Small States – Big Negotiations
Decision-Making Rules and Small State Influence in EU Treaty Negotiations

Tiia Lehtonen

Thesis submitted for assessment with a view to obtaining the degree of Doctor of Political and Social Sciences of the European University Institute

Florence, March 2009
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Abstract

This study examines the impact of the decision-making rules, procedures and practices of the European Union on the ability of small Member States to influence Treaty negotiation outcomes, and assesses the causality of this influence in Treaty-revision. Within Treaty-making processes, actor influence is here expected to vary according to the institutional preconditions, and small states are presumed to benefit from particular type of decision-making rules to the disadvantage of others. The fundamental aim of the study is therefore to investigate the conditions under which small state influence increases in European Union Treaty-negotiations. To explain this puzzle, a distinction is made between two types of Treaty-making processes, those of the Intergovernmental Conferences and the Convention, which allows for subsequent comparisons between the decision-making rules of unanimity and restricted consensus. In order to empirically test the underlying hypotheses, explicit units of observation are chosen from the IGCs of Amsterdam, Nice and 2003-04, and the Convention on the Future of the EU. In-depth comparisons are made between four small Member States – Belgium, Denmark, Finland and Ireland – and their de facto influence is process-traced through three substantial issues of the institutional reform: the composition of the Commission, the extension of qualified majority voting and the reform of Council Presidency. The empirical analysis focuses on both informal and formal levels of decision-making dynamics, and a further analytical distinction is made between bargaining and deliberation modes of conflict-resolution. Drawing initially on theories of rational choice institutionalism (RCI) and liberal intergovernmentalism (LI), the unanimity rule as applied in the IGCs is expected to strengthen the formal position of an individual small state by providing, respectively, a veto-right for each negotiator and promoting asymmetric interdependency. The empirical findings confirm the major underlying hypothesis concerning the correlation between the adopted decision-making rules and the small states’ impact on distributional outcomes in the EU Treaty-amending negotiations on the one hand, and the superiority of the unanimity rule for small states on the other. Yet, a couple of additional key success factors – other than can be explained exclusively along the conjectures of RCI or LI schools – are also identified in the study.

Keywords

Acknowledgements

“My country is smaller than your country”, declared an 11-year-old Dutch schoolgirl to a Finnish counterpart in the mid-1980s, during rush hour in the streets of Amsterdam. This statement made me think. “With all these people, how is it possible?” As a result of our countless family-trips around the European continent, my interest in European issues had begun as soon as I had recovered from the rather traumatic experience of seeing how all my friends spent their holidays in the Far East or Caribbean, while I was systematically brought not only to Europe, but usually to exotic countries like Belgium, the Netherlands and West-Germany. The years passed by and once it was time to consider any kind of academic engagement, my orientation was clear: Europe and its small countries.

At the EUI, I wish to express my deepest gratitude to my supervisor, Professor Adrienne Héritier. Her stringent yet extremely encouraging attitude, careful phrasing on questions and genuine interest on my eventual project, combined with her empathy towards some private matters bolstered me through the process and developed my logic and thinking.

The earliest intellectual academic seeds were planted in me at the Department of Political Science at Trinity College Dublin, which turned out to be an encouraging and highly stimulating environment for studies in international politics in the late 1990s. Back to Finland, I was fortunate enough to have an opportunity to be a member of the Graduate School of Cultural Interaction and Integration and the Baltic Sea Region, run by the Department of Cultural History at the University of Turku. I am grateful to Professor Esko Antola who initially drew my attention to the status and empirical significance of small Member States in the EU and helped me with my early concrete steps taken in the field. The personnel of the Jean Monnet Centre at the University of Turku and, later on, that of the Finnish Institute of International Affairs deserve a warm thank for the impromptu conversations and an overall inspiring atmosphere around the coffee tables and corridors. In fact, for a great final stage support offered inside the FIIA premises, I cannot resist mentioning our EU-group and, in particular, Hanna Ojanen, whose steps I would be proud to follow.

Thanks are also due to those national policymakers, EU-representatives and top civil servants in Brussels, Copenhagen, Dublin and Helsinki, who took the time to discuss with me any and all topics related to the Treaty negotiations. For accurate work with the data I wish to thank Ms Veronique Pinte and Ms Veronique Warlop for giving me tremendous help during my number of visits to the Commission Archives in Brussels. Apart from always welcoming me with a warm smile whenever I arrived, they kindly guided me around the Berlaymont-jungle, explaining all the essential codes and practices as regards the IGC documentation. I owe special thanks also to Christine Reh for constructive criticism and the most substantial suggestions for improvements of my various drafts of the thesis during the process. For formal linguistic advice – not to talk about the informal ad hoc practices as normally given somewhere on the south bank of the River Liffey in Dublin – I am indebted to Courtney and Gearoid Collins. Fairly often this cráic was dramatically enhanced by the company of Isabelle Hauffels, Triantafyllos Kirtzakis, Dimitris Paraskevas and Markus Schappert.
In addition to all of those research colleagues at the EUI, two particular persons deserve to be mentioned as having made my time in Florence. I am thankful to Carol Kiriakos, who was a perfect accompany to me no matter whether there was a need to evaluate the Finnish contemporary literature, to analyze the fancy little differences between the Scandinavian and Southern European life-styles, to rank the best tagliata in town or just to spend hours in talking. A huge amount of ‘Simons and Courtneys’ goes to Eva Heidbreder who, apart from having been a trustful friend equipped with firm shoulders, had an amazing ability both to make and implement proficient decisions on my behalf.

Regarding my overall welfare, I want to thank Luigia Cresti Scacciati for keeping my head sane, and Amica Backman and Heidi Walli for keeping my body sane. These thanks are extended to Ulla-Maija Kalleinen (and her entire league) for having been there when most needed. I am the most fortunate of all to have Reijo Lehtonen as a father-in-law. He is the one whose sophistication, true commitment and open attitude to all kinds of issues I greatly admire. Association-wise, I want to thank the members of Vino Juvenalis: Anette, Arja, Elli, Heikki, Mari, Riina, Staffan, Tarja and Timo, for guaranteeing the most relaxing counterbalance for my work as well as offering food both for my thought and mouth.

The last people of my closest circle do not need further explanations. Salla, Sanna-Riikka, Nunnu and my little ‘Anna-Manna’ – you know what you mean to me.

Finally, my greatest gratitude is here expressed to my husband Jarmo, who has provided me with the most valuable thing in life: unreserved love, even at times when I least deserved it. His wholehearted care-taking and continuous support helped me to keep my life in proper perspective especially at times when my personal status was far from convincing. Apart from that, those millions of teddy bears, mountains of chocolate and bunches of flowers with which I was regularly surprised were a great seed of joy bringing lots of seriously needed extra pleasure.

This study has been financed by the contributions of the Academy of Finland, European University Institute, the Finnish Cultural Foundation and the Turku University Foundation.

This work is dedicated to the memory of my mother, my father and my brother. I am sad that none of them came to see the end of the process, yet delighted to announce that their presence and support has been deeply felt.
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1 INTRODUCTION

This study examines the impact that the decision-making rules, procedures and practices in the European Union have upon the possibilities for small Member States to influence the negotiation outcomes, and assesses the causality of small state influence through a major area of EU high politics: Treaty revisions. The EU has been subject to a number of Treaty reforms since the 1980s, the result being that the applied revision methods in these negotiations or the architecture of the Treaties themselves are no longer deemed significant, no matter whether the processes are examined through the perspectives of small states, other decisive key players or with a view to the widely discussed matter of legitimacy. However, the extensive consequences that the EU Treaties have upon the national policy-making practices, as well as upon individual citizens, are still requisite of stringent analysis – particularly with regard to the procedures through which these adjustments are conducted and to the content of these agreements. Especially the supreme negotiation body in the IGCs, the European Council and its summit meetings has become an important arena – even some type of a niche – for many Member States to direct their influence. The small states, in particular, can significantly increase their leverage at these intergovernmental bargaining tables. It is for these reasons why the study has its focus on Treaty negotiations rather than legislative processes when assessing the small state influence within the EU decision-making structures.

Today the European Union is composed of a large number of small states, a number which has persistently increased over recent years. Since the beginning of January 2007, small states have accounted for 19 out of the total 27 Member States. The Union of 27 differs substantially from that of the European Economic Community in the late 1950s, in which the six founding members were evenly split between three big and three small countries. Yet, the smaller countries have been concerned with the domination of large states ever since the foundation of the European Communities. Small states thus form an important factor in European decision-making arenas and, given the Union’s fundamental philosophy and the requirement of equality between the Member States, their interests cannot be neglected.
In this study, the decision-making processes and outcomes of four Treaty revision negotiations, those of the Amsterdam, Nice and 2003-2004 Intergovernmental Conferences (hereafter IGC), and the Convention on the Future of the European Union (hereafter the Convention), will be analyzed in order to draw conclusions on the impact of decision-making rules on small state success in reaching their most preferred outcomes. In this sense, a distinction is made between two types of procedures: the IGCs allowing the use of unanimity as the main decision-making method, and the combination of an IGC with a Convention as a preparatory body applying the rule of restricted consensus. The hypothetical explanations of small state influence within the EU will be assessed through three substantial issues relating to institutional reform: the composition of the Commission, the extension of qualified majority voting in the Council of Ministers, and the system of rotating Council Presidency. The comparisons are made in-depth between four individual small Member States: namely Belgium, Denmark, Finland and Ireland.

Drawing initially on the theories of rational choice institutionalism and liberal intergovernmentalism, the major assumption is that Member States as predominant actors are inherently constrained by formal institutional conditions when negotiating Treaty amendments in the EU. It is argued that the decision-making process is strongly influenced by the rules and procedures in which the negotiations are embedded. Assuming consistant national preferences, the eventual outcomes are expected to depend primarily on varying power-configurations as constructed by the decision-making rules. The main objective is to compare these rules in the Treaty negotiations, thereby allowing for the drawing of conclusions as to the impact of institutional pre-conditions for a small Member State success in decision-making arenas. The approaches of sociological institutionalism and constructivism are incorporated into the study as alternative explanations. A theory of small state influence is developed and, in line with the rational choice institutionalist reasoning, it is argued that their success depends on specific scope conditions under which the negotiations are conducted, the most favorable outcome being achieved through unanimity decision-making rules under the IGCs.

Why should any of this be of interest to political scientists or IR scholars? What is the contribution of the study to the overall discipline on the one hand, and to the national and EU-level policy-makers on the other? Independent of the theoretical approaches or the
eventual outcomes, understanding and explaining how the Treaties are reformed in the EU and what are the implications of different revision practices to different actors is of great scientific and societal relevance. Moreover, it is widely believed that the EU suffers from a democratic deficit, no matter how unclear or ill-defined the term itself or the entire discussion surrounding it may be. Even if the deficit may primarily refer to the discrepancy between political decisions and public opinion, several attempts have been made to make the EU’s decision-making practices more equal and to decrease the democratic deficit of the Union. As a consequence, the need to strive for reasonable and fair Treaty-making methods has stimulated a lively debate within both academic and public fields. Impartial, justified and generally acceptable decision-making rules and processes, including those in the Treaty negotiations, can make an important contribution to the enhancement of the overall legitimacy of the EU. Although this topic is not examined or addressed here in great detail, the study will, from a wider perspective, have normative significance to the implementation of good governance and democratic legitimacy in the EU. As a second point, the fact that the ratification processes of the Treaties in particular has become an ever more challenging task due to the tactics of a number of veto-players, necessitates asking whether the procedures should be improved, and if yes, in what ways. In view of these recent developments in the Union, the study is of immediate interest and crucial importance. On the whole, it is a contribution to decision-making and negotiation research in the EU, as well as to small state studies in political science and international relations more broadly.

This study proceeds as follows. After introducing the overall research design as consisting of the research questions and key problems of the study, a conceptualization of the small state as a discipline in international relations and in the European Union will be presented in chapter two. It provides an overview of the definition of a small state as it is used in the academic literature, and elaborates the small Member States’ empirical significance and role in the EU context. The existing studies of small states and the EU decision-making structures will also be discussed in this chapter. The attempt is to address their potential deficiencies, any remaining and unsolved questions in the field, and to show the added value of this study in the discipline.
After the state of the art is reviewed, the study will move on to present its theoretical background. Chapter three introduces rational choice institutionalism and liberal intergovernmentalism as predominant theories that offer various hypotheses about the impact of institutional preconditions on the ability of small Member States to influence Treaty negotiation outcomes. Two competing theoretical schools, those of constructivism and sociological institutionalism, will be discussed subsequently. This will be followed by a definition of two decision-making rules – unanimity and restricted consensus – and their competence in denoting the modes of EU Treaty-revisions. When the theoretical framework is set, the IGC and the Convention will be evaluated as decision-making processes and two alternate Treaty-making practices in the EU. In this regard, an analytical distinction is made between bargaining and deliberation modes of conflict-resolution.

The methodological underpinnings are spelled out in chapter five. First, the main variables of the research are introduced and the eventual hypotheses derived from theoretical reasoning. The model of small state influence is developed subsequently. Second, the methods that are used for selecting the cases, i.e. the individual small states and the negotiation outcomes, will be discussed. Third, the chapter will focus on the methods that are used for analyzing the data. In this, the process of national preference formation, and the concepts of small state influence and strategies will be assessed in detail together with the operationalization of arguing and bargaining that is crucial in order to scrutinize the dynamics of the negotiations. The last section is devoted to a discussion about the mode of confirmation and disconfirmation of hypotheses, prior to introducing the nature of data, sources and the methods for data-collection.

The empirical findings on the processes and institutional outcomes of four EU Treaty negotiations together with the small states’ positions, preferences and behavior, will be introduced in chapter six. This chapter elaborates the overall negotiation processes of Amsterdam, Nice, the Convention and the IGC 2003-04, including brief reviews also of the stances taken by large Member States. The distributive outcomes of the negotiations as regards three issues of the institutional reform – the composition of the Commission, the extension of qualified majority voting and the system of rotating Presidency – are here indicated in detail. In this chapter, the positions and negotiation behavior of four small
states, consisting of their initial preferences, interests and degrees of saliencies attributed to each institutional question on the one hand, and their contributions, interventions and potential strategies on the other, will be at the centre of attention. Finally, chapter seven is devoted to further analysis and discussion. The IGC and Convention processes of decision-making are considered primarily in the light of the data as provided by selected informants that have been interviewed. For the first time, it also relates the eventual findings to the two poles of theoretical reasoning, those of rational choice institutionalism and sociological constructivism in order to confirm or disconfirm the stated hypotheses. The overall impact of the decision-making rules of unanimity and restricted consensus on small Member State negotiation behavior and influence is explored accordingly. The overall conclusions are presented in chapter eight, together with a discussion of remaining questions, and unresolved problems, and the setting of routes for further research.

1.1 Research Questions

The aim of this study is to tackle five key research questions. The fundamental starting point is based on the following question: “Under what conditions can we expect the level of small state influence increase in the European Union Treaty negotiations?” This leads us to formulate four sets of more specific working questions:

(i) How do the procedures of IGC and Convention differ as Treaty-making methods and what are their implications for the balance of power between large and small Member States?

(ii) Given the constant national preferences, what impact do different decision-making rules (unanimity as compared to restricted consensus) have on the possibilities for small states to influence outcomes in EU Treaty negotiations?

(iii) To what extent does bargaining, as compared to that of argumentative and deliberative modes of interaction, prevail within the IGC and Convention processes? Does either practice have greater impact on the small Member States’ possibilities to influence the outcomes in either Treaty reform
procedure? Are particular issues more conducive to arguing rather than bargaining?

(iv) What was the *de facto* influence of small Member States in Amsterdam, Nice and 2003-04 IGCs compared to the Convention negotiations in relation to their original aims investigated through three issues of the institutional reform?¹ Which were the key success factors as regards gaining influence?

The research questions are relevant both in empirical and theoretical terms. With regard to the theoretical aspects, the questions are strongly related to the intergovernmentalist-oriented negotiation and decision-making research at EU level. The empirical significance is closely linked to the ongoing debate on the normative questions of equal, representative, democratic and legitimate decision-making methods in the EU Treaty negotiations within both academic and public fields. The aim of this study is not, however, to become embroiled in this debate in depth, but rather to elaborate in detail the impact of the decision-making practices on small state influence in the European Union.

With a view to recent studies on EU Treaty-making procedures, an important further observation had an effect on the formulation of the research design and questions within this study. It was recognized that the studies on the Convention method come to conflicting assessments. There is a vast disagreement concerning the quality of the Convention method as EU Treaty-reform practice within the academic sphere. The Convention method can be deemed nothing but controversial, since remarkably varying analyses with nearly the opposite results have been produced when examining its essence and implications. To put it short at this stage, particular scholars consider it as an excellent decision-making method to revise the Treaties and an appropriate alternative to the traditional IGCs, while others judge it as vague, unequal and the most inappropriate invention made during the past few years. Given that it has been widely speculated of whether the Convention method could also be applied as a Treaty amending procedure in future, this controversy has made it all the more interesting as well as important to

¹ The areas of reform through which the small state influence will be assessed are: 1) the composition of the Commission, 2) the extension of QMV in the Council of Ministers, and 3) the abolishment of the rotating Council Presidency (including the proposal for electing a permanent President to the Council as formulated by the Convention).
investigate its qualities both in academic and empirical terms. The observation of this phenomenon thus drove us to examine the Convention procedure both in relation to the IGC method and in its own right.

1.2 Conceptualization of the Study

This section defines the main theoretical assumptions, and underlines the presumed factors and causal relationships of the study. It will introduce the research design as shown in the table consisting of theoretical claims, variables and empirical data to confirm or disconfirm the presented claims. The main argument in the study is drawn from the accounts of institutionalist school of thought in general, and rational choice institutionalism and liberal intergovernmentalism in particular. According to institutionalist approach, the procedural preconditions are of decisive importance in multilevel international negotiations. It is argued that when a state enters a decision-making arena at the European level, it is inherently constrained by background conditions and underlying settings, i.e. formal decision-making rules.

Since institutions, in the restricted sense, alone cannot always explain policy outcomes, the individual input of actors (Baillie 1996, 8) and the negotiation process (Wallace & Wallace 1996, 32-33) should also be taken into account. In this study, the influence is considered as determined by two tightly linked factors: the institutional set-up in which the negotiation is embedded (a proposition based on institutional constraints), and the state’s negotiation behavior (a proposition based on actors and other process-factors), with the latter being underpinned and causally determined by the former, i.e. respective institutional conditions. As a result, this study considers these factors as two separate steps in one causal process, where one leads to another. The underlying argument is hence that the specific decision-making rules (unanimity vs. restricted consensus) lead first to particular power distributions and actor configurations in which the states perform as predominant players, allowing thus certain scope conditions for particular negotiation behavior through distinctive decision-making processes (the IGC vs. Convention). Later on, the distributional outcomes are expected to evolve from the negotiations depending on
these circumstances respectively. To sum up, differences in policy outcomes are explained primarily by differences in institutional constraints and in line with institutionalist explanations, the formal institutional condition, i.e. the decision-making rule, is regarded as decisive in producing the outcomes of the negotiation processes.

In order to address the impact of the institutional conditions on the ability of small states to gain influence in EU Treaty reform negotiations, the study employs the theories of rational choice institutionalism and liberal intergovernmentalism. Given the particular decision-making rules and stable national preferences, it is assumed that actors pursue their interests rationally, and strategically aim to maximize their benefits through means-ends calculations. The national governments that are equipped with stable preferences are seen as decisive actors in the international negotiation arenas, and the direction of the decision-making itself is determined by threat of veto and non-agreement. This rational choice intergovernmentalist type of hypothetization will be contrasted with sociological institutionalist and constructivist schools of thought, on the one hand, and the overall neofunctionalist thinking assuming a decline in importance of nation-states in the EU, on the other.

The European Union today provides a number of arenas for testing the hypotheses related to the impact of particular mode of decision-making on the negotiation outcomes. In reviewing the subject, answering the research questions and assessing the underlying theoretical explanations, I focus on the high politics of Treaty reforms, and analyze the negotiation processes and outcomes of the Amsterdam IGC (1996-97), the Nice IGC (2000), the Convention on the Future of the EU (2002-03) and the IGC 2003-04. These decision-making arenas are selected here so as to include representative cases of previously introduced categories of unanimity and consensus modes of decision-making. The Convention negotiations present scholars of comparative politics with an opportunity to study decision-making in a setting constrained by few formal rules. With respect to small state influence, a critical test will be done in the issues of the institutional reform, in which significant small state interests have always been at stake. The underlying argument from which the small state analysis starts is hence that the institutional structure plays a vital role in determining equality between the Member States in the Union.
Empirically the argument proceeds in four steps, since the study includes four particular working parts on which the focus is placed. Based on the process-related theoretical reasoning, the stages are categorized as follows: 1) national preference-formation, 2) the types of the decision-making rules and processes, 3) the decision-makers and their behavior, and 4) the influence of decision-makers as measured through comparing their \textit{ex ante} preferences at $T_1$ to the negotiation outcomes at $T_2$. Table one has been set up to provide an illustration of the research design by displaying the relationships among the four working parts in the form of variables.

Table 1: The Research Design

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Comparisons between four Small States:
- Belgium
- Denmark
- Finland
- Ireland

RATIONAL CHOICE INSTITUTIONALISM
LIBERAL INTERGOVERNMENTALISM
vs. Sociological Institutionalism and Constructivism
2 SMALL STATES – A DISCIPLINE IN INTERNATIONAL RELATIONS

This chapter sheds light on the question of how small states are defined in the literatures on International Relations, political science, and on the European Union in particular. Small states have traditionally been seen as primarily weak and powerless states in international relations and they have hardly ever been regarded as a credible threat to neighboring or other states in world politics. Neutrality, on the one hand, and the formation of close agreements or alliances, on the other, has often defined their orientation in international relations. Although small states have commonly been described as rather powerless states in world politics, it can be argued that they also hold a privileged and advantageous position in regard to a number of matters.

All in all, small states’ experiences from varying alliances, including the European Union, have been mainly positive. Through memberships the small states can usually remarkably strengthen their international position and visibility. Moreover, the common rules and institutions tend to increase their opportunities to influence on the immediate environment, as well as to participate in such decision-making processes that are of vital importance especially to small countries usually equipped with relatively small national administrations.

2.1 Defining Small: Quantitative and Qualitative Approaches

In the relevant academic literature, there is no absolute or even commonly accepted definition of what a ‘small state’ actually is. Some scholars have argued that attributes such as small or large are irrelevant in today’s world of globalization and integration (see von Däniken 1998, 43-45). Others, as Griffiths and Pharo (1995, 28) have noted that small states should always be studied in relation to other – usually larger – states. The departure point of most of the small state research has actually focused on security issues. In this, small states have been seen as countries with a mixed combination of small territory, small population, limited military strength and limited resource base (Antola & Lehtimäki 2001, 13).
The existing definitions of small states can be divided into two main approaches: the quantitative and qualitative. According to the former, smallness needs to be defined in absolute terms, whereas the latter has adopted a comparative approach in conceptualizing the small states. Qualitative approach focuses on factors such as small state behavior and call attention even to psychological aspects when defining these states.

The quantitative approach defines small states on the basis of concrete, measurable criteria. One of the most widely referred quantitative definitions is provided by Damijan (1997, 47), who argues that the combination of population size, gross domestic product (GDP) and land area of a particular country represent the most important criteria when defining a small state. These variables are commonly used to predict and analyze the states’ behavior in international relations. Damijan classifies small states as countries of which the absolute value of GDP is between USD 10 and 20 billion, their population between 8 and 13 million and whose land area does not exceed 500,000 square kilometres.

The qualitative approach, for its part, does not use measurable data to identify small states and is thus, generally speaking, less objective and more vague, emphasizing the role a small state itself takes in relation to its wider environment. Two questions are decisive when formulating a definition: firstly, how does the country perceive itself and, secondly, how does it try to affect and influence other states? In international negotiations, small states often lack the resources necessary to bring pressure on larger Member States in the issues that are important to them. Small states might adopt a low-profile approach, keep out of the limelight and avoid attracting attention (Baillie 1998, 203), so that it is only in the issues of primary importance where they intervene and plead for the respect of their vital interests. In economic terms, as suggested by Raunio and Tiilikainen (2003, 9), small countries are normally more dependent on trade and a narrow range of export industries. In this regard, they generally have fewer and more clearly defined national interests to defend.

Thorhallsson (2006, 8-14) provides a criterion with which the quantitative and qualitative approaches are reasonably combined. He argues that the defining variables should be examined carefully in order to obtain a clear indication of how size eventually

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2 See also Rapaport et al. (1971). In their work, small states are defined as using the criteria based on population, GDP and land area.
affects states’ behavior within the international organizations and system. As a consequence, he comes up with a framework that defines states’ accurate size in containing six categories altogether: 1) fixed size (population and territory); 2) sovereignty size (the state’s ability to maintain minimum state structure and presence at international level); 3) political size (military and administrative capabilities and the degree of domestic cohesion); 4) economic size (GDP, market size and development success); 5) perceptual size (the way how domestic and external actors perceive the state); and 6) preference size (ambitions and prioritizations of the governing elite and its aspects towards the international system). In addition, Thorhallsson points out that concepts such as diplomatic and administrative action capacity, vulnerability and the economic prosperity are of crucial importance. Even if military strength used to be a key factor to the survival of states, today it is economic welfare. Both the international system and the European Union are based on political and economic cooperation.

2.2 Small and Large in the European Union

There has been a constant attempt to acknowledge different sizes of states along the development of the European Community. Nineteen Member States out of twenty-seven are today defined as small states in the European Union. That is to say that the majority of the EU Member States are counted as small states and they hence form an important factor in EU decision-making. Nevertheless, most of the studies examining the relationship between the EU and its Member States are carried out through analysis of only larger states, most commonly those of France, Germany and Great Britain. However, due to their large number it is also of crucial importance to analyze the positions and behavior of smaller Member States at the EU level, as their opinions cannot be easily neglected.

Within the European Union, small states’ political systems and national administrations are often associated with greater internal political cohesion and functional efficiency (Hanf & Soetendorp 1998, 4). Initially, small states have joined the EU in order

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3 These are Austria, Belgium, Cyprus, Czech Republic, Estonia, Finland, Denmark, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Slovakia, Slovenia and Sweden.
to avoid marginalization in a world of larger powers and, it can be argued that today they mostly gain from the membership. Through a common, highly institutionalized, decision-making structure, small states can influence and achieve more than they would outside of the Union. The European Union as an organization can therefore redress the inherent disadvantages caused by a small size, most obviously by ameliorating some of these negative aspects through its institutional and operational arrangements (Archer & Nugent 2006, 6). To this end, the EU increases rather than decreases their relative power opportunities in world politics. Even though small states are sometimes blamed for being overrepresented in the EU decision-making structures, the argument can be categorically rejected, since the fundamental philosophy of the EU is to give a voice to every single sovereign state, regardless of its number of inhabitants, geographical size or political and economic power.

As in international relations generally, small Member States in the European Union can be categorized according to several criteria. For Westlake (2000, 20), to give an example, EU Member States are either large, larger medium, smaller medium or small, depending on countries’ voting weights in the Council. The criteria for defining small state as adopted in this study lies exactly between quantitative and qualitative approaches. Originally, the definition of a small state was kept strictly in line with that of established in the European Union; the study counts only the states that fall into the category of small states as officially defined by the EU. As regards quantitative classification of small states, most of Damijan’s definitions, for instance, would not hold in the EU context. Many officially defined small EU Member States do not fall into the population category of 8 to 13 million inhabitants. The Netherlands exceeds the population limit with its 16 million inhabitants, while Cyprus, Estonia, Denmark, Finland, Ireland, Latvia, Lithuania, Luxembourg, Malta, Slovakia and Slovenia each have less than eight million inhabitants. In fact, the Netherlands has more than five million more inhabitants than the state next to it in order of size ranking (i.e. Greece), as measured through population (Thorhallsson 2006, 10). In addition, the limit for gross domestic product (USD 20 billion) would exclude most of the small states in the study.

Small states can also be distinguished by their types and scopes of interests which, further on, are very likely to affect their behavior and orientation in the EU. What is
distinctive here is that the overall preferences of smaller states are usually different to those of large states (Moravcsik 1993, 492). Their sphere of interests is generally much more limited compared to that of the larger Member States, whose interests are mostly rather global. Particularly in the issues of foreign policy, small states manage much more easily to reach a common stand, since their interests are often relatively narrow. Moreover, within the context of the European Union, they often facilitate co-operation, bring opinions together and build compromises, by acting as neutral brokers or bridging elements independent of the larger powers and their conflicting interests.

Arter (2000, 679-683) has also pointed out that the position of small states in the EU may well bring them benefits. Unlike their larger counterparts, small states may push particular issues onto the EU agenda, especially when the proposal is introduced as being in the interests of the Union as a whole. For larger states these acts are much more demanding, since they are more likely to be perceived as pursuing their own interests. In any case, larger states might also find themselves in a minority as regards a number of European issues. Yet, contrary to small states, they can usually find a way to proceed in order to reach a satisfactory solution. As Jakobson (1998, 117) notes, the citizens of the larger states can always be confident that their nations will be strong enough to look after its own interests in whatever political arena is conceived. The manner in which the common decision-making structures are organized in the EU thus matters to small states relatively more than to their counterparts. Archer and Nugent (2006, 4) call attention to the fact that the EU system actually places a large burden on its Member States in form of intellectual effort, paperwork, personnel and financial resources. Within these structures, and by having to bring together a wide range of policy issues, small states can also feel themselves rather disadvantaged.

Baillie (1998, 195) argues that small state influence in the EU derives from three different sources, namely the historical context that is specific to the state in question, the institutional factors that are advantageous to the small state, and the negotiation behavior of the small state. This classification is very similar to the one made in this study, and

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4 See e.g. Stubb (2003, 56), who points out that the foreign policy interests in the EU are traditionally “small among the small states, and large among the large states”.

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these factors are all considered to have explanatory value in assessing small state influence.

2.3 Existing Studies of Small States and the EU Decision-Making Structures

Few studies have been conducted with a focus on the scope conditions beneficial for small states’ influence in the EU decision-making structures in general, or in the Treaty negotiations in particular. All in all, the research questions as posed in this study, ranging from the impact of the adopted decision rules on small state influence in the EU Treaty negotiations to the role of interaction and means of communication therein, lack closer academic attention. It is the aim of this chapter to discuss the existing studies that focus on similar matters and to elaborate the relationship between already conducted work and the ongoing project. Likewise, the potential shortcomings of the existing studies and the added value of this study will be indicated.

Comparisons between the IGC and the Convention as Treaty-revision methods have already been made fairly extensively: see Beach (2002a; 2003; 2004), Hoffmann (2002), Kleine and Risse (2004; 2007), König and Slapin (2006), Panke (2005; 2006) and Pollack and Slominski (2004). The research questions of these studies, their exact settings and in some cases the underlying theoretical arguments as developed in these academic works, however, differ from the present one. Beach’s work is devoted to investigating mainly the role and impact of EU institutions (the Commission and the Council Secretariat) in the IGC and Convention processes of Treaty reform. Thus, instead of asking how the institutional set-up affects the possibilities of particular Member States – such as small ones – to influence outcomes, he is more interested in understanding what kind of impact it has on the influencing possibilities of EU institutions. With respect to the single Treaty negotiations, he has found that the Commission and European Parliament were both in a much stronger position in the Convention than in the past IGCs.

Panke’s (2005) starting point is the approach of interactionist learning in the European Convention. She, too, makes comparisons between the IGC and Convention as negotiation arenas (see also Panke 2006), but makes an interesting contribution to the
theoretical canon by concluding that the institutional variables do not seem to be too important in determining outcomes. Pollack and Slominski (2004) examine whether the Convention is more representative than the traditional IGC method. They conclude that the Convention has led to more balanced representation based not only on a broader presence of representatives but also on proper authorization, room for manoeuvre and voting rights together with an improved degree of responsiveness. Similarly to Hoffmann (2002), they contend that the Convention is a great improvement on the IGC method. Also Slapin (2006; 2008) and Sverdrup (2002) have taken institutional perspectives on EU Treaty reforms by investigating the main organizational factors constraining and facilitating it. Sverdrup notes that the analysis of the IGCs cannot be based only on the preferences and powers of the Member States and questions therefore some of the basic assumptions of a state-centric perspective. Instead, he argues, Treaty reform processes need to be situated in a distinct historical, institutional and contextual setting that are to reveal how actors are embedded in a web of structuring elements. Slapin, in turn, examines the sources of bargaining power at the IGCs and verifies the power of domestic ratification constraints in his studies.

In their recent study on the EU Treaty revision procedures, Risse and Kleine (2007) argue that the Convention method increased the legitimacy of EU constitutionalization. In an earlier study, they had focused purely on the effectiveness of arguing and bargaining in the Convention by trying to understand the pros and cons of the Convention method as an institutional set-up for Treaty negotiations. Initially they asked under which conditions argumentation can be expected to be effective. (Kleine & Risse 2004.) In fact, these questions of deliberative democracy and the role of argumentation in the decision-making contexts have been well treated in many studies. Also a number of studies have concentrated on analyzing the deliberation in the Convention (see i.e. Closa & Fossum 2004; Fossum & Menéndez 2005). Magnette (2003; 2004) focuses on the role played by argumentation and rhetoric in solving the incompatibilities in the Convention. Together with Nicolaïdis (2004), he argues that in the end the Convention seemed to reproduce the logic of intergovernmental bargaining and thus did not differ substantially from previous rounds of Treaty reform in the EU. The quest for legitimacy is important for Lord (2004), who compares bargaining and deliberation types of negotiating as potential
solutions for managing conflicts between the ‘vectors of legitimacy’. According to Lord, bargaining can be of only limited help in managing the disagreements over what is needed to make the EU legitimate.

A number of works have explored the small state concerns in the European Union from different angles. The Treaty reform processes have been studied by Antola and Lehtimäki (2001), with a focus on small state matters in the new circumstances as developed particularly along the Treaty of Nice. Their study analyzes the policy options of small states during the Nice negotiations, together with an exploration of their foreseeable future challenges. Zbinden (1998), in turn, has examined the implications of the Amsterdam IGC on small EU Member States. Broman (2005) looks at the ways in which small states exert influence in complex multi-actor systems such as the EU. According to her, the influence capacity of a small state is a combination of several factors. Primarily it is the selection of strategic actions of small states that can advance their power.

A small state literature review is not complete without mentioning the contributions of Thorhallsson (2000; 2006). He provides a powerful conceptual framework for analyzing the small states in political science, and has studied their behavior in the EU decision-making processes within the areas of Common Agricultural Policy and Regional Policy. Baillie (1996) has contributed with a case-study on small state influence in European decision-making structures. She has identified the factors which provide Luxembourg with an opportunity to guarantee the location of certain institutions. In another study she analyzed the small states’ positions in the EU at a more general level by focusing on their classic roles as mediators and honest brokers (Baillie 1998). Sepos (2005) examines the impact of various forms of differentiated integration (multi-speed, variable geometry and à la carte) on the position of small Member States in the new Europe, while Arter (2000) studies the small state influence in the EU through Finland’s ‘Northern Dimension’ initiative. In addition to the above, there are a number of other small state publications available, due to the recent revival in small state studies.  

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To conclude, the importance of this study should now be obvious: few studies attempt systematically to analyze the impact of the institutional set-up on the outcomes of the EU Treaty negotiations and no study examines it from the perspective of small Member States, nor carries it out with regard to the institutional reform of the Union. With the exception of some of the research mentioned above, many integration theories in international relations still ignore the impact of the institutional set-up or the negotiation process over the outcomes in decision-making. That is, most existing studies on EU Treaty negotiations, for instance, explain actor influence as based exclusively on relative actor power and preferences prior to negotiation in denying the impact of the formal institutional rules applied. As a result, neither do these studies based purely on realist theories offer many insights into the actors’ negotiation behavior.

In the area of small state research, therefore, much work remains to be done. In terms of their number, the small Member States form the majority in the European Union and their positions on both institutional and any other issues are thus important. From what has been said, it is evident that there is a lack of theoretical background, relevant research and, consequently, a number of unanswered questions as regards the empirical significance of the EU decision-making methods from a small state point of view, and it is on these aspects that this work will have its focus.
This chapter develops a theoretical framework to measure the potential capacity of the institutional preconditions of an EU Treaty negotiation to affect the ability of a small state to influence the negotiation outcomes, and to explain institutional choice in European Treaty-making processes. The theoretical basis of this study is rational choice institutionalism (RCI) and liberal intergovernmentalism (LI), as contrasted with sociological institutionalism and other constructivist paradigms. Rational choice and constructivist approaches both operate on the causal assumption that institutional arrangements have a constraining effect on political behavior of the decision-makers and, subsequently, the outcomes of the political processes. However, the logic through which the decision-making proceeds and the ontological nature and disposition of the political actor itself, differs between these two paradigms. Rational choice models rest on the assumption of a utility-maximizing and self-interested actor, while sociological institutionalists assume a sociologically constructed reality, in which the ultimate aim of any actor is to do the “right thing” so as to reach the common good. Therefore, the institutions can create an individual to act in one of two ways: either to maximize his or her benefits or to act out of duty and altruism.

Prior to introducing the theoretical approaches in detail, it must be pointed out that an increasing number of studies have attempted to fill the gap between the rationalist and constructivist ways of theorizing the European integration. It has been suggested that the process of Europeanization could be theorized by applying them both (Börzel & Risse 2000, 2). It has also been argued that since rational choice and constructivist approaches predict different mechanisms of Europeanization, they cannot be considered solely as colliding meta-theories. As such, they could be both implemented in EU studies. In a similar vein, it has been proposed that rational choice and constructivism are rather to be considered as analytical tool-kits that ask different questions and bring different aspects of social life into focus (Fearon & Wendt 2002, 53). Perhaps the most distinct work in seeking better understanding of the relationship between the concepts of rationalism and constructivism has been done by Jupille, Caporaso and Checkel (2003). In their study, the starting point is a belief that rationalism and constructivism possess a degree of
commensurability and they hence promote a greater synthesis among these competing institutional schools. The recent dialogue between Checkel and Moravcsik (2001) is one more example of an attempt to re-model the dynamics of these two institutional perspectives. Moravcsik has pointed out that almost all theories, constructivist or rationalist, predict correlation between collective ideas and policy outcomes. What distinguishes these two schools from each other is their assumptions of causal independence of those ideas, and their source, variation and links to eventual policies.

Irrespective of these recent attempts to employ both approaches to explain varying aspects of EU integration, the research design as applied in this study brings a necessity of considering them separately and to select either one as a theoretical starting point. The theoretical part proceeds as follows. In the first section, the EU Treaty negotiation processes are formally illustrated along the lines of game-theoretical structuring of collective decision-making as applied in political science. The underlying causal argument, that of RCI, is introduced in the second section and the impact of institutional preconditions evaluated accordingly. In the third part of the chapter, the role of the decision-making procedures is explained by elaborating the unanimity and consensus rules in the contexts of IGC and the Convention decision-making processes. Sociological constructivism as such will not be assessed here in greater detail, yet, the aim is to consider it constantly in relation to rational choice modelling.

3.1 Cooperative Bargaining with Distributive Outcomes

Interstate negotiation is a process of collective choice during which potential international agreements are first identified and then selected (Moravcsik 1998, 51). Negotiation and game theories, as applied in political science, provide formal and analytical models for investigating political behavior in decision-making situations. This type of structuring can also be employed to measure the rationality of political actors or the use of strategies during the decision-making processes. The theory of games considers rational choice in situations where the outcome depends on the choices of more than one player and the players are aware of one another’s rationality (Hollis & Sugden 1993, 8). Game-
theoretical modelling hence provides reliable tools for controlling circumstances and actor constellations while testing the hypotheses or theoretical underpinnings.

Game-theoretical and other strategic modelling can also provide additional value to the analysis of EU decision-making. Correspondingly, in this study the standard negotiation analytic concepts and methods are applied to assess the varying constellations and actor behavior in decision-making situations. To address these problems, as suggested by Sebenius (1992, 332), the following elements will be looked at: the actual and potential parties and factions, the parties’ interests, the alternatives to agreement, the processes of creating and claiming value together with the manner through which they can lead to agreements, and the parties’ efforts to change the game itself (see also Lax & Sebenius 1986). It is assumed that the structure of the game is common knowledge between the players, and it is common knowledge that the players are rational. According to this set of assumptions, common knowledge of rationality holds (Hollis & Sugden 1993, 8-9).

