

THE THOROUGHGOING VERSUS THE ENLARGEMENT OF
THE EUROPEAN UNION UNDER THE NEW APPROACH OF THE
EUROPEAN CONSTITUTION

1. The evolution of the European integration- historical marks.
2. The consolidation of the E.U. and its enlargement.
3. The definition and the analysis of the European Constitution:
to know what we reject.
4. The rejection of the constitution. The post-rejection evaluation.

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Abstract

The project of the new European constitution was rejected in 2005. We consider that a great part of the European citizens voted without a good understanding of this project or voted as a response to the socio-economic problems from their countries, not to the administrative stipulation of the new constitution.

So, we consider that we must understand the project of constitution and, only after this, to reject it, if it is necessary. On the other hand, the paper deals with the Lisbon Treaty as a solution of progress on this way.

The problem of the European constitution existence may be a problem of the E.U.'s future existence, as well.

1. The history of the E.U. is based on the chronology of the most important fulfilments of the Union and its institutions.

The European integration had a sinuous and non-uniform route which was determined by the dialectic debate of the fundamental

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phenomena: the thoroughgoing and the enlargement. The elements which support this idea are: the Schuman's statement from 1950, the earliest adhering processes from the 70's and 80's, the implementation of the Single Market in 1993, the Euro launch in 1999, the finalisation of the negotiations for a new European Constitution in 2004, and the latest two enlargements, as well.

The main historical events on the thoroughgoing versus the enlargement processes are the following:

- ✓ 9th of May 1950: the ministry of foreign affairs, Robert Shuman, proposed a plan for a European Coal and Steel Community (ECSC). Shuman was inspired by Jean Monnet;

- ✓ 18th of April 1951: the Paris Treaty was signed by Belgium, France, Germany, Italy, Luxembourg and Netherland;

- ✓ 10th of February 1953: the ECSC started to work. The founder members eliminated the custom barriers and the quantitative restrictions to the rare materials mentioned above;

- ✓ 30th of August 1954: the project of the European Politic Community missed as a result of the French Parliament rejection of the European Defeat Community;

- ✓ 25th of March 1957: were signed the EUROATOM Treaty and the European Economic Community Treaty by the same six states. These treaties are known as the Rome Treaties and they were implemented on the 1st of January 1958;

- ✓ 1st of July 1967: was implemented the Treaty which supported a single Commission and a single Council of the European Community;

- ✓ 1st of July 1987: was adopted the Single European Act, which added the political cooperation to the economic one;

- ✓ 1st of November 1993: was implemented the Treaty of the European Union. The ECSC, EUROATOM and EEC, the Common Foreign and Security Policy and the Justice and the Internal Affairs became the pylons of the E.U.;

- ✓ 16th of July 1997: was adopted the Agenda 2000, which treated the institutional reform of the E.U., presented the vision of the enlargement and the Commission's opinions about the adhering requests of the 10 Central European countries;

- ✓ 4th of November 1998: the first annual Reports on adhering progresses;

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- ✓ 1st of January 1999: the implementation of the Euro in France, Germany, Netherlands, Belgium, Luxembourg, Austria, Italy, Spain, Portugal, Finland and Ireland;
- ✓ 1st of May 1999: was implemented the Amsterdam Treaty;
- ✓ 14th of February 2000: began the intergovernmental conference from Brussels about the institutional reform of the E.U.;
- ✓ 11th of December 2000: the political accord connected to the Nice Treaty;
- ✓ 2nd of January 2001: Greece became the 12th member of the Euro zone;
- ✓ 26th of February 2001: the Nice Treaty was adopted by the governments of the Member States;
- ✓ 13th of November 2001: the European Commission adopted the annual reports on the progresses of the candidate countries;
- ✓ 1st of January 2002: the Euro was implemented in the Euro zone;
- ✓ 1st of May 2004: Cyprus, Estonia, Latvia, Lithuania, Malta, Poland, Czech Republic, Slovakia, Slovenia and Hungary became Member States of the E.U.;
- ✓ 18th of June 2004: the Intergovernmental Conference adopted the Treaty proposal for a European Constitution;
- ✓ May and June 2005: the rejection of the Constitution by French and Dutch voters;
- ✓ 1st of January 2007: Bulgaria and Romania adhered to the E.U.;
- ✓ 1st of January 2007: Slovenia adhered to the Euro zone;
- ✓ June 2007: the start of the negotiations on a Reform Treaty, as a replacement, known as the Lisbon Treaty;
- ✓ 1st of January 2008: Cyprus and Malta adhered to the Euro zone;
- ✓ 1st of January 2009: Slovakia adhered to the Euro zone.

