (12-13, December 2003) did not manage to reconcile different points of view of the member states and of the candidate countries. The unsolved issues referred to the competences of the President of the European Council, the minimum number of seats in the EP, the “Passerelle clause” (changing the voting system in certain areas from majority voting to qualified majority voting), the procedures for adoption of the Constitutional Treaty, the maintenance of the Christian origins of the EU in the Preamble of the Constitution and the introduction of certain collective rights for the national and ethnic minorities (Jinga 2004: 8). The areas concerned by the qualified majority voting were foreign affairs, social policy, taxes, common agricultural policy and judicial cooperation in criminal matters.

As the Romanian Ambassador at the EU Ion Jinga stated there were two blocks: one made up of the founding countries- France, Germany, Belgium, the Netherlands, Luxemburg - who wanted to keep the project proposed by the Convention as a whole, and the other one made up of the candidate countries- especially the Visegrad group - and some member states like Austria, Finland and Spain, who were not satisfied with the double majority voting in the EU (Jinga 2004: 9).

The solution “one state - one commissioner” was the only one accepted by all the participants, even though the impossibility of reaching a global agreement was underlined. The Irish Presidency had to elaborate a report for March 2004, which had to sum up the consultations and the evaluations on the “perspectives in progress”. Spain and Poland opposed the “noyau dur” and the double majority in the EU Council: 50% of the member states and 60% of the Union population. At that time everybody considered it a failure and that the Treaty could not be signed before the elections for the European Parliament of the 10<sup>th</sup> – the 13<sup>th</sup> of June 2004. Ion Jinga thinks that the plan failed because of the complexity of the problems and of the importance of the matters for a long term. On the other hand, there was a lack of success because of the low number of debates, bilateral negotiations, meetings with a small group of participants, which generated frustrations in some of the European capitals and stimulated the reinforcement of national feelings instead of the common European interest (Jinga 2004: 10).

The last debates on the Constitutional Treaty took place in Brussels between the 17<sup>th</sup> and the 18<sup>th</sup> of June 2004, when the European Council concluded the negotiations on the project proposed by the European Convention.

The issues discussed were almost the same as the ones discussed at the European Council in Rome (December 2003): the extension of the qualified majority voting (the system of double majority refused by Poland and Spain), the distribution of votes

and the presence of “God” in the Preamble (an issue that was brought up by the Pope John Paul II and supported by the Christian orthodox churches).

A special role was played by the Irish Presidency who succeeded on the 25<sup>th</sup> and the 26<sup>th</sup> of March 2004 to conclude the negotiations at the Intergovernmental Conference, which was convened in order to reach out a compromise. The Irish government was helped also by the political change that took place in Spain (the new socialist government being less sensitive to religious aspects) and the change of opinion of the Polish government with respect to the double majority issue.

The accepted compromise stipulated that from 2014 the number of the commissioners would be reduced to two-thirds. There was also created the post of “*Chairman of the Council of Ministers*”, elected for a five-year term, who had the role of coordinating some of the Councils (Treaty 2004). The decisions in the Council of Ministers must be taken with a qualified majority, representing 55% of the member states and at least 15 of the member states, representing 65% of the Union’s population.

For the more sensitive fields like justice (asylum, immigration, judicial cooperation in criminal matters), common foreign and security policy, economic and monetary policy, the exclusion of a member state a “supramajority” was decided; it was defined as 72% of the member states, representing 65% of the population from the Union.

In the area of justice, internal affairs and social security the previous text of the Treaty was modified. A series of new terms were introduced in order to allow the European Council to reach a compromise. If there was no agreement after 12 months, the qualified majority voting would be adopted.

The European Charter of Fundamental Rights favoured the concept of supranationalism - from that point on, any dispute had to be judged by the European Union Court of Justice.

The democracy of the European Union was reaffirmed by the expansion of the EP role and by the introduction the early warning mechanism, which enabled national parliaments to examine new legislation.

Through this compromise the three pillars were merged and a single institutional and law area were created. The co-decision procedure between the Council of Ministers and the EP would become an ordinary legislative procedure. Some modifications were made also in the defence area: the mechanism of “permanent structured cooperation” was based on a Cooperation Protocol among certain states, and the “Intensified Cooperation” principle applied to Foreign and Security Policy (Grevi 2004: 12).

The European Council, a new institution of the Union, was entitled to use the “Passerelle” procedure, which allowed it to establish the fields where the Council of Ministers would decide with qualified majority or unanimity. For example, the states that shared the “intensified cooperation” could use this “Passerelle” provision.

The Constitutional Treaty, signed on the 29<sup>th</sup> of October 2004, entered a ratification process, which was supposed to end on the 1<sup>st</sup> of November 2004 (Treaty 2004). The French and Irish vote from May-June 2005 triggered a crisis at the EU level which was further maintained by the Union budgetary disputes, by Tony Blair’s declarations on the necessity of a profound economic reform of the EU, as well as the disputes on the conclusion of the negotiations with Turkey.

The Annual Report of the Commission for 2004, published in the beginning of 2005, was optimistic about the accomplishment of the Lisbon 2000 Agenda and about the enlargement (Rapport général de la Commission 2004). The conclusions of the Commission were supported especially by the enlargement with 10 states on the 1<sup>st</sup> of May 2004, after the signing of the Accession Treaties in Athens, on the 16<sup>th</sup> of April 2003.

## Conclusions

The accomplishment of an effective *governance* of the European Union needed in the first place, a strong political will of the member states, of their governments, to go beyond national pride.

The debates on the Nice Treaty (2000) and on the Constitutional Treaty showed one more time that the process of sovereignty transfer from the member states to a possible European federation was a devious one, impossible to take at that time.

The compromise reached by the European Convention, that of strengthening the EU as a regional organization, providing it with legal personality, showed that these were the availabilities of Europe for the time being; the idea of a political, military and economic unified Europe remained wishful thinking.

The approach opened in Nice in 2000 was developed during the following years. The European Convention, chaired by Valéry Giscard d'Estaing, succeeded to present in front of the European Council a constitutional text, which showed the interest of the Europeans for an institutional reform, a necessary reform for an enlarged EU, for a better European identity on the international relations scene and for some important principles like "united in diversity", subsidiarity, transparency, responsibility, coherence, solidarity, complementarity and proportionality in the relationship between the Union and the member states, etc.

The determination of the European Convention to give the European Parliament the legislative role proved the willingness for legitimacy and democracy within the EU, the respect for the European citizen, the European citizenship representing the linchpin of the rapprochement of the European public opinions towards the European reasoning (Jeanbart 2005:273-285; Zorgbibe 2005:293; Gerbet 2007:517).

It is not by chance that people have tried to find solutions for the improvement of the decision making process within the Union and for the provision of the "*good governance*", essential in order to make the institutional relations more flexible and effective and the relationship between the Union and its citizens more transparent, responsible, efficient and coherent.

The qualified majority voting extended to new areas according to the Constitutional Treaty, even though in the area of the Union external policy the unanimity voting was largely used, especially in the areas of security and defence.

The steps towards *the United States of Europe* are still hesitant, but we have to admit that intergovernmentalism, too, played and will play an important role in the European integration, especially when the member states are aware of their vulnerability in the international relations. Moreover, the partisans of the liberal intergovernmentalism think that the nation-state, once integrated in the European Union develops a more

important negotiation capacity in the European and international systems even if it loses some of its sovereignty attributes.

The international crisis started by the American intervention in Iraq, despite the different opinions of the EU members, might represent, as other crises did, an opportunity to rethink the European identity issue and to restart the process of European integration in the political and military fields.

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