The negotiation and game theorists distinguish between cooperative (distributive) and coordinative (non-distributive) games. The division can also be labelled as distributive/defensive and integrative negotiations (Scharpf 1997; 1998). According to Sebenius (1992, 335), the former is often associated with “win-lose” or “zero-sum” encounters, while the latter with “win-win” or “positive-sum” encounters. An analytical distinction may also been drawn between the types of policies considered: those of regulatory and distributive, from which the former is expected to produce Pareto-optimal outcomes and the latter zero-sum outcomes making the winners and losers out-balance one another (Neyer 2006, 786). Walton and McKersie (1965) made this distinction already in the mid-1960s. According to them, the approach aimed at problem-solving and ‘expanding the pie’ is in clear contrast to the games dealing with distributive and ‘dividing the pie’ types of bargaining. A distributive game is one in which there is a clear and identifiable amount of utilities to be allocated. This is to say that when one gains, the other one loses, and the winners and loosers can be easily identified in general.

With a view to EU intergovernmental conferences, a number of key issues are zero-sum, in which a particular ‘pie’ needs to be divided. In other words, the outcomes are distributive and when one of the governments gains, the other one loses. From this it becomes evident that in the decision-making arenas, the distributive games denote
cooperation problems rather than coordination problems, and the EU Treaty-making processes most typically consist of cooperative and competitive elements. In cooperative games the actors can develop mutually binding commitments as how to proceed, while in coordinative games such commitments cannot be made. Schumpeter (1954, 255) has pointed out that the chances for a compromise to be drawn are greatest in issues which have elements of gradation or are quantitative rather than qualitative in nature. Sebenius (1992, 327) argues that suboptimal cooperation in the presence of distributional conflict is quite a general phenomenon, and it occurs most often in situations where the cooperative potential is not realized because of technical or strategic uncertainty, a lack of creativity, blocked communication or other factors. The coordination problems, which are typical to other type of negotiations, can prevent parties from reaching efficient outcomes. (Garrett & Weingast 1993; Scharpf 1997.)

It has been argued also by Lowi (1972) that policy types have an effect on the dynamics of interactions in the decision-making processes. Backed up by Knight (1992), an agreement is usually more difficult to reach in the negotiations that incorporate distributional effects. In view of the EU Treaty-making processes, especially the institutional issues – on which the focus in this study lies – have highly distributive consequences. Distributive and redistributive issues (such as the number of Commissioners or the decision-making rules in the Council of Ministers) tend to promote bargaining as a logic and mode of interaction, while deliberation is expected to occur within regulatory policy-issues (Scharpf 2000, 221-225). When the institutional reform is dealt with, each standpoint in the negotiation arena has to be accounted for in order to minimize the distributional conflicts and to reach a mutually acceptable outcome. Consequently, the outcome is a result of competitive behavior, in which the power-based acts such as trade-offs, issue-linkages, side-payments, concessions, offers and counter-offers play a significant role in the process. The formulation of package-deals is thus subject to preceding cooperation between the decision-makers. In order to indicate each party’s bottom-lines and the lowest common denominators, the preferences must have been revealed and information distributed.

At this point of game-theoretical structuring, the concept of Pareto-optimality also has significant analytical value. When the outcome is Pareto-optimum – as it is in most
issues in EU Treaty negotiations – it means that no party can be made better off without making another worse off. In decision-making situations, the alternative is Pareto-optimal if one cannot choose another alternative that everyone would consider to be at least as good as the chosen one and which at least one person would consider to be strictly better than the chosen one. In other words, if a move from state of affairs A to state of affairs B leaves nobody feeling worse off than before and at least one person feeling better off, the move satisfies the Pareto condition. Thus, if there is a state of affairs C that no further Pareto improvements can be made, C can be considered as Pareto-optimal. (McLean & McMillan 2003, 393.)

3.2 Explaining the Impact of Institutional Preconditions

The term institution, as defined by North (1990), refers to an actor-created rule that can be perceived as both restricting and enabling behavior. Apart from that, in political science institutions are understood also as organizations, shared and internalized beliefs, norms and social rules (Héritier 2007, 5-6). Moving on from this, the term institutionalism covers a wide range of sub-approaches to the study of political institutions, including those of rational choice, sociological, normative, historical and new institutionalist frameworks. The term was originally introduced into political science by the work of March and Olsen (1984; 1989) and its fundamental idea is that the organization of political life makes a difference.

In decision-making situations, the institutional arrangements determine things such as the rules and procedures, the number of actors, the modes of their potential behavior and interaction, and the strategies available. Moreover, they determine which issues are included in the decision-making process, how the information is structured, in what sequence decisions and actions will be taken and how individual actions will be aggregated into collective decisions. (Kiser & Ostrom 1982, 179, 191; Ostrom 1986.) With a view to these definitions on the functioning and role of institutions, the

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6 This criterion of comparison is originally created by Pareto (1897). The concept has been used in the studies of welfare economics and social choice. Regarding the institutionalist perspective on developing the ‘Pareto frontier’ in cooperative games, see Krasner (1991).
preconditions for decision-making – the institutional settings laid down in the IGCs and Convention – establish the independent variable in this study. In the following, two subtypes of the institutionalist tradition will be settled out. The approaches of rational choice institutionalism and liberal intergovernmentalism lay the foundation for the entire study, and will be contrasted with those of constructivism and sociological institutionalism respectively.

3.2.1 Rational Choice Institutionalism

Rational choice institutionalism (RCI) constitutes a significant class of international relations theories and is one of the leading strands of rational choice approaches. RCI draws heavily upon rational choice theory, yet, it is not identical to it. It is applied to explain a range of topics from empirical political science to international relations and it has a great influence especially in EU studies. The origin of contemporary literature of rational choice institutionalism derives from the 1970’s, when institutional factors were re-introduced by American political scientists (Pollack 2006, 5).

The usual approach to institutions within the rational choice tradition is to study the kinds of behavior they cause. Rational choice institutionalism argues that the behavior of political actors is shaped by the specific framework of rules and procedures within which they, inherently equipped with egoistic and rational motives, try to maximize their utilities by undertaking means-ends calculations for choosing the best courses of actions. Recurring patterns of behavior are thus traced back to the prevailing institutions and are explained as optimal behavior under constraints imposed by those institutions (Tsebelis 1990, 92). To this end, rational choice is an instrumental approach and it is guided by the outcome of action. Actions are valued and chosen not for themselves, but as more or less efficient means to a further end. (Elster 1989, 22.) In other words, RCI focuses on the constraints the institutional structures impose on actors in transforming individual

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preferences into outcomes in the form of policy choices. In this sense, the outcomes are not directly or exclusively determined by the original preferences or power-relations between the actors involved.

In line with rational choice approaches, this study rests on the intergovernmentalist assumptions about the role of states and considers them as unitary actors in European decision-making arenas. According to intergovernmentalism, national governments are decisive and powerful actors determining the agendas and key decisions by protecting and promoting solely their domestic interests and concerns. The states are argued to be uniquely powerful for two reasons: first, they possess legal sovereignty, and, second, they have political legitimacy as the only democratically elected actors. (Hoffmann 1966.)

As clearly postulated in the rational choice approach, the actors are usually aware both of their own as well as others’ preferences on particular issues and are thus also able to use specific strategies to satisfy their goals. The national preferences are considered as known and relatively stable and the approach hardly leaves room for potential learning processes or interest change during the negotiations. (Moravcsik 1998, 1999; Tsebelis 1990.) Nevertheless, these assumptions of full rationality, knowledge and information have recently translated into softer notions of rationality, as originally presented already by Simon (1957; 1982). In opposition to the models based strictly on calculation and strategic action, the ‘released’ versions take into account also the transaction costs and consider rationality as bounded, goal-oriented maneuver with a prioritization of objectives. It is well acknowledged in these models that being rational is costly, and human mind is anyhow cognitively restricted. (Cyert & March 1992; Héritier 2007, 34.)

This study has adopted a rule-based model of institutions (Peters 1999) as a conceptual starting point from the variety of different rational choice perspectives. The rule-based version conceptualizes institutions as aggregations of rules and normative constraints, which channel and structure actors’ behavior in policy processes, and which the members agree to follow in exchange for the benefits they derive from them (Scharpf 1998, 46). Actors usually choose voluntarily to be constrained by institutions because they are well aware of the fact that their goals can be achieved most effectively through them. From the perspective of rationality, institutions provide a stable means of making choices in what would otherwise be an extremely contentious political environment. (Peters 1999,
In addition, as Héritier (1998, 37) points out, institutions reduce the uncertainty of individuals in complex environments, guarantee reliability, convey general orientations for action, and relieve actors of the burden of deciding case by case. At the same time, they also leave room for self-interest and strategic decisions.

After all, in this study the rule-based model is supplemented by actor-based factors, as already stated out earlier. It has been acknowledged by many of the scholars that the negotiation success or actor influence cannot be explained exclusively by underlying institutional rules (Baillie 1996; Scharpf 1997; Wallace & Wallace 1996). It is at this point when the behavioral factors, such as actor strategies, intervene. To repeat the fundamental idea, however, it is still the proposition that institutional rules and conditions determine the mode of actor behavior and use of potential strategies.

In short, the contribution of the rational choice perspective includes such arguments as: 1) individuals, who are rational by nature, are the decisive actors in the policy-making arenas; 2) individual interests and national priorities are those that count and, 3) actors are constrained by background institutional conditions when making the decisions. In policy research, such a positivist orientation is most typically associated with empirist research designs, input-output studies, cost-benefit analysis, operations research, mathematical simulation models and systemic analysis (Putt & Springer 1989).

### 3.2.2 Liberal Intergovernmentalism

It has been argued that the rational choice approach cannot be seen as a substantive theory in terms of its conditional statements about the relationships among specific variables (Jupille et al. 2003, 11). A more detailed theoretical foundation will also here be employed from supplementary accounts. To explain the impact of decision-making rules on small state influence and the process and outcomes of the EU Treaty-negotiations, a bargaining theory of international cooperation is adopted to the study from the work of Moravcsik (1993; 1995; 1997; 1998; 1999). He provides a more accurate and rigorous version of intergovernmentalism, – i.e. an application of rational choice institutionalism – by interpreting the European Union through *liberal intergovernmentalism* (LI).
Like most intergovernmentalists and rational choice institutionalists, Moravcsik (1998, 20) argues that European integration can be best explained as a series of rational choices made by national leaders. When contributing to the theoretical discussion of European integration with LI approach, he thus focuses on key bargaining processes and strategic intergovernmental interactions by introducing a coherent set of testable propositions. It is suggested by the LI perspective that the most significant factors determining institutional reform are the relative bargaining power of each state in the international system and the role of international institutions.

In Moravcsik’s reasoning, the logic of international negotiations follows a path of causal sequences: national preference formation, interstate bargaining and, finally, institutional choice. A great deal of emphasis is always placed on domestic political factors. Within those factors, Moravcsik is most interested in two categories of questions: firstly, what kind of domestic preferences matter most in European decision-making arenas? And, secondly, have national preferences been developed through socio-economic, geopolitical or other determinants? By national preferences he refers primarily to a set of underlying national objectives which are independent of any particular international negotiation to expand exports, to enhance security or to realize some ideational goals. The main principles of the bargains are thus marked by the lowest common denominator and the protection of each actor’s ultimate sovereignty. This is to be followed by a bargaining process, in which various strategies to reach substantive agreements are widely applied. At the end of the day, the decision is made as whether to pool sovereignty in international institutions or not.

This intergovernmental bargaining theory which Moravcsik (1998) developed in his grand opus, *The Choice for Europe* can be applied to explain the specific impact of different decision-making modes on the possibilities of actors to influence outcomes. It rests on three assumptions for which he found empirical support from the five largest intergovernmental EU bargains from 1955 to 1992. The first notion of the LI theory is that Treaty-amending negotiations take place within a non-coercive system of unanimous voting in which rational governments can and will reject agreements that would leave

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8 See also Moravcsik (1993). Most principles of his intergovernmental bargaining theory were already presented in this article.
them worse off than unilateral policies. The domestic political and, in particular, economic processes always determine the positions that governments take with them into international negotiations. Second, the information and ideas required for efficient bargaining are plentiful, evenly distributed and cheap in intergovernmental negotiations (see also Moravcsik 1999, 273). Moravcsik underlines that governments are normally willing to reveal their real preferences in the form of bargaining demands and to compromise proposals respectively, because of their common interest and the absence of military strength. State preferences consist of a set of fundamental interests and they are by definition causally independent of the strategies of other actors and, therefore, prior to interstate political interactions (Moravcsik 1997, 7). In addition, Moravcsik notices that where transaction costs are low, negotiations among self-interest actors with clear property rights tend to generate efficient outcomes. In line with rational choice institutionalism, he predicts stable national positions in intergovernmental negotiations.

As a third point, Moravcsik argues that the negotiations focus primarily on the distribution of benefits that are shaped by the relative power of national governments and understood in terms of asymmetrical interdependence, viewing power as based upon actor dependence on the institutional set-up on the one hand, and the interests of other negotiators on the other. According to the asymmetric interdependence approach, the agreements are thus constrained by the positions of recalcitrant governments. The Member States that are most dependent on the outcome will have incentives to offer package-deals and side-payments to the actors least dependent on the agreement. (Moravcsik & Nicolaïdis 1999, 73; Sebenius 1992.)

Another factor indicating the prevalent power of domestic constraints and policy preferences in the EU negotiations can be seen in the existing traditions of referendum in particular countries. Those Member States that will later have to submit the Treaties to a national referendum are provided with a significant element of power, as they may dominate the negotiations by means of bargaining under an actual shadow of veto. That is to say that the Treaties will have to be formulated so as to win the support of national fronts and to minimize the possibilities of ratification failures. (Hug & König 2002, 447-448; Moravcsik & Nicolaïdis 1999, 70; Slapin 2006, 55-57.) The character of EU Treaty-negotiations as two-level games and the idea that domestic actors may tie the hands of the
rest of the negotiators, as suggested originally by Putnam (1988) and Schelling (1960), should be recognized here. Taking into consideration these domestic ratification constraints of referenda better explains the outcomes of intergovernmental EU negotiations, such as Treaty-revision processes.

As clearly indicated above, the LI theory relies explicitly on intergovernmentalism, which is a traditional school of thought in EU studies as contrasted with that of supranationalism. It has been pointed out that intergovernmentalism as an analytical approach for exploring and understanding the European Union remains attractive for its ‘parsimony, formal nature and predictive force’ (Eriksen 2003, 160). Liberal intergovernmentalism, in particular, is a parsimonius theory which can be summarized in a few general propositions that claim to explain the core of European integration (Schimmelfenning 2004, 75). In the EU context, it is argued that national governments are those that ultimately drive both the various negotiations and therefore the process of integration. In fact, in the EU only two types of decision-making practises are conducted through purely intergovernmental manners: those of Treaty amendments and enlargement negotiations. To a certain extent intergovernmentalism still pertains to the policy-areas of the Common Foreign and Security Policy, and cooperation in Justice and Home Affairs.

After all, Moravcsik’s argumentation proceeds from slightly weaker rationality assumptions as compared to that of rational choice institutionalism. He has pointed out that the assumption according to which the states are unitary maintains that governments act in international negotiations ‘as if’ they had a single voice and coherent national strategies. The states are thus unitary and rational vis-à-vis other states in negotiation arenas. Yet, it is to be noted that the nation states shall not be equated as individual actors, but rather as collective actors that represent a combined interest as formulated through national decision-making processes. Given the national mandates, the states do not have an authority to deliberate without restraints in the EU decision-making arenas. Moreover, even the preferences need not be completely uniform across issues, countries or long periods of time; they may change in response to exogenous changes in the economic, ideological and geopolitical environment within which European integration takes place. (Moravcsik 1998, 22-23.)

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9 On the concept of weak rationality see also Stacey & Rittberger (2003, 872).
3.2.3 Asymmetric Interdependence

Negotiation theories have generally agreed that actor power determines a great deal of negotiation outcomes. In this study, and as already indicated by Moravcsik and other intergovernmentalists, the sources of actor power are seen to derive from asymmetric interdependence, i.e. actor dependence upon the agreement on the one hand and other negotiators and their interests on the other. This approach follows ‘neoliberal institutionalism’, and is in contrast to realist theories that hold actor power deriving exclusively from static distribution of power resources – such as economic strength, size, strategic capabilities – among the negotiators. Applying the realist approach, the outcomes of IGCs would be assumed to reflect the interests of inherently most powerful actors, such as France and Germany, to mention the two classic examples possessing significant capabilities, economic power and strategic resources in the EU. (Beach 2002b; Habeeb 1998; Keohane & Nye 1977, 1989; Pfetsch & Landau 2000; Sebenius 1992.)

The paradigm of asymmetric interdependence rests on three assumptions. First, the outcomes of the negotiations reflect patterns of preferences and actor dependence upon agreement. The latter can be understood in terms of the number of alternatives to an agreement available to an actor (Habeeb 1998, 19-23; Moravcsik 1998, 62). Secondly, given the unanimity decision-making rule, the outcomes are skewed towards the interests of most reluctant governments. A direct bearing of the use of unanimity rule is that also the most skeptical governments will have to be taken into account; otherwise the Treaty will fail (Slapin 2006, 55). Third, the pattern of preference intensity dictates the relative value each state places on an agreement, which in turn determines its respective willingness to make concessions (Moravcsik 1998, 60-63). As predicted by the Nash bargaining model, the Member States which are most dependent upon agreement and who have strong interests in a certain issue-area have incentives to offer concessions and side-payments to less dependent actors. It is to say that the governments that benefit most from the issue-specific agreement are weak at the outset and tend to offer greater compromises in order to achieve it. Threats of veto and exit are used when credible to decrease the control of other actors over an outcome. (Beach 2002b, 596; Moravcsik 1998, 8.)
actors may also attempt to increase or decrease the degree of asymmetric interdependency in separate bargains in order to have a favourable impact on outcomes.

The assumptions of asymmetric interdependence approach provide an analytical backdrop to conceptual experiments. The three statements include specifications on how features of strategic setting are expected to affect national behavior given constant preferences (Frieden 1999, 68-74). The configuration of interdependent state preferences is assumed to determine state behavior in international system, and the states require a purpose to take any major foreign policy actions whether to provoke conflict or propose cooperation. Each nation state seeks to realize its preferences under varying constraints imposed by preferences of other states. And, the precise nature of these underlying stakes in the matter at hand drives policies through cooperation subject either to low or high conflict. (Moravcsik 1997, 520-521.) Frieden has emphasized the role of concentrated and diffuse interests in interstate politics by presuming that the more concentrated the domestic actor’s interests are, the more likely it is to be successful in organizing to achieve its goals.

Consequently, the asymmetrical power resources derived from existing asymmetrical interdependence are expected to play a significant role in explaining the institutional outcomes in the EU Treaty negotiation processes. Given the rationality of the decision-makers, asymmetries can function as a relevant criterion for measuring the ex ante power of individual Member States. The power of each Member State is determined by the scarcity of control over the single issues sought by other states, and it is on these resources that the actors are dependent when attempting to reach their objectives. These postulations provided by a neoliberal institutionalist reasoning allows for the setting up of a number of additional testable hypotheses, and the degree of asymmetric interdependency can satisfactorily predict the distribution of power between the actors in intergovernmental negotiations.
3.3 The Formal Decision-Making Rules

The preceding argumentation directs the study towards the second step, namely the detailed assessment of the presumed role of the decision-making rules employed in the EU Treaty negotiations. Given the two types of the decision-making processes, the IGC and Convention, a division is made between two rules applied in the Treaty-revision practices: unanimity and (restricted) consensus. This section will set out the concepts of unanimity and restricted consensus in terms of how they are applied and how they are expected to explain the actor’s influence over the given negotiation’s outcomes.

3.3.1 Unanimity – Bargaining Power Based on a Veto Right

Since the European Union is far from being as homogenous as individual nation states on average, some safeguard must be built into the founding Treaties. Although the scope of qualified majority voting has been generally extended in previous Treaties, the requirement for unanimity is maintained in the most sensitive issues in the EU. Therefore, the unanimity decision-making rule is still applied for example in the areas of Treaty amendments, international agreements, elections of the Commission President and accession of new Member States. Within the Council of Ministers, it still largely applies in the issues of taxation and social security, co-operation in Justice and Home Affairs and the Common Foreign and Security Policy (CFSP) or European Security and Defence Policy (ESDP) as it has been subsequently labelled.

Veto player – one of the most central concepts within this study – is an individual or collective decision-maker whose agreement is necessary for a change of status quo (Tsebelis 2002). As in unanimity rule, by which the EU Treaties have so far been revised, a decision is ratified only if every single voter supports it. Any disagreement, even presented by one single country, can formally block the decision. To this end, the rule gives each voter a veto over the outcome, in protecting its vested interests and eliminating the possibility of involuntary distribution even if it also makes the decision-making generally more difficult and time-consuming. (Scharpf 1998, 48; Yataganas & Tsebelis
As suggested by Moravcsik (1993, 499-500), the simple but credible threat of non-agreement provides national governments with their most fundamental form of bargaining power. Yet, a unilateral threat to veto or exit from an agreement do need to be credible, and in order to be credible, a superior unilateral alternative have to exist. It is usually this “threat of nonagreement”, however, which guarantees that the outcomes of rational bargaining fall within a set of agreements. (Moravcsik 1998, 63.) Schneider and Cederman (1994, 637) have distinguished between three different types of threats an actor may employ in the negotiations. First of all, the laggard or maverick – as they label a reluctant Member State – can either threat to leave the organization (full exit threat) or a particular area of cooperation (partial exit threat). Secondly, it may refer to the domestic difficulties followed by the subsequent ratification process, during which the national constituents can reject the Treaty (ratification threat). As a third point, a hesitant government may exploit the possibility of a takeover by a less integration-minded opposition.

In the European Union, the decision-making power of small Member States derives to a large extent from their fundamental veto-right in the Council of Ministers and European Council. It can reasonably be argued, in general terms, that the more stringent the decision rule, the more power the smaller members have (Raunio & Wiberg 1998, 1). Given the requirement for unanimity, as already postulated, the outcomes of the negotiations are directed towards the interests of reluctant actors since threats of exit shift the outcome toward the states making the threat (Moravcsik & Nicolaïdis 1999, 73; Elgström & Jönsson 2000, 7). Therefore, to reach an agreement in an eventual EU negotiation, the most recalcitrant governments also need to be engaged in a given proposal in one way or another. In these terms, there are well-established theoretical reasons for suspecting that the small states would be better off in unanimity decision-making, as it allows them to block the decisions whenever their vital interests would be seriously harmed.10 It is in here where the core of theoretical argument is ultimately based on, even if in real terms the European Community never witnessed, for example, a permanent exit

10 Yet, it has often been argued that in the Council an actual voting takes very seldom place. The Council negotiations are, however, conducted under the shadow of veto, since each Member State has a fundamental right to block the decision-making if they so wish.
of one of its members. Nevertheless, European leaders regularly use threats and other coercive bargaining tactics, although small and large Member States have different potential, opportunities and possibilities to credibly use the veto. These strategies of noncommitment have had a significant impact on the course of the EU constitutional negotiations and European integration in general. (Schneider & Cederman 1994, 633.)

As originally pointed out by Schelling (1960) and further formulated by Schneider and Cederman (1994, 637) above, strong national mandates or ratification constraints may significantly confer power. The delegations from the countries holding the traditions of referendum can make credible threats by proposing that their national fronts may eventually block the entire Treaties should their interests not be satisfactorily accommodated. This makes it easier for the actors to receive the necessary concessions and side-payments during the negotiations in order to render the agreement to meet their original preferences. To this end, the referendum factor predicts positive correlation between the actor interests and policy outcomes. (Hug & König 2002; Hug & Tsebelis 2002; Schneider 1994, 125-155; Slapin 2006.) It has been recognized by Martin (2000) and Milner (1997) that even if domestic constraints lead to tougher international bargaining, the commitments are more credible once they have been ratified.

When the unanimity rule is applied, a typical outcome of bargaining is usually a compromise. It may be a package-deal, which often means none of the parties get exactly what is wanted, but each regards the result as better than no outcome at all (Eriksen 1999, 21; 2001, 62). The losers need to be fully compensated through side-payments and concessions by the winners expected that the concessions do not exceed the winners’ benefits (Schimmelfenning 2001, 54). Generally speaking, the governments concede where they have little at stake and demand concessions where they have much at stake. Governments that gain most in the negotiations offer the most significant side payments. In this regard, explicitly different issues are often linked during the process in order to balance out the benefits. (Moravcsik 1998, 55; Moravcsik & Nicolaïdis 1999, 74.) Pollack (1994, 140-141) has noted that the veto can be seen as facilitating the redistributive bargains due to the fact that the package-deals require all actors on board, and the best incentive to get powerful actors to listen to weaker ones is their very threat of a veto. Only

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11 To the exclusion of Greenland’s change of status to the ‘European overseas territory’ of Denmark.
in this situation do the stronger actors understand that they have to come up with side-payments or other linkages.

With regard to the substantive criteria of allocative efficiency, the unanimity rule is strongly favored in public choice theory and it is in many ways considered an ideal decision-making rule (Scharpf 1998, 49). In intergovernmentalist theorization, the unanimity decision-making is usually regarded as containing low transaction costs. It is efficient since it guarantees that the results of the negotiations are Pareto-optimum and anybody adversely affected by a collective decision can veto it.\(^{12}\) Moreover, as already pointed out, binding institutional rules expand freedom by increasing predictability in decision-making situations (Kiser & Ostrom 1982, 191). According to Eriksen (1999, 19), the veto may also protect against professionals and lobbying. Besides this, it is a principal guardian of equality between the Member States.

### 3.3.2 Restricted Consensus – *Quasi Unity* Between the Negotiators

The term consensus is used in political science to describe the decision-making method that seeks to minimize objection in trying to reach a decision, which could be approved as widely as possible. It is explicitly contrasted to majority rule, since in consensus democracies no single group is usually able to form any kind of a majority on its own. The application of consensus decision-making generally entails a political system composed of several minorities, such as cultural, regional, linguistic or religious groupings.\(^{13}\) The consensus is thus an agreement or position which is accorded by the decision-makers as a whole, and it is most typically applied in multiparty systems. In consensus decision-making there are not easily identifiable winners or losers, since the outcome is all the same defined as a harmonized concord.

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\(^{12}\) As seen from another angle, the transaction costs in solving a collective action problem can also rise in an intergovernmental unanimity-based decision-making, should the negotiation context employ a number of actors equipped with evenly heterogeneous preferences. This being the case, the bargaining process might become lengthy and complicated, and with the increasing transaction costs, the overall benefit of deciding by unanimity rule decreases. (See Héritier 2007, 17.)

\(^{13}\) In Western Europe, ideal types of consensus democracies include countries such as Austria, Belgium, the Netherlands and Switzerland. Considerable groupings between ethnic, linguistic or regional minorities are to be found from each.
In particular contexts, however, consensus has misleadingly been equated with unanimity from which it distinctively diverges. Consensus – no matter whether it is considered as a decision-making rule or an outcome – is not identical to unanimity, since it may *de facto* include opposing parties who still do not veto the proposals or express their disagreement either for practical or judicial reasons. In a consensus decision-making practice, political actors may only be asked if anyone has objections against the proposal in question. To this end, the counting of votes is excluded, and the absence of explicit objections is sufficient to adopt a measure by consensus. All in all, consensus is reasonable considered as a kind of “mystery”: an ill-defined decision rule that does not indicate an exact numerical threshold for an agreement to be adopted. (Heisenberg 2005; Novak 2007.)

Decision-making studies have developed a number of major arguments dealing with the inherent disadvantages of the consensus rule as compared to that of unanimity. These arguments can be assessed with a view to the EU Treaty-revision negotiations as well. Under the condition of unanimity all positions are accepted as equal, whereas consensus and majority voting, in particular, force the actors to look out for mainstream positions and align to its argumentation. In contrast to the IGCs, the Convention involved actors that were often uncertain about the weight of their preferences and their position in relation to that of other actors. (Kleine & Risse 2004, 11.) The value of threatening a veto in order to be compensated in other areas of decision-making is not as significant under the conditions of consensus, since the recalcitrant positions cannot be used as bargaining tokens that could be saved until the end of the negotiations (Moravcsik 1993; 1998).

In the European Union, typical applications of the consensus rule can be found in the Council of Ministers and the Convention contexts. However, in the Convention on the Future of the EU the exact meaning of consensus was never defined in detail. In the Convention note on working methods it was stated that: “*The recommendations of the Convention shall be adopted by consensus, without representatives of candidate states being able to prevent it. When the deliberations of the Convention result in several different options, the support obtained by each option may be indicated.*” (CONV 9/02.) A complete, full consensus hardly occurs in empirical cases and, as becomes obvious from the previous statement, it was not expected in the Convention case either. In the
Convention the final outcome was not based on real – or normatively speaking: a positive type of – consensus among the decision-makers. Instead, it is now known that the outcome reflected deep disagreement among the representatives, and some issues could not be tackled even at the end of the day. Even at the final stage of the Convention process, the Conventioneers were once again insisted to leave aside their “initial positions influenced by their membership of one or other institution, small or large country, nationality or political group” and give priority to “common good” (CONV 748/03). To illustrate the applied decision-making rule (and the outcome) of the Convention process, an even weaker form of consensus is now introduced in this study, labelled and hereafter used as restricted consensus. The concept of restricted consensus equates with a decision-rule that rests on ‘false’ or quasi-unity in terms of its reasonable and acceptable grounds, but not in complete or genuine consensus between the decision-makers.14

In an ideal case, deliberation and argumentative practices can and will improve the conditions of consensus, and this is the core reasoning of the sociological constructivists. The consensus decision-making is most significantly backed up by the approach of sociological institutionalism, which categorically rejects the basic metatheoretical assumptions of economic and egoistic rationalism in multilevel decision-making structures such as the EU. The theoretical starting point of constructivists and sociological institutionalists is on learning processes and socialization from interaction.15 According to this paradigm, social phenomena cannot be reduced to aggregations or consequences of individual motives (DiMaggio & Powell 1991, 8). Instead, the actor’s interests and preferences are explained as socially constructed intersubjective norms, cognitions and structures, which develop from and in social interaction, by definition. Social learning involves a process of arguing and deliberation through which the actors can and will

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14 Seen from another angle, the consensus decision-making rule can also be introduced slightly more positively, as demonstrated by König and Slapin (2006, 414). According to them, the Convention method provided an example of a ‘qualified consensus’: something less than unanimity but more than a simple majority.

acquire new interests and preferences. (Christiansen et al. 2001; Eriksen & Fossum 2000; Fischer & Forester 1993; Kleine & Risse 2004; Neyer 2006; Risse 2000.) On the basis of these assumptions, it is claimed that especially when the actors are uncertain about their preferences or when there is the possibility for imperfect information about the empirical facts of the issue at stake, strategic action might change the original opinions of negotiators and influence the course of negotiation.

A sociologically defined rule-guided behavior also differs from instrumentally rational behavior with regard to another dimension: the actors are usually expected to try to do the “right thing” rather than maximizing or optimizing their given preferences. To this end, actors engage in truth-seeking by following the ‘logic of appropriateness’ rather than concentrate explicitly on individual interests by following the ‘logic of consequentiality’. (Fearon 1998b, 60-62; March & Olsen 1989, 160-162; Risse 2000, 1-4.)

Rationality in politics is considered as sociologically constructed and context-bound. The consensus-based decision-making will always avoid the political extremes and put a notable emphasis on balancing the diverging preferences in a way or another. More often than not, according to constructivists, this is to happen through a process of social learning and joint problem-solving.

What, then, are the potential implications of the consensus rule on the decision-making or the actors involved as evaluated from the perspective of rational choice institutionalism? Frankly, the RCI reasoning on these implications is the exact opposite to those hypothetized by constructivists. From the RCI point of view, the actors do not unavoidably become aware of the values at stake or socialize to common norms in any negotiations. Given that the actors are utility-maximizing political players, there is hardly room or even opportunities for a development of genuine consensus in any decision-making contexts in the EU. Harmonized agreements and mutually accepted solutions as expected by constructivists do not, from a RCI point of view, necessarily stem from de facto “consensus” between the decision-makers. Instead of that, the decision-makers are likely to hang on their initial preferences in spite of the apparent unity. To this end, the consensus democracy also contains an element of exclusion of those not agreeing. Given

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16 See also the concepts of ‘usable knowledge’ and ‘truth-speaking’ as developed by Haas (2004).
the stable national preferences, reaching consensus inevitably precedes the acts of political surrendering contrary to what *garbage can* models present.
4 TWO TYPES OF DECISION-MAKING PROCESSES

In the following section, a detailed explanation of the two Treaty-making processes in the EU is presented. The main principles of the IGC system, which is the traditional way to revise Treaties in the EU, will be introduced first. The bargaining character of the IGC negotiations is then outlined. Second, the chapter looks at the novel method of Convention by evaluating its composition, process and adopted working rules. The normative perspectives of the decision-making methods are subsequently discussed, and an analytical distinction made between bargaining and deliberation modes of conflict-resolution.

During the last ten years, negotiation theorists have been exceptionally eager to make a division between two types of negotiating: those resembling the perspectives taken by rational choice and sociological institutionalists respectively. As already became evident in the previous chapter, the negotiations can proceed either by means of “value-claiming” or “value-creating” (Lax & Sebenius 1986, 30-33), or “bargaining” and “problem-solving” types of decision-making (Elgström & Jönsson 2000, 685) and they can be explained by intergovernmental bargaining theory or supranational bargaining theory, respectively (Moravcsik 1998, 52). The main difference between the two lies in their respective focus on self-interest versus common interest. Problem-solving negotiations imply cooperative attitudes, value-sharing, fairness and the expectation that the parties will have mainly good intentions, while bargaining means highlighting utility-maximization and self-interests to the disadvantage of parties’ opinions and stances. These process-related variables are here taken into account in a bargaining model that is developed to explain how the conduct of the negotiation process matters in small states’ chances of influencing outcomes.

4.1 The IGC Method

The Intergovernmental Conference has been the traditional way of negotiating Treaty reforms in the European Union, and IGCs have been employed in the EU since its foundation. However, only minor IGCs were convened until 1985, and these small
gatherings were conducted primarily within the Council. Since the early 1990’s, however, the EU has gone through a period of continuous IGCs, which by themselves have been the major arenas for decision-making. Three types of IGCs have been distinguished: legal, specific and constitutional (see Smith 2002, 6).

The threshold for initiating an IGC is relatively low since it can be convened if a simple majority of the European Council votes for it. According to the Article 48 of the TEU, the government of any Member State or the Commission may submit to the Council proposals for the amendments of the Treaties on which the Union is founded. In addition, the Article designates the procedure to be followed: after consulting the European Parliament, the Commission and, where appropriate, the European Central Bank, the Council must deliver an opinion in favour of initiating an IGC. The Conference is then formally convened by the President of the Council. The outcome of an IGC is converted into a Treaty and it must be agreed upon unanimously and ratified by each Member State in accordance with the requirements of their national constitutions before being able to enter into force.

4.1.1 The Negotiation Process and Levels of Meetings

The IGCs consist of various preparatory group meetings and a set of European Council summits. The negotiations might last from one to two years involving six meetings maximum. These meetings are chaired by a Member State that is in charge of the rotating six-months Presidency. In fact, there are no formal, official or stringent specifications on how the IGC agendas should be prepared, but normally they are formulated in the discussions of COREPER, particular reflection groups and committees. The Council Secretariat also has a key role in setting the agenda by drawing up a list of the issues that need to be negotiated. The institutional vertical and horizontal distinction is generally high, since the practice incorporates several bureaucratic and political levels.

The IGCs are largely unregulated and the system lacks detailed sets of rules and procedures on how the negotiations should proceed (Smith 2002, 23). Practically, four separate levels are regularly involved in an actual decision-making process of an IGC
(McDonagh 1998, 17-23). The supreme negotiating body is the European Council, consisting of the Heads of States or Government from all Member States. The European Council bargains behind closed doors together with the Commission President in the meetings often referred to as ‘Summits’ and is assisted by the Council Secretariat and sometimes even the Commission. A meeting is convened twice a year, basically at the end of each six-month Presidency. In these forums the Prime Ministers or Heads of States are accompanied only by their Foreign Ministers, whereas the national officials are not present. Second, the negotiations proceed at the Ministerial level approximately once a month on the occasion of varying Council formations. The Foreign Ministers meet within the General Affairs Council (GAC), since they have a general coordinating function and a responsibility for all the proceedings of an IGC. The personal representatives of the Foreign Ministers are also counted as key players in the process. These personal representatives also have their own advisors, usually located in ministries dealing with internal and external matters (Foreign Ministries) or in Permanent Representations in Brussels. (Smith 2002, 13-16.)

Third, negotiations also take place at a lower level within the IGC Representatives, who are nominated by each delegation and consist usually of a mixture of national officials, such as the Ministers of State, Ambassadors and Permanent Representatives of the EU. From the varying configurations, this body meets most often, nearly for two days every week over the entire IGC-period. Fourth, there is a working group level that solves a number of technical issues and assists the IGC Representatives in their work. An example of such a forum is the ‘Friends of the Presidency’ as created during the Amsterdam IGC. As can be seen, the IGCs are composed of various preparatory groups, and the negotiations take place in a number of political and bureaucratic levels. The institutional vertical and horizontal differentiation is thus high (Panke 2006, 365).

Today the IGCs are elaborate processes and they deal with a range of issues from economic to social, political and institutional matters. The negotiations take place within a system of unanimous voting in which each government can support an agreement, veto on

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17 Looking at specific IGCs, the Commission played an important role in 1985 negotiations on Single European Act and in 1990-91 IGC. In 1985 IGC, the Commission was allowed to control the agenda under Luxembourg Presidency, during which it was given an opportunity to table various proposals and substantive issues according to its own preferences.
it or agree to opt out. The representatives have binding mandates from their national governments, and a right to veto is their most fundamental source of bargaining power. The dynamics of the actual negotiation process play a crucial role in developing the final Treaty. The process usually involves hard bargaining and extensive negotiations, reflecting mostly strict governmental positions and leaving hardly room for any real deliberations. Just as intergovernmentalist literature suggests, the IGCs and meetings of the Council of Ministers are defined by tough, interest-driven negotiations (Stone Sweet & Sandholtz 1997, 306). In contrast to the problem-solving types of negotiations aiming at “expanding the pie,” the purpose of an IGC is rather to divide it. In this type of a distributive process, as Scharpf (2000, 221-225) has suggested, the deliberation mode of conflict resolution is not hypothesized to play a dominant role.

The actual contents of the IGC negotiations are typically not reported in public. As Westlake (1995) has formulated, the lack of an official record is at times an irritation and a frustration, and it can give rise to ambiguity about what has been decided, but it is also an important guarantee for frank discussions. Moreover, in-between the meetings, there is always some scope for national public sphere interaction and discussion. During the Amsterdam and Nice IGCs, for instance, public information campaigns were officially launched and a large amount of IGC documents were even put onto the internet.

4.1.2 Bargaining through Concessions and Side-Payments

The concept of bargaining is often referred to in the analysis of rational choice negotiation processes and it has a well-established position in the rational choice literature.18 According to Elster (1998, 6), bargaining can be illustrated by sequential “divide-a-dollar” games in which the parties make successive offers and counteroffers. He points out that: “[--] to bargain is to engage in communication for the purpose of forcing or inducing the opponent to accept one’s claim. To achieve this end, bargainers rely on threats and

18 Further, it is to be noted that bargaining and negotiation are classified as two different modes of interaction. Rubin and Brown (1975, 1-2) argue that the categorization of these two episodes appears, however, extraordinarily difficult. They point out that in general usage the term bargaining often seems to refer to the interaction between individuals over some sale or purchase, while negotiation seems to be used primarily in connection with interaction involving complex social units and multiple issues.
promises that will have to be executed outside the assembly itself” (Elster 1992, 15). In its most traditional sense, as McDonagh (1998, 27) describes, the syntax of bargaining follows the logic of ‘you give me this – I’ll give you that’. Besides offers and counter-offers, bargaining can be understood as the exchange of concessions and retractions (Jönsson 2001, 218). The presence of coercion and the use of hidden or open threats and warnings are central elements of most typical bargaining situations (Eriksen 1999, 21).

Bargaining allows actors to draw on power resources which are external to the negotiation process. Gehring (2003, 70-71) has contended that in pure bargaining, power is the only asset that matters.