2. The European integration was supported by the European nucleus France-Germany the beginning till nowadays. The other tendency of enlargement was supported by the free market. There was a permanent conflict between these two tendencies which influenced the evolution of the European integration.

The first result was the delimitation between the euro-optimists and euro-sceptics. This process was accompanied by some specific concepts, like the following:

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✓ Europe of the tough nucleon: it was a concept supported by those who considered that France and Germany represent the locomotive of the European integration;

✓ Europe of the concentric circles: it was an extension of the tough nucleon concept which considered that the European integration needs a geographic gradation of its profundity. The concept was criticised because it was considered as an old centre-periphery relationship which proved to have tragic historic consequences;

✓ Europe with more speeds: it was considered as a compromise between the need of integration and enlargement for the countries which have different economic and institutional development degrees. This concept could have a negative impact on the European cohesion;

✓ Europe with variable geometry: it was focused on different geographic areas of the E.U. and on different domains of the integration. The concept was applied as exception and as transitory stage connected to the monetary union or the Schengen space;

✓ Europe a la carte: it was applied especially in the U.K., in order to use opt out clause which allowed it to obtain the derogation from adopting the Euro.

The interesting approach of these concepts is that they were criticised. The winner was the idea of a coherent and unique European Union, in which the Member States have the same political status and the decision process reflects the weight of every country within the Community.

As a result, the Treaty of the European Union (1993) marked out the positive effects of the single market, the Euro currency and the convergence of the Member States' macroeconomic policies. On the other hand, the E.U. has to obtain an authentic political dimension, in order to answer to its internal needs and to develop a powerful presence on the international arena.

We can resume that a single powerful currency, which represents a main element of the federalisation, asks for a powerful socio-political identity, as well.

The principle of enlargement was consacrated in Copenhagen (1993), when it was adopted the decision to open the E.U. to the new democracies. This principle was consolidated in Essen (1994), when the pre-adhering strategy was adopted. In Cannes and Madrid (1995), was established a concrete plan of integration on the Single Market and was defined the principle of the equality of chances for all the candidates.

Later, in Luxembourg (1997), was started the enlargement process under the principle of the non-discrimination difference.

The new elements of the latest two enlargements were:

- ✓ the short lag between the beginning and the ending of these two processes;
- ✓ the dimension of the new E.U., which became more complex and more heterogeneous. As a result, some voices talk about the risk of the E.U.'s dilution if the number of the Member States will be greater than 30. In order to prevent this, the E.U. has to operate changes of its mechanisms before new enlargements.

An optimistic point of view about the future integration and enlargement in the E.U. implies an adequate institutional system in order to maintain and to improve the performance of the enlarged E.U. Moreover, the E.U. has to be globally acknowledged and to get closer to the community citizen. The main present challenges for the E.U.'s enlargement are:

- ✓ the fearless approach of the direct effects of the enlargement on the working of European institutions;
- ✓ the need to decrease the importance of the decisions which are adopted by unanimity when the number of Member States grows;
- ✓ the institutionalisation of a flexibility which is able to allow the E.U. to progress even if some Member States are slower.

The institutional reform of the E.U. is necessary, and the future enlargements ask for it immediately.

3. On 18th of June 2004, the Intergovernmental Conference adopted the proposal "Treaty for a European Constitution". This constitution had to replace the three pylons of the E.U. Treaty and offer juridical personality to the E.U. The first part of this document defines the goal and the main elements of the European Constitution. The second part covers the Chart of the Fundamental Rights and the third part defines the activities of the European institutions. The last part of the Constitution covers the final and general provisions. In the preamble of the Constitution, it is analysed the cultural, religious and humanist European heritage and in the annex, there are some protocols and statements.