All in all, bargaining is defined as a mode of decision-making in which bilateral discussions are employed only in order to achieve effective results. On this view, bargaining is often regarded as a form of non-communicative interaction and it can appropriately be identified with intergovernmental Treaty negotiations in the EU, where the decision-making distinctively proceeds through value-claiming practices. For intergovernmental bargaining, the underlying demand for cooperation imposes a binding constraint on negotiations. The decisions are determined by bargaining actors equipped with domestic mandates and no one will accept policies that may harm the national interests solely ‘in the name of the common good’. In sum, acts such as deliberation and argumentation are not considered crucial factors or as empirically significant in intergovernmental political arenas or decision-making processes from the RCI and LI points of views. Rational actors do not change their views due to the force of a better argument; they do it in order to strike a better bargain and, subsequently, to achieve a more satisfactorily result (Eriksen 1999, 24).

According to Scharpf (1988; 1997), bargaining is based on the assumption that all participants pursue their individual self-interest, and that the agreement will only be reached if each party expects an outcome which is at least no worse than the status quo. Therefore, as Scharpf points out, it is extremely difficult to move away from status quo when unanimity rule is employed, and if some actors prefer it to change. For each party, a necessary condition for agreement is the prospect of higher subjective worth than its best course of action without agreement (Sebenius 1992, 333). Moreover, it has been argued by Tsebelis (2002) that the further the ideological distance among veto players, the higher the
policy stability is, i.e. the likelihood of maintaining the status quo. As the required majority for a decision increases, policy stability increases, and this leads us to expect that under unanimity rule the stability is as firm as it can get. Due to the facts mentioned above, bargaining theories consider the negotiation failures, deadlocks and breakdowns as standard problems in collective decision-making. Particularly the intensive and complex intergovernmental negotiations are fairly often subject to failure since the parties cannot always identify the underlying zones of agreement. The gains are left on the table and the agreement postponed as soon as it becomes evident that satisfactory and mutually acceptable solutions cannot be found. (Héritier 1999; Hoffmann 1996; Lax & Sebenius 1986; Luce & Raiffa 1957; Walton & McKersie 1965.) The deadlocks are also to give national governments an impression that they hold the necessary power and influence over the decision-making processes.

From this it follows that the intergovernmental negotiations often end up in a compromise, and take the form of a package-deal. In the course of the process, there are practically two manners in which the political decision-maker can be compelled to agree with the proposal that it does not originally support. On the one hand, the agreement will be possible if the potential losers are fully compensated through relevant side-payments, and if these concessions do not exceed the winners benefits from the outcome. On the other hand, an element of credible threat of exclusion or non-agreement must exist, and the losses of exclusion should exceed the losses of respective agreement. (Schimmelfenning 2001, 54; Slapin 2008, 132.) This type of agreement is usually achieved through integrative bargaining, meaning that compromises are made possible by trading support on different issues, the bargaining currency then being saliency. Linking the issues and formulating the package-deals work out only if the actors rank the issues differently. (Naurin 2007, 16.) Interdependence between the negotiating parties is thus expected to be highly asymmetrical.

Last but not least, it has also been argued that the larger the shadow of future, the more likely the use of tough bargaining. Put differently, if actors expect to be tightly bound for a long time by a joint agreement, they are more prone to confirm that it is not in conflict with their important interests. This logic should apply particularly well to the EU context, since the EU decisions are often binding and likely to be implemented. (Fearon
4.2 The Convention Method

In December 2001, the European Council launched a process of grand bargaining in the form of the Declaration of Laeken. The Council announced that the major stages in the development of the EU would no longer be decided solely within the Member State governments at Intergovernmental Conferences behind closed doors. Instead, it was maintained that the next IGC (2003-04) was to be prepared as transparently as possible, employing more democratic practices and engaging as many decision-makers as possible at an early stage of the decision-making process. The Laeken Declaration gave birth to an alternative way for steering a Treaty-reform in Europe: the Convention on the Future of the European Union, which started its work on 28 February 2002. At the time of its launching, it was widely speculated that the institutional set-up of the Convention could also serve as a template for future Treaty-negotiations. The distinctive nature of the Convention as a novel and innovative decision-making method and the role in EU constitutional politics will now be addressed in greater detail.

4.2.1 The Composition, Stages and Working Rules

“Mr. President, as a student of public administration and public policy for many years, when the Convention was formed and 105 politicians and political egos from all over Europe were selected to come here along with 105 alternates, I threw my hands in the air of despair and said, who would possibly bring this together?”

Dick Roche, Irish Member of the Convention in PE Plenary Session, July 2003.19

The composition of the Convention was broader than that of any of the regular decision-making bodies in the EU and, for the first time, euro-sceptical views were also widely

19 European Commission (2003g).
represented in the negotiations. The Convention consisted of 105 members, including one
government and two national parliament representatives from each of the 15 member
states and 13 candidate countries (including Bulgaria, Romania and Turkey), 16 Members
of the European Parliament and two representatives from the European Commission. The
nomination of the government and parliament representatives was organized nationally. In
addition, observer status was given to the Economic and Social Committee (three
members), the Committee of the Regions (six members), Social partners (three members)
and the European Ombudsman (one member). The Convention was chaired by former
French President Valéry Giscard d’Estaing and assisted by Giuliano Amato and Jean-Luc
Dehaene. The Praesidium consisted of representatives of each grouping together with the
chairman and vice-chairmen, and it was envisioned to play a similar role to that of the EU
Presidencies in the IGCs.

In the Convention, the participants did not exclusively represent the governmental
bodies of their respect Member States and were thus not fully eligible to decide in the
process. In addition, the overall exchange rate among the delegations was relatively high,
and almost a quarter of all members were switched or substituted at one point during the
process. The status of the Conventioners *vis-à-vis* their nominating institution was not
defined by any official document, which allowed a notable divergence on participants’
autonomy (Closa 2003b, 10).

The Convention provided different negotiation arenas for each issue-areas. Its
work was structured in three separate stages, those of the listening stage (February-July
2002), the study stage (September-December 2002), and the proposals stage (January-July
2003). The institutional issues were considered rather briefly within the plenary session
during the listening stage in the Convention. Eleven working groups were established, yet
no working group was dedicated to the institutional issues, even though the groups
generally dealt with a wide range of topics, most obviously less important than the
institutional ones. Each working group had hence a jurisdiction over particular policy
areas and a commitment to submit a written report to the Praesidium for preparation of a

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20 The Convention working groups in chronological order: Subsidiarity (I), Charter/ECHR (II), Legal
Personality (III), National Parliaments (IV), Complementary Competencies (V), Economic Governance (VI),
External Action (VII), Defence (VIII), Simplification (IX), Freedom, Security and Justice (X) and Social
Europe (XI).
draft text. The institutional issues did not emerge at any stages in the Convention discussions until the very end of the negotiations when the Praesidium introduced the first set of draft articles in April 2003. This draft presented far-reaching proposals for the institutional reform despite the fact that there were significant disagreements between small and large Member States, opposition of both small and large countries and the central questions were still up in the air. 21

In the Convention, the decision-making rules were not as clear as in traditional IGCs. The procedure stated that the final product of the Convention was to be adopted using consensus (CONV 09/02). In the Convention the exact meaning of consensus – the number or type of consenting actors – was, however, never defined in detail, although it was implicitly equated to the absence of formal voting and to the requirement of ‘more than a majority’ of decision-makers. Until the end of the negotiations it was uncertain as to how many Conventioners would be needed to support the decisions for the outcome to be termed as adopted by “consensus”. As a consequence, the participants could never be aware of the real weight of their preferences as compared to those of the others. No votes were taken in the Convention, except in the institutional issues on proposal packages, and there were serious disagreements regarding the final outcome within the plenary. During the last days of the plenary session, the consensus seemed to be formally reached, although significant disagreements still remained especially in those very important institutional issues. Formal votes were also taken during the last phase, but only 66 members out of 207 in total were allowed to vote on the final document. 22 In conclusion, the remaining 154 participants were never able to direct or block the decisions even had they so desired. (König & Slapin 2006, 428.) It was also stated in the rules that everyone was guaranteed permission to suggest any amendments or modifications to any proposals. As a result, several thousands of amendments were eventually submitted during the process, yet the rules did not specify as to how these amendments should be considered. (Tsebelis & Proksch 2007, 161.)

21 See the contribution of small Member States: CONV (646/03).
22 The voting members included the Convention President, the two Vice Presidents, fifteen governmental and thirty parliamentary representatives from the Member States, sixteen Members of the European Parliament and two Members of the European Commission.
One of the advantages of the Convention was to strengthen the role of non-governmental actors and the EU institutions in allowing them more possibilities to gain influence. The most significant differences between the IGC and Convention refer hence to Convention’s broader composition of participants, its more transparent process, more flexible decision-making rules and widely presumed elements of deliberation, persuasion and arguing. These elements were also believed to support the dynamics of deliberation, as well as the particular outcome of the negotiation itself. It was expected that the composition of the Convention would lead at least to a broader spectrum of opinions and preferences than was the case at regular IGCs. (Maurer 2003, 2004; Pollack & Slominski 2004.)

The main task of the Convention was to prepare the agenda for the IGC 2003-04. The substantial decisions and deals thus awaited the approval – and finally the ratification – of the intergovernmental actors. It has been strongly argued by some scholars that the Convention was unable to demonstrate its full potential due to the fact that it was held in the shadow of an IGC. In a similar vein, the subsequent IGC was also strongly affected by the preceding Convention and it was claimed to have a role of a rubber-stamper. The Convention’s draft Constitutional Treaty represented a status quo from which the governments started to deliberate in the IGC. It has been posited that if future rounds of Treaty reforms were prepared using the Convention-method, and if future Conventions succeeded in forging broad consensus, future IGCs would also be relegated to rubber-stamping exercises in most issues (Beach 2004, 3-6).

4.2.2 Dynamics through Deliberation and Arguing

The fact that a recent ‘linguistic turn’ has been taken in social scientific inquiry is made manifest through the increased prominence of constructivist, postmodernist, poststructuralist and ethnomethodological approaches. Apart from stressing the

23 With respect to transparency, it needs to be noted that the Convention was, however, at best on a medium level, e.g. heads of the working groups could themselves decide about the publicity of the documents, and the debates on the steering committee were not public. (Closa 2003b, 15.)
significance of language itself, their core idea lies in pointing out that all meaning and knowledge is socially constructed. The importance of political language, and in particular on the communicative and argumentative elements of decision-making contexts, is also one of the major notions in the work of Habermas (1987; 1996; 2001), a critical social theorist and central scholar in the Frankfurt school. This overall orientation has also been labelled as the argumentative turn (Fischer 1998) and the deliberative turn (Dryzek 2000).

Since early 21st century, Habermasian deliberative political thinking has been distinctively advocated by a group of scholars based at ARENA in Norway. The leading scholars that have followed Habermas’s lead – particularly Eriksen, Fossum and Sjursen, to mention only the core figures – have examined deliberative practices in the context of the EU, including also the questions of public spheres, citizenships, democratic deficit and legitimacy (see Eriksen 1999, 2001, 2003, 2005; Eriksen & Fossum 2000, 2002; Sjursen 2006).

In the constructivist literature, deliberation is often equated with argumentation (Eriksen & Fossum 2000), and it is also a conceptual starting point also of this study. The terms argumentation and deliberation are classified as modes of communication which are used in order to convince other – usually opposing – actors of the issues at stake.  

The use of argumentative practices is completely severed from the concept of power. In an argumentative process, every actor is expected to be free and willing to hear other actors’ reasoning. As described by Kleine and Risse (2004, 8), argumentation is characterized by the use of empirical and normative validity claims in contrast to pragmatic demands and threats. These validity claims are put forward so as to expose them to collective challenging and contest. In general terms, language constitutes the identities and interests of actors rather than merely constraining them (Checkel 2006, 8).

The concept of deliberative democracy or the idea of decision-making by deliberative practices, is also having a revival in political theory and public policy, and it stems primarily from the ideas of sociological institutionalism and constructivism. In the deliberative process, arguing is the dominating modus operandi and the actors attempt to

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25 Yet, it is to be noted that varying forms of argumentation exist, e.g. those of far less persuasive or even rationalist argumentation. This variation will be tackled and the concepts introduced more in-detail in the methodology section.

26 According to Checkel (2006, 17), ‘power’ and ‘domestic politics’ are such real-world dynamics that the linguistically oriented scholarship has missed.
present ‘good arguments’, whose force would be generally recognized. Community actors cannot just bargain, that is, exchange threats and promises, but they need to argue, that is, legitimize their preferences on the basis of the community ethos (Schimmelfenning 2004, 91). This activity is supposed to add legitimacy to their goals and so strengthen their bargaining power. From the perspective of constructivism, such a deliberative discussion is believed to make the parties aware of the values at stake, to mould their preferences, to change their views and to move standpoints. To this end, deliberation is a setting where the preferences or interest of actors may come to be reshaped, and in which persuasion as a negotiation strategy is presumed to have causal force and work out most effectively. (Checkel 2001, 2; Eriksen 1999, 24; 2001, 62-63; Magnette 2003, 7.)

Another tradition in the empirical research has been to investigate the conditions under which deliberation and consensus outcomes above lowest common denominator would be more likely to occur. With respect to the European Union, it is a widely shared belief that the institutional set-up of the Convention on the Future of the EU was conducive to deliberative practices.27 A number of scholars have suggested that arguing and deliberation can be expected in the scope conditions typical to Convention, i.e. in arenas with wide access and flexible decision-making rules that consist of public and network-like settings with high transparency (Checkel 2001, 5; Closa 2003a, 18; Elster 1989; Maurer 2003; Risse 1999 and Risse & Kleine 2007).

There are hence reasons to assume that particular settings in the Convention process were deliberative or discursive in structure. The Convention represents a case in point of a decision-making process in which argumentation was at least meant to play an important role. To give an example, the Convention members were asked not to primarily present governmental opinions but to deliberate freely in order to seek common positions. The Habermasian notion of a ‘common lifeworld’ was regularly acclaimed during the negotiations with references to the shared culture, social identities and common history of participants. This common lifeworld is claimed to consist of embedded norms and ideas perceived as legitimate. It presupposes successful communicative action, and is one of the necessary preconditions for a deliberation to occur. In addition, the publicity of the

negotiation is presumed to affect its dynamics. In public settings, the decision-makers must provide reasons and give justifications on their priorities and opinions (Checkel 2006, 9).

Furthermore, Checkel (2005a, 812-813) has developed scope conditions that are particularly conducive to change the actors’ interests as a result of argumentation or persuasion (see also Checkel & Moravcsik 2001, 222). He distinguishes between five propositions regarding the optimal conditions. First, the target of the persuasion attempt is in a novel and uncertain environment and the actors are thus cognitively motivated to analyze new information. Second, the target has few prior beliefs that are inconsistent with the persuader’s message. In general, the argumentation has to resonate with existing knowledge and commonly held worldviews, as well as to be framed according to already agreed principles, norms and beliefs (Ulbert & Risse 2005, 361). Third, the persuader is an authoritative member of such a group to which the target belongs or wants to belong. Fourth, the persuader does not lecture or demand but acts out principles of serious deliberative argument. Fifth, the interaction between persuader and persuadee occurs in less politicized in-camera settings.

Yet, regarding the fifth point, the propositions of whether arguing in-camera or in public settings is more effective varies, and their validity depends on further scope conditions such as assumed logic of action, the intensity of underlying preferences and the supposed audience (Kleine & Risse 2004, 11; Ulbert & Risse 2005, 363). In contrast to the ideas of deliberative approaches, it has been argued that publicity sometimes has a rather negative effect on the quality of discourse (Elster 1995, 251). According to Checkel (1999), negotiations in front of public audience lead to ritualistic rhetoric. The effectiveness of arguing is thus more likely behind closed doors where actors expose their preferences and even identities.

In opposition to the mainstream intergovernmentalist hypothesizing, a couple of central scholars have assumed the unanimity decision-making rule to be more conducive to deliberation and argumentation (see Dryzek 1990; Naurin 2006 & 2007; Panke 2006; Steiner et al. 2004). This reasoning is based on the rationale that when a decision-maker has veto power, other actors are simply forced to listen and deliberate in order to reach an agreement and mutually accepted outcome. Therefore, the veto-right gives every single
actor the security it needs in order to engage in arguing rather than bargaining. (Naurin 2007, 5.) Panke (2006, 366) points out that the more specialized participants of interactions, the higher the likelihood that they share expertise and a standard for what constitutes truth. Homogeneity is conducive to argumentation, while heterogeneity decreases the likelihood that common standards for the evaluation of truth and rightfulness are present. To this end, high institutional vertical differentiation in IGCs indicates greater potential for argumentation to develop as the dominant structure of interaction.

4.3 Bargaining and Deliberation Modes of Conflict-Resolution

Table two illustrates the differences between bargaining and deliberation types of decision-making as established in the political science literature. The concepts are ideal types but here related to a broad range of issues from decision-making principles and most typical scope conditions to the means of reasoning and characteristic patterns of speech acts. Negotiation, in turn, will be here treated as a generic concept signifying a vast array of collective action and joint decision-making aiming at reaching a political agreement. Bargaining and deliberation as two different sub-modes of negotiation can be equally represented in the decision-making processes.

Table 2: Bargaining and Deliberation as Analytical Concepts

<table>
<thead>
<tr>
<th>Scope conditions under which a theory holds explanatory power for outcomes</th>
<th>Bargaining</th>
<th>Deliberation</th>
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<tbody>
<tr>
<td>Few decision-makers</td>
<td>Plurality of actors</td>
<td></td>
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<tr>
<td>Intergovernmental arenas</td>
<td>Public and network-like settings</td>
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<tr>
<td>Strict, approved and well-identified decision-making rules</td>
<td>High transparency</td>
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<tr>
<td>(Moravcsik 1998)</td>
<td>Flexible decision-making rules</td>
<td></td>
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<tr>
<td>Utility-maximizing actors</td>
<td>(Checkel 2001; Elster 1989; Eriksen &amp; Fossum 2002; Kleine &amp; Risse 2004; Risse 1999; Risse &amp; Kleine 2007)</td>
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<tr>
<td>Predetermined and stable domestic mandates</td>
<td>Novel and uncertain environment</td>
<td></td>
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<tr>
<td>(Moravcsik 1998)</td>
<td>Few prior beliefs</td>
<td></td>
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<td></td>
<td>(Checkel 2005)</td>
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<tr>
<td></td>
<td>Epistemic communities</td>
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<td></td>
<td>Common lifeworld, Community ethos</td>
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<tr>
<td></td>
<td>(Habermas 1987, 1996; Schimmelfennig 2004)</td>
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<tr>
<td>Decision-making rules</td>
<td>National interests and preferences</td>
<td>Decision-making process and principles</td>
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<tr>
<td><strong>Unanimity</strong></td>
<td>Stable, known and intensive</td>
<td>‘Logic of consequentiality’ (Fearon 1998b; March &amp; Olsen 1989; Risse 2000)</td>
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<tr>
<td></td>
<td>Constraining</td>
<td>‘If you give us X, we’ll give you Y.’ (McDonagh 1998; Naurin 2006)</td>
</tr>
<tr>
<td><strong>Consensus</strong></td>
<td>Unstable, situational and ad hoc preferences, depending often on exogenous factors, e.g. changes in governments</td>
<td>‘Logic of appropriateness’ (Fearon 1998b; March &amp; Olsen 1989; Risse 2000)</td>
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4.3.1 Normative Insight on Decision-Making Rules and Processes

As clearly postulated in the previous sections, a number of scholars place a point of departure in the idea that deliberation and argumentative types of interaction are normatively superior to bargaining within the EU decision-making structures, whether examined with a view to equality between the Member States or to aspects of democracy.\textsuperscript{28} The advocates of deliberation consider it to be superior to other modes of political decision-making, because it mainly involves reasoned discussion and a pluralism of opinions (Johnson 1998, 161-168). It is argued that political proposals require verbalization, communication and justification, which, in turn, foster the decision-making and legitimize the outcomes (Eriksen 1999, 18; 2001, 54-55). A functional approach maintains that any non-coercive political order must build on communicative interaction and collective efforts at problem-solving. Deliberation is explained as causing positive effects on making the European governance more effective, efficient and legitimate by expanding the Pareto frontier towards ‘collective optimality’ (Neyer 2004; 2006, 786-788). In sum, deliberative democracy is seen so as to contributing to ‘better decisions’ in general (Elster 1998), and the superiority of deliberation has even been justified by moral and ethical considerations (Offe & Preuss 1991). As Eriksen (2001, 55) puts it: “Arguing, then, not voting or bargaining, is the currency of democracy”. This conventional constructivist wisdom will be here tested against the empirical evidence.

Regarding the previous conceptualization of the EU Treaty-making processes, and given that the Convention method was by a number of scholars expected to be more conducive to deliberative practices, it logically leads us to expect that the Convention method is generally more legitimate than the traditional IGC method and, as a consequence, conducive to generate more legitimate outcomes (Fossum & Menéndez 2005; Pollack & Slominski 2004; Risse & Kleine 2007). The advocates of the Convention method have used a variety of arguments when propounding it as a decision-making procedure. Most of the arguments can be identified to derive from the accounts of sociological institutionalist, functionalist and constructivist angles of theoretical thinking.

According to Closa (2003a, 8), the working method of the Convention injects a deliberative type of the procedure that apparently serves to circumvent the deadlock induced by aggregative negotiations of utility-maximizing actors.

The previous inferences are both attractive and convincing. Nevertheless, in addition to theoretical terms, the deliberative decision-making involves a number of problems and loose ends when examined empirically (Johnson 1998). Guaranteeing genuine pluralism of the opinions in an outcome is exceedingly demanding and does not automatically follow from argumentation. Once the number of actors increases, the information is generally more costly to coordinate and exchange (Moravcsik 1998, 59). Given the complexity of views and ‘reasoned discussion’ as presented in political arenas, there should be no guarantees of coherent results or agreements. Furthermore, softening and loosening of decision-making processes and their procedural and regulatory openness often means occupying powerful private actors whose interests are moving more easily into the negotiation processes to the detriment of less powerful societal groups (Héritier 1998, 41). In a similar vein, more flexible rules in the EU Treaty-making processes could be expected to lead to the jeopardizing of the equal performing of the Member States.

All the same, within this topic the state of research remains incomplete and there are a number of unanswered questions in the discipline. To begin with, the concept of learning is ill-defined in the European governance literature. Within the EU context, learning connotes to a number of meanings and mechanisms, such as experience comparison, knowledge diffusion and its strategic use, peer review and pressure, common policy discourses and cognitive convergences across the issues. Besides, convergence in talk hardly ever means convergence in decisions. (Citi & Rhodes 2007, 15.) The learning approach has received a number of critical evaluations even from the post-positivist end of the spectrum.

According to Johnson (1998, 175), no social or political theorists have yet been able to provide an account of the ‘force of language’ in social and political interaction. Fischer (2003, 111) points out that introducing scientific findings, for instance, which are normally conceived as triggering the learning process among the policy-makers, can equally as well have counter-effects in terms of learning. That is, instead of leading unidirectionally to preference-change, the new information is just as likely to harden
existing beliefs and positions. This touches on the reasoning by Sabatier and Jenkins-Smith (1993), who also presume that resistant core beliefs exist, which do not change as a result of minor shocks or crises. In their view, policymakers always seek to interpret new events in ways that do not disturb their basic axioms of knowledge.

It has now become evident that the arguments set forth in defense of RCI or LI views emphasize the role of calculative, utility-maximizing actors attempting to reach their most preferred outcome exclusively through bargaining types of practices. Moving slightly away from traditional RCI line of reasoning, Schimmelfenning (2001; 2004) notes that bargaining can also be communicative in mode, as it is composed of particular speech acts and their exchange. According to him, deliberation can equally occur when an actor believes that he or she can advance his or her interests sufficiently by justifying, explaining or persuading. In this sense, he argues, deliberation can be viewed as strategic intention as long as it is used to achieve better results in the negotiations. Like in the parliamentary arenas, as suggested by Goodin (2004, 20), each party sets regularly out as coherent and persuasive justifications as possible for its preference. These arguments are counted and responded to, but not expected to change anyone’s preferences. Elster (1998, 100-105), in a similar vein, points out that argumentation in the EU needs to be conceptualized as the rational reaction of an actor to a given opportunity structure in order to be understood. To this end, deliberation in general and argumentation in particular could also be explained as rational reactions to specific issues in specific negotiation circumstances. With regard to the former notion, this type of negotiating is labelled as “integrative bargaining” by Walton and McKersie (1965).

To sum up, in order to account for a theoretical examinations on Member State behavior within the EU decision-making bodies, one needs to assess the conditions under which it is or is not rational for a Member State to adjust its position within a given negotiation round. The challenge of operationalizing the concept of negotiation in general, and deliberation and bargaining modes of interaction in particular, will be considered in-depth in chapter six.
4.3.2 The EU Context – *Common Lifeworld* or Competing Goals?

In the context of the European Union, the normative superiority of deliberation-based decision-making is in many respects not as obvious as it seems, and it is not empirically easy even to indicate a pure form of such a concept. In the EU, there is a distinctive lack of a true collective identity, due to the fact that the Union is composed of a plurality of actors – not to mention the number of distinct nationalities involved – each occupied with varying perceptions of what is appropriate or relevant in order to reach common good (Lord 2004, 171; Risse 2000, 10; Scharpf 1998, 43). In this sense, the precondition of a ‘common lifeworld’ as identified by Habermas (1987; 1996), is generally rather weak, if not absent, in the EU and its decision-making structures.

European policy-making is heavily conditioned by the fundamental variance of political, geographical, cultural, institutional and economic features (Héritier 1999, 2). Therefore, it is obvious that EU negotiations consist to a great extent of mutual disagreements, and competing values, opinions, preferences and normative goals, which all emerge in the arena as presented by different nationalities even in various languages. As Fossum and Trenz (2006) have pointed out, linguistically the EU is probably the most diverse polity in the world and it does not even have a common working language, although English is widely used especially in decision-making and bargaining arenas. According to Neyer (2006, 784-785), one could even argue that deliberation among representatives is a contradiction in terms, i.e. it is rather difficult to imagine a representative with a mandate to state to be open to the arguments of others and to engage honestly in a reflexive process of truth-seeking. Instead of that, the representatives of collective actors hardly ever have the authority to deliberate whether their own constituencies represent legitimate or appropriate interests, yet, they are expected to question the legitimacy of the interests and concerns of others.

By the same token, an enlarged Union is even less homogenous than its predecessor, and the substantial interests of the Member States diverge to a larger extent. Given that at the present Union there are a number of Member States that have recently regained their independence, it is even more unlikely that they would in the near future make any more sacrifices “to the well-being of the Union as a whole” than necessary. In
fact, these points have recently also been acknowledged by many constructivists and even by Habermas himself. During the ratification process of the draft Constitutional Treaty he noted that there still do not seem to be a European public space or common discussion. Instead of that, he admitted, the discussion and votes take place within the national public spheres.29

To the extent that classical doctrines of democracy or public choice are referred, one can even acknowledge that it is almost impossible to indicate such concepts as the ‘common good’ or the ‘will of people’. As Schumpeter (1954, 251) has noted, there is no such thing as a uniquely determined common good that all people could agree on or be made to agree on by force of rational argument. Wherever the ultimate values differ substantially – as they certainly do in the context as wide and heterogenous as the European Union – the ideas and beliefs of what is good and what is not vary accordingly. Even if a compromise acceptable to all or even most of the people about the substance of common good could be reached, the means as how achieve this good would yet remain subject to vast disagreement.

29 See Nouvel Observateur, 7 May 2005.
5 METHODOLOGY

This section discusses the methodology of the research and describes the major underpinnings in the study. In the following, the nature of the data and sources will be discussed, and the data-collection methods will be presented in detail. Also the hypotheses as derived from the theoretical basement are settled, means by which to correct the potential bias discussed and the methods for analysis introduced.

5.1 Hypotheses, Variables, Selection of Cases and Methods for Analysis

In this section, the methods for collecting and analyzing the data will be indicated in detail. First, the unit of analysis and the main variables will be introduced. As a next step, the hypotheses will be established and the empirical indicators to address and measure the relationship between the variables are spelled out. It will also discuss how the individual small Member States and the particular institutional issues were selected to the study. After that the main method which is used to analyze the data, that of process tracing, will be introduced. At this point, also the methods for exploring the bargaining behavior and strategies used by the small states will be elaborated. Finally, the last section discusses the hypotheses with respect to the conditions under which they would be confirmed or disconfirmed respectively.

5.1.1 The Unit of Analysis

The research methodology is based on a qualitative and comparative multi-case approach. The study is implemented by evaluating the IGC and the Convention as types of decision-making processes in the EU Treaty negotiations, while a further distinction is made between two decision-making rules respectively. The unit of analysis consists of individual institutional decisions (the composition of the Commission, the extension of qualified majority voting and the amendments of the rotating Presidency), which are...
traced through four different negotiation contexts, those of the Amsterdam IGC (1996-97), the Nice IGC (2000), the Convention on the Future of the EU (2002-03), and the IGC 2003-04. The Treaty reform cases were selected according to their respect variation in independent variable, as it is hypothetized that the outcomes in the institutional issues vary across the negotiation rounds with regard to the applied decision-making rule. For a comparative multi-case research, the negotiations were therefore chosen so as to include traditional Treaty-making IGCs plus a novelty – that of the Convention – as followed by a “rubber-stamping” IGC of 2003-04 in order to reliably address the variation in independent variable. An attempt is made systematically to examine each decision with regard to the hypotheses based on the small state influence in using the textual documents and in-depth interviews as primary sources of empirical information.

Strictly speaking, the research design could also be judged as problematic for not meeting the elementary requirements of a comparative research design due to the numerical fact that it now consists of three examples of unanimity-based negotiations and only one example of a negotiation where the rule of restricted consensus was applied. However, a necessary amount of convincing arguments emerge for the case-selection. The Convention, as a new and yet potential standard method of Treaty-revision, is here also studied in its own right, rather than in a strict comparison or direct association with the IGC method as such. As stated by one of the interviewees (Conv9), the Convention had a ‘life of its own’. In these terms, it should not be evaluated exclusively in one-to-one relationship with the IGCs. The aim is to examine the Convention’s qualifications as a Treaty-making practice with regard to the small states’ status on the one hand, and its specific disadvantages and shortcomings on the other.

In addition, during these particular Treaty reform negotiations, the institutional issues played a dominant role and they were ranked high on the agenda. At the Amsterdam IGC, the division between small and large Member States became apparent and an issue for the first time in history. Comparisons between two IGCs and two Conventions, e.g. those of the Convention on the Future of the EU and the Convention on the Charter of the Fundamental Rights, as an illustration, would certainly produce a more feasible research design as regards to the number of different types of cases, but then again would not allow the comparisons through the outcome of one single topic, namely the institutional reform,
neither to provide with a systematic exploration of the eventual types of Treaty-making practises in the EU. To conclude, it was the primary interest of the researcher to have an explicit focus on the EU high politics, i.e. Treaty negotiations, yet, given the importance of the institutional issues as regards the small Member States, convincing reasons were found to select them as a unit for analysis.

5.1.2 The Hypotheses, Variables, Empirical Indicators and Sources of Bias

In the research design, the formal institutional conditions of the EU Treaty negotiation (decision-making rules and their variation) are conceptualized as an independent variable, and the outcome of the negotiations (the results of the institutional reform) as a dependent variable of the study. The dependent variable consists of three particular outcomes and they are examined from the perspectives of four small Member States. The small states’ abilities to influence outcomes are investigated through measuring their impact on three issues of the institutional reform. The results of these topics – the composition of the Commission, the extension of qualified majority voting and the Council Presidency – will function as empirical indicators to address the small states’ success, bargaining power and exact influence. The small states’ behavior is analyzed in detail across the negotiation processes where the formal institutional set-up is considered as given.

The decision-making process is treated as an intermediate variable in the study and it involves two types of decision-making arenas, those of the IGC and Convention. The dynamics of the decision process goes a long way in explaining how the small states gain influence in the EU Treaty negotiations, but instead of being a sufficient condition, it is to be characterized as a necessary condition in nature. Following this, two conditions under which a small state is most likely to gain influence over the outcomes are proposed: intensity of preferences and the process variables as necessary factors, and the (unanimity) decision-making rule as both necessary and sufficient factor. Thus, the role of institutional preconditions will be completed in process-related (Baillie 1996, 13), and actor-related (Scharpf 1997) explanations that consist of applied strategies, decision-making behavior, appropriate planning and timing, and overall dynamics of the negotiations.
In the political science, a researcher has rarely an opportunity to experimentally manipulate the explanatory variables, and it is indeed a difficult matter to unambiguously draw the exact line of causality in any research question, be it quantitative or qualitative in nature. This brings us to call attention to the issue of endogeneity, which maintains that the values given to the explanatory variables may also prove out a consequence rather than a cause of the dependent variable. On top of that, it is not self-evident as to which variables ‘out of the control’ may have an effect on outcomes. (King et al. 1994, 185-186.) Political scientists have made an extensive effort to understand both the effects as well as the sources of underlying institutional conditions, i.e. the decision-making rules, in multilevel negotiation structures. In order to avoid endogeneity problems and to reduce the potential bias, particular measures have taken in this study. First, on the side of the dependent variable it has been attempted to focus only on those parts that are consequences rather than causes of the explanatory variable. One may reasonably argue that the EU Treaty negotiations resemble several rounds of the same game and subsequently question as to whether the decision-making rules (unanimity vs. restricted consensus) are a consequence rather than a cause of particular institutional outcomes. In this study an eye has been kept on the issue by following methodologically the best practices to control the values of the explanatory factors and holding them constant throughout the decision-making processes. Some characteristics of the summits themselves contribute to specific stop-and-go logic (Schneider & Cederman 1994, 643). In other words, particular path-dependencies between the EU Treaty negotiation rounds are acknowledged, as well as the fact that each decision-making phase has an influence on the next one so that the outcomes of any negotiation serve as an institutional starting point to the following. The initial circumstances of any negotiation are thus dependent on the outcomes of the preceding one. However, this endogeneity and particular path-dependencies have been controlled to the greatest possible extent.

With a view to the whole range of external, intervening or additional factors that may play a role in EU decision-making arenas, every measure needs to be taken to avoid biased inferences. It may also be suspected as to whether it can be reliably claimed that the institutional set-up acted as the main explanatory factor in the Treaty negotiations or in the Convention case, in particular. It is indeed an important bearing that the issues – such as
the pending EU-enlargement at the time of the Convention – may too have an effect on the eventual outcomes, yet, it can be confirmed that the issue of enlargement has played a certain role throughout the Treaty revision processes as dealt with in this study. Given that the candidate countries of the 2004 enlargement submitted their applications for accession already well before the start of the Amsterdam Treaty negotiations, we can reasonably insist that the process of enlargement was sufficiently acknowledged and well established already long before the Convention negotiations started. Proposals and provisions for the enlargement to the Central and Eastern European countries appeared in the agenda for the first time in Amsterdam. At the institutional level, for instance, the Amsterdam Treaty needed to address several issues with a view to the next enlargement and the issue was generally widely discussed. Also for this reason, a Group of Reflection was established in June 1995 in the context of the Amsterdam IGC. In empirical terms, it is thus the argument that even if the factor of enlargement certainly played an important role in the Convention process and the decision-makers ultimately game to grips with the issue right then, it remained a secondary factor to explain the outcomes and has in any case been controlled throughout the case-studies of Amsterdam, Nice, Convention and the 2003-04 IGC.

In view of the two types of EU Treaty-making spheres employing two types of the decision-making rules, a set of four hypotheses is formulated. The hypotheses are developed deductively and their origin lies in three theoretical sources respectively: 1) the wide ranging negotiation and bargaining literature; 2) the approach of rational choice institutionalism; and 3) the contributions of the principal intergovernmentalist scholars. Drawing upon these insights, a hypothetical model of small state influence is hence created with a view to the theoretical underpinnings as presented more in-detail in previous chapters. The small state influence is presumed to be highest under the following conditions:

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1. *The negotiations take place in intergovernmental forums (IGCs) where the representatives of national governments and domestic politics dominate the settings and the unanimity rule is used.* Decision-making based on unanimity increases the power and strengthens the formal position of a small state in putting it on an equal footing with the large ones by providing it with a right to veto.

H1(a): Given the veto-right of each negotiator, the outcomes are constrained by the positions of governments making the threat to exit. Whenever a fundamental disagreement between the participants emerges, the negotiations result in a deadlock.

H1(b): Regarding institutional issues, negotiation under the unanimity rule in the IGCs allows for outcomes that are more favorable to small states, i.e. reaching their most preferred configurations in the issues of the composition of the Commission, rotating Council Presidency and maintaining of unanimity rule in policy areas with particular domestic significance, as compared to the negotiations under the restricted consensus rule.

2. *Information on national positions and preferences is distributed equally to the negotiators and they are, therefore, mostly known.* Small states’ influence over outcomes is greatest in the negotiations where the information of preferences, interests and positions is widely distributed among the decision-makers. The governments know what they want and they then try to achieve them by means-ends calculations. When these conditions are met, the predictability of the negotiations increases and it becomes easier for the actors to satisfy their goals by strategic moves.

H2: Holding constant the institutional rule, the extent to which the Member States’ preferences are declared at the beginning of the negotiations matters. The wider the information on preferences is distributed at $T^1$, the greater the possibilities for small states to obtain their most preferred outcomes at $T^2$. 


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DOI: 10.2870/2709
3. *The negotiated issue is high salience for a small Member State and its preferences thus intense. For these reasons, asymmetric interdependence exists between the negotiators.* Small states put in their greatest effort in order to skew the outcome closest to their own interests in highly salient issues, and due to the great intensity of the preferences and dependence on the agreement they are prepared to offer side-payments and concessions to other actors given that the unanimity rule is used. Normally the issues are significant for specific domestic reasons, or as a result of their large distributional consequences. The negotiation outcomes are expected to be determined by the domestic interests and marked by the lowest common denominator, as the most sensitive questions are presumed to remain under the control of national governments.

H3(a): Issue salience and intensity of preferences predict the small Member States’ distance to the outcome. While the issue saliency and intensity increase, the likelihood for an involuntary distribution decreases whenever the unanimity rule is applied.

H3(b): Given the unanimity rule, the more dependent a small Member State is on the institutional outcome, the more incentives it has to offer concessions and side-payments, and the better its possibilities to skew the result closest to its original preferences during the negotiations.

H3(c): Given the restricted consensus rule, the asymmetrical interdependency is expected to be insignificant or absent. The issue saliencies and preference intensities are presumed to play less decisive roles in leading to the outcomes advantageous for small states through the acts of concession-trading and side-paying.

4. *The negotiation proceeds along the patterns of traditional bargaining.* Regarding this intermediate variable, a distinction is made between two modes of interaction: bargaining on the one hand, and arguing and deliberation, on the other. It is here expected that the small Member States reach their most preferred outcomes through a process of traditional
bargaining that the unanimity rule allows. Conflicting interests may be identified from the outset in the decision-making arena, but a relevant compromise is achieved through the acts of value-claiming, issue-linking, issue-trading, compromizing and package-dealing. During the process, the positions of each Member State are reasonably justified and there is no leeway for preference-changes.

H4: The adopted mode of communication matters in the decision-making process. The small Member States achieve their most preferred outcomes through a traditional bargaining process, which proceeds along rational reasoning, pragmatic demands, signaling the saliencies, and allows thus introducing issue-linkages, concessions and side-payments for a formulation of a package-deal types of compromises.

To (dis-)confirm the rationale of sociological institutionalist and constructivist arguing, the extent to which the Convention method differed from the traditional IGCs will be examined, together with the impact of the decision-making rule of restricted consensus on small state influence in the institutional issues, given constant national preferences. It is not the aim here to develop a specific hypothesis to assess the decision-making in the Convention context or to ex ante expect particular outcomes from the process.

5.1.3 The Selection of Small States

As mentioned above, the small states have been chosen as an analytical focus due to their large number and, subsequently, inherent importance in today’s European Union. Generally, small states can be distinguished from large states in various respects. The focus can be, for example, on economic, societal or political factors. The economies of the smaller states are typically more open and directly dependent on other economies than those of the larger states. This fact has also an effect on the concentration of their political interests. As regards the societal factors, one typical feature common to all European small states is their relatively strong corporatism, which is characterized by centralized and
concentrated interest groups. Policy-making is usually driven by voluntary and informal coordination of conflicting issues. (Katzenstein 1985.)

Nevertheless, in the European Union there is a substantial difference between the preferences of small and large states, especially when it comes to the issues of the institutions and their reform – the topic on which this study puts its main focus. Small states tend to have an exceptionally strong interest in the institutional balance, the 'rules of the game', law and procedural correctness (Laffan 1997, 297). There are thus two groups of states, large and small, occupied with diverging interests, from which the latter plays a majority role when figured out through the number of respective states. To sum up, the small states have specific characteristics and range of interests, which differ from those of the large states. This applies both in the EU context and in international relations more broadly.

To assess the hypotheses, a sufficient number of cases are needed with a relevant degree of variation between them. In view of this requirement, four small Member States are employed to the study for in-depth comparisons: Belgium, Denmark, Finland and Ireland. The method for case-selection has been guided by a three-fold criteria regarding the status of these small states within the European Union so as to include countries mutually as different as possible: 1) the diversity of their average orientation towards the European integration; 2) the proximity of their average preferences in the institutional issues; and 3) their difference from the larger counterparts with respect to their interests in the institutional issues. Although in general the small Member States have explicitly adopted rather diverse orientation towards the Union, their positions and interests tend to be, however, implicitly similar regarding the institutional issues.

In addition, the aim was to select such Member States that have joined the Union at different points in time. Of these cases, Finland is a clear late-comer, since it joined the Union in 1995. Belgium is a founding member, while Denmark and Ireland joined in between these two, as early as 1973. Apart from the recent developments in the process of Constitution-building in the Union, the advantage of including Belgium lies on the point that the Netherlands and Luxembourg are by so doing inherently involved in the study. Within the European levels, the Benelux cooperation has traditionally been distinctive. In
the following, a brief portrait will be given of each Member State with a focus on their domestic political profiles and relationships with the European Union.

5.1.3.1 Belgium – Pro-European with Few National Interests

Belgium is a federal country based on three partially overlapping linguistic communities (Flemish, French and German) and three socio-economic regions (Flanders, Brussels and Wallonia). It is commonly argued to have only few national interests in the European policy-making. Deemed also as an artificial state, it lacks the sense of any kind of patriotism and its overall nationalism is weak. (De Winter and Türsan 2001, 12-16.) Yet, despite this, as one of the founding members it has throughout the EU’s history been a great supporter of European integration, even along federal lines. Due to this background, Belgian civil servants and other officials are experienced with European decision-making practices. Regarding the formal requirements and domestic constraints, the Treaty reforms have to be approved in Belgium by seven legislative assemblies altogether. Operating between the regions and communities in formulating common positions for the EU decision-making has sometimes proved out to be complicated for Belgium (Nat13).

Belgium has been viewed as a great supporter of small countries against the hegemony of the large states. It has continually favoured the use of the community method, which it considers as beneficial particularly to small Member States. The use of community method was evident at least in the Union with six or twelve Member States, but in an EU of more than twenty members it is still not clear even to Belgium whether that premise would hold in the future. (Kerremans 2002, 43-46.)

The political system of Belgium is described as a consociational democracy in which the reaching of consensus over a large number of varying actors is an essential decision-making rule (Lijphart 1999). Belgium is criticized for having a rather weak national front at the international level, and it is domestically not as cohesive as it could be. The parties commonly place the interests of their own region before the Belgian common interest (De Winter & Türsan 2001, 12). The federal institutions do not have authority to function as superior with respect to the regional and subnational units. This
political instability has often weakened its stand in the EU negotiations making it hard to become an important player (Thorhallsson 2000; 2006). Yet, there is a surprising large consensus between political parties on European issues and this consensus is reached in a political process that opens opportunities for all major parties to have their say (Crombez & Lebbe 2006, 49). In addition, the government has made an attempt to depict the nation as cohesive as possible towards the European eyes and tended to follow the integrationist lines frequently repeating the slogan ‘everything that is good for Europe, is good for Belgium’.

Belgian citizens have also traditionally been pro-European, and eurobarometer surveys indicate that the public opinion reflects permissive consensus.\textsuperscript{31} In average Belgian thinking, European integration can eventually be used as means to have more sovereignty. On the other hand, the EU is taken as given, and the lack of real discussions and political debates regarding its future has in some contexts seen as a significant disadvantage causing a democratic deficit.

5.1.3.2 Denmark – EU’s Difficult Partner

Denmark is a constitutional monarchy that holds a unicameral legislature consisting of fourteen counties including the Faroe Islands and Greenland. Its modern market economy is to a great extent export-oriented and its inflation and unemployment rates have constantly been below the EU average. Regarding attitudes towards the EU, the Danish orientation has throughout the Union’s history been rather intergovernmental, domestic-politics driven, as well as complex in nature. As previously stated by the Danish Government (2001, 6), it is commonly seen in Denmark that Europe should be built on nation states, albeit providing a unique mixture of intergovernmental cooperation and integration. A majority of the Danish citizens are in favour of economic integration, expected that it does not affect their autonomy too much. This hesitancy has in many ways made Denmark a “minimalist” state with respect to European integration. Yet, the Danish economic and political elite is generally much more pro-integrationist than the public. This

\textsuperscript{31} See e.g. Eurobarometer 54, Autumn 2000.
is a distinctive feature of the overall Danish EU-orientation, which has been described as an effort to bridge elite Euro-optimism and popular Euro-skepticism. In Denmark, broad support in Parliament does not automatically translate into public support. (Laursen 2002b, 71-74; Lenz & Dorussen 2006, 69.) The success of the parties such as the June Movement and the People’s Movement – both holding seats in the European Parliament – indicates prevalent Euro-skepticism in Denmark (Ferrara & Weishaupt 2004).

Danish political culture is distinctively characterized and even dependent on its tradition of holding regular referenda. The institution of referendum has a firm basis within the Danish civil society and it is remarkably popular among the voters. The public opinion has thus an impact on Danish EU policies more than in other countries in average. It has been judged that the culture of referenda sometimes limits the government’s ability to work rationally (Nat12). Another distinctive feature is that the Folketing, the Danish Parliament, exercises considerable control over EU policies through its powerful European Committee. (Danish Ministry of Foreign Affairs 2003; Lenz & Dorussen 2006, 71.) Besides, any ratification of international Treaties implying delegation of sovereignty by Parliament requires a five-sixths majority. From this it follows that whatever decisions are made at the EU level, Denmark and its citizens need to be taken into account as well as accommodated to the greatest possible extent. In this sense, Denmark is endowed with a fixed veto-power already at the outset in the EU negotiations.

During the 1990’s, Danish EU policy was influenced by their rejection of the Maastricht Treaty in 1992. The Treaty of Maastricht was characterized as a major step in European integration and it established the European Union. As it is obvious, the result of the Danish referendum was then not a minor concern or a matter of insignificance. After the Danish rejection, as originating primarily from defence and security issues, the Union went through a political crisis lasting for six months altogether. During that period, Denmark called into question the overall importance and requirement of transparency, proximity and democracy. In the end, the problem was solved at the Edinburgh Summit in December 1992, where an additional clause concerning the participation in the WEU was tailored to Denmark. A new referendum was organized and the Treaty endorsed by the Danish citizens on May 1993.
The Edinburgh agreement guarantees that even today Denmark has four specific opt-outs from the Treaties allowing it to stay outside the development of the EU in these areas. First of all, Denmark is not bound by first pillar legislation on Justice and Home Affairs. In spite of the Danish opposition, the Amsterdam Treaty transferred significant parts of this cooperation (border control, asylum, immigration and civil law) from the third pillar to the first pillar. As a result, Denmark’s status was protected by a Protocol attached to the Amsterdam Treaty and it is not obliged to take part in JHA actions under the first pillar. However, this opt-out has gone through a process of slight modification and today Denmark participates completely in intergovernmental cooperation in the police and criminal law but does not participate in decision-areas involving border control, asylum, immigration and civil law. Secondly, Denmark holds an opt-out for Union citizenship that, nevertheless, has no significance in today’s Union. (Danish Institute of International Affairs 2008.) Third, Denmark does not participate in the defence cooperation. Since the abolishment of the WEU, the rapid development has presented it with some concerns and problems. In practice, Denmark participates in the relevant EU policy and planning bodies, but cannot take part in decisions and actions affecting the defence area. Moreover, Denmark is not a member of the Eurogroup. It has retained its national currency, the krone, and only to a limited extent participates in the European Central Bank. (Danish Ministry of Foreign Affairs 2003.)

After a period of serious criticism that characterized the Danish orientation for so long, several steps have been taken forward by Denmark. Since 1993, the Social Democrat-led Danish governments actively attempted to find reasonable solutions for the emerging disagreements between the EU and Denmark in the hope of making the Union more widely accepted within the domestic structures. At the time of the Convention, Danish Prime Minister Fogh Rasmussen (2003a) stated: “Far too often, the standard Danish reaction has been characterized by a skeptical attitude towards changes in the EU. We have, as point of departure, wished to keep things as they were. [---] This is not the way to achieve influence.”
5.1.3.3  Finland – Striving to the Core

Finland joined the European Union together with Austria and Sweden in January 1995, and has been positively committed to European integration right from the beginning of its membership. Overall, the Finnish approach is in several contexts defined as pro-integrationist, pragmatic and constructive. It clearly diverges from that of its Nordic counterparts, Sweden and Denmark, who have proved out to be more Euro-skeptical in their orientation. As Arter (2000, 691) puts it, EU membership has constituted a key element for Finnish people in the process of wholesale re-identification on the international stage.

Finland’s EU relations are usually subject to broad consensus among the national decision-makers. It is called a consensus democracy with a strong president, i.e. semi-presidentialism (Finke & König 2006, 85). The EU policies are coordinated in Finnish Parliament, the Eduskunta, within the Cabinet Committee on EU Affairs together with the parties and opposition. Further key players consist of the President, the government (particularly the Prime Minister’s office) and the government Secretariat for EU Affairs. Preparation and monitoring work load is delegated to the respect ministries. The main feature of Finland’s EU policy has been active participation and support for strong institutions, although it has also been keen to defend its fundamental interests once needed. Agriculture and regional policy have often been the key issues in Finland’s relationship with the Union. All in all, Finland has in many contexts been characterized as a ‘good pupil’ which is willing to promote common aims in the European Union. Moreover, Finland has a strong tendency to respect the common rules, which is clearly seen from its implementation behavior. According to Raunio and Tiilikainen (2003, 149), this stringent orientation can partly be explained by the Lutheran mentality of the Finns, combined with its small-state identity.

Finland has often studied particularly from the perspective of foreign and security policy issues, even in the European context. This is understandable, since among several new Member States, Finland has a geographical position situated strategically between east and west. Its relationship with the EU cannot be explained without referring to past. Finland’s neutrality policy had a rather strong influence on its foreign policy orientation.
since the Second World War, and it lasted all the way until the beginning of EU-membership discussion in early 1990’s. Along with its EU membership, Finland changed smoothly and pragmatically its Cold War policy of neutrality into a policy of firm commitment to European integration. Finland has often been praised for its ability to adapt quickly to new conditions, and due to its overall positive EU-orientation it has sometimes been characterized as the “seventh original Member States of the EU”. (Tiilikainen 2006, 77-78.)

Even though the political, administrative and business elites are generally committed to the integration, Finnish citizens are said to be more skeptical in terms of the virtues of the project. To some extent it might result from the overall skepticism that is prevalent among the European citizens. The increased emphasis on requirements of democratic legitimacy, transparency and good governance has influenced Finnish people as well. On the other hand, scepticism can be treated also as an indication of an increased readiness of people to develop their own opinions on political issues and question the axioms of the political actors. As is the case in many other Member States, the European issues have never dominated any Finnish elections, for instance. (Raunio & Tiilikainen 2003, 146-149.)

5.1.3.4 Ireland – Pragmatism as a Driving Force

Ireland is a classical example of a country in which an enormous economic success has determined both its domestic circumstances and, subsequently, its attitude towards the outer world during the past decade. This ‘Celtic Tiger’ has adopted a rather practical approach towards the European Union, and it has lasted throughout its membership. In fact, the original primus motor for triggering Irish membership application process in early 1970’s was the economic utility that the EU was expected to provide. Besides that, the Great Britain was about to join the Union at the same time, and Ireland was distinctively interested in getting access to its market. Since then Ireland has tried to protect its vital national interests while joining the full range of benefits as provided by the Union: mostly in the area of structural and agricultural funding.
Ireland is a constitutional parliamentary democracy, which is characterized by the doctrines of cabinet responsibility and cabinet confidentiality (Gwiazda 2006, 129). Together with Denmark, it possesses an important additional domestic power resource, namely the tradition of referendum as based on its Constitution. In Ireland every constitutional amendment must be approved by a public referendum and this applies also to the ratification of the major EU Treaties, since they require amendments to the Constitution of Ireland. Moreover, it is stipulated by the Irish Constitution that the government as headed by the Prime Minister (Taoiseach) exercises the executive power being in the centre of political decision-making. The Irish Parliament (Oireachtas), consisting of the president and two houses (Dáil Éireann and Seanad Éireann), plays only a peripheral role on EU issues and it is a servant of the executive for all intents and purposes. This is to say that it may submit only minor contributions to the IGC debates as well. (Gwiazda 2006, 129; Tonra 2002, 212.)

Holmes (2005, 2) has described the Irish approach to the EU through three key issues: size, shape and structure. In addition to its generally positive attitude towards new members, Ireland has adopted a positive stance towards various policy developments, i.e. “the shape of the EU”. Especially in economic issues Ireland has supported a number of initiatives. Given that Ireland has changed positively a great deal as a result of its EU membership, this is hardly surprising. Its political leaders are well aware of the enormous political and economic advantages the Union has provided, and are thus largely committed to the European integration in general. The question of structure, as mentioned by Holmes, refers to the institutional architecture of the EU, in which Ireland has again tended to emphasize its self-interests and tried to secure that its voice is heard.

As in many other small states, nationalism – or even patriotism to a certain degree – has been a central element in Irish political culture. To this end, Ireland has always attempted to defend its national interests perhaps more strongly than other EU Member States. Moreover, the conservative forces which play quite a dominant role in Irish politics and culture, have adopted a rather reactive and reluctant attitude towards most of the European activities and issues. After all, the economic growth and social change are slowly restructuring the Irish political culture and citizens’ attitudes. (Holmes 2005, 5.)
As a conclusion, Ireland has for a long time been a great supporter of European integration and the EU itself. Thus, as expressed by Holmes (2005, 1-3), when Ireland voted No to the Treaty of Nice in June 2001, a general reaction was as if a good pupil had suddenly misbehaved. The rejection of Nice Treaty was actually not the only occasion when European integration suffered from a setback as caused by the Irish. Ireland delayed also the coming into force of the Single European Act and the internal market for six months in 1987 due to its national constitutional reasons. By now it is also known that Ireland profiled as a recalcitrant player in the Union later on as well. Even if the ratification process of the Lisbon Treaty is no more included in this study as a unit of analysis, the Irish referendum in June 2008 certainly has far-reaching effects in the EU. By and large, therefore, Irish orientation towards the EU is also a mix of positive and negative features.

5.1.4  The Selection of Negotiation Outcomes: Institutional Issues

In international multilevel negotiations, the aim of social-scientific inquiry has long been to explain varying outcomes and to explore how preferences on the one hand, and strategies or institutional settings on the other, affect them. The dimensions of outcomes such as efficiency and the distribution of gains have been of particular interest in bargaining studies or analyses of international negotiations (Moravcsik 1998, 51).32 In order to conduct systematic negotiation analysis, a common parameter by which to measure these results is required. In this study, the types of outcomes, i.e. particular institutional amendments agreed in the EU Treaties are conceptualized as distribution of gains. The following institutional outcomes are selected to the study to address the gains received or not received during the Treaty-making process: 1) the composition of the Commission; 2) the extension of QMV voting in the Council of Ministers; and 3) the reform of the European Council rotating Presidency (including the proposal of electing a Permanent President to the Council as formulated by the Convention). The main interest is

32 In Moravcsik’s (1998, 51) words, the dimension of gain distribution concerns interstate distribution and it answers to the following questions: How were the benefits of cooperation divided among the parties and who won and who lost the negotiations? See also Moravcsik (1999, 298-299).
to examine the extent to which small states have been able to defend their varying interests concerning the institutional issues within the constraints of underlying institutional conditions and decision-making rules adopted in a given Treaty negotiation.

In selecting the observations, i.e. the types of outcomes, the following requirements have been met. Firstly, all small Member States can generally be regarded as having a vested interest in the chosen institutional changes, since each individual change indicates the level of equality between the EU Member States. Moreover, the institutions are the backbone of every political system, having an impact on every negotiation arena in constraining the decision-making. Hence, the institutional structure as such is one of the most important matters also in European context. However, in order to assess the impact of issue saliency on outcomes, particular variation in the degrees of Member States’ preferences must occur. Therefore, it has been confirmed that a relevant variation exists as regards the level of importance each Member State has announced towards the substantive institutional questions. Different degrees of salience were announced especially within the policy areas in which the extension of qmv was discussed.

Second, the institutional issues in general, and the selected issues in particular, have received much attention in both the IGC and Convention processes. Third, the dividing line between small and large Member States has been rather clear in the chosen issues. Hilf (1995, 169) has pointed out that the alliances among smaller states versus larger states have throughout the history been particularly strong in the institutional issues. The orientation of the small Member States towards the EU is often characterized by a preference for strong and effective institutions, through which they are to defend their interests in the framework of more powerful and often dominant states. In addition, institutions offer a reliable forum where small states can gain information on the actions and preferences of other states. Finally, only one policy area, that of the institutional reform, was chosen from the range of Treaty revision-areas, so as to give as exact an indication as possible of small states’ positions and subsequent behavior in the negotiations. In the following, the selected institutions and their significance with respect to the small Member States will be discussed in detail.
5.1.4.1 The Composition of the Commission

The European Commission is a supranational institution that promotes independently the interest of the Community as a whole. To exercise its legal functions, the Commission has to be impartial and representative. Generally, all Member States are treated equally in the college in the sense that each Commissioner has strictly equal weight, and the Commissioners do not act as representatives of the countries from which they come. The representativeness is often envisaged to be best secured by an arrangement in which each Member State nominates its own member to the Commission. The original European Commission was composed of nine Commissioners from six countries, comprising two for the large states and one for each of the small states. Even in the Union of fifteen Member States, the five biggest countries still retained two Commissioners. Yet, the equal right to nominate an own Commissioner has been seriously threatened ever since Amsterdam negotiations in 1996, where it was for the first time stipulated that when the number of Member States increases to twenty-seven or more, there would be far too many Commissioners in the college. The major questions then appeared as whether or not the Commission should continue to consist of one Commissioner of each Member State in the future, or what kind of a system should be applied when nominating future Commissioners. Several proposals were made both within the past IGC and Convention negotiations, the most significant and innovative having been a system of fixed rotation and the idea of dividing between senior and junior Commissioners with or without portfolio and/or voting rights.

The Commission exercises considerable power through its initiative and administrative rights. Small states have traditionally tended to have a great interest in the Commission due to the fact that it is felt to protect against the domination of larger Member States. As may be obvious, the right to nominate their own Commissioner is crucial to small states, and it can be seen to support the philosophy of equality in the Union. It has been argued that the size of the Commission bear direct effects both to its efficiency and legitimacy. On the other hand, it has been pointed out that the size has little to do with efficiency and a lot to do with legitimacy (Stubb 1998, 182). Consequently, any new arrangement as regards reducing the size of the Commission would also reduce its
representativity and, later on, legitimacy. It is important that the Commission cannot be criticized by a Member State which has, for the time being, no nominee in it (Temple Lang 2001, 5). It has been argued that especially if one of the larger countries, e.g. France, did not have a Commissioner at any one time, it would probably not take its work seriously (Nat8).

From the citizens’ point of view, as a conclusion, the legitimacy of the Commission increases once there are representatives from each Member States, no matter if it officially functions as a supranational body taking care of the Community’s interests rather than reflecting the national ones. Supranationalism is certainly a key word describing how the system works at least in theory, yet there is a considerable academic debate about whether the Commission is an autonomous actor in its own right or whether it is an exclusive agent of the Member States. In practical terms, the Commissioners do act as some sort of a link between the nation states and the Union. They do observe which proposals are politically acceptable according to their respective capitals and which ones are not. They represent a channel of communication for the Commission’s requirements to the Member States and forward the European message to national media. This practise has a strong symbolic meaning and value to European citizens. In Stubb’s (1998, 183) words: “The Commissioner, rightly or wrongly, is the personification of a particular Member States’ EU policy – a sort of a representative on a supranational level. Against this background, if the Commission does not consist of representatives from each Member State, it does not fulfill its charter of being a collection of democracies.”

5.1.4.2 The Extension of Qualified Majority Voting

In the Council of Ministers, decisions are taken in one of two ways: majority voting or unanimity. The Council decides procedural matters by the majority of its members, while on most policy matters, such as directives and regulations, the Council decides by weighted and qualified majority voting. Particular key issues, however, such as reform of the Treaties, the accession of new members and most topics dealing with the CFSP, Justice and Home Affairs or taxation, still require unanimity. Majority principle has
become a norm in most areas of Community policy-making, and qualified majority voting is already applied in majority of the decisions. By QMV, each Member State has a fixed number of votes roughly related to a country’s size but progressively weighted in favour of smaller countries. To pass a vote, the proposal must be packed by a majority of Member States and a qualified majority of the votes in total.\textsuperscript{33} In the Council of Ministers, the decision-making rule is known in advance and the choice takes place in a setting of clear actor goals, revealed preferences and informed interests, all of which impinge on the production of a decision-making environment provided with complete information.

It has been argued by König and Junge (2006, 14) that QMV is actually not particularly effectively applied in Council decision-making, as the Member States require consensus for amending the Commission proposals. As noted by Stubb (1998, 190), all Member States know that when dealing with qualified majority, a vote is rarely taken, since in most cases a compromise is hammered out long before the actual decision takes place. To give an example, out of 300 directives relating to the internal market, over 250 have been decided without a vote, while only some 20 cases required voting. In this sense, unanimity is the factual decision-making rule, even if qualified majority could formally enforce its position.

From institutional issues, the extension of qualified majority voting has been another key item on the agenda in the path of IGCs, encompassing clear implications for small Member States. The introduction of QMV has always been a sensitive issue and it is in many areas considered to touch the core of national sovereignty of Member States. The Member States are generally unwilling to give up the prerogatives provided by the QMV, and the traces of unanimity are seen to protect their vested interests in the EU. In his frequently cited notion about the decision-making process in the Council of Ministers, the former Commissioner Leon Brittan (1994, 232) stated that the aim in reforming the rules is twofold: “[…] to stop the big fish from eating the small fry, and preventing the small fry from ganging up on the big fish.”

\textsuperscript{33} According to the currently applied voting system as based on the Treaty of Nice, majority is formed by a simple majority of Member States (50%) or two-thirds (67%) in some cases like acting on a proposal of the Commission, and a majority of votes (74%). Furthermore, a Member State may require the verification of the population condition meaning that the countries supporting a particular proposal must represent at least 62% of the EU population.
The retreat to the unanimity rule is usually most obvious in the areas that deal with the economic issues. Regarding the institutional reform, five types or clusters of decisions have been identified where the unanimity rule should be retained in Council decision-making. These include: 1) the decisions which have to be adopted by the Member States in accordance with their constitutional requirements or the decisions which require ratification in all Member States; 2) essential institutional decisions or those affecting the institutional balance; 3) decisions to which the principle of QMV does not necessarily need to be applied due to the fact that the level of integration of the EU is not yet such as to justify it (e.g. provisions on Economic and Monetary Union); 4) certain provisions relating to external relations; and 5) questions providing derogation from internal market rules.

It has been generally recognized, within both small and large Member States, that there is a need for a further extension of the scope of QMV to enable the decision-making and especially to prevent deadlocks in an enlarged Union. It is no doubt that the more members there are in the Union, the more difficult it will be to take decisions by unanimity. Most Member States are fully aware of the fact that while unanimity by definition allows an individual state to block a decision which it opposes, it also permits other states to block decisions which it may, in turn, favour. Although most Member States agree that the QMV should be extended, they do not agree on how far or on which provisions it should be extended. As from all institutional issues, the QMV is controversial as such and certainly subject to greatest complexity. It is the most difficult single subject for any observer to deal with empirically, as the Member States’ preferences, interests and their degrees of intensity extensively vary in this matter. Due to this, the Treaty-revision negotiations have usually proceeded on a time-consuming case-by-case basis whenever the issue of QMV has been dealt with.

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5.1.4.3 The Council Presidency

The Presidency of the Council of Ministers in the EU has so far rotated between the Member States in six-month turns. The Member State holding a Presidency has a responsibility for organizing and chairing the meetings of the Council and its various committees. The system of rotation in the Presidency institution has in many contexts been considered to be the most important expression and a key symbol of the equality between the Member States. In addition, it is seen to be one of the main preconditions for keeping the balance between small and large Member States. In practice, the value of holding a Presidency has been enormous particularly to small Member States, as it offers them several vital and important opportunities to guarantee their international and Union-wide visibility, allowing them to determine the agenda of the Union for six months and bringing the EU closer to the citizens of the country. Especially if the Presidency is considered as a success, the popularity of the EU is reported to have increased among the citizens in the country in question.

The rotating system has over the years been highly predictable. At the time of the EC foundation, the institution of Presidency was equipped with rather elementary administrative functions whereas today it performs a great variety of tasks from agenda-setting to brokering and overall procedural management. This increase in its role, it has been argued, has resulted from several developments, the most notable being the economic crisis, growing emphasis on the intergovernmentalism and the inefficiency of the Commission to address the Member States ever more divergent positions in the 1970s (Kirchner 1992, 72-73). During its period in office, the Presidency conducts the consultation-rounds of the respective capitals (tours des capitales) in order to discuss the issues at agenda and the preferences of individual Member States. In addition, the Presidency represents the EU externally and negotiates on behalf of the Union with third parties. Moreover, the chair manages individual negotiation sessions by opening and concluding the meetings, shaping the meeting agendas, addressing the right to speak, directing voting procedures, and summarizing the obtained results. The General Secretariat may offer necessary expertise on varying topics under negotiations and it prepares the official documents of Member States’ positions and preferences. Should a
negotiation end in deadlock, the Presidency may arrange confidential discussions with the delegations involved in order to find a solution.

Smith (2002, 20) has remarked that the smaller states, unlike their larger counterparts, can also accomplish the task of using the Presidency in an attempt to benefit all by functioning as honest brokers seeking consensus. Even if the formulation of compromises is an inclusive duty practiced by all Presidency-holders equally, it might yet be slightly easier for small Member States to find the zones for agreement. Chairing the Presidency has also facilitated the Member States in directing the general development of the EU. Some studies have shown that the Presidency post has functioned fairly well also as a means to aid the individual Member States in pushing their interests through during the negotiations and influencing the distribution of gains in the end (see e.g. Tallberg 2003; 2004; 2006). Tallberg (2004, 1000-1004) argues that if the contract zone permits a number of efficient agreements with varying distributional consequences, Presidencies can and will promote the outcome closest to their own preferences. He notes that the Member State holding the Presidency enjoys privileged control over decisions through asymmetrical power resources on the sequence of negotiations, frequency of negotiation sessions, the general procedures and the methods used in the eventual decision-making. The tours des capitals allow access to varying sources of information on the governments’ positions and preferences. These power resources, as suggested by Tallberg, can be exploited to pursue particular private gains as well.

The educational value of the Presidency has also been a significant further implication and is thus not a minor issue either. Holding the chair has forced each Member State and its citizens to think in European terms and to learn to seek common solutions to common problems. According to barometres, the number of debates on European issues has considerably increased in the country that is in charge of the six-month Presidency. Therefore, in preparing and running the Presidency, a Member State is both allowed as well as forced to follow the everyday politics of the EU for a particular period. As is obvious, the practice has had a tendency to narrow the gap between the EU and the Member State respectively. (Nat4.) These are important aspects also from a wider European point of view, since from experience it is known that more knowledge of the EU tends to lead to more support for it.
From the Community’s side, however, many doubts have recently been presented as to the potential problems arising from Presidencies run by small Member States. It has been claimed that the small state Presidencies suffer from a lack of respect and that they bring practical problems due to their respective sizes. These arguments have prevailed particularly in large Member States’ notions during the Treaty negotiations, when the Presidency-issue has been on the table. Irrespective of the controversies between the small and large states, the institution of Presidency as a whole is at stake in today’s Union as will be indicated later on in the study. In the Union of 27 or more members there is too long a gap between the shifts of individual Member State Presidencies. A system of Troika in which the current Presidency works in close liaison with the previous and next presidencies was already introduced as early as 1983, yet several proposals for its reform have been made during the recent Treaty revision processes, the last one being that for a permanent President of two-and-half-year term.

5.1.5 Conceptualizing the Interstate Bargaining Process

The aim of political actors, as rational choice institutionalism argues, is to maximize their benefits in decision-making situations. Regarding the intermediate variable, i.e. the decision-making process, the main interest hence lies accordingly in the question of how the (small) states choose their optimal behavior under the constraints formulated by the formal institutional conditions, and what is, in fact, possible for them within the limits of decision-making procedures? Moreover, this chapter attempts to illustrate a wide range of other process-related affairs. It starts from the process of domestic preference-formation and describes how the Member States’ preferences are initially established. It further asks to what extent and by which means do small states (try to) influence decisions in the negotiations themselves? Are there other factors than that of the decision-making procedure affecting to the selection of negotiation strategies? Which methodological problems can be confronted when measuring arguing and bargaining on the one hand, and power and influence on the other?
5.1.5.1 National Preference Formation

How are the nation-states’ preferences formed in the EU decision-making arenas? How do they impact on the subsequent selection of bargaining strategies in the EU Treaty negotiations? It has been recognized that the Member States’ domestic and international preferences and ambitions differ widely in the outset, deriving originally from those of their national politicians (Thorhallsson 2006, 26). Yet, the role of the politicians is rather to channel the national will aggregation to international decision-making arenas. At times the preferences are realistic as measured through the likelihood that they will eventually be processed, sometimes they are not. By and large, the preferences and positions are prepared in various domestic committees, the exact code of conduct depending on the Member State itself. In this regard, extensive deliberations among all parties and other Parliamentary actors are certainly common denominators for all Member States. Depending on issue area and domestic societal structures, civil society may also be strongly involved in the process of national preference formation.

Moving a step forward, Moravcsik (1993, 482; 1998, 21) has noted that preferences are by definition independent of strategic calculations, but in many cases strategies cannot be predicted without extensive knowledge of preferences. His conception of rationality suggests that parsimonious explanations of international cooperation and conflict can be developed by two types of theories sequentially: national preference formation and interstate strategic interaction. Preferences can also take different degrees of intensity and so have an effect on outcomes, as expected in hypotheses. Due to this, variation in preferences must be explained or at least controlled before theory testing can take place. Moravcsik indicates that the preferences of the EU Member States are mainly issue-specific. With respect to the process of preference formation, he argues that the specific sectoral interests, adjustment costs, economic aspects and geopolitical concerns play an important role.

This is partly parallel to the argument of Frieden (1999, 40-46), who notes that preferences and strategies must be kept distinct, and the preferences need to be held constant for the given round of analysis. Moreover, in contrast to Moravcsik, Frieden has pointed out that preferences are actually not directly observable, since in international
politics one can only monitor the behavior of states, without knowing their true motivations. He moves on to argue that while the observed behavior might perfectly reflect an actor’s preferences it might equally be affected by uncertainty, institutions or other features of strategic settings. To this end, it is never inherently obvious whether some actions are resulting from preferences, strategies, interests or the environment through which these are brought onto the stage.

Frieden (1999, 53-66) distinguishes between three ways of specifying preferences in international negotiations: assumption, observation and deduction. Regarding the nation states, the easiest way is usually to assume their preferences, the principal supposition being that they typically attempt to maximize their national welfare or resources. In other words, in international politics all actors have essentially identical, fundamental preferences – that of wealth-maximization – etc. As a result, what can be labeled ‘strategies’ can be assumed to derive from these basic preferences. The problem with domestic preference aggregation is that it usually involves a large number of subnational units: individuals, organizations, firms, groups and parties. To this end, the national positions in European decision-making arenas are a combination of great mixtures of rather heterogeneous interests originally derived from a number of domestic sub-units such as Ministries and special interest groups. Assuming, as depicted by Frieden, is rather a starting point in the process of preference defining, and it does not provide us with any specific advice in methodological terms.

In observation or induction, on the contrary, domestic preferences are revealed through investigating the country’s behavior in international arenas. Most investigations as made by scholars of political science fall into this category, where preferences are traced from a wide range of statements and actions of the nation-state and of its policy-makers. Third, the preferences can be identified as by deducing them from pre-existing theories, which according to Frieden, is analytically valuable. In this study, for instance, if one wants to identify the nation-states’ preferences over the institutional issues in the EU, the identification-process could start one level up. At that level the states’ factual properties, characteristics, features and environment are known and they can be taken as given. These factual circumstances lead a nation-state to formulate its institutional preferences, and aid the researcher to arrive at some tentative hypotheses. To give a rough example related to

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DOI: 10.2870/2709
the framework of this study, it could be postulated that: “The smaller the country, the more negative its attitude towards the idea of abolishing the system of rotating Council Presidency”.

5.1.5.2 Strategies – Calculated Shifts or Ad hoc Moves?

It is expected that both small and large Member States applied various strategies for negotiating the issues of the institutional reform both in the IGCs and Convention. The term strategy is here defined as a concrete action taken by a state, believed to produce better outcomes in the negotiations. As Frieden (1999, 41; 45-46) formulates it, the essential point is that in any given setting, an actor prefers some outcomes to others and pursues a strategy to come as close as possible to its most preferred outcome. In this sense, strategies are derived from preferences and they imply the best means to a desired end given the anticipated actions of others, differential capabilities, general knowledge and the possibilities presented by the environment.

According to Kiser and Ostrom (1982, 189), a strategy is a plan of action which involves activities such as information gathering, giving and withholding. They note that strategies might include threats, guile, bargaining and force. The strategies can also be fairly sophisticated, meaning that actors can make real sacrifices in the initial rounds of the decision-making situations in order to achieve more in the later rounds. Sometimes, as in chess, the actor can select the best move only after the opposing actor has made a move. This symbolic and rather classical notion has high relevance and can be applied also in international politics.

This study classifies the types of actor strategies into six subgroups and investigates each one respectively. As will be seen, the strategies can empirically be established on either arguing or bargaining. The types are: 1) the use of argumentative and/or deliberative tactics (rhetorical speech acts, persuasion, attempts to change the minds and positions of other actors); 2) trade-offs and/or package-deal offers, (including issue-linkages, concessions and side-payments); 3) agenda-shaping activities (including actions such as identifying problems, mobilizing support for particular proposals and...
emphasizing, adding or excluding substantial issues in the negotiations); 4) coalition-building; 5) noting the existence of a binding mandate and constraints from domestic actors; and, 6) threatening a veto. The actors’ possibilities of using these strategies are, in turn, assumed to depend on the decision-making procedure applied in the negotiation round. Small states, in particular, are expected to put a relatively large amount of effort into bargaining types of strategies especially within the issues that are of significant importance to them.

In order to elaborate upon the strategies, further operationalisations must be made as regards their substance and exact implications. Checkel (2001, 6) has defined persuasion as a social process of interaction that involves changing attitudes about cause and effect in the absence of overt coercion. However, it is highlighted that persuasion does not always and necessarily change minds. According to Moravcsik (1999, 6), persuasion involves three basic functions related to the manipulation of information and ideas: informal agenda-setting, mediation and mobilization of domestic social support for an agreement.

Coalition-building and alliance-forming are among the most common strategies used by political actors in the decision-making situations. Coalitions can be built when one or two actors have similar interests or preferences in the issues or set of issues that are negotiated. Coalition-building has normally two major aims: first, to increase the potential for influencing outcomes and, second, to oppose and block such proposals and decisions that could be harmful in one way or another.

The formation of package-deals is a bargaining tactic that refers to a single negotiating text that combines distinct issues for agreement or rejection (Raiffa 1982). It denotes side-payments and concessions that can be given or taken from one party to another during the negotiations. That is, strong preferences can be traded for weaker preferences. In general, the larger the number of issues on the agenda, the easier it is to come up with a package-deal that benefit all. (Naurin 2007; Pfetsch 1999.) Sebenius (1983) notes that the issues are normally linked when they are simultaneously discussed for joint settlement. Mutual agreement and joint gaining have been analytical starting points for many negotiation theorists (see Mayer 1992; Tollison & Willet 1979). Issue-linkages have often been used as basic tools to make diplomatic deals and agreements. In
this study, however, the issue-linkages are rather considered as pure strategies of the negotiators involved, which may or may not lead to trade-offs, concessions, side-payments and finally to package-deals. In this sense, issue-linking does not necessarily have to imply joint settlement. At this point, the negotiators can also call into question the domestic politics and plead the existence of a binding mandate that may have been given by national decision-makers and audiences.

5.1.5.3 Operationalization of Arguing and Bargaining

Arguing and bargaining are two different modes of interaction through which actors can attempt to reach an agreement in collective political decision-making. However, pure arguing in terms of deliberative and truth-seeking behavior occurs in decision-making processes as rarely as pure bargaining in terms of exchanging demands, threats and promises (Ulbert & Risse 2005, 352). With respect to analytical political science, a methodological challenge remains at the discursive level: how to operationalize the arguing modes of decision-making and conceptualize them for empirical research? Indicating, measuring or categorizing particular speech acts is difficult, and a central task especially for proponents of arguing, deliberation and persuasion is thus recognizing it when they see it (Checkel 2006, 9).

At this point, another fundamental question also emerges: what counts as a better argument and how do we know if a decision-maker is convinced by such an argument? Empirically it is rather problematic to discover what actually makes one particular argument prevail over another or to clarify how to evaluate the arguments used at all. In addition to this, it is at least as demanding to explore why persuasion, for instance, works in some situations but not in others. In deliberative approaches, there is a lack of exhaustive, unambiguous theoretical background conceptualizing the detailed conditions that benefit the use of argumentation, and of the factors affecting the reception itself. It is notoriously difficult to show the extent to which language used as persuasive or argumentative appeals can be taken as a theory of enabling action (Jupille et al. 2003, 15).
Naurin (2006, 14; 2007, 4) has contributed to these methodological challenges with a comprehensive operationalization experiment that is substantially relevant also with respect to this study. First of all, he draws attention to the slight, yet decisive, difference between *arguing* and *cooperative* (problem-solving, integrative) *bargaining* (see also Walton & McKersie 1965). The methodological challenge of distinguishing between cooperative bargaining and pure arguing/deliberation might, according to him, be a reason why so few studies have so far tried to capture them in real world politics. Further on, Naurin sub-categorizes arguing to two separate forms: *cooperative* and *competitive arguing*, the former referring to sincere deliberation and the latter to rhetorical deliberation, in which an actor is equipped with a strategic intention to persuade the opposing party (see also Schimmelfenning 2001, 63). In addition, bargaining can also be cooperative or competitive in form and is thus divided into two sub-categories respectively. From this it follows, therefore, that both arguing and bargaining can theoretically take either strategic or communicative forms. What is particularly challenging here is, however, to empirically differentiate between cooperative bargaining and the two modes of arguing, since their features overlap in a couple of key areas. To give an example, decision-making in the EU Council resembles arguing in many ways. It is usually consensual, voting takes seldom place and the outcomes tend to satisfy most participants. It can be seen as highly cooperative, but such behavior alone should not be confused with arguing. (Naurin 2007.)

In conceptualizing these two major modes that are further divided into two sub-modes, Naurin has pointed out that it is particularly important to figure out not only *whether*, but *why* actors give reasons for their positions during the decision-making processes, as well as to control whether they initially attempt at changing the minds of other actors or not. The mere appearance of reason-giving during the negotiation-process cannot be considered as indicating its argumentative mode. Instead of that, one needs to acknowledge the exact motivations behind these arguing-types of speech acts (see also Checkel 2001). By giving justifications and conducting reasoning, the decision-makers can attempt, e.g., to deliver information, formulate and clarify their adopted positions, show the opponents how committed they are to a certain position or simply to construct optimal sphere for a potential compromise. Similarly to Naurin, Neyer (2004, 28) has
claimed that in an argumentative decision-making process, the actors do not have to change their minds or adopt altruistic positions. Instead of that, arguing implies that the actors have adopted a particular style of reasoning in order to make their proposals plausible.