The Constitution defines the role of every European institution and organism and regulates the interrelationship mechanisms between these institutions.

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The European Parliament (EP), together with the Ministries Council, adopts the European legislation and has budgetary, politic control and consulting functions, as well.

The EP selects the President of the European Commission and the composition of this commission.

The number of the EP has to be less than 750. The European Constitution didn't stipulate a manner of allocation to the Members of Parliament on Member States but it talked about the decreasing proportionality of the European citizens. As a result, the maximum representative level was dimensioned between 6 and 96 members for every country.

The new design of the European Parliament was adapted to the enlargement process and to the decrease of the democratic deficit, as in figure 1.

The European Council (EC) was defined as an institution with absolute abilities. As a result, it was proposed the elimination of the rotation in presidency and the adoption of a permanent presidency, with limited powers, which can be voted for 2.5 years and which can be once revoted.

The general rule in adopting decisions by the European Council is the consensus. The European Council had to promote the politic priorities of the E.U. and it didn't have legislative capacities, as in figure 2.

The Council of Ministers of the E.U. was proposed by the European Constitution and it had to be led by the Ministry of Foreign Affairs of the E.U. The meetings of the different components of the Council should be dedicated to ensure the transparency of the legislative and non-legislative debates. The impact of this council is presented in figure 3.

Under the Intergovernmental Conference, the component of the Council is adopted using the qualified majority. As a result, the minimum limit grew to 55% from all the Member States. It represents at least 15 Member States or 65% of the whole population. On the other hand, the Intergovernmental Conference stipulated the manner to block a decision by a minority of at least 4 Member States or 35% of the whole population.

The exception is the situation in which it isn't necessary o proposal from the European Commission. In this case, the qualified majority growths to 72% from all Member States or 65% of the whole population.

The Minister of Foreign Affairs has to lead the European foreign and security policies (proposes the foreign policy, represents the E.U.) and to chair the Council of the Foreign Affairs. Moreover, it has the role of the vice-president of the European Commission. The activity of the Minister of Foreign Affairs will be supported by the European Service for Foreign Action.

The European Commission has to initiate the European legislation. Until 2014, the European Commission is made up of one Commissioner for every Member State. After 2014, the number of the commissioners will decrease to 2/3 from the number of the Member States. These commissioners will be selected by rotation, in order to ensure the equal participation and representation of all Member States.

The political role of the President of the European Commission will increase. He/she will be elected by the Parliament and will nominate the commissioners, the portfolios and will have the prerogative to require the demission of the commissioners, as well.

The composition of the European Commission is presented in figure 4.

The Court of Justice will have larger competences connected to the liberties, security, justice and some aspects of the foreign policy. There are some stipulations about the citizens' access to the Court judgement.

The project of the Constitution defines the fundamental principles of the E.U.:

- ✓ the principles which supports the allocation of the E.U.'s powers between different institutions;
- ✓ the way of creating the European legislation under the subsidiary and the proportionality principles;
- ✓ the priority of the European legislation regarding the national legislation;
- ✓ the obligation for all Member States to implement the European legislation.

There are three power categories under the E.U.'s competence system: the domains under the exclusive E.U.'s competence, the domains with competences which are divided between the E.U. and the Member States, and the domains in which the E.U. should have actions in order to support the national competences.

On the other hand, there are special situations (the foreign policy, the common security policy, the coordination of the economic policy and the labour policy) which can't be introduced under the general classification (Articles no. 14 and 15).

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The flexibility of the system is guaranteed by a stipulation which talks about the possibility to adopt the necessary measures in order to achieve the objectives of the constitution.

Moreover, the stipulation connected to the competences is completed by an Applying Protocol for the Subsidiary and the Proportionality Principles, which mentions the existence of an early pointed out system which offers to the national parliaments the possibility to monitor the way of implementation subsidiary principles.

The constitution would function using a hierarchy of the normative acts, which defines them based on the way in which they are used by the institutions, the manner in which they are adopted and the use of the E.U's powers, as well. Under this context, the legislative acts can be: obligatory legislative acts (laws, frame laws, regulations and decisions) and non-obligatory legislative acts (recommendations and notices).