When actors make explicit efforts at first convincing others about what they perceive to be right and later at changing the other decision-makers’ fundamental preferences, it corresponds solely to the competitive mode of arguing, not to the cooperative and nor to one of the bargaining types. In a competitive bargaining, instead, reasons and justifications can equally be presented, but the goal is to make the others comply with one’s demands by pressuring them to make concessions. When the decision-makers do not make any efforts at changing anyone’s preferences, the interaction can come in a cooperative form of either arguing or bargaining, even though the speech acts themselves might implicitly resemble sincere arguing. In cooperative modes of arguing and bargaining, the goal is not to transform the preferences but to clarify them by way of putting all the needs on the table and involve a common effort to reach a solution.
Table 3: Empirical Conceptualization of Bargaining and Arguing.\(^{35}\)

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<tr>
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<th>Bargaining</th>
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<tr>
<td><strong>Cooperative</strong></td>
<td><strong>Integrative Bargaining</strong></td>
<td><strong>Deliberation</strong></td>
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<td></td>
<td>Disagreement over course of action as a result of conflicting wants - self, other and ideal</td>
<td>Disagreement over course of action - partiality of views - differing frames of reference</td>
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<tr>
<td></td>
<td>Cooperation</td>
<td>Dialogue</td>
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<td></td>
<td>Argumentative rationality ((Lewis \ 2008))</td>
<td>Argumentative persuasion ((Riker \ 1986))</td>
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<tr>
<td></td>
<td>Particular style of reasoning with no intention of changing other actors’ minds ((Neyer \ 2004))</td>
<td>Empirical exploration of other actors’ beliefs and understandings on empirical facts and normative principles → Common and better understanding of right course of action</td>
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<tr>
<td></td>
<td>Clarifying and comparing the preferences of others and self, information-sharing</td>
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<td></td>
<td>Issue-linking and -trading</td>
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<td></td>
<td>→ Compromise solution</td>
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<td></td>
<td>Package-Deal</td>
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<td></td>
<td>Maximization of everyone’s needs</td>
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<tr>
<td><strong>Competitive</strong></td>
<td><strong>Distributive Bargaining</strong></td>
<td><strong>Rhetorical Action</strong></td>
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<td>Disagreement over course of action as a result of conflicting wants - self, other and ideal</td>
<td>Disagreement over course of action caused by lack of info or wrong beliefs</td>
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<td></td>
<td>Signaling commitments</td>
<td>Monologue</td>
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<td></td>
<td>Pressuring via threats and demands</td>
<td>Manipulative persuasion ((Riker \ 1986))</td>
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<td>Concession-trading</td>
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<td></td>
<td>→ Maximization of subjective needs at the cost of others</td>
<td>Strategic use of norm-based arguments ((Schimmelfenning \ 2001))</td>
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\(^{35}\) The format of the table is derived from the work of Naurin (2006; 2007). The substantial content is largely derived from the same sources, yet, it includes slight amendments and an overall revision as made by the author herself. Moreover, the conceptualization works of Checkel (2001a), Lewis (2008), Neyer (2004), Riker (1986), Schimmelfenning (2001) and Walton & McKersie (1965) are incorporated to the table.
5.1.5.4 The Origins of Actor Influence and Position-Changes

In addition to the institutional variables, the literature on negotiation theories distinguishes between several sources of actor power, among the most frequently mentioned being the domestic constraints (Putnam 1988; Schelling 1960), size of the country (Moravcsik 1998), or eventual distance from the status quo and median voter (König & Slapin 2006; Slapin 2008). In this study, the concept of influence is defined as a state’s ability to channel the negotiation outcomes towards a more favorable direction regarding its own ideal points and initial interests. This definition includes an essential assumption that the direction would not have been determined or the outcomes achieved to the advantage of the state in question without its own contribution.36

However, when measuring the exact degree of each Member State’s influence through comparisons of their initial interests and the *de facto* outcomes, some methodological concerns automatically emerge from the outset. First of all, there are a number of both explicit and implicit ways of influencing others. When looking at EU level negotiations, it can be seen that even an explicit influence does not necessarily indicate real influence.37 This is to say that while a Member State makes suggestions that are very close to its actual preferences, the others can push forward proposals that are actually relatively far away from their initial preferences, and in so doing guarantee that their ideal point will be met.38 In a similar vein, as Bachrach and Baratz (1963, 635) suggest, a negotiator can forward solely the proposals that can be anticipated to get through allowing us somewhat misleadingly to acknowledge their influence. As it is obvious, a proposal that is in any case anticipated to be accepted by other decision-makers cannot be considered as indicating real influence over the other actors or outcomes. On the other hand, a negotiator

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36 This definition of influence is equivalent to the one made by Slapin (2006, 58) and to another one relying on leadership theories as made by Beach (2005, 11). Beach has defined influence as a successful use of leadership resources to change an outcome from what it otherwise would have been in the absence of action. The definition as used in this study also concords with Baillie’s (1996, 2) conceptualization of the term as an ability to have the desired effect on outcomes in issues which are seen to be of great importance to the actor itself.

37 Beach (2002b, 623) has stressed that those of us who have not sat around an IGC negotiating table do not know that much about the internal dynamics of IGC negotiations. There is little data available, and no systematic investigations have been undertaken on questions such as whether there are wide discrepancies between *stated* and *real* national positions during IGCs.

38 How and when two potential sources of power, the Member State’s proximities to the status quo and to the median voter, affect on its bargaining strength have been identified by König and Slapin (2006).
can also prevent certain issues from ever being put onto the agenda and thereby have a real, significant, influence on outcome. Given that the nation states are heterogeneous utility-maximizing actors, these applications of negotiation tactics can be expected to vary accordingly.

Secondly, it is an empirical fact that the Member States’ observable and explicit positions may or may not change during the negotiations. Nevertheless, it is not at all clear that a change in position necessarily stems from the successful use of power or influence of other, opposing parties. The positions may change for varying reasons, which may or may not derive from pure power politics. They may get adjusted as a result of economic or domestic factors, as an outcome of either arguing or bargaining types of interaction, as well as for the reasons that can be positioned nearly at any point in the spectrum depicting rational vs. irrational actor motives. It is relatively often the case, however, that the positions are simply coordinated and adjusted as a consequence of domestic affairs. This points to the RCI and liberal intergovernmentalist nature of policy-making practices given the power addressed to the domestic actors and factors. In line with Moravcsik (1993, 481), Frieden (1999, 52, 62) also points out that a change in domestic factors – such as economic settings, geopolitical questions, technological developments etc. – might just as well predict changes in national preferences. The state preferences may vary across time and topics. As countries develop, their resources and characteristics change, which might affect their preferences in predictable ways. Moreover, Frieden has requested careful attention to the negotiation rounds themselves before asserting that a specific outcome derives exclusively from increased information or changed bargaining conditions.

In empirical and conceptual terms, it is also important here to recognize that a change in an actor’s standpoint does not necessarily have to signify de facto change of preference, by definition, but a change of position. In Naurin’s (2007, 11) words, the preference ordering contain the normative ranking of actors’ beliefs of what is right, whereas their positions indicate what compromise they are ready to accept. From this it follows that the phenomena of position-change in the EU negotiations can undoubtedly be explained in rational choice terms. Rather than being an outcome caused by persuasion, good argumentation or social learning, the positions can change due to the actor’s rational, strategic calculations with respect to the negotiation round or issue at stake. In a real world
negotiation a Member State might also give a sudden, apparently changed statement of an issue at stake solely because it expects significant side-payments, concessions or distributional trade-offs in other issues that are much more important to it.

Regarding the explicit changes in Member States’ positions, varying explanations have been given, as stated above. Stubb (2002, 646) has evaluated the reasons for the change in the IGC processes from a constructivist point of view. According to him, “[p]ositions in IGCs swing for many reasons, but rational choice and calculation are rarely among them. IGC negotiations are a messy and often confusing learning process, where the basic positions of the Member States show some continuity, but the specific positions of the negotiators fluctuate in line with the dynamics of the negotiations.” In sum, drawing conclusions about the origins and mechanisms of position-changes is also subject to stringent analysis in this study.

5.1.5.5 Negotiation Analysis by Process Tracing

In this study the empirical research has primarily relied on document analysis and the data-sets have been assessed by systematic sequencing. The outcomes of the IGC and Convention negotiations as regards the institutional issues were first explored, after which the small states’ negotiation behaviour, contributions and eventual discussions were evaluated in-depth by assessing their interventions in particular situations in the decision-making processes. The *de facto* small state success and influence was measured roughly by comparisons of their *ex ante* preferences at the beginning of the decision-making processes ($T^1$) with the final accords in the issues of the institutional reform ($T^3$). Their positions during various stages of the negotiation processes ($T^2$) were accounted for in order to assess the role of the process resources and potential preference-changes.

The number of coalitions, mode of interaction, national statements, declarations, argumentation and bargaining of these four small states, in particular, were clarified through a systematic content analysis of the documents. Whenever there appeared to be a high level of correlation between the proposals put forward by small Member States and the respect outcomes of the negotiations, it was possible to argue that the small states have
been able to influence the outcomes, and it was expected that a certain amount of diverging interests and opposition emerged, which was assessed in the study as well.

In addition to the rigorous calculations on winning and losing parties in the negotiations, the aim of this study has been to interpret the communicative processes by analyzing the usage of language: speech acts whenever they existed, verbal contributions, mode of dialogues, as well as to examine the types of varying announcements, declarations and interventions made by the Member States. The main methodological tool for analyzing this side of the negotiations is discourse analysis. Nevertheless, it needs to be pointed out that the nature of the data as drawn particularly from the IGC processes is delicate and, as such, fairly specific. Since many of the documents and all of the interviews are strictly confidential, the study does not conduct stringent discourse analysis, by definition, or making word-by-word transcriptions of the interviews in order to investigate every implicit or explicit signal at least potentially sent by the informants. Instead, the method is here called as qualitative content analysis, as conducted using discourse analytical tools.

The data analysis proceeds by means of process tracing, which is an appropriate device to examine different conditions turning into outcomes. Process tracing is also a practical tool to be used to create data on causal mechanisms, specific events, actions and other kinds of intervening variables or context conditions that connect bargaining to observed effects and generate particular outcomes. Since the study has employed multiple data streams, process tracing can be used as a means of interview analysis to uncover specific data from key individuals concerning a particular chain of events at the process of interest. Furthermore, the approach of process tracing is here divided into a specific sub-technique, namely backward tracing, through which the behavior of small states has been analyzed in this study. In backward tracing, the analysis starts from the opposite end of the hypothetical chain of causation, that is, from an explanandum (Scharpf 1997, 25).


One of the main methodological challenges inherent in studies of decision-making processes concerns the problem of the counterfactual. As already noted earlier, methodological problems in this project emerge when investigating the actor influence during an IGC or Convention processes. It is notoriously challenging to measure actual actor impact on specific institutional issues during a negotiation, or to find empirically out whether a small intervention has had any major consequences in the decision-making process. Real-world negotiations are always ‘one-offs’, making it impossible to clarify what would have happened if a given actor did not intervene at a given point in a negotiation. (Beach 2002a.) Similarly, as Svedrup (2002, 137) has noted, it is at least a challenge to prove that some specific details in the Treaties could have been different if the institutional setting had been different. These methodological concerns as linked inherently to the research questions of the project are here taken into consideration to the greatest possible extent.

5.1.6 Confirmation and Disconfirmation of the Hypotheses

As previously stated, two types of assumptions deriving from different schools of thought are examined in order to explain small state influence over EU Treaty negotiation outcomes. Rational choice and constructivist approaches presume different causal mechanisms for the (small) Member State influence in the EU Treaty-making processes. The intergovernmental hypotheses derived from rational choice angle of theorizing suggest that the negotiations proceed in full accordance with national interests, and the decision-makers have their main target in maximizing the utilities through means-ends calculations. The Member States bargain primarily by offering side-payments and concessions in return for the other actors’ support in a given issue. In addition, they demand trade-offs and package-deals, plead a binding mandate from domestic actors and threaten a veto whenever necessary.

Given that the rational choice approach is a theoretical starting point in the study, the empirical data is expected to verify that in the IGCs, decision-makers have been largely rational and utility-maximizing, the interstate bargaining has been strategic and
domestic-driven in nature, and the outcomes of the negotiations ultimately determined by the credible threat of veto. Should the interests of Member States seriously clash with each other, it is expected that the negotiations break down and the status quo is maintained. With a view to the small states it is presumed that under unanimity decision-making rules, small Member States are able to skew the outcome closest to their original interests in three particular institutional issues: those of the Commission composition, the extension of QMV and the reform of the Council Presidency. As regards the Convention process, in turn, the empirical data is expected to imply relatively smaller influence for small Member States, as well as a weaker consensus among the decision-makers. The Convention setting – presumably incorporating more flexible decision-making rules and possessing less institutionalized scope conditions to the disadvantage of national governments – should indicate less room for asymmetric interdependence between the actors. The Convention method is not expected to allow for appropriate formulation of institutional package-deals through concessions and side-payments, nor is it expected to permit the use of veto. Under these conditions, the decisive factor of influence is the actual power of a Member State, usually depending on its size.

The two theoretical conjectures posit different independent variables to explain small state influence within the given Treaty-negotiations. For rationalists it is the constraining institutional setting, while for constructivists it is the communicative logic of action, persuasion and effective argumentation. According to constructivists, those having the best arguments in given issues will have the greatest influence and, subsequently, win in the end. In view of the Convention outcomes, the rationale derived from the constructivist angle of theorizing would assume that the draft Constitutional Treaty as a proposal for an institutional reform reflects full and sincere agreement between the negotiators. The achievement of such consensus would have been preceded a reflexive decision-making process based on deliberative practices and normative argumentation excluding hierarchy and authority. Since it is a presumption of the constructivist perspective that the better argument prevails, it is consequently expected that political learning and transformation of preferences frequently take place in the negotiations, and the decision-makers adopt new opinions through a process of socialization and learning.
In order to find out which hypotheses withstand empirical scrutiny, I proceed by means of process tracing and examine whether the small states’ initiatives were (or were not) included to the respect Treaties: 1) through a process of traditional bargaining as driven by domestic constraints, threat of veto and specific actor strategies in line with the intergovernmental hypothesis, or 2) through a process in which deliberative and argumentative practices were used in a way that mobilised the actors to reach consensus through learning and subsequent preference convergence. Given the fact that the Convention procedure was implemented under the shadow of veto from the following IGC, some elements of purely intergovernmental bargaining can be expected to exist also in that proceeding. Also, to restrict the power of rational choice and intergovernmental reasoning, there can be evidence from the use of deliberative and argumentative practices in the IGC negotiations. Whether these elements would systematically turn out to be explicitly dominating in their least expected settings, the hypotheses would have to be disconfirmed respectively.

Varying evidence in the data set could lead to weakening or even disconfirmation of the first hypothesis. First of all, the significance of the formal veto-right as a small state weapon could be decreased in accordance the notion that it is actually more often than not used by the large states than the small states. Secondly, it might turn out that the veto power has successfully and to a considerable extent also been used in the Convention negotiations under the restricted consensus decision rule. Yet, a detailed empirical analysis will have to be conducted until it is possible to conclude that it has been a major or significant strategy in either type of the EU Treaty negotiation practice. Whether it would turn out that the constructivist arguments apply equally to each type of the decision-making rules and processes – be it unanimity or restricted consensus, IGC or Convention – the explanatory power of the LI theory would decrease, as the counter-argument derived from the sociological institutionalist theorizing would gain empirical support.

In a similar vein, and still confirming the competing thinking of constructivists, it could be empirically verified that the small states’ influence actually increased under the restricted consensus rule in the Convention negotiations. This being the case, they might have succeeded to affect the large Member States’ preferences to skew the final agreement as close as possible to their original interests through a process of an intense, deliberative
argumentation based on persuasive practices. Whether the counter-thought of sociological institutionalism is noticeably strengthened and the intergovernmental hypothesis likewise disconfirmed depends also on the extent to which the small states’ original preferences correlate with the distributive outcomes in the eventual Treaties. Should the incorporation of small states preferences be greater in the Convention case, an explanation would then have to be given to a question of why did the small state influence increase under restricted consensus rule in the Convention type of a negotiation context? Would, then, constructivist explanations hold better, or is the phenomena still to be accounted by rationalist type of reasoning?

5.2 Data and Sources

The European Union is in various contexts considered to represent a ‘living laboratory’ and normally EU documents are widely available, with the exception of some IGC documents that are confidential. In particular, the information and material concerning “tours de table” within the Council of Ministers remains rather scarce, and this fact has brought some notable challenges with respect to this study. The shortage of documents seems to be particularly distinct in relation to the Amsterdam negotiations, whereas the Nice and 2003-04 IGCs together with the Convention produced a greater amount of textual documents.

Nevertheless, this study has relied on primary data sources whenever possible. Most of the data used in the empirical part derives directly from the material produced in the administrative and secretarial bodies of the EU on the one hand, and the Member States on the other. In addition to the textual documentary sources, a significant amount of information is received through in-depth interviews. In the following, the nature of data and the methods for collection will be described in detail.

\[\text{Lehtonen, Tiia (2009), Small States – Big Negotiations: Decision-Making Rules and Small State Influence in EU Treaty Negotiations} \]

\[\text{European University Institute} \]

\[\text{DOI: 10.2870/2709} \]

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\[\text{41 See Jupille et al. (2003, 8).} \]
5.2.1 Archival Material and Literature

The most important part of the primary data sources consists of a range of documents drawn from the Amsterdam and Nice IGCs, the Convention negotiations and the IGC 2003-04. These documents have been consulted in the Commission Archives, as administered by the General Secretariat, and located in the Commission’s main district in Brussels. Most of the documents are here classified as internal notes or documents of the Commission. As regards the EU Treaty negotiations, the Archives have provided with detailed minutes, verbatims and summaries of the meetings both at the Ministerial and Representative level, including specific IGC proposals termed as ‘CONF’ and ‘CONFER’ papers, as well as the individual Member States’ positions and contributions during the decision-making processes. In opposition to the IGC material, most of the Convention documents are actually public and easily accessible. They are available also as web-versions in Convention’s official homepages.42

The interests, opinions and preferences of Belgium, Denmark, Finland and Ireland as regards the institutional issues are examined through three main clusters of documents offered by the Commission Archives, namely: 1) the official positions of the national governments expressed in the reports they submitted to the EU during the negotiation processes, 2) transcripts of speeches and statements by national politicians, usually those of Prime or Foreign Ministers, over a period of the Treaty negotiation in question, and 3) the summaries of the proceedings in the negotiations themselves, in which every single expression of preference, position, view, opinion or statement are recorded. Also the salience that each national negotiator has attributed to a specific issue is deducted from these documents. Therefore, the small state preferences are primarily explored through direct observation.

It is to be noted, however, that there is a slight source of inconsistency within the data-sets when it comes to scrutinizing the small states’ positions through the material provided by the Commission Archives. This is due to the fact that the archival files contain also a considerable amount of somewhat softer, second-hand documents, i.e. national press releases, newspaper articles, summaries of speeches given by national

42 The address is: <URL:http://european-convention.eu.int/>.
politicians in various forums, sent faxes, and even confidential e-mails, which cannot be unambiguously categorized as indicating the “official” positions of Member States but are, however, used to construct a comprehensive description of national preferences. Given that journalists, for instance, can seldom empirically verify the validity of different statements, these documents are always subject to bias. Secondly, when it came to indicating issue saliencies, there appeared to be a certain number of missing preferences even if it finally turned out to be a rather minor concern. This is to say that especially in the issue of QMV the data-set did not contain systematic or detailed measures on each Member States’ preferences in each negotiation rounds as from the Amsterdam IGC on. Given the fact that a vast number of different policy-areas fall under the realm of QMV, it is hardly surprising that all Member States did not always indicate their positions. One may also interpret these to be issues of minor domestic saliency and less intensive interests. Alternatively, the Member States may have chosen not to indicate their preferences if their respect governments have not been able to reach consensus on the position. After all, the positions introduced in this study are aggregations of small states’ expressions presented in various contexts during the negotiations rounds. This data has made it possible to create average positions for Member States. All the same, each utterance of an opinion or preference is collected from the EU Commission Archives, so that it can be argued to be subject to sufficient reliability.

A significant part of the literature that is browsed in the study deals with the factual figures, information and statistics of individual small states and their orientation towards the EU. This literature is at least sufficient if not plentiful, and several contributions analyze the individual Member States’ relationships with the EU. A secondary data source is offered by a great variety of additional EU documents, such as official statements, Community reports, summaries of decisions, Presidency conclusions and EC Bulletins. To sum up, the study contains a significant amount of theoretical, methodological and empirical literature, including the secondary sources such as historical and contemporary journals, articles and publications in the discipline of EU studies and international relations.
5.2.2 Interviews and the Selection of Informants

In order to supplement the textual and documentary sources and to fill up the remaining interpretative gaps, the data has also been collected through semi-structured in-depth interviews among the Treaty-negotiation representatives from four small Member States: Belgium, Denmark, Finland and Ireland. The interviews were conducted among a variety of representatives who had personally attended or dealt with the respective negotiations at some level. The group of selected informants consisted of high-level political decision-makers on the one hand (the Heads of States and Governments, such as the Prime and Foreign Ministers), and the top civil servants on the other hand (officials from the Ministries for Foreign Affairs, officials and ambassadors from the Permanent Representations to the EU, members of the national EU-Secretaries, governmental and parliamentary representatives, counsellors and advisors). The Convention Members were selected so as to include at least one government and one parliament representative from each country.

Originally the request for an interview was sent to twenty-four respondents altogether. An attempt was made to catch one or two respondents per IGC or Convention negotiation round from each of the four Member States. From this group some ten respondents returned immediately back to the investigator so as to fix an appointment for an interview, whereas four refused referring to their eventual time-constraints, and one offered his apologies in light of his 'apparent difficulties in remembering the substantial issues within particular negotiation processes that took place nearly ten years ago'. As the process went on, more requests were sent to varying national representatives also on the basis of recommendations and advice given by the original candidates.

In all, some eighteen interviews were carried out altogether consisting of four informants from the countries of Belgium, Denmark and Ireland, and five informants from

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43 In fact, this matter was stressed in a number of conducted interviews, too, and many of the informants were seemingly sensitive towards particular events and issues that had been tackled already years ago, especially in the case of Amsterdam IGC in 1996-97. Consequently, the interviewees were sometimes rather reluctant to report particular developments and turning points during the negotiations in greater detail constantly emphasizing that they might misremember the exact state of affairs.
Finland. One informant was caught up from the European Commission. Eleven interviewees had been involved with more than one IGC, which made it even easier for an interviewer to get a valid depiction of the development of Treaty negotiations and reforms. The Convention representatives consisted of both Conventioneers (four Government and two Parliament Representatives) and civil servants who had been dealing with the Convention proceedings and/or preparations at national level (i.e. the group consisting of personal assistants of the Conventioneers and officials, counsellors and legal experts from the Permanent Representations and Foreign Ministries). Ten informants had been involved with both the Convention and IGC proceedings, and only four respondents took part in no more than one Treaty reform: either an IGC or the Convention.

The first round of interviews was conducted during the months of June and July 2007, and the second round during the months of November 2007 and January 2008. The interviews were strictly confidential and formal in nature, they were held in private and the informants were guaranteed their anonymity. The respondents answered to open questions which were categorized according to three themes. During the sessions, the following topics were tackled: 1) the national interests and the process of position-formation, the intensity of preferences, de facto changes, and the domestic constraints and issue saliencies on institutional issues; 2) the decision-making process, including the actual style of the negotiations, the mode communication as used in them, the actor behavior and the experienced key success factors on actor influence; and 3) the experiences and general impressions regarding the applied decision-making rules. In addition, the aim was to deal with a set of more general topics regarding the overall nature of the IGC and Convention processes and to let the informants associate freely whenever possible.

The questions were spelled out from a standard form, yet some accommodation and modifications needed to be made as depending on the respect informant’s position and experience regarding the Treaty negotiation. Further clarifications were provided on substantial questions whenever an interviewee could not comprehend the question.

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44 The individual interviewees are here coded either as “Nat-” (referring to the national IGC participants/representatives) or “Conv-” (referring to the Convention participants/representatives), followed by the numerical ordering as starting from number one, (e.g. “Nat1”, “Conv1” etc.) In cases where the interviewee has participated both the IGC and Convention proceedings, s/he has been provided with two different codes (e.g. “Nat3” and “Conv5” as an illustration) so as to guarantee his or her anonymity. In the analysis an appropriate code is used depending on the context. The questionnaire is annexed in full Annex 1.
completely or in its full length. In order to guarantee value-free questions and to maximize the neutrality of the interviewer, however, the questions were posed so as to allow various sides and alternative interpretations of an issue. For the same reasons, only the minimum information of the interviewer’s research project was provided for respondents in advance, i.e. the broader research purposes were not spelled out explicitly, nor were the hypothetical underpinnings revealed. The respondents were advised to articulate their subjective thoughts through evaluating, explaining, describing and giving reasons in relation to the topics proposed. It was attempted to provide an atmosphere as conducive to undistorted communication as possible, since the respondents were also presumed to transfer confidential and sensitive information.

Regarding the importance of the interviews in general, it is well known that they play a crucial role in social scientific research today and the researchers increasingly get their information by means of active interviews. According to some estimations, as much as 90% of all social science investigations exploit the data as derived from the interviews. (Briggs 1986.) However, given the research design that this study applies, the interviews as a method for data-collection is intrinsic to some fundamental methodological and empirical problems, and it is acknowledged that it may consist some sources of bias. It has been argued that the interviewing techniques may rest on fundamental misapprehensions about the nature both of the interview as a communicative event, and of the nature of the data that it produces, (ibid). Within the EU context, Beach (2002b, 597; 2005, 12) has pointed out that the success often has many self-proclaimed fathers. Considering this, it is possible that the national decision-makers – including those interviewed in this study – might have incentives to stress the state-based character of the negotiations to a relatively large extent.

Given that the major interest in this study is to measure small state influence under varying circumstances, the oral (and thus inherently subjective) evaluations of the potential influence or specific events as presented by small state administrators or decision-makers are obviously not the best possible data sources in terms of reliability. As is well known, the political actors tend to forget and even reinterpret particular events over time and the politicians are inclined to give positive statements at least in public. In sum, it can be expected that the interviewees, especially when being national representatives,
would have incentives to overemphasize their actual influence. As posited by Moravcsik (1998, 11), one can candidly find support for any plausible conjecture about the causes of European integration. By the same token, one can almost certainly find support for any inference about small state influence, especially when asking small state national representatives.

Consequently, a great amount of methodological considerations needed particular attention when the interviews were prepared. As suggested by Fowler and Mangione (1990), the order of questions, the ways to pose them appropriately to respondents and the means to avoid saying wrong things or intervening at wrong moments were carefully accounted for in order to minimize interviewer-related errors and to prevent the classical mistake of directing the interview and thereby spoiling the potential information. Holstein and Gubrium (1995, 3) call for the use of stringent interview techniques in noting that if the interviewer merely asks questions properly, the respondent will omit the desired information. After all, in this study the interviewing was used as a supplementary – albeit as such significant – means of acquiring information, and its specific nature as a sensitive data-collection technique was taken into account in all respects. The sources of potential bias were considered, and the interviews were arranged so as to avoid distortion to the maximum extent. This is to say that the interviews were designed and prepared as carefully as possible, and the questions were phrased in a nondirective and neutral manner. The outcomes of the interviews were cross-checked with the documentary records, and in the ambivalent cases the documentary data was allowed to prevail.

In the end, the essence of the qualitative approach is to examine a set of events through the perspective of people who are being studied (King, Keohane and Verba 1994). When the major aim is to understand these events in which a number of decision-makers have been involved, the most appropriate way to proceed is simply to discuss with the participants in an organized interview. Given the fact that the IGC negotiations are still to a great extent strictly confidential, the interviews provided a significant amount of valuable information that could not have been derived from any other sources.
6 REFORMING THE TREATIES: PROCESSES AND OUTCOMES

This chapter introduces the empirical findings as drawn from the four Treaty reform negotiations: those of Amsterdam and Nice IGCs, the Convention and the IGC 2003-04. Each negotiation process is assessed with a view to the independent variable, namely, the decision-making arena embedded by particular institutional preconditions and decision-making rules. In addition, documented information together with major features and turning points in negotiation processes and national ratification proceedings will be provided. The analysis thus concentrates on the decision-making process in general, and on the contributions of Belgium, Denmark, Finland and Ireland in particular.

Apart from the impact of the applied decision-making rules, the major analytical interest rests on an intermediate variable, that is, the dynamics of the interaction and communication around the negotiation tables. While the first part of each section identifies the small Member States’ preferences, interests, positions and contributions during the negotiations, the second part moves on to look at the negotiation behavior of selected small states. It then proceeds to the side of dependent variable in exploring the distributive outcomes in Amsterdam, Nice and 2003-04 IGC’s and the Convention as regards the institutional issues. The overall process and the most significant contributions of the large Member States will also gain attention in these sections.

6.1 The Amsterdam Intergovernmental Conference in 1996-97

The Amsterdam Intergovernmental Conference started its work during the Italian Presidency in Turin on 29 March 1996 with a European Council meeting where the mandate for the IGC was initially established. The draft Treaty of Amsterdam was issued on 12 June 1997 and a suggestion for an overall compromise on 17 June. The final form of a draft Treaty was issued on 19 June, and the Treaty was signed in Amsterdam on 2 October 1997.45 The Amsterdam Treaty entered into force on 1 May 1999, preceding referenda in Ireland and Denmark and a constitutional revision in France.

45 CONF (4000/97), CONF (4000/97 ADD.1) and CONF (4001/97).
The Amsterdam negotiations were initially declared to focus on three main topics: to bring the Union closer to its citizens, to carry out an institutional reform and to create more effective external policies. One of the major features of the Amsterdam IGC was its long and comprehensive preparation process. In fact, it was the longest IGC so far in the Union’s history. Moreover, the Amsterdam IGC started in rather dubious and unsettled surroundings, since the ratification process of the Maastricht Treaty had been exceptionally difficult and it had not vanished from Member States’ memories. The period after the Maastricht Treaty were dominated by the issue of monetary union. Proposals considering enlargement to the Central and Eastern European countries also appeared in the agenda for the first time. That agenda for Amsterdam IGC was established in a complex way. While the IGCs of Single European Act (1986) and Maastricht (1992) were formulated around one specific topic, the elements of the Amsterdam negotiations were finally collected from three separate sources, those of the Maastricht Treaty, the prospect of enlargement to the Central and Eastern European countries and the acknowledgement of European citizens themselves (Dehousse 1999, 3).

On the institutional level, the Amsterdam Treaty needed to address several issues before the next enlargement. For this reason, a Group of Reflection was established in June 1995 in Messina, Italy. The Group was composed of high-ranking experienced staff of politicians, consisting of representatives of Member States and the Commission, and two observers from the European Parliament. It was chaired by the Spanish Presidency and represented by Carlos Westendrop, and its major aim was to consider the items laid down by the Maastricht Treaty. The Reflection Group exposed the complexity of reaching an agreement on the agenda of the IGC. (Duff 1997, 130-131.)

In sum, it was the Reflection Group’s task to summarize the mistakes made in Maastricht and prepare the IGC’s agenda. In spite of a number of problems that arised and lasted throughout the Group’s working period, it submitted its report to the European Council Madrid Summit in December 1995. One of its main tasks was also to deliver the positions of Member States. Nevertheless, once the Amsterdam negotiations started, the

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46 The Maastricht Treaty was described to be a treaty of compromise between the different perspectives of the Member States. Germany, Belgium and Italy in particular demonstrated their dissatisfaction with the treaty in a rather straightforward manner. They also worked as primus motors for convening a new IGC.

debate was still rather ambiguous and the results contradictory. According to one coalition, the institutional balance was to be preserved after the enlargement, while the other was rather skeptical about it. The European Council introduced a number of specific questions about the working of the institutions and the institutional issues were particularly high on the agenda, especially when the discussions of the enlargement proceeded. Even the individual Member States considered institutional issues as the most important ones in their public announcements, since the significance and the overall consequences of the forthcoming enlargement were not difficult to anticipate.

When the Treaty was signed in October 1997, it was criticized as being relatively modest and even ‘disappearing’ in scope, and for not having an identity of its own (Church & Phinnemore 2002, 41). The European Union stood on the threshold of a new era in its development, but many decisions were still left for future Intergovernmental Conferences. The insufficiency of the institutional reform in Amsterdam Treaty led to concrete planning for a revision.

6.1.1 National Positions, Preferences and Contributions

The process of negotiating the Amsterdam Treaty was tremendously slow and hard-going. During the negotiations, several opinions clashed, and serious cleavages emerged. The cleavage between small and large Member States turned out to be exceptionally sharp when the institutional issues were put onto the table in an informal European Council meeting that held in Noordwijk in May 1997. The final agreement was hoped to be made by 17 June, but by that date the issues of re-weighted votes and the number of Commissioners remained too controversial to be concluded. The negotiation behavior of two large Member States, those of France and Spain, in particular, was depicted as aggressive and undiplomatic. They were deemed as having created an impression of launching an attack on the small Member States, and to have made compromise impossible. (Beach 2005, 120-121.)
6.1.1.1 Utilitarian and Pragmatic Belgium

On the eve of the Amsterdam IGC, the Belgian Prime Minister Jean-Luc Dehaene (1996) noted that the Belgian approach would be pre-eminently pragmatic. He assured that each negotiation required compromises but, however, he hoped that those compromises would be an outcome of serene discussion with clear and rational arguments being put forward. Although Belgium had throughout the Union’s history favoured a rather federalist and far-going European integration project (Nat5), it took a utilitarian approach in Amsterdam IGC. In line with many other small states, the Belgian government pointed out that an international cooperation is needed in order to maintain some sort of a control over the international environment. (Kerremans 2002, 44.)

With a view to the IGC, Belgium set its principal objectives together with its Benelux partners by issuing common memorandums. As always before, it was a supporter of a Community method, deriving its logic of integration from rather federalist approaches. In the Benelux view, the use of the Community method is the only way to guarantee the efficiency, procedural transparency and democratic functioning of the European institutions. Moreover, as the Prime Minister Dehaene (1996) put it, the simple rule of subsidiarity constituted the basis of the Belgian position. He thus reminded everyone that Belgium has applied this principle on the internal level more consistently than any other Member State.

The Commission

Among the other small Member States, Belgium supported the idea of a strong and efficient Commission, which, on their view, represents the Monnetian non-hegemonic European tradition, and guarantees the influence of small states and their position against the potential dominance by larger Member States. According to Belgium, the reduction of the number of Commissioners might endanger this important role.

In the beginning of the IGC negotiations, Belgium thus stated together with its Dutch and Luxemburgish partners that each Member State must have its own

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Commissioner.\textsuperscript{50} As Kerremans (2002, 66) has pointed out, this position was somewhat incompatible with Belgium’s overall federalist attitude towards other issues. However, Belgium stressed that on the level of actual integration, the principle of one Commissioner per Member State is a question of credibility, legitimacy and recognition equally to large and small Member States.\textsuperscript{51} Nevertheless, while the negotiations proceeded, Belgium also ended up expressing openness to other suggestions concerning the size of the Commission. With a view to the enlargement, it was recognized that the Commission would no longer be able to work as a college and it would not be efficient enough when maintaining representatives from all Member States (Nat13).

In the end, Belgium was therefore ready to accept a solution of junior and senior Commissioners. Yet, it is to be noted that Belgium made an issue-linkage between two institutional questions. It stated that it would be ready to give up its Commissioner in exchange for the strengthening of the first pillar.\textsuperscript{52} The issues of the composition of the Commission and the extension of QMV were tightly interrelated for Belgium. Therefore, Belgium required side-payments by stating that it could consider giving up its Commissioner in exchange for a strengthening of the first pillar, and as a part of the overall package. Apparently, it adjusted its position in order to advance a relevant compromise, and even more importantly, presented it together with the concessions.

It was argued by Belgium that whereas a system of qualified majority is adopted in Council, the Commission could act as a protector against the “tyranny of the majority”, i.e. the absolute power of the larger Member States. Belgium contended that if the Council voting was modified, it would inevitably lead to a relative enhancement of the position of large Member States. To make this acceptable, it was stated by Belgium, the role of the Commission should equally be reinforced to the benefit of the smaller Member States. (Kerremans 2002; 53, 66.) From the Belgian point of view, modifying the Council voting should thus go hand in hand with the reinforcement of the Commission and the extension of QMV.

\textsuperscript{50} European Commission (1996d) and Sénat de Belgique (1996).
\textsuperscript{51} European Commission (1996h).
\textsuperscript{52} \textit{Agence Europe}, 1 May 1997; European Commission (1995a) and European Parliament (1995).
According to Belgium, the use of qualified majority voting should be generally extended, since the intergovernmental method and rule of unanimity will surely not yield positive results in a Union of 25 Member States or more. It defended the application of QMV in all three pillars, plus in the areas of social policy, taxation and environment. As expected, the rest of the Member States were not at all prepared to such a liberal position on the issue.

The fiscal provisions were of special interest to the Belgian government, but to its disadvantage, the crucial Article 99 was left unchanged. Belgium was primarily concerned by the extent to which the unanimity rule had de facto blocked harmonization in the field. Failing harmonization would, in its view, give rise to adverse effects on tax revenues in all Member States. This aspect derived from the so called Rhineland economic model, according to which competition has to be reconciled with social justice and with the possibility for government to intervene in the market. (Kerremans 2002, 58-59.) Towards the end of the negotiations, Belgium even hardened its attitude regarding the scope of the extension once the German retreat – from which it eventually expected the greatest support – on QMV became evident. It then argued that the re-weighting of Council votes is hardly necessary if QMV was not to be extended. (Duff 1997, 132-133.)

The Belgian Minister of Foreign Affairs, Frank Vandenboroucke, opposed explicitly the right of veto and any compulsory or systematic use of unanimous voting at Union level. The Prime Minister Dehaene (1996) backed this by noting how recent experience has shown that unanimity is an untenable rule in the EU decision-making, and how it eventually becomes unrealistic in view of enlargement. According to their view, the unanimity rule should be applied only in the institutional issues. In order to fullfill the criteria of democratic decision-making, the qualified majority should correspond with the majority of Union population, although the balance between the small and large Member

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States should always be taken into consideration.\textsuperscript{56} For certain fundamental decisions, larger majorities could also be required.\textsuperscript{57}

The Belgian position on cultural issues, however, is to be counted as an anomaly with respect to its generally positive attitude towards the extension of QMV. This stance on Article 128 was primarily derived from the opposition by the Flemish government, which succeeded to push its concerns through the concensus-based decision-making process at the federal government. It stipulated that a European cultural policy should not lead to any threat to the cultural specificity of, and the cultural diversity inside the Member States. (Kerremans 2002, 64; Nat7.) In the end, the outcome in the provisions concerning the extension of QMV was a slight disappointment to Belgium.

\textit{The Council Presidency}

Belgium favoured the improvement of the rotating Presidency for the reasons of safeguarding its continuation. In its view, the improvement might equate with developing a Troika-system, in which a college of three Member States could work together for one year at a time to prepare and coordinate the tasks of the Presidency.\textsuperscript{58}

On the other hand, from a Belgian point of view no tremendous problems were seen in maintaining the current system either. The smaller countries tended to have an interest in a rotating Presidency, as the opinion was that they hold better Presidencies than the larger states. By the same token, the positive influence that the rotating Presidency has on public opinion was regularly pointed out. (Nat7.)

\textbf{6.1.1.2 Denmark in Maastricht’s Aftermath}

Denmark started the Amsterdam IGC from a special situation after having rejected the outcome of the previous, Maastricht negotiations in a referendum of June 1992. This event had apparently not disappeared from other Member States’ memories, especially since Denmark was assigned several opt-outs due to its rejection and increasing skepticism. The

\textsuperscript{56} European Commission (1996d) and Sénat de Belgique (1996).
\textsuperscript{57} Dehaene (1996).
\textsuperscript{58} European Commission (1996d) and Sénat de Belgique (1996).
four opt-out clauses attached to the Maastricht Treaty concerned European citizenship, judicial cooperation under the third pillar, defence and security policy issues and the third stage of economic and monetary union. In Maastricht’s aftermath, these opt-outs were officially guaranteed at the Edinburgh Summit in December 1992, and followed by another referendum, in which the Danish voted ‘yes’ for the Treaty in June 1993.

At the beginning of the Amsterdam negotiations, the tension was evenly present within the Danish delegation and the repetition of the 1992 referendum was generally feared. Denmark went to the IGC with an attempt to retain all their Edinburgh exemptions. It was stated by Foreign Minister Helveg Petersen that the government’s negotiation mandate should be based on principles supporting the issues most important to Denmark. Given their starting point, the Danish Government worked particularly hard to influence the new Treaty so as it could be accepted among the majority of Danish citizens. This time the Danish policies were prepared within a particular mechanism. The intention was to secure broader involvement and capture as many of the domestic implications as possible. (Laursen 2002b; 71, 76.) At the Amsterdam European Council, Denmark threatened with a prospect of another referendum, should its interests not be taken into account. At the end of the day, its threat of veto proved out credible enough and it retained its exemptions in the way indicated below. Denmark was thus fairly satisfied with the outcome and the Treaty was sold to the Danes as a better one compared to that of Maastricht (Nat12).

**The Commission**

Within this issue, Denmark made a typical small country statement, according to which each Member State should be represented in the Commission. That was evaluated to be the only way the public can get assured that the Commission takes various Member States’ interest equally into account. The Danish Foreign Minister Helveg Petersen pointed out that the integrity of the Commission would be jeopardised, if some countries were not represented. In a Danish context any system whereby each Member State would not have

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a full Commissioner would immediately result in demands for significant changes in the role and competence of the Commission.\textsuperscript{64} In this sense, the Danish delegation tried to take into account the opinion of Danish civil society.

\textit{The Extension of Qualified Majority Voting}

Denmark has generally favoured the application of qualified majority voting throughout the history of the European integration (Nat11). At the time of Amsterdam, it took an opinion that the extension of QMV should be considered on a case-by-case basis, although there was general support for introducing QMV into a large number of new areas.\textsuperscript{65} It was admitted in Denmark that with the enlargement, it would be necessary to simplify the decision-making structures and use majority voting to a much larger extent. Nevertheless, the preconditions for the extension were stated to be that: 1) community legislation should generally be minimum rules and standards, and 2) the balance in the Council voting system between small and big countries must be maintained.\textsuperscript{66}

Denmark favoured the extended use of QMV decisions under the first pillar issues, but opposed its introduction to the third pillar issues. In Danish view, the decisions of Justice and Home Affairs should be taken under unanimity also in the future. Within the second pillar, Denmark supported some kind of “consensus minus one or two” practice when adapting joint actions. In view of the fact that environmental issues have been distinctively important to Denmark, it was not surprising that within this area it sought several improvements at Amsterdam. As an objective, it attempted to move certain environmental taxes under the QMV rule.\textsuperscript{67} On top of that, the Danish delegation introduced a proposal in September 1996 aiming at maintaining its national rules in environmental decision-making.\textsuperscript{68} It was stated by Denmark that particular selling points will be needed for the domestic ratification of the Treaty (McDonagh 1998, 88-89). The environmental guarantee is a term for a provision of the EC Treaty which, in certain circumstances, allows Member States to maintain their national rules irrespective of EU regulations. The negotiations around this environmental clause in Article 95 were

\textsuperscript{64} European Commission (1996a).
\textsuperscript{65} European Commission (1997c) and European Parliament (1995).
\textsuperscript{66} Commission of the European Communities (1994).
\textsuperscript{67} Danish Ministry of Foreign Affairs (1997) and Laursen (2002b, 77).
\textsuperscript{68} CONF (3958/96).
successful to Denmark, as the proposal was included in the final Treaty. Denmark was therefore able to skew the outcome close to its original preferences. In all, within the QMV issues Denmark was willing to: “[--] accept rules in the Council which preserve the balance between smaller and larger Member States after enlargement including a double majority voting system.”69

For Denmark the major problem was its Maastricht-based exemption in respect to JHA co-operation and moving parts of the third pillar to the first pillar. At the end of the Amsterdam negotiations, a protocol on the “Position of Denmark” was included in the final agreement. According to that protocol, Denmark shall not take part in the adoption by the Council of proposed measures pursuant to Title IIIa of the Treaty establishing the European Community. In other words, it referred to the newly transferred parts of Justice and Home Affairs, i.e. to asylum and immigration policies. (Laursen 2002b, 80-81.) In addition, the protocol suggests that Denmark does not accept the incorporation of the Schengen acquis into the European Union. Neither would it participate in decisions affecting the area of freedom, security and justice. Also, the Danish opt-outs of defence arrangements in the second pillar as originally defined in Maastricht were retained by the protocol.

The Council Presidency

At the start it was announced by Denmark that the Council Presidency should be held by each Member State in turn.70 Nonetheless, the Danish government was prepared to consider ways to make the Presidency more effective and to avoid too long periods between the individual countries’ participation in the Presidency. Therefore, the reinforcement of the Community ‘troika’ and the system of shared Presidencies were also acceptable to Denmark.71 The Danish Foreign Minister Helveg Petersen preferred Presidency teams with three or four countries working together a year at a time. He stated that it would make the Presidency a service function instead of a vehicle for national interests. In addition, it would prevent standstills caused by elections or ‘dead ducks’.72

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6.1.1.3 Finland’s Aim: Association of Independent States

Finland negotiated its first Intergovernmental Conference in Amsterdam. Its policy lines and basic positions had been drafted well before it even joined the European Union. A distinctive feature of the Finnish approach was a commitment to make the preparations as transparent as possible with the aim of involving the entire civil society together with the higher-level political decision-makers (Antola 2002, 122). The Finnish point of departure was announced as being in accordance with its economic and security-policy interests. In particular, the positions were often shaped by their aim of meeting the criteria of the Economic and Monetary Union (ibid., 126). Four issues were stated to be the main objectives regarding the IGC: keeping the EU as an intergovernmental institution, bringing the EU closer to its citizens, improving the efficiency of the Union, and supporting its transparency and democracy. 

According to Finns, the European Union should develop into a strong association of states, in which the Member States have shared power in order to use it to achieve the objectives that they have collectively approved.

Finland favoured a limited agenda to the Amsterdam IGC with a focus on amendments that would enhance the Union’s capacity to deal with its future challenges, such as stable economic development, employment and environmental protection. Moreover, Finland devoted special attention to safeguarding the position of small Member States. It stressed the interests of small Member States, which, from its point of view, should in particular be taken into consideration when examining the institutional issues. In institutional issues, the Finnish approach was thus cautious but flexible. Its starting point was that they should be looked at as a whole by assessing the balance between the institutions. In this context, attention should be attached to the requirements of democracy and effectiveness. All in all, Finland was fairly satisfied with the outcome of the Amsterdam IGC and it was stated by the Prime Minister Lipponen in the Finnish

Parliament that Finland was ultimately successful especially if measured against its background as a new and small Member State.\(^79\)

*The Commission*

With respect to the Commission, Finland suggested that the final institutional compromise should be established so as to secure that each Member State will have a member in the Commission.\(^80\) In Finland’s view, the Commission’s legitimacy, authority and opportunities for action can be increased only the conditions in which each Member State has an own representative. In addition, an own Commissioner enhances citizens’ sense of belonging to the Union and ensures that the practical knowledge of all Member States is represented in the Commission.\(^81\)

Finland underlined that the Commission’s independence and its role as a guardian of the Treaties should be preserved. As to the specific questions, it was stated by Finland that the Commission’s position in the issues of CFSP should not be altered but the right to initiative should be extended related to Justice and Home Affairs.\(^82\) In addition, Finland considered the present manner of electing the Commissioners and the President appropriate and took a negative stance towards any alternative proposals with respect the composition of the Commission. In its view, the Commission members should not be appointed on different ranks. The Finnish government did not consider it necessary to amend the provisions on votes of non-confidence nor those relating to the dismissal of Commission members.

*The Extension of Qualified Majority Voting*

Finland agreed with the formulation of the extension of QMV as established in the Presidency’s draft Treaty of Amsterdam. In its view, there is no need to change the system of QMV based on the present principles, at least not before enlargement. It took a positive attitude towards increasing QMV in the issues relating to social policy and environment.\(^83\) Flexibility in the first and third pillars could also be triggered by QMV; yet, Finland

\(^{79}\) Lipponen (1998).
\(^{80}\) European Commission (1997a) and European Commission (1997d).
\(^{81}\) Finnish Ministry for Foreign Affairs (1996).
\(^{83}\) European Commission (1996e).
wished to maintain intergovernmental cooperation as the principal line of action on many cases in Justice and Home Affairs.\textsuperscript{84} Consensus should be limited to constitutional and quasi-constitutional issues.\textsuperscript{85}

Finland emphasized that any Member State should be allowed to oppose the establishment of enhanced cooperation for important and stated reasons of national policy.\textsuperscript{86} According to the Finnish view, its specific interests should be preserved especially within the issue of CFSP, and the unanimity should be used so as to trigger flexibility in the second pillar. For Finland the precondition was that the Union’s objectives in relation to each particular question on CFSP are clear and that the vital interests of no Member State are involved.\textsuperscript{87} The Finnish desire to maintain the CFSP under the unanimity decision-making rule was claimed to have derived primarily from its particular relationship with the neighbouring Russia.

During the Amsterdam IGC, Finland made a joint proposal together with Sweden as regards incorporating the ‘Petersberg tasks’ into the CFSP.\textsuperscript{88} These tasks allow the EU to act without an explicit UN mandate, including humanitarian, rescue, peacekeeping and -making tasks, and the tasks of combat forces in crisis management. The Finnish-Swedish submission can be seen as indicating successful agenda-setting and coalition-building power, since the proposal had an evident influence on the outcome. The Petersberg tasks were introduced into the competence of the Common Foreign and Security Policy under the Amsterdam Treaty in the form of Article 17. It guarantees that all EU Member States irrespective of their national foreign and security policy provisions have an equal right to participate in the EU’s crisis management operations.

**The Council Presidency**

In the view of Finnish government, there was no need to amend the Treaties in relation to the European Council. It should continue to be the most central decision-making body, in which the status of Member States is based on equality.\textsuperscript{89} Finland did not agree with

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\textsuperscript{84} European Commission (1995c) and Finnish Government (1996).
\textsuperscript{85} European Commission (1997b).
\textsuperscript{86} European Commission (1997d).
\textsuperscript{87} Finnish Government (1996).
\textsuperscript{88} CONF (3832/96) and European Commission (1997a).
\textsuperscript{89} European Commission (1995c) and Finnish Ministry for Foreign Affairs (1996).
expressed fears that the present procedure of rotating Presidency weakens the continuity of the Council’s work or makes the efficiency of the Union’s actions excessively dependent on which Member State holds the Presidency at any given time.\textsuperscript{90}

Finland took a negative stance concerning the amendments to the rotating Presidency. It stated that the existing arrangements are appropriate, and improving the efficiency of the Presidency on the practical level does not require amendments to the Treaty. According to Finland, the work of the Council could be made more effective within the framework of the existing Treaties. All in all, it emphasized that the rotating Presidency has been functional and worked quite well.\textsuperscript{91} In the Finnish view, the status of small Member States could weaken if the Presidency posts were elected by majority rule, team Presidencies were applied or the periods of Presidencies lengthened.\textsuperscript{92} Yet, it took a flexible view on the possibility to develop the procedure of Troika.\textsuperscript{93}

6.1.1.4 Irish Emphasis on a Successful Presidency

The position of the Irish Government towards the institutional issues was laid out in a White Paper published prior to the start of the IGC. In addition to the institutional issues, Ireland announced that it had at least four major concerns in Amsterdam IGC. First, it possessed the general small state concerns that it shared with other small EU Member States. In line with Finland, Ireland pointed out that its national interests are best served through strong central institutions within which they can play a full role and ensure that their voice is heard.\textsuperscript{94} Secondly, Ireland dealt with the so called neutral-state concerns, and, third, a concern about whether it emerges as part of the Union’s core, or a part of an outer circle. Fourth, and perhaps most importantly, Ireland had a desire to carry off its Presidency in the fall of 1996 with as much success as possible.\textsuperscript{95} Due to this, Ireland was not tied down by exact national constraints or mandates. Its highest priority was rather in

\textsuperscript{90} Finnish Ministry for Justice (1995).
\textsuperscript{91} Finnish Ministry for Foreign Affairs (1996) and interview (Nat4).
\textsuperscript{92} Finnish Ministry of Justice (1995).
\textsuperscript{93} European Commission (1995c).
\textsuperscript{94} European Commission (1996f) and Irish Ministry for Foreign Affairs (1996).
\textsuperscript{95} Scott (1996) and Tonra (2002, 203).
making the Presidency work well. (Nat8.) After all, it was stated that all key Irish policy objectives were achieved in the Amsterdam Treaty (Tonra 2002, 219).

The Commission

The issue of the composition of the Commission was of central importance to Ireland. Ireland indicated that it would even be ready to cede some elements of its sovereignty in the IGC, but not to accept a removal of a right to retain a Commissioner for each Member State. The essence for this approach at Amsterdam was to preserve equality within the Commission in terms of the national right to nominate its members (Nat3). Already at the beginning of the Reflection Group’s work, the Irish Minister of State for European Affairs, Gay Mitchell, announced that Ireland would oppose any proposals which would seek to deprive the smaller Member States’ rights to nominate a Commissioner. It was made clear by the Irish Government that the issue was non-negotiable and no compromises should be expected on it. The proposal according to which the smaller Member States would have to share Commissioner posts on a rotating basis was also opposed. All in all, Ireland was surely seen as one of the Member States that insisted strongest on equality between the Member States (Nat3).

During the Amsterdam negotiations, the Irish Foreign Minister Spring stated that the real effectiveness of the Commission would be very much reduced in a situation where each Member State could no longer nominate a full member to the Commission. He added that as a small Member State, Ireland highly values the Commission’s independence, impartiality and responsiveness to the concerns of all. He also believed that there would be a significant loss of public confidence in the process of integration in case some Member States would not be given a right to nominate their Commissioners. Even though the decisions in the Commission are conventionally made through majority voting, it is generally acknowledged that the individual members can and will raise particular national sensitivities when needed. Apart from that, having someone to explain the decisions to national front is seen to be important. Regarding the relationship between the Commission

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and Ireland, the key issues emerged from agriculture. It has been of particular concern for Ireland and in this issue the Irish farmers follow the Commission’s work very closely. (Nat8.)

One of the proposals as presented by Spring (1995a) was to organize the Commission’s work internally so that it is capable of operating efficiently with a larger number of members. He pointed out that in several Member States there are a large number of people around the cabinet table, and the governments are still quite capable of functioning effectively. This opinion was highlighted also by the Chairman of the Joint Foreign Affairs Committee of the Irish Parliament, Alain Dukes, who stated that even if the Commission of the future had 24 members there would be enough work for each of them to be creatively employed.\textsuperscript{99} In addition, it was highlighted that the Commission could establish closer links with the national parliaments.\textsuperscript{100}

\textit{The Extension of Qualified Majority Voting}

As a Presidency-holder, Ireland circulated a specific questionnaire on the QMV issues for all Member States during the IGC. The aim was to invite everyone to indicate on which issues a move to the QMV would be accepted, and on which issues it would not. As a result, almost every article had at least one opponent. It was then clear that implication on a case-by-case basis would be, if not impossible, at least exceptionally complicated. (Stubb 1998, 186.) As a result, Ireland pointed out that the institutional questions should be looked at in a way that is specifically appropriate to the policy area in question rather than from a doctrinaire point of view.

According to the Irish national view, the most important aim with regard to the Council is to ensure that it can take its decisions effectively. Ireland could thus consider the extension of qualified majority voting also into some areas of the first pillar where unanimity was still required.\textsuperscript{101} For Ireland the fields of transport, culture, research and environment appeared to be some of the possible areas for extending QMV.\textsuperscript{102} In theory, the extension of QMV as a broad principle would from an Irish perspective be both

\textsuperscript{99} European Commission (1996g).
\textsuperscript{100} European Commission (1995d).
\textsuperscript{101} Intergovernmental Conference (1997b) and Spring (1995b).
\textsuperscript{102} European Commission (1996g) and Tonra (2002, 208).
acceptable and desirable. However, in practice it would have to be conducted on a case-by-case basis.\footnote{European Commission (1996g), interview (Nat8) and Irish Ministry for Foreign Affairs (1996).} It was pointed out that there are still many areas in which the Council, in accordance with the Treaty provisions, must decide by unanimity rather than by qualified majority. Many of these remaining areas where unanimity is still required, involve very sensitive national interests. In these issues, the abolishment of unanimity requirement could be counterproductive in the future development of the Union.\footnote{Spring (1995a).}

In Ireland the difficulties related to the extension of QMV arised mostly in the field of taxation, energy, defence, asylum, immigration and Treaty reform, with reservations also in the area of social policy. Furthermore it was felt that the majority decisions should not be added within the field of agriculture (Nat8). On the other hand, even if the Justice and Home Affairs, for instance, were highly sensitive to Ireland, it was generally acknowledged that the Union needs to function. Against this background it was recognized that it was not particularly realistic or thoughtful to require unanimity, especially because Ireland itself had benefited principally from two EU policies, which are based on QMV: the internal market and common agricultural policy. (Nat3.)

As in many other countries, the initial positions of Ireland were formulated in an inter-departmental committee of civil servants. During the process of position-building the individual departments eventually each looked out for their own interests, and it was admitted by one of the Irish IGC representatives that their respect ministry even tried to persuade other departments to accept more majority voting instead of insisting on unanimity (Nat8). Yet, in certain areas, such as taxation and defence, unanimity remained appropriate for Ireland even at the end of the process. Regarding taxation, it was pointed out that as far as the EU does not have a role or control over the whole economy, it should not have a role in taxation either. (Nat3 and Nat8.) With respect to the Petersberg’s tasks as proposed jointly by Finland and Sweden, Ireland was worried about going too far towards military involvement or militarizing the EU (Nat8). At the same time, however, Ireland supported a more effective Common Foreign and Security Policy (see Irish Ministry for Foreign Affairs 1996, 140). This reflects a fairly general phenomenon in the IGC negotiations: it is often the case that a Member State may well agree on the overall
necessity in the EU to introduce more cooperation or QMV in specific fields, yet it is not willing to pool its national sovereignty in these sensitive issues.

Together with Denmark, the Irish succeeded in negotiating an exemption clause to the Title on free movement of persons, asylum and immigration under Justice and Home Affairs. That is to say that similarly to Denmark, Ireland shall not take part in the adoption by the Council of proposed measures pursuant to Title IIIa of the Treaty establishing the European Community. This outcome indicates that Ireland succeeded to credibly use its threat of veto, as its original interest was appropriately taken into account. In addition, a protocol on the position of the United Kingdom and Ireland was annexed to the Treaty.

After all, it was pointed out by one of the Irish IGC representatives that the issue of QMV extension links to the nature and structure of the whole European Union system in general, and to the issue of the Commission composition in particular. “If you feel that you can trust the Commission, […] that you have an unanimous Commission, […] and not subject to too much pressure and so on, […] that it really does the things that are right for the Union as a whole, then you are little more ready to agree to majority voting as a system.” On the contrary, if the Commission was composed of a limited number of countries and thus subject to pressure from those countries and other countries feeling that they have no voice in its proposals, the acceptation of majority voting would be harder. (Nat8.)

The Council Presidency
At the time of Amsterdam negotiations, Ireland was running the Presidency and thus having a special, additional interest in the reform of automatically rotating Presidency (Nat8). Ireland stipulated that the Council Presidency should continue to rotate between all Member States.105 According to the Irish Foreign Minister Spring, the rotating Presidency system fosters a sense of ownership of the issues of the Union, a sense in public opinion of being at the heart of Europe and the urge to excel on the part of those holding office. In addition, it was seen as an opportunity for all Member States to advance the Union agenda efficiently, effectively and in an impartial manner. Irish Governments have traditionally considered these six-month Council chairs as great occasions to generate valuable political

105 European Commission (1996g).
capital.\textsuperscript{106} It gives the citizens a great sense of how the system works and socializes them into it (Nat8).

Therefore, even though the shortcomings of the rotating system were strongly put forward by some Member States, Ireland believed that the old fashioned Presidency has its advantages and is ‘a wonderful thing’. It provides with new energy and political target deliberations for a period of six months. ‘\textit{It is imperfect but it broadly speaking works.}’ (Nat3.) Apart from that, it was seen that for small Member States the Presidency post is relatively more important than to their larger counterparts. A small country, such as Ireland can add to its reputation as a good Member State by running a good Presidency. (Nat8.)

6.1.1.5 Large Member States

Regarding the composition of the Commission, the majority of large Member States were in favour of a limited, smaller-size Commission.\textsuperscript{107} Perhaps the most radical suggestion in terms of its reform was pushed forward by France. According to France, the size of the Commission should be reduced to ten to twelve members, having regard only to regional balance. Both Germany and the UK seemed to be prepared to give up their second Commissioner, although the proposal was not too explicitly favoured. Spain, in turn, contended that the larger states should always have a Commissioner, while the others would have to rotate. (Duff 1997, 132; Stubb 1998, 183.) Italy proposed that the number of Commissioners could be established once and for all at a certain figure (15), with an undertaking that the number will not be changed in future enlargements (CONF 3863/97).

With respect to QMV, Germany and Italy supported its general extension. From the Italian point of view, unanimity should be kept only in constitutional or quasi-constitutional provisions and those concerning derogations from the rules of internal market. Germany was of the opinion that the majority voting should be introduced particularly in defence issues. In its view, the unanimity decision-making should be

\textsuperscript{106} Spring (1995b) and Tonra (2002, 204).
\textsuperscript{107} Intergovernmental Conference (1997a).
limited only to the issues of particular sensibility. As a traditionally Euro-sceptic country, the United Kingdom made an exception from large states’ line by being generally doubtful of the extension of QMV. It argued that those preferring the extension of QMV should clearly demonstrate its advantages. The UK opposed its introduction in external and defence matters. After all, Germany withdrew its support for the extension of QMV in cultural and industrial policies in the final stages of Amsterdam negotiations, only a couple of hours after the subject had been discussed. This sudden blocking, said to have derived from the pressure from the German Länder, received strong criticism from other countries. (Stubb 1998, 184.)

In all, the large Member States also tended to make issue-linkages between different issues of institutional reform. Especially over the issue of the Commission reform, the large Member States called for appropriate side-payments in arguing that if they must give up one of their Commissioners, they should be compensated in re-weighting of Council votes. Similarly, it was announced that if the use of QMV were extended, the adjustment in the vote-weighting should be considered as ever more important.

6.1.2 Negotiating under Unanimity Rule: The Process and Outcome of the Amsterdam IGC

The institutional issues were known to form a central element in the Amsterdam negotiations, especially given the anticipated Eastern enlargement. Soon after the Maastricht Treaty had entered into force in December 1993, the European Council announced four agenda points for the future IGC: the role of the European Parliament, the size of the Commission, vote-weighting in the Council and the efficiency of the institutions. Finally, the institutional tension of the Amsterdam IGC culminated in three questions, those of the re-weighting of votes, the number of Commissioners and the extension of qualified majority voting.

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Finally no decisions could be reached in Amsterdam over these issues, which were particularly important with respect to the enlargement. The general concern to prevent further transferral of powers from the national level to the Community level was apparent by the time of negotiations (George & Bache 2001, 138). The IGC left a number of leftovers which could not be tackled, especially in the issues of institutional reform. The issue of the rotating Presidency was considered only briefly, and the overall terms and conditions for the Commission reform were left to be solved in the next IGC.
Table 4: The Outcome of the Amsterdam IGC

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6.1.2.1 First Requirements for Reforming the Commission

At the Amsterdam IGC, the reduction in the size of the Commission was placed on the agenda for the first time.\textsuperscript{109} It was decided that the Commission would not continue following the then principles of its composition, which would imply 35 Commissioners from 28 Member States in the future.\textsuperscript{110} Consequently, three options were presented regarding its future size: 1) maintaining the system of one Commissioner per Member State; 2) stating the maximum number of the Commissioners (e.g. 10, 12 or 15); or 3) creating two types of the Commissioners, either with or without portfolios.\textsuperscript{111} Finally, the negotiations focused purely on the size of the Commission while its internal matters, such as the allocation of portfolios, were mostly left out with some exceptions.\textsuperscript{112}

In view of the negotiation process and its outcome, it is remarkable that the Reflection Group initially held another point of view on the issue. According to the report submitted by the Group in July 1995, the number of Commissioners “[--] would cause no insuperable difficulty, especially if reduced to one per Member State.” In the same report, it was brought to attention that the national governments may also have thirty or more ministers.\textsuperscript{113} In the final report submitted by the Group in December 1995, the option of a full Commission was still considered as a feasible alternative particularly in the name of legitimacy and credibility.\textsuperscript{114}

The issue of Commission size was considered during the Amsterdam negotiations with great significance with a cleavage apparent between large and small Member States.\textsuperscript{115} It was stated that the objective of an efficient and strengthened Commission should be married to the legitimate expectation that no Member state would be excluded

\textsuperscript{109} It is to be noted that the number of the Commission members had also been a topic already in the 1990-91 IGC. The Declaration (No. 15) annexed to the Final Act of the Maastricht Treaty notes: “The Member States will examine the questions relating to the number of Members of the Commission […] no later than the end of 1992.” However, the questions were never examined. During the Amsterdam negotiations Jacques Santer, the President of the Commission, gave a significant impetus for the debate by pointing out that the Commission had too many members with respect to the portfolios available.
\textsuperscript{110} Expected that Poland and Turkey would both have a right to nominate two Commissioners.
\textsuperscript{111} CONF (3818/96), CONF (3856/97), CONF (3860/96), CONF (3900/96) and CONF (3951/96).
\textsuperscript{112} CONF (3856/97) and CONF (3887/97).
\textsuperscript{113} Reflection Group (1995a).
\textsuperscript{114} Reflection Group (1995b).
\textsuperscript{115} Intergovernmental Conference (1997a) and Intergovernmental Conference (1997c).
from the College. By and large, the small states defended the principle of one Commissioner per Member State, whereas the larger states, particularly Germany, France and the UK, were keen to discuss the role of the Commission President and Vice-Presidents, the Commission’s constitutional status and its role regarding the external relations. The appointment of Commissioners and their number was also subject to large state concern, but there were diverging interests in their side. (Spence 2000, 34.)

Side-payments were explicitly offered during the negotiations concerning the future size of the Commission. The issues of the re-weighting of Council votes and the composition of the Commission were strategically linked together. The large Member States were warned that they might have to sacrifice their second Commissioners once new Member States join the Union. They had been aware of this, but, all the same, the votes in the Council were proposed to be re-weighted in their favour. The small Member States, in turn, accepted the re-weighting of votes in return for the guarantee that they could keep their Commissioners. From this it can be seen that the concessions and side-payments were offered by actors most dependent on the agreement and the asymmetric interdependence clearly existed.

At last, a package-deal was introduced, and the overall terms and conditions were agreed to be reviewed in the next IGC. Although the detailed principles of the Commission reform remained unsolved, the Amsterdam Treaty did not leave the question as open as was the case with Maastricht. The Protocol on the institutions annexed to the Amsterdam Treaty states: “At the date of entry into force of the first enlargement of the Union […] the Commission shall comprise one national of each of the Member States, provided that, by that date, the weighting of votes in the Council has been modified, whether by reweighting of the votes or by dual majority, in a manner acceptable to all Member States, taking into account all relevant elements, notably compensating those Member States which give up the possibility of nominating a second member of the Commission.”

In the end, attempts to find a unanimous compromise on the composition of the Commission thus failed. The protocol on the institutions annexed to the Amsterdam Treaty

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116 CONF (3856/97).
117 “The Protocol on the Institutions with the Prospect of Enlargement of the EU” commits the Member States to a process of institutional reform with a view to the enlargement.
states that the issue would be reviewed in the next IGC. Nonetheless, the Amsterdam Treaty fixed the number of Commissioners at twenty. It was decided that if more than two and fewer than six members joined the EU, the Commission would still be composed of representatives from each Member State. Once this was exceeded, the provisions would be revised. Moreover, the role of the Commission President was indirectly strengthened in terms of his right to appoint the Commissioners.

6.1.2.2 Impressive Leftovers in Extending the Scope of QMV

At the Amsterdam IGC, the extension of qualified majority voting under the first pillar was stated to be one of the major issues for consideration.\(^\text{118}\) During the negotiations, three possible options were presented as how to expand the scope of the qualified majority voting in general. First, the QMV could be extended so as to consider each article on a case-by-case basis. Second, it was suggested to introduce some sort of a criterion to be applied more systematically, such as a super-qualified majority as an intermediate arrangement between unanimity and the present QMV system. Third, the QMV could be implied on a general basis with fairly limited exceptions. A large majority regarded the proposal for a case-by-case consideration with great disfavour.\(^\text{119}\)

With respect to the decisions concerning the extension of qualified majority voting and the weighting of votes, the Amsterdam negotiations finally failed. The QMV was originally expected to extend to all legislative areas. For maximalists, the final list leaves much to be desired regarding the articles that are still subject to unanimity. In the Amsterdam Treaty, QMV was conclusively extended to fourteen areas including, for example, parts of employment and social policies, public health, customs co-operation, research framework programs and equal opportunities. Yet, the extension was still not viewed as sufficient. The QMV was also to be used in foreign policy issues with a provision that any Member State could exercise a veto when feeling that its vital national interests were damaged. Article J.13(2) states that: “If a member of the Council declares

\(^{118}\) CONF (3900/96).
\(^{119}\) CONFER (3900/96), Intergovernmental Conference (1997a) and Stubb (1998, 185-186).
that, for important and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority, a vote shall not be taken. The Council may, acting by qualified majority, request that the matter be referred to the European Council for decision by unanimity.” This clause was included in the Treaty primarily as a follow-up to Luxembourg’s compromise-typed veto. Unanimity was also announced as required in the areas of services and intellectual property, which were added to the common commercial policy in the first pillar.

The Amsterdam Treaty shifted a number of policy areas from the third pillar to the first pillar. This was envisaged to take place over a five-year transition period during which the unanimity rule would still apply. Due to the Danish and Irish difficulties in accepting to move parts of the Justice and Home Affair issues into the supranational first pillar, specific protocols on the position of Denmark and Ireland were included in the final Treaty. Also, the ‘environmental guarantee’ was included in the Treaty as a result of the Danish requirement for relevant selling points to its national referendum. Using appropriate threats, recalcitrant behavior and pleadings to domestic concerns, the Danish and Irish delegations were hence able to skew the outcome close to its interests and return home as winners. A highly salient issue was adequately taken into account, and it can be argued that the domestic constraints played a significant role in the Danish and Irish cases.

6.1.2.3 The Rotating Presidency

On the whole, the role of the European Council was strengthened in the Amsterdam Treaty. Although the original aim was not stated to be its strengthening, the European Council was endowed with some additional powers. The Amsterdam Treaty offered an alternative to the classic unanimity clause by introducing an option for a right to veto in vital national interests. The role of the European Council was also negotiated in relation to the new regulations and decision-making procedures of the Common Foreign and Security Policy, fundamental rights, employment and closer co-operation. In particular, the introduction of a clause ensuring closer co-operation was considered to be one of the major innovations in the Amsterdam Treaty.
Regarding the reform of the rotation system of the Council Presidency, a clear-cut distinction between small and large Member States was not yet perceptible at Amsterdam. During the discussions, two basic options for reform emerged, the first one being a proposal of team Presidencies, with the second one a proposal for maintaining the status quo, i.e. the system in which the Presidency rotates automatically between each Member State in six-month turns. The larger Member States adhered to the former proposal, while the latter received support mostly from smaller ones. The small Member States argued mainly on behalf of the positive side-effects that the current system provided. In addition, they were concerned about the possibility that the team Presidencies would weaken their position by forcing them to work only as assisting partners on a ‘team’ for larger states. Finally, no amendments were made to the existing system of rotating Presidency in the Amsterdam Treaty. In line with their original preferences, the small Member States continued to enjoy a full right to run the presidencies together with the larger ones.

6.2 The Nice Intergovernmental Conference in 2000

The Nice Intergovernmental Conference began on 14 February 2000, and finished its work in December the same year when the European Council was held in Nice. The IGC was thus run through the Portuguese and French Presidencies, and the progress of the negotiations was reviewed twice. The first review was held in June 2000 at the European Council meeting in Santa Maria da Feira in Portugal, while the second in October at the informal European Council meeting in Biarritz. The Treaty of Nice was signed on 26 February 2001 and it entered into force on 1 February 2003, after Ireland had once rejected it in a referendum and later accepted it. The Treaty technically paved the way for the enlargement of the Union as well as opened the serious discussion on the future of the EU among the Member States.

Before the start of the Nice negotiations, a preparatory committee was established again. This time it was intended to be more informal, composed of ‘wisemen’ from the Commission and EU Member States with the participation of observers from the European Parliament. The aim of the preparation, however, was more or less the same as compared
to that of the Reflection Group nominated in Amsterdam: to learn from the past and to set a relevant agenda for the IGC, which would serve all the Member States equally. Nevertheless, two distinct opinions as to preparing the IGC emerged. By one group of proponents it was felt that the agenda should be as minimalist as possible, while another group advocated a more comprehensive reform to ensure the functioning of the institutions in the EU-27. (Galloway 2001.)

During the IGC, the Group of Representatives met approximately twice a month, while the Foreign Ministers met about once a month (Laursen 2006, 4). In the end, the main discussions took place in Coreper and in the Council of Ministers. The preparation itself was left to the Finnish Presidency during the second half of 1999, and the agenda of the IGC turned out to be relatively narrow.

6.2.1 National Positions, Preferences and Contributions

For the first time in the history of the European Union, the distinction between the small and large Member States appeared to be significant during the Nice negotiations. The interests of the small Member States diverged distinctively from those of the larger ones. This phenomenon was notable particularly in the institutional issues, such as the weighting of votes in the Council and the composition of the Commission. On the whole, the Nice negotiations were run at a critical time in the sense that the Union was just about to experience the accession of a considerable number of new Member States – all of them small with the exception of Poland.

6.2.1.1 Belgium’s Concern in an Appropriate Agenda

On the eve of the Helsinki European Council 1999, the Benelux countries stated that the upcoming IGC should be charged with more than just the left-overs of Amsterdam. At the beginning of the negotiations they confirmed that the IGC should cover, for instance, the issues of strengthening the role and authority of the Commission President; the efficiency
of Court of Justice and Committee of Regions; the extension of co-decision procedure and the dimensions of the defence. This opinion was still recalled in one more memorandum as put forward in October 2000. As before, Belgium was an advocator of the Community method and noted that it must continue to be the hallmark of the future EU. Moreover, it took the view that the Union should be reformed on the basis of its existing institutions and structures.

The Commission
Initially Belgium took the view that each Member State should be represented by one Commissioner even in an extended Union, and there can be no question of introducing a hierarchy between the Commissioners. It was highlighted that the new Member States, in particular, have a necessity to attain a national Commissioner in the college. In a larger Commission, this would have to indicate reinforcing the President’s authority and to consolidate the institution’s autonomy. The President should have more flexibility in assigning the activities, but he or she would not need to be assisted by more than one or two Vice Presidents. The delegation of powers would in any case be a risk for collegiality and the maximum number of portfolios should not be indicated. Belgium was not convinced by the argument of “less meaning more,” as the Commission’s workload would be increasing anyway.

At the end of the day, as at Amsterdam, Belgium was nevertheless ready to consider other alternatives in the name of efficiency, since a strong and reinforced Commission is in its view important for the institutional triangle. According to Belgium’s statement, as long as the conditions for a smaller Commission are mostly unknown, it would officially stick to the position of one Commissioner per Member State. Prime Minister Verhofstadt stated at the Biarritz European Council that Belgium could consider

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120 CONFERR (4721/00) and European Commission (1999a).
121 CONFERR (4787/00).
122 CONFERR (4787/00).
126 Intergovernmental Conference (2000c) and Sénat de Belgique (2000).
an equal rotation of the Commissioners in the longer run.\textsuperscript{127} This position was repeated in a Representative’s meeting later in October. In fact, it was then stated that if the context of the IGC – in particular the issue of QMV extension – was positive, Belgium would be prepared to consider other provisions for the composition of the Commission.\textsuperscript{128} To this end, an issue-linkage was developed.

\textit{The Extension of Qualified Majority Voting}

Carrying on with its Amsterdam convictions, Belgium considered that qualified majority voting has to be applied to the largest possible extent and the unanimity should be used only exceptionally, especially in an enlarged Union. Together with the Netherlands and Luxembourg, it noted that the passage from unanimity to QMV would contribute to the further development and the good functioning of the internal market and the Economic and Monetary Union.\textsuperscript{129} To this end, Belgium seemed to have linked two issues in its memorandum with the Netherlands and Luxembourg.

Although the unanimity rule should be used rather exceptionally, Belgium was of the opinion that the basic regulations and (quasi-)constitutional matters, i.e. the general policy lines, citizen’s rights, the application and regulation of languages and the institutional framework should be subject to unanimity at least for the time being.\textsuperscript{130} Especially the provisions dealing with language were sensitive to Belgium (Nat13). The policy fields within the first pillar, Justice and Home Affairs (free movement of the people, asylum and migration), the common trade, taxation, social and environmental policies could be considered for QMV. Within the CFSP Belgium pleaded for more flexible conditions by suggesting the removal of the possibility of a veto by one Member State.\textsuperscript{131}

\textsuperscript{127} European Commission (2000i).
\textsuperscript{128} European Commission (2000j).
\textsuperscript{129} European Commission (1999a), European Commission (2000b) and Sénat de Belgique (2000).
\textsuperscript{130} CONFER (4709/00), European Commission (1999a), European Commission (2000b), European Commission (2000g), interview (Nat13) and Sénat de Belgique (2000)
\textsuperscript{131} CONFER (4709/00), CONFER (4800/00), European Commission (1999a), European Commission (2000g) and Sénat de Belgique (2000).
6.2.1.2 Denmark Drifting away from Small State Line

During the Nice negotiations, the shadow of the Maastricht ratification process had already vanished from both Denmark’s own as well as other Member States’ memories. Denmark was thus able to start the IGC from a clean slate, although the potential for a referendum is always in the air should the Treaty not satisfy its fundamental concerns or constitutional constraints (Nat14). At the end of the day, the Danish priorities were rather similar to those that were presented in Amsterdam IGC. The final Treaty was considered by the Danes as necessary in order to proceed with the enlargement (Nat12). The draft Treaty was adopted by the Folketing on 1 June, and signed by the Queen on 7 June 2001.  

The Commission

At the beginning of the negotiations, Denmark supported a solution with one Commissioner per Member State in line with many other small states. It was seen to be the best way to secure the legitimacy and reliability of the Commission. Also, it was assessed to be a system that would guarantee that the political reality of the new Member States, in particular, is understood (Nat14). On the question of rotation Denmark argued that five years is a long time in politics, and in European politics even longer. It was illustrated by the Danish delegation how difficult it is to try to imagine that there would not have been i.e. a German Commissioner during the years 1990-1995, or Portuguese or Spanish Commissioners during the Agenda 2000 discussions. The implementation of a rotation principle was thus argued to be as great a problem to big countries as to small countries (Nat14), and a Commission without the big Member State representation could not be seen as efficient (Nat15).

In a representative’s group meeting in July 2000, Denmark was still against setting a maximum number of portfolios to the Commission. It stated that since the notion of

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135 Intergovernmental Conference (2000c).
portfolios does not exist in the Treaty, it should be left within the President’s authority.\textsuperscript{136} Denmark was of the opinion that a ceiling system could weaken the Commission and jeopardize its legitimacy. However, general interest was expressed in seeing how the system would work in practice. Therefore, Denmark was willing to discuss it further.\textsuperscript{137} After all, when the General Affairs Council meeting was concluded in December 2000, it was surprisingly posited by Denmark that its delegation is prepared to accept an equal rotation in 2010 as a final compromise.\textsuperscript{138} Indeed, this rather unexpected revision of the initial position was conducted exclusively for the sake of compromise (Nat11-12), and the equality in rotation was until the end strictly requested, no matter which model would finally be adopted (Nat15).

The positions towards the Commission issue varied greatly among the political actors in Denmark and it was domestically difficult for them to develop a coherent stance. It was pointed out by some of the informants that the personal opinions of particular decision-makers were already more open to a smaller Commission at the beginning, while others kept on requesting their ‘national’ representatives. Not everyone, however, required their own national Commissioners, and the rotating system was also seen to maintain the equality between the Member States by some actors. (Nat11-12.) The argument suggesting the link between the size and efficiency of the Commission has also been prominent in Denmark since the beginning (Nat15).

\textit{The Extension of Qualified Majority Voting}

From a Danish perspective, any abstract criteria should not be established on the extension of QMV. In its place, for Denmark, the only possible way forward would be a case-by-case approach with each article taken on its own merits.\textsuperscript{139} As articulated by one of the informants: if the Union did not have a decision-making procedure that would allow exclusions, there would probably be a lot of court-cases (Nat14).