The European Commission has the power to initiate the legislative acts, excepting those situations in which the Commission needs $\frac{1}{4}$ from the Member States in order to co-initiate the legislative acts.

The third part of the project of new constitution covered the European foreign and internal policies. The main changes were the creation of the function of Minister of the Foreign Affairs and the greater role of the European Parliament connected to the trade policy and to the adopting of international accords.

The implementation of the Foreign Policy and Common Security had to be done under unanimity within the European Council. The decisions of the Foreign Policy and Common Security aren't object of the ordinary legislative procedure. The new element of the constitution was the Parliament's consultation in adopting these decisions.

Moreover, there were created new juridical backgrounds as the solidarity clause under a terrorist attack or a natural disaster and the international agreements with the neighbour countries.

The security policy will be improved using:

- ✓ the restructuration of the Petersberg capacities: the missions to disarm, the military cooperation, the post-conflict stabilization, the fight against terrorism, the actions on the other states' territories;

- ✓ the new forms of flexible defence cooperation;

- ✓ the creation of the European Agency for armament, research and military capacities: the European Defence Agency;

✓ the definition of a quick access procedure to the European budget's dedicated funds.

Under the new constitution, the trade policy framework was enlarged with service exchanges and intellectual property rights. The European Parliament has a fundamental role in order to define and to implement the common trade policy. The negotiations under the international agreements have to be reported to the Parliament and to be carried out only with the Parliament's assent.

On the other hand, the new constitution created the conditions to integrate the European Development Fund into the European budget. Moreover, the constitution created the juridical base for the human help, which created the Voluntary Corp for Human Help.

The most important internal policies which had to be changed by the new constitution were those connected to liberties, security and justice.

The new constitution defined the political objectives of the E.U.: access to justice, legislative harmonisation, immigration and home policy, fight against the criminality.

In order to increase the confidence in the new constitution, was introduced the emergency brake. This is a procedure to ask for a law's re-evaluation by the European Council, if a Member State considers that this law brings prejudices to its own juridical system.

Moreover, the new constitution wanted to create a European Office of the Procurer, which had to be focused on the elimination of the financial criminality across the E.U. and which had the capacity to judge these contraventions.

On the other hand, the decisions had to be adopted under qualified majority for the sector policies. It had to be aware of the difference between legislative and non-legislative acts. As a result, were created new juridical bases for energetic policy, sport, civil protection against natural and human disasters, and for the administrative cooperation in order to implement the European legislation.

According to the economic and monetary policies, the new constitution brought some significant changes connected to the statute of the European Central Bank, the direct connection between the economic and labour policies and the statute of the Euro zone's countries.

The third part of the new constitution introduced a horizontal clause which stipulated that the E.U. had to promote a high employment level and a greater social protection, in order to eliminate the social

exclusion, to obtain a high education and training and to protect human health.

The Common Agricultural Policy focused on the common managements of agricultural markets, of price level calculation, the financial support, the quantitative limitations and the fishing capacities, as well.

The new constitution added a new section about the European spatial policy. The framework of this specific program had to become a European law which had to be adopted by qualified majority. As a result, the European Space Program had to be defined by a law or a frame law.

The new constitution had a more democratic character because:

- ✓ the citizens can initiate projects of European laws using the referendum and they would benefit from greater judge guarantee as a result of the Court of Justice competences' growth;
- ✓ the national parliaments would have a greater impact on the European democratic system under the early alert clause;
- ✓ the budgetary and legislative power of the European Parliament would be consolidated;
- ✓ the future use of the convention as a revision method for the constitution, under a standard practice.

4. The result of a difficult work was the new constitution which had more than 440 pages and which was signed. The start of the referendums about the constitution ratification was a good one: Austria, Germany, Greece, Hungary, Italy, Lithuania, Slovakia, Slovenia and Spain ratified the new constitution until 29th of May 2005.

But France (29th of May 2005) and Netherlands (1st of June 2005) rejected the constitution by referendum. This represented a cold shower for the supporters of the new constitution. Moreover, the French citizens rejected a constitution which was elaborated under Valery Giscard d'Estaing's idea.

Those who said no to the new constitution motivated their answer more by internal reasons than by the administrative stipulations from the constitution (Junckers J.C., 2005).

Moreover, other idea is that the French government was responsible for the French referendum fiasco (d'Estaing V.G., 2005).

On the other hand, the structure of the votes represented an occupational reaction (most of the labour voted NO) and one between the generations (the citizens older than 65 voted YES for the new constitution).

Under a domino effect, the Netherlands voted NO, as well. The rejection of the Constitution by French and Dutch voters in May and June 2005, called the future of the Constitution into question. In light of these developments, three member states, Finland, Germany and Slovakia, abandoned their partially complete ratification procedures and a further seven member states indefinitely postponed consideration.

Following the period of reflection, the European Council meeting in June 2007 decided to start negotiations on a Reform Treaty as a replacement. Known as the Lisbon Treaty, it was put into question too when the Republic of Ireland failed to ratify it in a referendum.

The Lisbon Treaty was originally meant to be ratified by all member states by the end of 2008, so it could come into force before the 2009 European elections. However, the rejection of the Treaty on 12th of June 2008 by Irish voters means that the treaty cannot currently come into force. As of February 2009, 23 of the total 27 member states have ratified the Treaty.

Table 1 shows the ratification progress in specific countries of the European Union. Note that the assent of the Head of State represents the approval of the parliamentary procedure, while the deposition of the Treaty refers to the last step of ratification, which may require a separate consent. For the discussion of the specific legal situation in countries which have not deposited the Treaty with the Government of Italy, see relevant section below the table.

The European Constitution is an important step in the construction of Europe. It is designed to meet the challenges of a changing world, of a Union which goes through its biggest enlargement and, last but not least, of a United Europe with more than 450 million inhabitants. It has to provide an environment of democracy, freedom and transparency, an efficient Europe working closer to each and every citizen.

The European Constitution coexists with the national Constitutions and institutions of the European countries, it does not replace them. It ensures the legal continuity of the Communities, by simplifying thus the legal instruments and by adapting the decision making process to present challenges.

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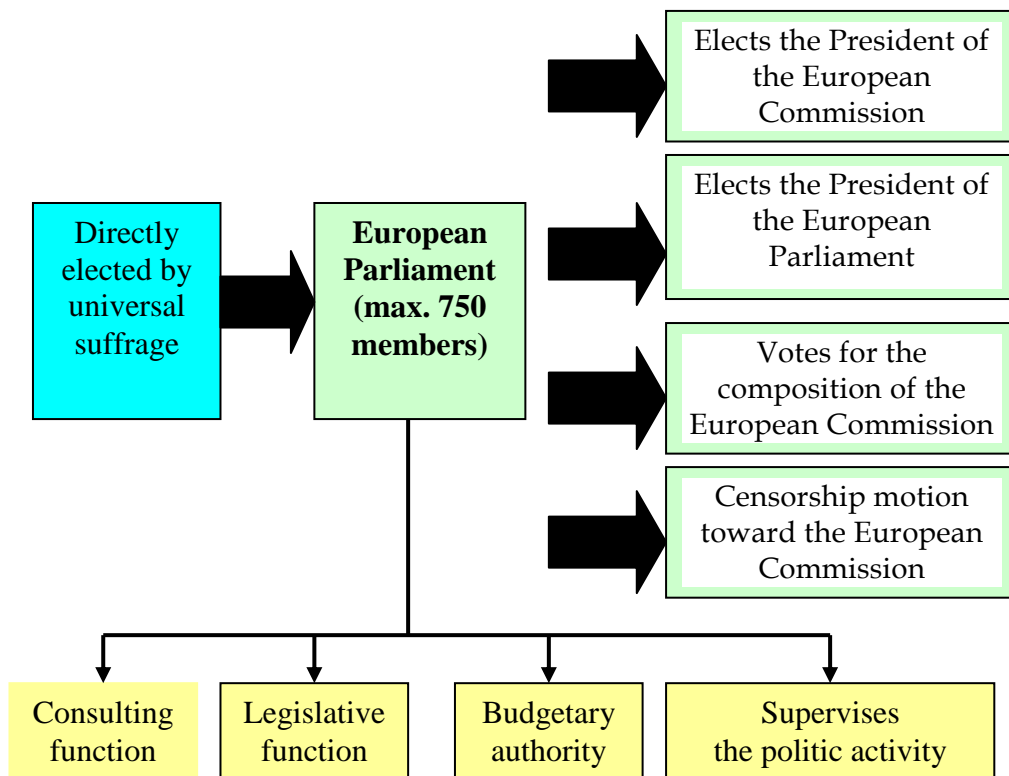