Denmark announced that it had a similar opinion to that of Ireland regarding the extension of QMV in the issues of agencies, external relations and energy. Denmark

\textsuperscript{136} Intergovernmental Conference (2000i).
\textsuperscript{137} CONFER (4802/00).
\textsuperscript{138} European Commission (2000o) and interview (Nat12).
\textsuperscript{139} European Commission (2000b) and Intergovernmental Conference (1999).
stressed that in the issue of external relations it is too tempting to argue that on aid the decision is made by qualified majority, while for industrial countries the rule is unanimity. In the Danish view, the issue of energy is a complex exercise. Denmark could consider a specific Treaty base through more flexibility of environment and transport provisions. It could also consider QMV for specific environmental taxes, but did not promise to move any further. The energy framework programme is subject to unanimity, however, because the provision concerning the clean burning of coal cannot be adopted under the environment provisions of the Treaty. Moreover, the issues under the third pillar would require unanimity according to the Danish delegation. Other defensive points included the statute of the European Parliament, a common commercial policy and the conclusion of international agreements in CFSP/JHA fields.

In addition, Denmark was not able to support QMV in the issues of taxation, social security and anti-discrimination. The questions of social security were especially highly sensitive to Denmark, and it was feared that majority voting would pose a threat to the special Danish social system, as it was put in the IGC Representatives’ meeting in March 2000: “Social labour market model in Denmark has a high level of social security financed by taxpayers. We have a flexible labour market where it is easy to hire and fire due to the safety net of social security. The social partners play an important part. Denmark will not put this at risk by introducing QMV”, and further on in May 2000: “[--but] must be unanimity for Article 42 and Article 137. Representation and collective defence of workers is a no go for Denmark. I have never seen a proposal in this area.” Denmark opposed also the provisions facilitating the right of the EU citizens to move and reside within the territory of the Member States, as it was feared to have a link to social security. In sum, throughout the negotiations Denmark frequently called attention to its distinct social system, which would in its view deserve particular protection.

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140 Intergovernmental Conference (2000a) and Intergovernmental Conference (2000c).
142 Intergovernmental Conference (2000k) and interview (Nat14).
143 CONFER (4708/00), European Commission (2000n) and Intergovernmental Conference (2000d).
144 European Commission (2000h).
145 See e.g. Intergovernmental Conference (2000a) and interviews (Nat11 and Nat14).
6.2.1.3 Finnish Suspicious and Satisfaction

The objectives of Finland at the Nice Intergovernmental Conference were rather similar to those launched at the time of Amsterdam. The programme of the second government headed by Prime Minister Lipponen, states the following: “The Government will seek further development of the decision-making and administrative powers of the EU in accordance with the principles of transparency, responsibility and effective administrative procedure. The Government is committed to strengthening the European Union as an international political and economic actor. The government aims at institutional reforms that are durable also after enlargement.”

In the end, Finland was poorly satisfied with the Treaty, since the outcome did not fully correspond with its initial objectives. The only reason, why it was considered somewhat acceptable was its package-deal character. Finland accepted the outcome of the composition of the Commission negotiations, because the rotation system based on the principle of equality was formally recorded in the Treaty. The approval was preceded by exceedingly reluctant behavior of one of the key persons of the Finnish delegation, who became known for his very aversion to compromising in any dissatisfying issues (Nat2). The Treaty of Nice was adopted by Eduskunta on 14 December 2001, and signed by the President on 4 January 2002. The Åland Assembly adopted it on 25 January 2002.

The Commission
Again, at Nice, Finland considered that each Member State should have a Commissioner post in the future Commissions. It was seen that a Commission could still operate efficiently as a college with increased number of members. Finland stated that a smaller college with fewer members than Member States would affect particularly the representation of the small states in the Commission. Using the size or population as criteria for permission to nominate an own Commissioner would mean unequal

146 Lipponen (2001).
classification of the Member States. Such conduct would essentially violate the equality of
the Member States and thus require settlement by an Intergovernmental Conference.\textsuperscript{148}

Finland emphasized the importance of a strong and independent Commission.\textsuperscript{149} In
addition, two principles were stressed regarding the composition of the Commission, those
of collegiality and quality of all members in the College. Developing two categories of
Commissioners was not seen as a feasible idea to be put in practice, and the idea of
Commissioners without portfolios was thus rejected.\textsuperscript{150} During the negotiations Finland
made a reference to potential side-payments by stating that the loss should be compensated
for the Member States that will give up one of their two Commissioners. In its view, the
compensation could take place in re-weighting of votes.\textsuperscript{151}

Also in the Finnish view, increasing the number of Vice-Presidents might lead to
an increased differentiation of the Member’s actual positions within the Commission.
Generally, the Commissioners should possess an equal status in the Commission’s
collegial decision-making irrespective of whether the number of Vice-Presidents is
increased or not. Nevertheless, Finland justified the suggestion of an increased number of
Vice-Presidents on the grounds that the workload of the President in the political steering
of the Commission would grow by the enlargement. In addition, the Vice-Presidents
could, for their part, affect positively into the internal coordination of the Commission. By
and large, in the Finnish opinion, the potential change should be a part of a
comprehensive, balanced solution.\textsuperscript{152}

\textit{The Extension of Qualified Majority Voting}

The Finnish Government attached crucial importance to the expansion of the scope of
QMV in Nice negotiations to ensure proper functioning of the Union.\textsuperscript{153} Similarly to
Belgium, Finland linked two substantive institutional issues by exclaiming that if the
subject of QMV extension did not move positively forward during the negotiations, it

\textsuperscript{148} CONFER (4723/00), European Commission (2000c), European Commission (2000d) and European
\textsuperscript{149} European Commission (2000m), Intergovernmental Conference (2000c) and interview (Nat4).
\textsuperscript{150} CONFER (4802/00), European Commission (2000c), Intergovernmental Conference (2000c),
Intergovernmental Conference (2000i).
\textsuperscript{151} European Commission (2000m).
\textsuperscript{152} CONFER (4723/00) and European Commission (2000m).
\textsuperscript{153} CONFER (4723/00) and European Commission (2000m).
would not accept the proposals regarding the composition of the Commission. Moreover, the extended recourse to the QMV was connected by Finland with the discussion on an extended use of the codecision procedure.  

In the Finnish view, the extension of QMV could cover the issues in the areas related to Union citizenship, the right of movement and residence of Union citizens, Community policies (industry, culture and the environment), the Community budget, trade policy (service sector, investments, financial management and intellectual property), certain institutional issues (approval of rules of procedure of the Community Courts and the exercise of implementing powers conferred on the Commission), Justice and Home Affairs (except Article 66: cooperation between Member States’ administrations, in which unanimity should be maintained), social policy (except for social security matters) and environmental taxation. Although the third pillar issues in Justice and Home Affairs should in principle maintain under unanimity, Finland called for their careful monitoring and was not willing to let intergovernmentalism spread any further. In social policy issues the Finnish opinion has been slightly biased. On the one hand, during the Nice negotiations political will for extending the scope for QMV was strong especially in the social policy sectors that were domestically less sensitive, on the other hand a full extension was not yet favoured. (Nat2.)

Finland justified qualified majority voting also in the issues of energy and external relations, provided that more specific provisions would be examined. It required improving the wording in Article 42. Regarding the environmental questions, Finland could well see that the issues of town and country planning, land use with exception of waste management and measures of a general nature and management of water resources are sensitive for many countries. With a view to the expansion of the common trade policy to the QMV, it was maintained by Finland that the sensitive areas, such as culture

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154 CONFERENCE (4723/00) and European Commission (2000j).
155 CONFERENCE (4723/00), CONFERENCE (4800/00), CONFERENCE (4807/00), European Commission (2000b), European Commission (2000f), Intergovernmental Conference (2000c) and Intergovernmental Conference (2000n).
156 Intergovernmental Conference (2000c) and Intergovernmental Conference (2000d).
157 CONFERENCE (4709/00).
and cultural investments, education, vocational training and public health should be excluded from the article.\textsuperscript{158}

According to the Finnish view, such issues that relate to the basic nature of the Union and do not concern increasing the efficiency of decision-making, should generally remain subject to unanimity rule. In other words, these are the issues of Treaty revisions or other primary law, Council decisions which need to be approved separately by the Member States, the division of competence between the Union and the Member States, decisions concerning derogation from the key principles of the internal market, defence policy, public order, security, the use of coercion, changes to the common institutional system and certain financing arrangements outside the budget.\textsuperscript{159} Similarly to many other Member States, the Finnish aim to protect some substantive issue areas resulted from hard bargaining at the national level, which did not always seem to reflect real consensus. During the domestic bargaining process, a number of actors intervened, each coming up with seemingly varying preferences. Most typically, the resistant actors were individual Ministries possessing inherent incentives or great political will to defend their own policy-sectors. (Nat6.)

\textbf{6.2.1.4 Ireland Rejecting the Treaty}

Since the Nice IGC was first mooted, the Irish Government wanted to focus on two issues: the retention of an Irish Member of the Commission and the avoidance of a referendum on the results of the IGC.\textsuperscript{160} In the end, however, Irish citizens rejected the Nice Treaty by a referendum held on 7 June 2001, the voting outcome being 54 to 46 percent not to ratify it. The overall turnout was strikingly low, namely 34.79 percent.\textsuperscript{161} Ireland was the only Member State that had to submit the Treaty to a referendum for constitutional reasons.

Soon after the results the Minister for Foreign Affairs, Cowen, confirmed that the government plans to hold a second referendum, although it did not have an idea when,

\textsuperscript{158} CONFER (4807/00), European Commission (2000l) and European Commission (2000m).
\textsuperscript{159} CONFER (4723/00) and Intergovernmental Conference (2000d).
\textsuperscript{160} European Commission (2000a).
\textsuperscript{161} European Commission (2001a).
neither through what kind of a domestic campaign. He admitted that among the citizens there is a widespread ignorance and even misunderstanding about the Nice Treaty itself, largely induced by the malicious campaigning against it. On the other hand, Irish objections to the EU were generally appraised to extend far beyond the contents of the Nice Treaty. Specific reasons for turnout were assessed to be i.e. the growing disillusionment with both national and EU level politics and politicians arising from allegations of corruption and nepotism, fear of militarisation of the EU, the feeling that the small Member States were losing out to larger ones, the recent statements by political leaders such as Joschka Fischer, Lionel Jospin and Romano Prodi on where Europe is currently, in their view, heading to. Finally, the absence of any sense of a grand vision of the European project was seen as a great disadvantage.

By and large, for the European Union there was certainly a lesson to be learned from the Irish case. According to some evaluations, the rejection of the Nice Treaty was eventually rather healthy to the Union, and it was estimated to have had even positive impacts as regards Ireland’s relationship with the EU. It was a clear reminder of the increasing demand for greater legitimacy and for the alleviation of democratic deficits in the EU (Vergés Bausili 2005, 137). Due to the rejection, the Irish government would for the first time be forced to work hard for its European policy, and to engage the mass public in a debate on Europe and its developments. A National Forum on Europe was set up in October 2001 to operate as an open public forum for the discussion related with the EU topics. As a result, public debate in Ireland increased the level of public knowledge about the European Union. Even more importantly, more knowledge of Europe seemed to lead to more support for Europe in Ireland.

Finally, the second referendum, in which 63 per cent of the citizens voted ‘yes’ for the ratification of the Nice Treaty, took place during the time of the Convention, on 19 October 2002. It was adopted by the Seanad on 20 November, and by the Dáil on 28

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162 European Commission (2001c).
163 See e.g. “12 reasons why we said no to Nice.” Irish Times, 25.6.2001, p. 12.
164 European Commission (2001a). According to a post-referendum survey carried out by Irish Marketing Survey, the main reasons for the rejection of the Nice Treaty were: 1) the lack of understanding/information, and 2) the issues of sovereignty and neutrality. On this, see European Commission (2001f).
November 2002. The President of the Taoiseach signed it on 10 December 2002. In addition to the stronger ‘yes’ gained in the second referendum of Nice, the Irish citizens started to be more interested and involved in European issues.

**The Commission**

Ireland supported a strong Commission, which would work as a motor of integration without the intergovernmental elements. From a public point of view, the legitimacy of the Commission derives from the fact that all have a stake in it. In order to secure the citizens’ support, Ireland preferred the principle of one Commissioner per Member State, as supported by majority of small states. In IGC representatives meeting held in March 2000, Ireland argued as follows: “Size and composition – one Commissioner for every Member State is based on two reasons: that a nomination can be made and that Ireland can nominate! […] The best situation is one Commissioner (Irish) taking all decisions!” In addition, Ireland pointed out that especially the new Member States would attach a particular importance to a strong Commission.

In a representatives meeting held in 30 May 2000, Ireland seemingly required side-payments in the issue of the Commission composition. According to their announcement, if Ireland is to agree to a package on reweighting of votes, it must also have a Commissioner. The suggestion for a package-deal was announced already in April when the Government of Ireland reported its position to the EU. It stipulated that: “With regard to the Amsterdam leftovers, Ireland would accept reweighting of votes in the Council as part of a package which includes keeping its Commissioner.” As an alternative to reweighting, Ireland could also consider going along with a double simple majority voting.

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167 Institute of European Affairs (2003).  
169 Intergovernmental Conference (2000c).  
170 Intergovernmental Conference (2000l).  
171 Intergovernmental Conference (2000e).  
All in all, Ireland opposed any suggestions for a Commission limited in numbers.\textsuperscript{173} From an Irish point of view, there would certainly be jobs even for a larger amount of Commissioners, and it could not see the substantive difference between 20 and 26 Commissioners. Moreover, if the Commissioners were left without portfolios, it would lead to a mischief and hierarchy in practice. For this, Ireland stated that there should not be two categories of Commissioners and any suggestions for rotation, or senior and junior Commissioners were dismissed by the Taoiseach.\textsuperscript{174} Ireland considered that once its right to nominate an own Commissioner for a foreseeable future is secured, the discussion could be opened as on the question of a hierarchy of Commissioners.\textsuperscript{175}

\textit{The Extension of Qualified Majority Voting}

On the extension of QMV, the position of the Irish Government was to a large extent the same as at Amsterdam. Ireland was of the opinion that qualified majority voting could be applied in the issues of economic and social cohesion, and structural and cohesion funds.\textsuperscript{176} The QMV could also be extended for trade matters in intellectual property rights.\textsuperscript{177} This time Ireland took a somewhat more positive and flexible stance towards the social policy issues, and suggested moving social protection of workers from unanimity and linking it with social exclusion and hence a move to majority voting.\textsuperscript{178} It considered that there should be a consistent base for the type of cooperation provided for in Article 137.2 in the case of combating social exclusion and in the development and improvement of social protection.\textsuperscript{179}

In general, Ireland supported the extension of a number of Treaty articles subject to QMV and was of the opinion that in order to guarantee the efficient decision-making in the Council, unanimity should be rendered an exception. However, as in previous negotiation rounds Ireland was not convinced of the need to create a legal base for QMV in the areas of core national interest: the issues of agencies, external relations, energy

\begin{flushleft}
\textsuperscript{173} European Commission (2000e).
\textsuperscript{175} European Commission (2000a).
\textsuperscript{176} Intergovernmental Conference (2000m).
\textsuperscript{177} Intergovernmental Conference (2000o).
\textsuperscript{178} Intergovernmental Conference (2000d) and Intergovernmental Conference (2000n).
\textsuperscript{179} CONFER (4778/00).
\end{flushleft}
(Article 308), anti-discrimination (Article 13), taxation and environment. Especially the issue of town and country planning should not be covered by the QMV, since for Ireland it is a question of subsidiarity. In addition, the problem of taxation was stated to be fundamental. According to its own wording, even if Ireland feels uneasy about the removal of Article 94, it would, however, not prevent it. It wanted to keep unanimity also in third pillar issues, and was warned to oppose any attempt to include defence related aspects in the Treaty.\footnote{180}

### 6.2.1.5 Large Member States

All of the larger Member States preferred the option of setting a maximum number for the Commissioners. According to their view, a smaller Commission would be necessary in order to guarantee its efficiency and credibility. If this would not be possible, they were prepared to accept an option for one Commissioner per Member State, yet requiring side-payments in the form of substantial re-weighting.\footnote{181}

France was one of the strongest defenders of a smaller Commission and it pushed forward the proposal neglecting explicitly the views of small Member States (Smith 2002, 176). At the summit, it proposed a solution to the issues of the Commission and the extension of qualified majority voting that seemingly favoured the larger Member States (Dür & Mateo 2006, 10). According to Barnier (2000), the advantages of having national representation in a Commission of 30 or more members would not be self-evident. In such a college, the sensitivity for national issues would be in danger to disappear. In March 2000, France argued in the IGC Representatives meeting that if the ceiling is refused, the hierarchy must be increased. Furthermore, it pointed out that the issue of the Commission composition is on the whole not a question of nationality but of personalities.\footnote{182}


\footnote{181} CONFER (4802/00), European Commission (2000c), European Commission (2000d) and Intergovernmental Conference (2000b).

\footnote{182} Intergovernmental Conference (2000c).
Germany stipulated that if the number of Commissioners is too close to the number of Member States, rotation would not make much sense. It pointed out that if the collegial nature were important, the hierarchy would be a necessity after the enlargement. The number of Commissioners should be limited to twenty, but pleasing everyone was admitted to be another matter. In Germany’s view, a transitional period would in any case be needed, and the ceiling could hence start operating as from 2010. The United Kingdom argued that an independent and strong Commission is even more essential after enlargement. Furthermore, it felt that there is a strong case to limit the number of Commissioners to twenty, since there is a point beyond which effectiveness of the Commission will be impaired. Maintaining a full Commission with representatives of each Member States would in any case lead to its hierarchization in the longer run, as the system would reinforce the Commissioners’ tendency to adopt national roles within the college. According to Italy, the Commission should not have more than one member from each Member State, and after 20 members the egalitarian rotation should be adopted. It argued that the smaller countries would be in a worse situation in a Commission of 30 members. In an enlarged Union a Commission composed of Commissioners from each Member States would endanger the principle of collegiality and decrease its efficiency.\(^{183}\)

From the large Member States the United Kingdom was particularly reticent to go further in proposals concerning the extension of QMV, whereas France and Germany stipulated that the unanimity should be the exception. In the UK’s view, taxation, environment, energy fiscal aspects and social security needed to be held under unanimity, while France would consider own resources to be subject to unanimity.\(^{184}\) Germany supported the move of taxation under QMV rule, but required unanimity to the family benefit and unemployment issues for Article 42. According to the Italians, the QMV should be the general rule, and the making of some specific lists on the issues should be avoided. Italy declared that it was ready for a compromise in the issue of taxation.\(^{185}\) For the extension, it stated three points: first, there is a difference in how the tax system works which is an obstacle to the functioning of the single market. Second, the co-decision

\(^{183}\) CONFER (4746/00), CONFER (4802/00), European Commission (2000c), European Commission (2000d) and Intergovernmental Conference (2000c).

\(^{184}\) European Commission (2000b) and Intergovernmental Conference (2000p).

\(^{185}\) CONFER (4709/00), CONFER (4731/00), CONFER (4800/00), Intergovernmental Conference (1999) and Intergovernmental Conference (2000k).
should apply since tax by definition is legislative, and third, if the veto is maintained along the enlargement, the right to establishing tax havens is founded. Spain took a restrictive approach and agreed that the issues of taxation, environment and social affairs are important, although not to be directed towards the QMV.\textsuperscript{186} The maintenance of unanimity for the financial perspectives was important to Spain, which all in all maintained that a case-by-bases approach should be adopted when discussing the areas of QMV.\textsuperscript{187}

6.2.2 Negotiating under Unanimity Rule: The Process and Outcome of the Nice IGC

In June 1999 it was agreed at the European Council meeting in Cologne that an IGC would be convened in early 2000 to solve the institutional aspects of the enlargement which remained unresolved at Amsterdam (also referred to as “Amsterdam leftovers”). While these institutional questions were then left on the table, the Treaty of Nice succeeded to set better provisions for reforming the system of governance in the European Union. All in all, the Treaty was estimated to provide a feasible solution for the enlargement, although it took two Irish referendums to approve it.

As may be obvious, the focus of the Nice negotiations was clearly on institutional reform. The negotiation context was rather straightforward, and the Member States’ positions were to a considerable extent known in advance. The agenda-setting phase was rather similar to that of the Amsterdam negotiations, which attempted to incorporate the “Maastricht leftovers”. The major institutional issues were for the first time tackled at the Biarritz European Council of 13-14 October 2000. Nevertheless, these negotiations were already about to collapse at the very beginning as a consequence of an emerging dispute between small and large Member States. The French statement, according to which “the small Member States should just accept the deal given to them” apparently did not improve the atmosphere. (Galloway 2001, 48.) The split between small and large countries

\textsuperscript{186} CONFER (4707/00) and Intergovernmental Conference (2000a).
\textsuperscript{187} European Commission (2000b) and European Commission (2000s).
received most attention also in the European Council Summit in December. It was seen that the large states won the overall negotiations.\(^{188}\)

Table 5: The Outcome of the Nice IGC

<table>
<thead>
<tr>
<th>The Composition of The Commission</th>
<th>The Extension of QMV</th>
<th>The Rotating Presidency</th>
</tr>
</thead>
</table>
| One Commissioner from each Member State until there are 27 Member States. Large States give up their 2\(^{nd}\) Commissioners. After 27 Member States → Rotation | **Extension of QMV:**
(+/- 32 Articles)
11: Enhanced Cooperation
13: Combating Discrimination
18: Citizenship, Freedom of Movement
23: Appointment of a Special Representative for the CFSP
24: International Agreements
27C: Enhanced Cooperation in the Area of CFSP
40A: Enhanced Cooperation in the Area of Police and Judicial Cooperation
65: Judicial Cooperation in Civil Matters
66: Cooperation between Member States
100: Economic Distortions
111: External Issues of Relevance to Economic and Monetary Union; 123: Introduction of the Euro
157: Industrial Policy; 159: Economic and Social Cohesion; 161: Structural Funds
181A: Economic, Financial and Technical Cooperation with Third Countries
190: European Parliament
191: Regulations Governing Political Parties at European Level
207: Secretary-General of the Council and High Representative for the CFSP
210: Renumeration
214: Appointment of the Members of the Commission
215: Replacement of the Member of the Commission
223: Court of Justice; 224: Court of First Instance
247: Court of Auditors
248: Court of Auditors, Rules of Procedure
259: European Economic and Social Committee
263: Committee of Regions; 279: Financial Provisions | **Status Quo:**
Decision not taken |

**Leftovers:**
- 1) The number of Commissioners in EU-27
- 2) The mechanism of rotation

\(^{188}\) European Commission (2000s).
6.2.2.1 The Second Dispute over the Commission Size

During the Nice negotiations, the issue of composition of the Commission divided the small and large Member States even more clearly than at Amsterdam. While the small Member States strongly defended their right to nominate an own Commissioner, the argument put forward by large Member States was that a Commission larger than the present college would not function properly. Prior to the Biarritz Summit, France ended up holding a secret consultation with the other four large Member States in agreeing that they would all accept an equal rotation of seats in a future Commission that would be smaller than the number of Member States (Beach 2005, 148). From their perspective, the Commission should be either decreased in number or organized so as to allow the posts for senior and junior Commissioners once the enlargement takes place.

On the composition of the Commission, some discussions led to much more entrenched positions rather than producing progress. Again, concerns relating to function, public image, legitimacy and equality between the Member States were brought into the table during the IGC representatives meetings. The Ministerial meeting, which was held in March 2000, failed completely to make any progress on the composition of the Commission. In the meeting, the national delegates simply re-stated their well-known and previously announced positions and were not able to reach a consensus. In another

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189 Intergovernmental Conference (2000f).
190 Intergovernmental Conference (2000b).
representatives meeting in May 2000, three scenarios were presented regarding both the size and composition of the Commission. According to the first one, a college could be made up of one national from each Member State, no matter how many members there are in the Union, but the number of portfolios would, however, vary. In the second scenario it was suggested that the Commission could compose of a fixed number of Commissioners, and in the third one that it could still consist of one national from each Member State after the first enlargement, while leaving the question of its definite future open. In the end, a clear majority of delegations rejected the possibility of Commissioners without portfolio, and the scenarios once again raised a fundamental issue: how to ensure equal treatment between Member States over time.191

In September 2000, the Presidency convened a restricted session of the IGC in order to discuss the issue of the Commission on an informal basis. In this meeting, two options were presented by the President: either one Commissioner per Member States with a hierarchy, or a fixed number of Commissioners based on an equal rotation system. Once again, the majority of Member States rejected both options arguing that the Commission would not be legitimate in a system where each Member State does not have a Commissioner.192 Before the December European Council, the Presidency still attempted to reach an agreement on an article about equal rotation of the Commissioners, but again faced the opposition of several small Member States to even contemplating a ceiling on the number of Commissioners. As a solution, the most reluctant delegations even suggested that the issue could again be left on the table.193

Following the negotiations at Amsterdam, an issue-linkage was made between the questions of voting rights in the Council and the size of the Commission (Usher 2003, 184). In the end, the Treaty of Nice revised the provisions made in Amsterdam and stipulated the maximum number of members in the Commission with the aim of maintaining its efficiency after the enlargement. It was stated in the Treaty that as soon as the provisions of Nice took effect, each Member State would still be able to appoint an own Commissioner, with the larger states giving up their second Commissioner. As long as the Union has fewer than 27 Member States, the Commission will continue to have one

191 CONFER (4744/00) and Intergovernmental Conference (2000f).
192 Intergovernmental Conference (2000l).
member from each Member State. It was proclaimed that once the number of Member States rises to 27 or more – which would happen when the then candidate countries have all joined and if Bulgaria and Romania were to join in the foreseeable future – the Commission will go over to equitable rotation and none of the Member States will be presented anymore at any given time. The actual number of Commissioners, however, was not agreed upon.

Therefore, according to the Nice Treaty, the smaller countries will be able to keep one full member on the Commission at least until Bulgaria and Romania joined the Union. After that the Council would unanimously decide the size of the Commission. Expecting that the number of Commissioners is smaller than the number of Member States, the selection would be based on a system of equal rotation regarding the length of time, sequence of terms spent in the Commission, and demographic and geographical balance. The future composition of the Commission evoked a certain degree of relief amongst smaller countries.\textsuperscript{194} It can be maintained that the smaller states won the deal and had an influence over the outcome, which was in line with their request for keeping the right to nominate an own Commissioner until the Union consists of twenty-seven or more members. The detailed criteria on the mechanism of rotation were, however, still left undefined in the Nice Treaty.

6.2.2.2 Enabling the Enlargement by Further Extension of QMV and Another Exclusion of the Council Presidency

The extension of qualified majority voting in the Council was again considered one of the most important preconditions for the enlargement of the EU: greater recourse to QMV, it was argued, would ensure efficiency and dynamism in an enlarged Union. With a membership of 27 countries the application of unanimity rule could paralyze the decision-making of the entire Union.

As soon as the actual discussions on the extension of QMV started, the varying sub-points emerged. During the Ambassadors’ preparation meeting in September 1999,

\textsuperscript{194} European Commission (2000s).
the majority of delegations rejected the idea of applying QMV as a general rule and embracing unanimity as an exception. Many of them felt that the room for manoeuvre was extremely limited after the Amsterdam. In April 2000, the Presidency stated that even though certain delegations expressed their preferences for an approach establishing QMV as a general rule for Council voting – and then seeking to identify agreed exceptions to that rule – the majority appeared to support a pragmatic, category-based approach. At the Representatives Meeting on 2 May, the Presidency finally exclaimed that a different approach must be taken with respect to the QMV areas, as the work cannot be based on national experiences exclusively. It was propounded that a well-adopted ‘shopping list’ approach must be avoided, and the issues would need to be looked at from the perspective of enlargement.

The negotiations did not proceed without conflict, and fundamental reservations by a number of Member States remained. The scope of policy-fields was extensive, and a common agreement needed to be reached within a large number of articles. In many tour de tables, the governments had to express their opinions for more than forty different provisions to QMV transfers at best. Normally this took place on an article-by-article basis, and hence led to rather heavy and lengthy sessions. According to the French Foreign Minister Védrine, the progress was impossible as long as “[...] twelve countries out of fifteen have serious problems with applying QMV to such or such a subject.” The only issues in which basically all delegations agreed that QMV should used were Article 223 (the rules of procedure of the Court of Justice), Article 224 (the rules of procedure of the Court of First Instance), and Article 247.3 (appointment of the members of the Court of Auditors).

In the beginning of the negotiations there were 73 areas requiring unanimity, from which some 50 provisions were considered for transfer under QMV. In fact, the number of potential areas increased throughout the process. As a result of the Nice negotiations, thirty-seven issue areas were transferred under the QMV, approximately 90 percent of all

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195 Intergovernmental Conference (1999).
196 CONFER (4734/00).
197 Intergovernmental Conference (2000d).
198 See e.g. Intergovernmental Conference (2000h), Intergovernmental Conference (2000j), Intergovernmental Conference (2000m) and Intergovernmental Conference (2000n).
199 See Agence Europe, 4 December 2000.
the decisions made in the Council. Again, the Treaty of Nice offered better conditions for enlargement, although there was also some disappointment at the limited extension of QMV which was achieved.\textsuperscript{201} The extension of qualified majority voting was introduced into the areas of trade in services and commercial aspects of intellectual property rights (Article 133.5), appointment of the President and Members of the Commission (Article 214), appointment of the Secretary General and deputy Secretary General of the Council (Article 207.2), and economic, technical and financial cooperation with third countries (new Article 181a). The issue areas to which QMV was intended to extend to were agencies, external relations and energy (Article 308). In fact, in these areas the community competence already existed at the time of Nice. Thus, it was not a question of creating new powers, but rather the creation of a legal basis through qualified majority voting.\textsuperscript{202}

In line with the Amsterdam negotiations, the most complex provisions concerned taxation, social security and environment. In spite of the great extension of QMV, it was decided that a number of issues should remain subject to unanimity, including all aspects on taxation and coordination of social security.\textsuperscript{203} These decisions were in line with the original stance taken by many of the smaller Member States, and they were pushed forward particularly by Denmark and Finland. Especially the issue of social policy (Articles 42 and 137) was highly controversial and a large number of delegations had difficulties with specific points. They felt that these inconsistencies would need to be solved before a move to majority voting could be agreed. Belgium and Finland had problems with the areas of social security and social protection of workers, whilst Ireland had reservations with codetermination as well as representation and collective defence of the interests of workers and employers. Finland could not go on with financial contributions for promotion of employment and job creation either. Nevertheless, a majority of the delegations could accept the reference to the soft law for the fight against social exclusion and the development and the improvement of social welfare.\textsuperscript{204}

As regards the rotating Presidency, the changes had still not been made at the time of Nice. The issue of rotating Presidency was not satisfactorily considered during the Nice

\textsuperscript{201} European Commission (2000s).
\textsuperscript{202} Intergovernmental Conference (2000c).
\textsuperscript{203} CONFER (4734/00), CONFER (4737/00), CONFER (4784/00) and CONFER (4795/00).
\textsuperscript{204} European Commission (2000h).
negotiations. In fact, it was hardly tackled at all around the negotiation table. Article 203 of Nice Treaty states that the office of President shall be held in turn by each Member State in the Council for a term of six months, in the order decided by the Council acting unanimously. Therefore, the issue was left on the table, the status quo successfully kept and the agreement postponed because mutually acceptable solutions could not be found.

6.3 The Convention on the Future of the EU in 2002-03

A next step was taken forward shortly after the end of the Nice negotiations when the Convention on the Future of the European Union began its work in February 2002. Its main task was to prepare the next Treaty reform to be negotiated at the Intergovernmental Conference in 2004. The Convention was asked to solve a number of fundamental, yet crucial, questions: how to bring Europe closer to its citizens, how to ensure Union's role in the international stage and how to redesign its institutional structure as effectively as possible. The Convention finished its work on 13 June 2003 by presenting a draft Constitutional Treaty of the European Union. However, after fifteen months of intensive work, some central questions were still, and again, up in the air in the final draft. Not at all surprisingly, the Convention proceeding was overshadowed by the prevalent division between small and large Member States, this time for ever more obvious reasons.

6.3.1 National Positions, Preferences and Contributions

The draft Constitutional Treaty, as produced by the Convention on the Future of the EU, turned out to be a symbol of great disagreement: formulated under the conditions of consensus but, however, in a very restricted form of consensus at best. The Convention remained divided in the institutional issues throughout the process, and the negotiations were basically finished before any real consensus was reached. The Praesidium of the Convention did not aim to reach a compromise or even consensus between the small and large Member States even if it was stated to be an aim at the start of the process (Norman
2005, 108). As seen from the above statement, the national positions were, if not inexistent, then at least vague. The states did not act as unitary actors and the national delegates were comprised of a rather heterogeneous group of representatives.

“In the Convention we never fixed the [national] positions. [---] If you ask me, I couldn’t tell you what our [national] position were in these issues. [---] So, I don’t think you can talk in any formal sense about [national] positions.” (Conv10.)

By the end of April 2003, two days before the plenary session was about to start, President Valéry Giscard d’Estaing presented his personal views on the Convention proceedings to the wider media. After this, a preliminary version for a final draft was introduced to the Convention, which, nevertheless, reflected the opinions as stated by large countries without any reference to the small Member States’ previously expressed concerns. The Convention submitted its proposal to the Thessaloniki European Council in June 2003, and its President noted that no substantial questions should be reopened at the following IGC.

6.3.1.1 Belgium’s Focus in the Convention Method

Before the Laeken European Council, the Benelux countries concluded that a “concrete and ambitious agenda” should be drawn up to incorporate the values of the Union, to manage the future of the Europe and to promote the role of Europe in world. The governments of the Benelux countries were generally of the opinion that a constitution should be developed for the European project. It would mean simplifying and re-grouping the existing Treaties and bringing them together in a basic constitutional treaty. Later on during the Convention process it was maintained by Belgium that a Constitutional Treaty should also define the different categories of the Union’s powers and their impact on the powers of the Member States. It is citizens’ right to see ‘who does what’ and ‘who is responsible for what’ as clearly as possible. In addition, the strengthening and extending the Community method was highlighted by Belgium once again.205

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To prepare the Convention, the Belgian government set up a system of domestic policy committees and organized considerable coordination within the Benelux framework. The domestic debates would typically start from the Prime Ministers’ office and then move to a committee of experts, which was set up specifically for the Convention and the following IGC. Next, the proposal was sent to another committee consisting of assistants and advisors to the Belgian delegates and, finally, to the Convention delegation itself. (Crombez & Lebbe 2006, 44-45.)

Belgium was one of the principal advocates of the Convention already at the beginning of the process, and it attached a high importance to its work. In fact, the decision to establish a Convention at the Laeken Summit was one of the greatest achievements of the respective Belgian Presidency. It was thus not unexpected that Belgium took a relatively more integrationist orientation towards the institutional issues as compared to other small Member States (Conv2). At the end of the negotiations, however, Belgium did not express pleasure at the overall outcome; instead, the process was strictly speaking considered as a missed chance by Belgians. (Conv5.)

Table 6: Belgian Representatives in the Convention

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
<th>Party</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jean-Luc Dehaene</td>
<td>Praesidium Representative</td>
<td>Christian Democratic and Flemish Party</td>
</tr>
<tr>
<td>Louis Michel</td>
<td>Government Representative</td>
<td>PRL Liberal Party</td>
</tr>
<tr>
<td>Pierre Chevalier</td>
<td>Government Representative</td>
<td>Flemish Liberal Democrats</td>
</tr>
<tr>
<td>Karel de Gucht</td>
<td>Parliament Representative</td>
<td>Flemish Liberal Democrats</td>
</tr>
<tr>
<td>Elio Di Rupo</td>
<td>Parliament Representative</td>
<td>Socialist Party</td>
</tr>
<tr>
<td>Danny Pieters</td>
<td>Parliament Alternate Representative</td>
<td>Nieuwe Vlaamse Alliantie</td>
</tr>
<tr>
<td>Marie Nagy</td>
<td>Parliament Alternative Representative</td>
<td>Green Party</td>
</tr>
<tr>
<td>Anne Van Lancker</td>
<td>EP Representative</td>
<td>PSE (Socialist Party)</td>
</tr>
<tr>
<td>Josef Chabert</td>
<td>Observer</td>
<td>Christian Democratic and Flemish Party</td>
</tr>
<tr>
<td>Patrick Dewael</td>
<td>Observer</td>
<td>Flemish Liberal Democrats</td>
</tr>
</tbody>
</table>
The Commission

Belgium was one of the few smaller Member States that was in favour of reducing the size of the Commission. It was of the opinion that the composition of the Commission could be based on the system of Commissioners’ equal rotation between the Member States. The exact principles of rotation must thus strictly respect the equality between the Member States, and be decided by the Council under unanimity. Since the Commission must remain, in the Belgian view, the driving force of an enlarged Europe, it should be strengthened by the direct election of its President.

The Extension of Qualified Majority Voting

Belgium was in favour of extending the scope of qualified majority voting. In fact, its leading principle and general attitude was to gain “as much QMV as possible” (Conv5), and it put forward a number of proposals concerning the policy fields for extension (Conv11). It wished to make use of QMV which, in legislative matters, should go hand in hand with the codecision procedure in the European Parliament. Retaining the principle of unanimity in these matters would lead to a greater chance of obstruction.

The Belgian deputy Foreign Minister Neyts-Uyttebroeck (2001) stated that the extension of QMV and the use of the enhanced cooperation mechanism were necessary elements to ensure that the Union remains strong and fully operational. Within some policy areas, such as social policy and free movement of workers, it was seen that the Convention proceedings and the lack of substantial discussion had even counterproductive effects on the outcomes (Conv5).

The Council Presidency

Together with many other Member States, Belgium stressed that the system of rotating Presidencies would no more be efficient in an enlarged Union, and that it would thus need to be reformed. The Foreign Minister Louis Michel referred to the weight of responsibility Belgium had felt when running its previous Presidencies. However, it was stipulated by

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206 CONV (457/02) and CONV (732/03).
209 Belgian Ministry for Foreign Affairs (2002a), CONV (457/02) and European Commission (2001b).
Belgium that the role of the Member States should be respected when reforming the institution of Council Presidency.\textsuperscript{210}

Belgium pointed out that the current practice of rotating Presidencies still has several advantages. First of all, it satisfies the principle of the equality between the Member States, which is important for institutional relations. Second, the Presidency gives the Union more visibility in Member States, and the Council’s activities are given fresh impetus every six months. Literally, the European Union comes closer for the public, press and parliaments. Moreover, the coordination is generally facilitated when one Member State chairs all the meetings. Third, the rotating Presidency enables the authorities of the Member States to learn from experience. On the other hand, the rotating Presidency was also stated by Belgium to entail a number of disadvantages. The Presidencies might not prove successful in fitting their programmes appropriately into the agenda, in placing too much emphasis on national priorities at the expense of the coherence and continuity of the policy of the Union as a whole. Another weakness was seen to be the lack of continuity in the external representation of the EU. In conclusion, the advantages of the rotating Presidency should be maintained and the disadvantages eliminated when considering any alternative solutions to the Council Presidencies.\textsuperscript{211}

In practical terms, Belgium took the view that the rotating Presidency should be maintained within the European Council and special councils. The General Affairs Council and the External Relations Council should be led by the Commission or its President. Belgium rejected strongly the idea of electing the President outside the Council.\textsuperscript{212} Predominantly, the creation of a Permanent President had rather negative connotations since it was felt to produce a superpower together with a strong Commission, which was favoured by Belgium (Conv5). Belgium was against any team Presidencies for practical reasons as linked to the potential problems of coordination and chains of command.\textsuperscript{213}

\textsuperscript{210} CONV (457/02), interview (Conv5) and Norman (2005, 110).
\textsuperscript{211} Belgian Ministry for Foreign Affairs (2002b).
\textsuperscript{212} CONV (457/02) and interview (Conv5).
\textsuperscript{213} European Commission (2003h).
6.3.1.2 Danish Substance in Presidency Reform

In August 2001, the Danish government announced that it accepted the Convention method in order to prepare the forthcoming IGC, at the same time emphasizing that the national governments should be allowed to decide in the end. The word ‘Constitution’ was never liked in Denmark and the government indicated early on that the Constitutional Treaty proposed by the European Convention would be sent to a referendum if confirmed by the IGC. (Conv10 and Laursen 2005, 3.) Overall, Denmark stressed that the European Council still needs to be a decisive power in the EU construct, and preferred thus a development in which national governments would continue to set the agenda of Europe.