Figure 1: The impact of the European Parliament

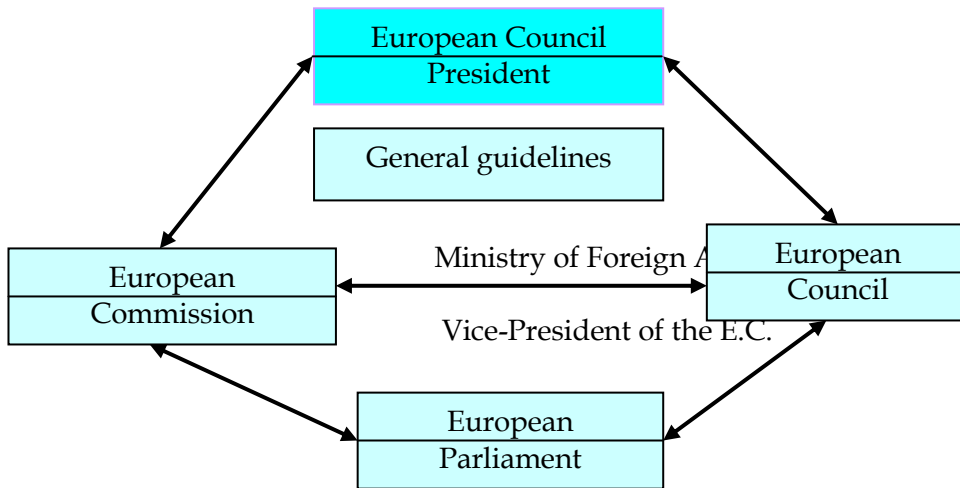


Figure 2: The impact of the European Council

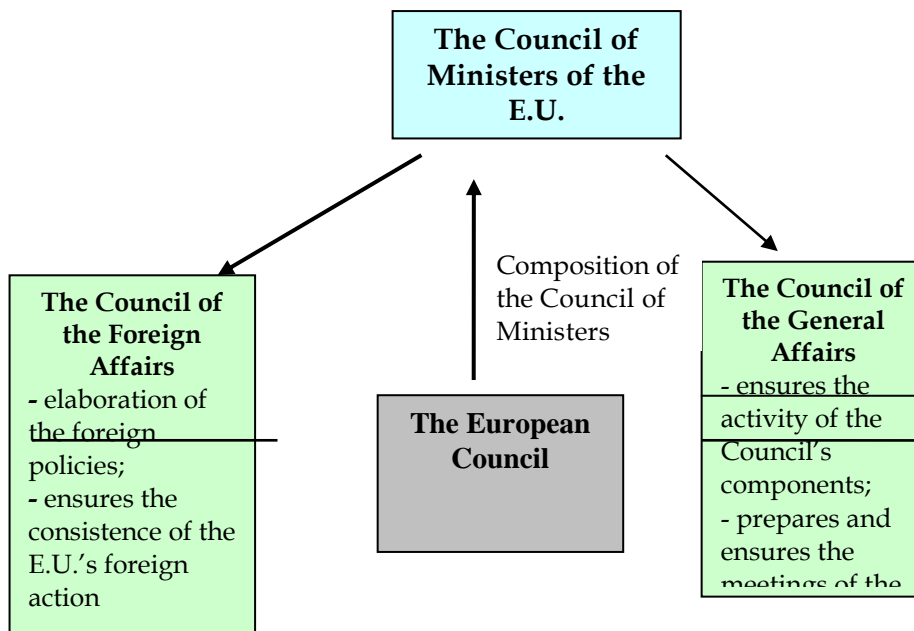


Figure 3: The impact of the Council of Ministers of the E.U.

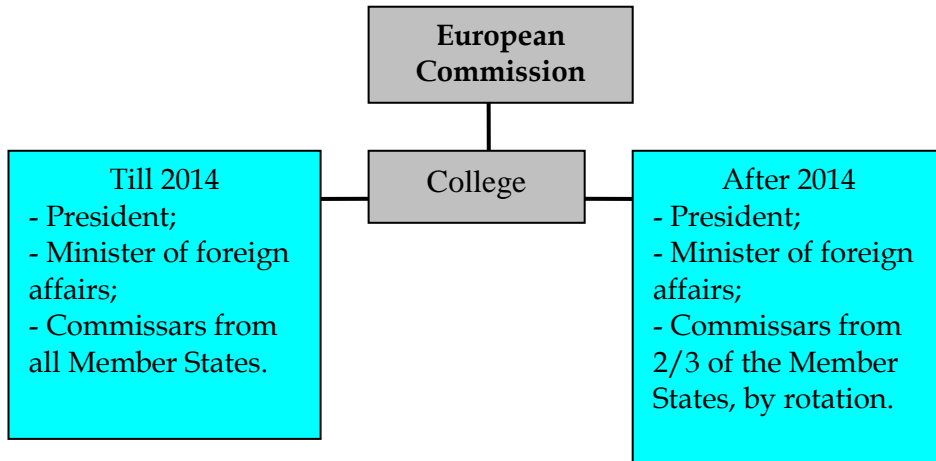


Figure 4: The structure of the European Commission

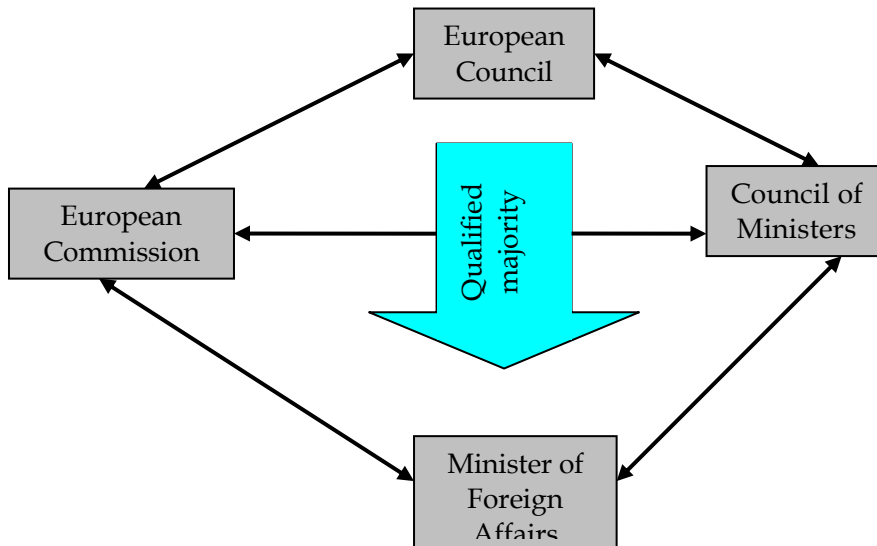














Figure 5: The mechanisms of the Foreign Policy and Common Security

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Table 1: The ratification process of the Lisbon Treaty

Signatory	Conclusion date	Chamber			AB	Deposited
 Austria	9 April 2008	National Council	151	27	5	13 May 2008
	24 April 2008	Federal Council	58	4	0	
	28 April 2008	Presidential Assent	Granted			
 Belgium	6 March 2008	Senate	48	8	1	15 October 2008
	10 April 2008	Chamber of Representatives	116	11	7	
	19 June 2008	Royal Assent	Granted			
	14 May 2008	Walloon Parliament (regional)	56	2	4	
	14 May 2008	(community matters)	53	3	2	
	19 May 2008	German-speaking Community	22	2	1	
	20 May 2008	French Community	67	0	3	
	27 June 2008	Brussels Regional Parliament	65	10	1	
	27 June 2008	Brussels United Assembly	66	10	0	
	10 July 2008	Flemish Parliament (regional) (community matters)	76	21	2	
			78	22	3	
	11 July	COCOF	52	5	0	










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	2008	Assembly				
 Bulgaria	21 March 2008	National Assembly	195	15	30	28 April 2008
 Cyprus	3 July 2008	House of Representatives	31	17	1	26 August 2008
	Unknown	Presidential Assent	Granted			
 Czech Republic	18 February 2009	Chamber of Deputies	125	61	11	
	6 May 2009	Senate	54	20	5	
	TBD	Presidential Assent				
 Denmark	24 April 2008	Parliament	90	25	0	29 May 2008
	30 April 2008	Royal Assent	Granted			
 Estonia	11 June 2008	Parliament	91	1	9	23 September 2008
	19 June 2008	Presidential Assent	Granted			
 Finland	11 June 2008	Parliament	151	27	21	30 September 2008
	12 September 2008	Presidential Assent	Granted			
 France	7 February 2008	National Assembly	336	52	22	14 February 2008
	7 February 2008	Senate	265	42	13	
	13 February 2008	Presidential Assent	Granted			
 Germany	24 April 2008	Federal Diet	515	58	1	
	23 May	Federal	65	0	4	

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	2008	Council				
	8 October 2008	Presidential Assent	Granted			
 Greece	11 June 2008	Parliament	250	42	8	12 August 2008
 Hungary	17 December 2007	National Assembly	325	5	14	6 February 2008
	20 December 2007	Presidential Assent	Granted			
 Ireland	29 April 2008	Dáil Éireann (1 st ref. bill)	Passed			
	9 May 2008	Seanad Éireann (1 st ref. bill)	Passed			
	12 June 2008	Referendum*	46%*	53%*	N/A*	
	TBD	Dáil Éireann (2 nd ref. bill)				
	TBD	Seanad Éireann (2 nd ref. bill)				
	October 2009	Second Referendum				
	TBD	Presidential Assent				
	TBD	Dáil Éireann (statute bill)				
	TBD	Seanad Éireann (statute bill)				
	TBD	Presidential Assent				
 Italy	23 July 2008	Senate of the Republic	286	0	0	8 August 2008
	31 July 2008	Chamber of Deputies	551	0	0	
	2 August	Presidential	Granted			

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	2008	Assent			
 Latvia	8 May 2008	Parliament	70	3	1
	28 May 2008	Presidential Assent	Granted		
 Lithuania	8 May 2008	Parliament	83	5	23
	14 May 2008	Presidential Assent	Granted		
 Luxembourg	29 May 2008	Chamber of Deputies	47	1	3
	3 July 2008	Ducal Assent	Granted		
 Malta	29 January 2008	House of Representatives	65	0	0
 Netherlands	5 June 2008	House of Representatives	111	39	0
	8 July 2008	Senate	60	15	0
	10 July 2008	Royal Assent	Granted		
 Poland	1 April 2008	House of Representatives	384	56	12
	2 April 2008	Senate	74	17	6
	9 April 2008	Presidential Assent	Granted		
 Portugal	23 April 2008	Assembly of the Republic	208	21	0
	9 May 2008	Presidential Assent	Granted		
 Romania	4 February 2008	Parliament	387	1	1
	7 February 2008	Presidential Assent	Granted		
 Slovakia	10 April 2008	National Council	103	5	1
	12 May	Presidential	Granted		

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	2008	Assent			
 Slovenia	29 January 2008	National Assembly	74	6	0
	7 February 2008	Presidential Assent	Granted		
 Spain	26 June 2008	Congress of Deputies	322	6	2
	15 July 2008	Senate	232	6	2
	30 July 2008	Royal Assent	Granted		
 Sweden	20 November 2008	Parliament	243	39	13
 United Kingdom	11 March 2008	House of Commons	346	206	81
	18 June 2008	House of Lords	Approved ^[90]		
	19 June 2008	Royal Assent	Granted		