In the Convention, Denmark had again only one issue subject to extremely careful protection, namely the Danish opt-outs. At the end of the negotiations it was explicitly stated by the Danish government that the draft Treaty can be accepted if a solution could be found for the Danish opt-outs. (Conv10.) Otherwise the Danes took their point of departure from the same rationale as in the Nice negotiations: the demand for equality between large and small countries. The Prime Minister Fogh Rasmussen (2002) stated straightforwardly that a strong and effective EU is vital for a small country like Denmark. Clear and strong rules for EU decision-making were believed to be the best means of protection for small Member States by all Danish Conventioneers.

In Denmark, the general election took place in November 2001, shortly before the start of the Convention process. The governing Social Democrats lost the elections, while the Liberal Party and the right-wing populist Danish Peoples’ Party came out as the winners. Although the EU was hardly mentioned in the election campaigns, the new government as consisting of liberals and conservatives was expected to be much more pro-European than the preceding one.

Denmark took over the Presidency of the EU in the second half of 2002. The national debate on the future of the EU was therefore to a certain extent interlinked with

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217 European Commission (2001g).
the priorities and challenges for the Danish Presidency. The European Affairs Committee of the Danish Parliament organized four hearings on the Future of Europe, in which the EU-spokespersons from the political parties, interest groups, ministerial departments, university representatives, students and the media were able to pose questions and take part in the debate.218

Table 7: Danish Representatives in the Convention

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Henning Christophersen</td>
<td>Government Representative, Liberal Party</td>
</tr>
<tr>
<td>Poul Schlüter</td>
<td>Government Alternate Representative, Conservative People’s Party</td>
</tr>
<tr>
<td>Peter Skaarup</td>
<td>Parliament Representative, Danish People’s Party</td>
</tr>
<tr>
<td>Henrik Dam Christensen</td>
<td>Parliament Representative, Social Democratic Party</td>
</tr>
<tr>
<td>Per Dalgaard</td>
<td>Parliament Alternate Representative, Danish People’s Party</td>
</tr>
<tr>
<td>Niels Helveg Petersen</td>
<td>Parliament Alternate Representative, Social Liberal Party</td>
</tr>
<tr>
<td>Jens-Peter Bonde</td>
<td>EP Representative, Danish June Movement</td>
</tr>
<tr>
<td>Helle Thorning-Schmidt</td>
<td>EP Alternate Representative, Social Democratic Party</td>
</tr>
<tr>
<td>Lone Tybkjaer</td>
<td>EP Alternate Representative, Social Liberal Party</td>
</tr>
</tbody>
</table>

The Commission

Even if having approved a suggestion for the Commissioners’ equal rotation as a final compromise in Nice, Denmark returned to its original position in the Convention negotiations requiring that each Member State should continue to have a right to keep one Commissioner as a result of the domestic political pressure.219 Additionally, Denmark stated that if the composition of the Commission would be so reformed as to create posts for non-voting Commissioners, they should still be able to participate fully in college meetings and be responsible before the European Parliament.220

Nevertheless, as a small country, Denmark had a clear interest in a strong Commission.221 From the political elite, the Danish Foreign Minister Møller supported

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218 CONV (151/02).
219 Interview (Conv10) and European Policy Institutes Network (2003).
strengthening the role of the Commission. He noted that it was extremely essential, particularly for the smaller Member States,\textsuperscript{222} and this statement was later affirmed also by the Prime Minister Fogh Rasmussen.\textsuperscript{223} According to the Danish view, the Commission must be able to act with authority in the areas where it is assigned a decisive role. In that respect, both small and large Member States would have a strong arbitrator in the Commission, which is not governed by narrow and short-sighted national interests.

Apart from reducing its size, the Commission could be strengthened also by launching a new procedure regarding the election of its President. From the Danish perspective, the balance between small and large countries, or the Commission’s independence in relation to other institutions, would not be sufficiently taken into account if its President was elected by the European Parliament exclusively. As a result, the Prime Minister Fogh Rasmussen made a proposal for the creation of an ‘electoral college’ to nominate the Commission President. Such a college would consist of members representing both national parliaments and the European Parliament.\textsuperscript{224} This suggestion was, however, rejected by many in the Convention. These opposers recommended sticking to the current procedure, warning against politicization of the Commission.\textsuperscript{225}

\textit{The Extension of Qualified Majority Voting}

Denmark supported rendering the QMV a normal decision-making approach in community affairs. Before the Convention started its work, Prime Minister Nyrop Rasmussen (2001) highlighted that by using QMV, decision-making and EU institutions would be made more efficient. He was interested in seeing more QMV in particular in the environmental issues and certain aspects of taxation. The increase of the QMV was suggested also by the Prime Minister Fogh Rasmussen (2003a) later on. According to him, the larger the number of Member States, the greater the need will be for taking as many decisions as possible by qualified majority. He agreed with Nyrop Rasmussen’s view that the taxation matters should not be a taboo, and declared that at least selected parts of that area, i.e. when fixing minimum rates for indirect taxes, should be transformed to QMV.

\textsuperscript{222} Møller (2002).
\textsuperscript{223} Fogh Rasmussen (2003a).
\textsuperscript{224} Fogh Rasmussen (2003a).
\textsuperscript{225} CONV (508/03).
Fogh Rasmussen (2003a) announced that personal income tax and Member States’ distribution policies are areas where the EU has no business. In addition, he argued that unanimity should continue to apply when the EU expenditure ceilings are to be changed.

Nevertheless, the extension of QMV was again subject to exceptions from a Danish view.\textsuperscript{226} Denmark made a point that the QMV should be based on the fundamental principle of minimum standards, not on a total harmonization.\textsuperscript{227}

\textit{The Council Presidency}

Of the small Member States, only Denmark and Sweden took finally a more flexible position towards the proposal for an elected President of the European Council, and their opinion was thus divided from that of the other small states. In 2001 Denmark was still, in fact, of the opinion that the longer-term team Presidencies would be a feasible solution to reform the rotation principle of the Council Presidency.\textsuperscript{228} However, in early 2003, Danish Prime Minister Fogh Rasmussen changed both his own and Denmark’s official position as regards the issue of permanent Council President. This was believed to be due to Denmark’s experiences of holding its six-month Presidency in the fall of 2002.\textsuperscript{229} When Denmark took over the EU Presidency in July 2002, Fogh Rasmussen had still argued that the position of a permanent President would be a means of strengthening the power of the bigger countries in the EU to the detriment of the smaller ones. He then thought it to be inevitable that the new Council President would come from one of the larger EU members.\textsuperscript{230}

Subsequently, towards the end of the process Denmark agreed that a full-time President should be appointed by the European Council, however, requesting the presented model to be subject to clear conditions and complete clarity. Again in this context, Denmark highlighted the demand for equality between the large and small Member States. According to Fogh Rasmussen (2003a), an elected President would create continuity and ensure clarity and balance in relation to the EU Commission. The President should be elected from either former or present members of the European Council. He or she could

\textsuperscript{226} European Policy Institutes Network (2003).
\textsuperscript{227} Danish Government (2001, 14).
\textsuperscript{228} European Commission (2001e).
\textsuperscript{229} Interviews (Conv10 and Conv13).
\textsuperscript{230} “Copenhagen attacks Chirac and Blair EU leadership plan.” \textit{Financial Times}, 2 July 2002, p. 2.
represent the EU externally at a high level as well as prepare the meetings of the European Council. However, the President should not interfere in the areas that fell under the Commission’s competence.\textsuperscript{231} A sensible division of labour between the elected President of the European Council, the President of the Commission and the EU Foreign Minister should be secured.\textsuperscript{232}

In the end, Denmark presented an updated version for rotating, biannual Presidencies that it believed to guarantee the effective functioning of the system. The Danish model contained an idea of dividing the Member States into particular ‘electoral groupings’ according to their size, the categories consisting of large, medium and small states. The presidential post, elected from the former or present Prime Ministers, could be allowed to rotate between these groups respectively.\textsuperscript{233} The application of such a model would best guarantee equality between the Member States. According to the Foreign Minister Møller, a combination of the European Council President and rotating Presidencies for the other council formations would provide the foundation for a strong and dynamic EU.\textsuperscript{234} As regards the team Presidencies, Fogh Rasmussen did not believe them to ensure proper co-ordination, since they could be paralyzed by internal quarrels over competence.\textsuperscript{235} After all, the Danish model turned out to be relatively complex and the demand to maintain the six-month rotating Presidencies for the Council of Ministers made it even more difficult to understand. The political decision-makers in Denmark did not always have clear, fixed and strong ideas or identical opinions on the matter of Presidency. In the national sphere the parties were often and again not able to reach a clear consensus, in particular on the issues of institutional reform.\textsuperscript{236}

\textsuperscript{231} Fogh Rasmussen, Anders (2003a).
\textsuperscript{232} Fogh Rasmussen, Anders (2003b).
\textsuperscript{233} Tybjærg Schacke & Mariegaard (2003).
\textsuperscript{234} Møller (2003).
\textsuperscript{235} Fogh Rasmussen (2003a) and European Commission (2003a).
\textsuperscript{236} Interview (Conv10) and Tybjærg Schacke & Mariegaard (2003).
Before the start of the Convention negotiations the attitude of the Finnish government was fairly positive, which could have resulted from the influence of the then Prime Minister Lipponen, who explicitly supported the Convention idea. However, while the negotiations proceeded, the general environment turned out distinctively more skeptical and the Prime Minister did not agree with all points highlighted. He warned the Convention for only working towards the benefit of the big European countries. In February 2002, he started to have severe doubts related to Convention’s work. He attacked the preparations for the Convention, and accused it of being oriented against smaller countries. According to his statement, there were signs that in the Convention one planned to push through a model that was drafted elsewhere and not very openly.

The issues that were prepared hastily or without proper involvement and debate raised particular reservations towards the Convention method in Finland. These pertained mainly to the institutional issues. The Finnish government stated that some of the institutional solutions did not sufficiently take into account the basic principles that Finland and a clear majority of Member States set as goals concerning the institutional package. Therefore, the government declared that it would reassess the institutional package in the upcoming IGC, in particular the status of the European Council and its proposed President, the rotation of the Council Presidency and the composition and the tasks of the Commission.

One of Finland’s major requirements was that the draft Treaty must not weaken its parliamentary system of EU policy-making. It underlined that the Member States are the source of Union’s authority and the general principles for reform include keeping the primacy of the community method and competence-competence in the hands of the Member States, respect for the equality of the Member States, maintaining the institutional
balance and increasing the effectiveness, clarity and transparency of the EU decision-making.\textsuperscript{242}

As the Convention finished its work, the Finnish Heads of State stipulated that the institutional issues needed to be re-discussed.\textsuperscript{243} Moreover, the Grand Committee of the Finnish Parliament stressed that the Convention’s final session did not achieve the consensus required by the Laeken conclusions. Strong criticism was also voiced about the Praesidium’s representativity and procedures. With respect to the Convention method itself, it was stated that the Convention members are sufficiently representative and accountable to the states or institutions that they nominally represent if the Convention is a preparatory body, but not if the Convention was to actually make decisions. In this regard, the Convention was not seen to be democratically accountable or legitimate body.\textsuperscript{244}

As soon as it became evident that the outcome of the Convention would also be an outcome of the IGC, Finland changed its attitude towards the overall process and started to formulate real positions. Moreover, from a Finnish point of view, it was a great disadvantage that the decision-making methods as originally devised to the Convention, i.e. free deliberation, brain-storming and argumentation, were never employed. Yet, at the same time Finland was of the opinion that the working methods and rules should be clear. (Conv1.) “\textit{From my experience, the Convention-method was anything but positive},” as stated by a Finnish member of the Convention (Conv3).

By September 2003, the skepticism had increased even among the citizens, who were reported to require a referendum on the Constitutional Treaty. It was stated by Prime Minister Lipponen that Finland will veto any constitutional changes which are against its vital interests in the IGC. To this extent, a threat a veto was used by Finland. According to a poll made by the European Parliament’s Information Office, 78 percent of the Finns favoured their government to veto the entire Treaty if the final text goes against Finland’s preferences. The key questions turned out to be the right to nominate an own Commissioner and the rotating Presidency.\textsuperscript{245}

\begin{flushleft}
\footnotesize
\textsuperscript{242} Finnish Government (2003a).
\textsuperscript{243} European Commission (2003f).
\textsuperscript{244} Finnish Government (2003a) and Finnish Government (2003e).
\textsuperscript{245} See \textit{EUobserver}, 18 September 2003 and Finke & König (2006, 88).
\end{flushleft}
Table 8: Finnish Representatives in the Convention

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Teija Tiilikainen</td>
<td>Representative of the Finnish Prime Minister</td>
</tr>
<tr>
<td>Antti Peltomäki</td>
<td>Government Alternate Representative, Social Democratic Party</td>
</tr>
<tr>
<td>Kimmo Kiljunen</td>
<td>Parliament Representative, Social Democratic Party</td>
</tr>
<tr>
<td>Jari Vilén</td>
<td>Parliament Representative, National Coalition Party</td>
</tr>
<tr>
<td>Hannu Takkula</td>
<td>Parliament Alternate Representative, Finnish Centre Party</td>
</tr>
<tr>
<td>Esko Helle</td>
<td>Parliament Alternate Representative, Left Alliance</td>
</tr>
<tr>
<td>Piia-Noora Kauppi</td>
<td>EP Alternate Representative, National Coalition Party</td>
</tr>
<tr>
<td>Esko Seppänen</td>
<td>EP Alternate Representative, Left Alliance</td>
</tr>
</tbody>
</table>

The Commission

During the Convention, Finland considered the provisions concerning the composition and appointment of the Commission contained in the Nice Treaty to be justified. In other words, Finland still supported the principle of one Commissioner per Member State, and it was very reserved to the proposal of two-tier Commissioners with and without voting rights. It argued that the role of Commissioners without voting power is confusing and unclear. At worst it would lead to such a counterproductive situation in which the Commissioners work as lobbyists of national interests. However, Finland accepted the clause as made at Nice, according to which the number of Commissioners would be reduced and the system based on equal rotation as soon as there are 27 Member States in the Union.

According to Finland, it was essential to maintain the Commission’s independence and its original role as the originator of the proposals in order to develop the Union. A strong Commission, which safeguards common rules and norms, was one of the cornerstones of the Finnish approach. In addition, the Commission’s collegiality and the equality of its members were seen to be particularly important to small states.

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246 CONV (514/03).
248 CONV (509/03) and Raik (2003).
According to Finnish Prime Minister Lipponen, the Commission is the best protection of the smaller Member States against the larger ones.249

*The Extension of Qualified Majority Voting*

Finland took a positive view on broadening the scope of QMV even in the fields of environmental and energy taxation, certain social policy provisions and the CFSP, with the exception of security and defence policy. In the field of defence and development of military capabilities, the Finnish government stressed the importance of revising the conventional text later on.250

Finnish Prime Minister Vanhanen (2003) stated that an increased use of QMV was a precondition for guaranteeing effective decision-making in the Union. In his view, efficiency also required the decision-making structure to be made sufficiently transparent.251 It considered that when the Council acts on a qualified majority, decisions should be taken by a simple dual majority.252 Even though Finland was generally in favor of extending the scope of QMV, it was also felt that QMV should be used on a case-by-case basis, each issue area being treated with particular sensitivity.

Also the Finnish government representative to the Convention, Teija Tiilikainen, noted that in an enlarged Union, the decision-making capacity would call for increased application of majority voting. According to her, there should be more coherent and streamlined instruments for the implementation of the Union’s decisions.253

*The Council Presidency*

Finland did not support the nomination of any fixed Presidencies, and it rejected the idea of a permanent President of the European Council several times during the Convention negotiations. The proposal was criticized as a confusing solution that would weaken the Commission, undermine the position of the small states and, as stated by the Prime Minister Lipponen, take the whole EU to a wrong direction.254 In addition, Finland stated

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250 See e.g. CONV (514/03), Finnish Government (2003a), Lipponen (2002a) and Lipponen (2002b).
251 See also Finnish Government (2003b).
253 CONV (521/03).
that such a proposal do not remedy the problems they are meant to solve. On the contrary, from the Finnish perspective, the Union’s problems could be resolved by streamlining and rationalizing the existing institutions and decision-making systems rather than by establishing new power centres into an already complex system. At worst, the election of a European President would further intensify perceptions of the Union as an elite institution that had lost contact with the people.255

All in all, Finland was of the opinion that any proposals for an independent Presidency of the European Council or EU Council should be evaluated in terms of its benefits to the performance of the institutional system. On the basis of information, which had been available until that point of time, Finland had not become aware of any grounds on which such arrangements would appear particularly useful.256 It was argued that the Presidency-institution would require its own bureaucracy to Brussels and would, at worst, compete with the Commission (Conv3).

Finland admitted that the rotating Presidency has in certain circumstances weakened the effectiveness of the Union. Yet, it was of the opinion that the rotation principle has considerable value for the individual Member States (Nat4). Finland was strongly in favour of retaining the existing mode of rotating six-months presidencies, at least in all the key structures that were essential for coordinating decisions. These would be the European Council, the General Affairs Council, the External Relations Council and Coreper. Finland considered that the list of Council formations should be adopted unanimously by the Council and their number should be limited to ten maximum.257 In line with many other small Member States, Finland also stipulated that the equality of Member States must be taken into specific consideration while reforming the Presidency.

By the end of the negotiations, Finland did not fully reject the idea of shared or team Presidencies, in which three to six Member States would take responsibility for chairing the Council for a period of 18 months to three years, as long as they continue to apply strict equality between the Member States particularly with respect to the rotation principle and do not create excessive concentrations of power around the Presidency. In addition, the Member States of each team should be in an equal position. According to

255 CONV (509/03), European Commission (2002d) and European Commission (2003e).
256 CONV (509/03) and CONV (521/03).
Finnish model, every member of the team should be in charge of chairing all Council formations on a ministerial level, as well as Coreper I and II, during a period of six months. The teams should change in every full round and a new set of teams would need to be determined unanimously by the Council, preferably at least two terms in advance.\textsuperscript{258} Moreover, Finland stated that in order to be accepted as a proposal, the team Presidencies would need to provide real added value as to the better, more coherent and transparent management of Council work.\textsuperscript{259}

However, until the end of the Convention’s work no convincing evidence had, from the Finnish perspective, been presented to support the idea that an independent President would improve the effectiveness of the European Council, nor had it been explained how such a Presidency could fail to disrupt the institutional balance. Therefore, it was required that the proposal for a President of the European Council is examined in the IGC on the basis of publicly expressed justifications, related to strengthening the Union.\textsuperscript{260} According to the Convention Member Tiilikainen, the rotating Presidency has become cumbersome only because it is loaded with inappropriate tasks. She emphasized that if these tasks were returned to the Commission, the Presidency would be able to continue rotating at least in the key council formations. In addition to that, she was rather sceptical as to whether a long-term European Council chair could eventually be constrained from becoming a rival to the Commission President.\textsuperscript{261}

### 6.3.1.4 Ireland in the Aftermath of Nice Referendum

Ireland started the Convention negotiations from a relatively weak position. At that time the Irish debate on the future of the European Union was still to a large extent dominated by the unfortunate outcome of its ratification process of the Nice Treaty. In fact, at the beginning of the Convention process in February 2002, the Treaty was still unratified by Ireland, and the Convention’s domains were thus not wished to spill excessively over Nice

\textsuperscript{258} CONV (509/03), CONV (514/03), Finnish Government (2003a) and Jäätteenmäki (2003).

\textsuperscript{259} European Commission (2003i).

\textsuperscript{260} Finnish Government (2003a).

\textsuperscript{261} CONV (521/03) and Norman (2005, 238).
(Conv8). In addition to that, the outcome of the first referendum had an impact on the perception of Ireland from other Member States’ point of view.

In early 2003, the Irish government reviewed its general attitude towards the Convention after realizing the actual achievements and power of the body. Yet, Ireland was rather cautious throughout the process, especially because of the national front at home. It was acknowledged that the Convention text would have to meet the national requirements in the form of a referendum, and the Euro-sceptical thinking was not hoped to increase in domestic arenas. Moreover, the recognition that nation states shall remain the overall building blocks of the EU was fundamental to the Irish government. (Vergés Bausili 2005, 140-142.)

Regarding the Convention, Ireland’s main concern was obvious, and focused in its scope: it was not desired for the agenda to go much beyond the items agreed in Nice.\(^262\) Again the Irish government defended a number of issues that were seen to represent their vital national interests. The Convention was even warned that Ireland might use its right to veto in the following IGC. In line with a number of other states, Ireland was sceptical towards the ‘consensus’ decision-making rule. At his speech in the European Policy Centre in April 2003, Prime Minister Cowen emphasized how much he hopes that “[w]ithin the Convention a real consensus on all the fundamental points emerges. But if it does not, this should be frankly acknowledged and left for further consideration.”

Overall, the Irish representatives did not work as a firm team in the Convention. At some point the government representatives allied and identified with other small Member States rather than with their own nationality. In the end, the Irish government declared that it was generally happy with the quality of the text of the draft Constitutional Treaty, “[w]ith the notable exception of the institutional chapter”.\(^263\) This dissatisfaction with the institutional outcome was affirmed within an interview as well. At the time of the Convention it was envisaged that the issues had to be renegotiated in the IGC. In particular, nobody liked the outcome on the composition of the Commission, and nobody really thought that it was going to work. (Conv4.)

\(^{262}\) European Commission (2001h).

\(^{263}\) European Commission (2003d).
Table 9: Irish Representatives in the Convention

<table>
<thead>
<tr>
<th>Name</th>
<th>Role</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dick Roche</td>
<td>Government Representative, <em>Fianna Fáil</em></td>
</tr>
<tr>
<td>Bobby McDonagh</td>
<td>Government Alternate Representative, <em>non-party</em></td>
</tr>
<tr>
<td>John Bruton</td>
<td>Parliament Representative, <em>Fine Gael</em></td>
</tr>
<tr>
<td>Proinsias De Rossa</td>
<td>Parliament Representative, <em>Labour Party</em></td>
</tr>
<tr>
<td>John Gormley</td>
<td>Parliament Representative, <em>Green Party</em></td>
</tr>
<tr>
<td>Pat Carey</td>
<td>Parliament Representative, <em>Fianna Fáil</em></td>
</tr>
<tr>
<td>John Cushnahan</td>
<td>EP Alternate Representative, <em>Fine Gael</em></td>
</tr>
</tbody>
</table>

The Commission

As in the previous Treaty negotiations, Ireland pointed out that a strong Commission is a vital protection for small states. It defended two principles regarding the composition of the Commission: an elected President and each Member States’ right to nominate their own Commissioners. According to Ireland, the proposal for the Commission of 10 or 15 members included an unacceptable vision that the larger Member States would always have a Commissioner while the smaller states would have to rotate. Ireland was convinced that there is plenty of work to do for 25 or 30 Commissioners.\(^{264}\) Besides that they argued that a larger college would simply provide with wider expertise. The principle of equality of all Member States was central to the Irish position.

In the end, the Irish negotiators accepted the logic for a smaller Commission in the EU-25 or more Member States, since it had been cognitively processed and politically justified already in the aftermath of Nice (Conv7-8). Subsequently, Ireland accepted the Convention outcome regarding the composition of the Commission, i.e. a downsized Commission, but requested more clarifications on the status of non-voting Commissioners.\(^{265}\) These fall-back positions must be possessed by each country, and in the Irish case a smaller Commission was accepted if, and only if, the system would function on the basis of strict equality, which is an essential element of the Commission and established already at the Treaty of Rome (Conv7).

\(^{264}\) Bruton (2002).
\(^{265}\) European Commission (2003h).
The Extension of Qualified Majority Voting

Ireland supported the extension of QMV within the Council, unless there would be clear justification for an alternative choice.\(^{266}\) Traditionally Ireland has been cautious on issues such as the extension of QMV, but this time it admitted that progress would be extremely difficult to achieve, if decisions were to be taken solely by unanimity. However, according to the Irish view, unanimity should still be applied in a limited number of areas. For Ireland, those areas were tax harmonisation, social, foreign and defence policies, trade policy with impact on internal policies, criminal law and some aspects of Justice and Home Affairs. In the issue of defence, the Irish government expressed its reservations on specific procedures, as the foreign policy cooperation still remains a controversial area in Ireland because of its NON-membership of NATO and a traditional policy of military neutrality.\(^{267}\) On the other hand, according to one of the interviewees, that card was never completely or too seriously put on the table during the negotiations. (Conv8.)

According to Vergés Bausili (2005, 142), taxation matters were indeed a red line in Irish policy at the time of the Convention, albeit the actual threat was exaggerated at times, as noted by one informant (Conv8). Another interviewee pointed out that the subject of taxation will always be a kind of a red line for Ireland. This can be explained by the fact that the Irish government relies heavily on attracting foreign investment through low tax rates. In addition, the entire economic recovery of Ireland can be derived from its taxation system and low personal taxes. This arrangement encourages people to work and assists them to spend their own resources. (Conv7.)

The Council Presidency

Ireland supported maintaining the rotating six-month presidencies and could not find any convincing case for its abandonment. It argued that much could be done to improve the operation of the current system without resorting to ‘an institutional coup d’état’.\(^{268}\) The Irish government declared that it has always, and will continue to oppose the proposal of a

\(^{266}\) Ahern (2003) and Institute of European Affairs (2003).


permanent Council President. They found it rather easy to identify the advantages and fairness of the rotating presidency (Conv8). It was once again seen as recognizing the equality of Member States in putting the destiny of the entire Union occasionally into the hands of small states (Conv7), and involving all Member States and national systems in the EU matters for a certain period irrespective of their size (Conv8).

For Ireland the idea of the European Council President was hence complicated, problematic and unclear. A permanent President was generally felt to affect the institutional balance so as to favour primarily the large Member States. Prime Minister Ahern rejected the proposal in arguing that it would inevitably create a new bureaucracy and lead to a clash with the President of the Commission. It would be very unwise to set up a situation in which Europe had two presidents, particularly if it was to lead to a shift in the balance of power in favour of the Council of Ministers at the expense of the Commission. Nevertheless, by December 2002 Ireland began to feel that some sort of changes would most likely take place in any case (Conv8). Having prepared itself for what lay ahead, Ireland finally stated that the permanent President would most probably become a fact, since there seemed to be such a great weight of large Member States behind it. Yet, in spite of formally accepting the proposal for a permanent Presidency, Ireland continued to be a strong supporter of the conventional rotating Presidencies (Conv8).

At the end of the day, Ireland took a flexible stand towards alternative approaches, such as team and troika Presidencies, which would share the burdens and bring more effectiveness to the Union. However, Ireland was not sure that these arrangements would in practise improve the matters or to make much sense (Conv8). On Council formations, the key issue for Ireland was argued to be the equal rotation. To this end, an appropriate balance between the greatest possible coherence and the need for each team to be representative of the Union in terms of geographic and demographic balance should be accounted for when establishing the teams. The rotation could be organized so as to allow each team, consisting of five members, for instance, to chair the meetings for

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270 Cowen (2003).
272 Bruton (2002).
273 European Commission (2003d) and interview (Conv8).
274 Brown (2003) and interview (Conv7).
approximately two and half years. Ireland pointed out that there might be general advantages in organizing the team Presidency system to reflect the rhythm that co-operates with other institutions of the Union. Yet, the essential elements and detailed arrangements of the system of rotation should be subject to unanimity and decided by the European Council.276

6.3.1.5 Large Member States

As already argued above, the Convention was characterized by a clear distinction between the orientations of small and large Member States. From the large Member States, only Italy was positioned somewhere in between the two poles of interests (Conv2). Many Conventioners, however, welcomed the renewal of the Franco-German partnership and at least their attempts to formulate a joint position for the 40th anniversary of the Elysée Treaty in January 2003. When the Franco-German proposal for the reform of the institutions appeared in January, the emerged split between small and large countries was deepened ever further even if their overture was generally attempted to give new impetus and foster the discussions. (Norman 2005, 143.)

The large Member States did not support the small state stipulations for retaining an equal right for everyone to nominate an own Commissioner. It was frequently announced by large states that as a guarantor of general and common interest, the composition of the Commission cannot be linked exclusively to the absolute representation of all Member States.

Many of the larger Member States did not favour the extension of qualified majority voting to the areas of taxation (a red-line for the UK), immigration, foreign policy and culture. Eventually, in these areas the Convention was working under a pressure from the big Member States.277 The issues surrounding the CFSP were highly sensitive to the United Kingdom, and it succeeded to shift the final articles close to its initial position. The British were particularly afraid of Commission involvement in foreign

277 European Commission (2002e) and Intergovernmental Conference (2004b).
policy, and the clause article in which it was stated that QMV would be used in joint proposals from the Foreign Minister and the Commission was deleted. Yet it was stated by the UK that they will welcome the inevitable increase of QMV. The Franco-German coalition too expressed their longing for more QMV to the Council of Ministers and made a proposition on the ‘double-hatted’ Foreign Minister to the Union.\footnote{European Commission (2002e) and Norman (2005; 144, 255-256.)}

The idea of a “president for the European Union” originally came from a group of large Member States, i.e. those of France, the UK and Spain, as will be shown later on. President Jacques Chirac was apparently one of the first advocates of a more stable Council Presidency practice to replace the rotating model. It was envisaged by the group that the existing system of rotating Presidencies would no more function properly in an enlarged Union. Instead, a permanent President possessing a longer mandate would more coherently represent the EU in the eyes of the rest of world and provide the EU with a stronger political leadership. In 2003, the UK presented its rather ambitious description of the tasks for this European Council President. Among other things, it was stated by the UK that the president should play a particular role in defence issues, he or she should work in a close proximity with the Commission and its President, chair the General Affairs Council, supervise the work of sectoral Councils, oversee the EU’s relations with the major world powers and undertake a ‘tour of the capitals’ around all Member States four times a year.\footnote{European Commission (2002e) and Norman (2005, 112.)}

6.3.1 The Process and Outcome under the Rule of Restricted Consensus

A closer look at the \textit{de facto} work of the Convention, especially that of the Presidium or the President himself, reveals that the Convention working methods were rather dissimilar to deliberative practices as defined in the negotiation literature and, in particular, by the constructivists. The leadership and coordination jobs were primarily carried out by the
Praesidium solely – in some cases even by the President himself.\footnote{At some point, the President announced that one should not naturally assume that the states are equal. See “Citizens are equal – but some states are more equal than others” by D. Spinant in\textit{European Voice}, 22-28 May 2003.} The Praesidium was frequently blamed for having acted as an interpreter of the dominant view and as a sole drafter of actual text presented to the floor, although the Convention was supposed to remain sovereign in this process. Nor did the provisions on the institutional reform introduced as a ‘compromise’ withstand the test of fair bargaining. President Giscard d’Estaing tended to communicate with the broader media all alone, sometimes presenting his own position as that of the Praesidium, and often presenting the latter as that of the whole Convention. The Praesidium’s role was central in steering, framing and addressing the discussion, as well as in identifying the points of consensus. (Conv2, Magnette \& Nicolaïdis 2004; 389-390, 397-398.) To move on into the details, it was even noted that the President – who was generally perceived as a ‘big country man’ – often paid attention in the plenary when leaders such as Peter Hain or Joschka Fischer spoke but preferred to chat with Sir John Kerr or Giuliano Amato whenever the smaller members made interventions (Norman 2005, 125). It becomes ever more evident that deliberation and argumentation did not play a significant role in the Convention.

At the end of the day, the majority of the Conventioneers did not feel that the consensus was factually reached, at least not in the institutional issues. The institutional issues were considered rather briefly in the plenary, and they did not emerge in the Convention discussions until January 2003 when they were tackled directly by the President Giscard d’Estaing on the basis of the Franco-German memorandum on the institutional architecture of Europe.\footnote{CONV (477/03) and CONV (489/03).} The joint Franco-German proposal included a clear description for an institutional structure of the Union creating thus a basis for further and yet more intensive institutional debate. Their aim was to promote a stronger European Commission, use of the Community Method and to launch a permanent Presidency of the European Council. These suggestions were discussed at length during the plenary session on 20 and 21 January.\footnote{CONV (508/03).}

The Franco-German paper on the upcoming directions of institutional reform somewhat shocked the small Member States to make them to search for new solutions to
deal with the big states directorate. The Prime and Foreign Ministers of Austria, Finland, Ireland and Portugal were invited to Luxembourg by Prime Minister Juncker to join their Benelux counterparts to discuss the topic of institutional reform. The proposal concerning the European Council President raised particular anxiety, and it was made evident by Jean-Claude Juncker that the small states would oppose this idea as introduced by big countries. Even at the eve of the Athens European Council in mid-April, the leaders of 18 small states gathered together in order to participate in a conversation led by the Benelux-countries. (Norman 2005, 152.)

The empirical fact that there was no working-group devoted to institutional issues was seen as a substantial shortcoming, and thus subject to regular criticism throughout the Convention process. In fact, as soon as the first-wave working-groups were established in summer 2002, the Praesidium assured that a working-group dedicated for the institutional issues would be built up in the second-wave. As already known, such a group was never created and, according to a number of evaluations, it had a direct and negative bearing on the outcome. Towards the end of the process, as argued by one of the interviewees, some issue-linkages were introduced in order to reach a feasible solution in the institutional matters. At this stage, the discussions proceeded by means of announcing offers and counter-offers, and some Member States had to come up with the relevant side-payments along giving up with other issues that were less salient for them. (Conv1.)

After all, institutional issues were again held back until the very end of April when the Presidency presented to the plenary its first set of draft articles for the institutional reform. These proposals contained some aspects of the working groups’ conclusions but were not subject to the general ‘Conventional Method’. Literally two options were stated by the Praesidium: either to keep the Nice provisions or to go beyond them. Not at all surprisingly the proposals put forward reflected the latter. The provisions for the European Council chair maintained that its (permanent) President shall be elected for a term of two and a half years, renewable once. It was also contended that the person elected must be, or have been for at least two years, a member of the European Council. With respect to the Commission, it was stipulated that fourteen members shall consist the college, while it may call on the help of associate Commissioners. It became evident that all Member States
would not retain their rights to nominate national candidates to the Commission.⁸³

Significant disagreements still emerged between the small and large Member States, especially the proposal for a Permanent President of the European Council suffered from a set of internal contradictions.⁸⁴ A timely reaction on the topic in the form of a flash report was submitted by Ireland already at the same day. The Irish Government’s representative, Minister for Europe Dick Roche rejected Giscard’s draft articles on the institutions as not representing the majority view. He exclaimed that twenty-two Member States or candidate countries opposed the views presented by the President Giscard d’Estaing, and it would be enough to guarantee that a consensus would not be reached in the end. Minister Roche also declared his unhappiness with the fact that the final draft Treaty would become available to the Conventioneers not earlier than June 21 leaving thus too little time for proper debate on its content.⁸⁵ He was also the one who asserted that neither the Nice nor the Laeken European Council mandates authorized the Convention to deal with institutional issues (Norman 2005, 238).

Next time the institutional issues were discussed in the plenary session on 15 and 16 May, which was meant to be the last phase of the ‘consensus building’ process. It was also evaluated as the most delicate and most significant stage of the Convention proceedings. Before allowing the Conventioneers to start the eventual discussions, Giscard d’Estaing re-indicated the working method which would be used to reach a ‘consensus’. Even though several Convention members insisted on the need to examine particular parts of the draft Constitution more in detail and indicated their doubts about the feasibility of completing that work in time available to the Convention, Giscard d’Estaing pointed out in response to these comments that the working method was that of consensus and voting would be excluded. In the end, a number of speakers took the floor and made interventions on various issues.⁸⁶

Prior to the early June meeting, the divergencies between the governments and Giscard d’Estaing were substantial. It indicated that the President had not taken too much notice of the criticisms put forward. The main areas of disagreement concerned the

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⁸³ CONV (691/03).
⁸⁴ CONV (770/03) and interview (Conv2).
⁸⁵ European Commission (2003c).
⁸⁶ CONV (748/03).
Council Presidencies (18 governments being against a full-time Presidencies, while only five supporting the proposal), weighting of votes in the Council of Ministers and the structure of the Commission. (Norman 2005, 237.) The Praesidium consulted four constituent groups until 4 June and revised the draft text on 10 June, only three days before the fixed concluding session on 13 June. It has been argued by Tsebelis and Proksch (2007, 157) that in addition to the overall agenda control exercised by Giscard d’Estaing, he used three significant tools to draft a Treaty beyond lowest common denominator: 1) limiting the number of amendments from Convention delegates by limiting the time and by making informal changes to the rules of procedure with an aim to reduce the number of amendments even more; 2) creating an iterated agenda-setting process in order to modify the amendments; and 3) prohibiting voting and defining the meaning of ‘consensus’ by himself. As the proposals for the institutional reform were introduced by the Presidency in many sequences during a process that lasted nearly for two years, it became extremely difficult to develop any feasible package-deals.

As soon as the Convention finished its work, the Ministries and Secretaries of State of fifteen small Member States held a meeting on 1 September 2003, with a view to preparing the following IGC. The event was hosted by the government of Czech Republic and the participators consisted of Austria, Denmark, Estonia, Finland, Greece, Hungary, Ireland, Latvia, Lithuania, Poland, Portugal, Slovakia, Slovenia and Sweden. All participants fully agreed that the text of the draft Constitutional Treaty was in urgent need of changes. The major deficiencies were associated to the composition of the Commission, the role of the European Council President and the future of the rotating Council Presidencies. Against this background it is obvious that the consensus had not been reached in the institutional issues. The final draft Constitutional Treaty was approved by the Thessaloniki European Council as a “good starting point” to the upcoming IGC (European Council 2003).
Table 10: The Outcome of the Convention

<table>
<thead>
<tr>
<th>The Composition of the Commission</th>
<th>The Extension of QMV</th>
<th>The Rotating Presidency</th>
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<tbody>
<tr>
<td><strong>Two-Tier System:</strong></td>
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<tr>
<td>15 Commissioners</td>
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<tr>
<td>composed of 13 Commissioners, the</td>
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<td>President and the Minister for</td>
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<td>Foreign Affairs</td>
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<td>+ Associate Commissioners</td>
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<td>without voting rights,</td>
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<tr>
<td>selected on the basis of</td>
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<td>rotation between the Member States</td>
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**Abolishment of the Luxembourg Compromise**
→ QMV a general rule
**Introduction of the bridging clauses**
→ move to QMV by a unanimous Council

**Extension of QMV:**
(+/- 20 Articles)
- I-39: Common Foreign and Security Policy
- III-21: Free Movement of Workers, Social Benefits
- III-62: Administrative Cooperation and Combating Tax Fraud and Tax Evasion in the field of Indirect Taxes
- III-77: Specific Tasks Vested in the European Central Bank
- III-79: Amendments to the Statute of the European System of Central Banks
- III-104: Social Policy
- III-119: Definition of the Tasks and Objectives of the Structural Funds; III-130: Environment
- III-134: Derogation in the field of Transport
- III-164: Administrative Cooperation in the Area of Freedom, Security and Justice
- III-166: Border Checks; III-167: Asylum
- III-168: Immigration
- III-170: Judicial Cooperation in Civil Matters
- III-171: Judicial Cooperation in Criminal Matters
- III-172: Approximation of Criminal Offences and Sanctions
- III-173: Incentive Measures in the field of Crime Prevention; III-174: Eurojust
- III-176: Non-Operational Police Cooperation
- III-177: Europol
- III-181: Laws, Framework Laws and Recommendations in the field of Culture
- III-201: CFSP (generally unanimity – QMV when deciding about Union actions, positions or appointments of certain representatives)
- III-212: Statute and Seat of the European Armaments Agency
- III-328: Qualified Majority in Reinforced Cooperation

**Maintaining of Unanimity (totally or partly) and/or no decisions taken:**
Non-Discrimination and Citizenship, Taxation, Social Policy, Immigration, Foreign Policy, International Trade Agreements, Culture

Permanent President to the European Council for two-and-a-half-year terms, (renewable once)
Rotation principle preserved within all formations of the Council of Ministers, (except the Foreign Affairs Council)
The (team-)Presidencies will be held by three governments for a period of at least one year

European University Institute
DOI: 10.2870/2709
6.3.2.1 A Two-Tier Commission

By the time of the Convention, the issue of the Commission was already triggering national passion, and therefore its composition was again one of the most frequently raised issues. It had already become evident to everyone that the institution needed amending, but opinions were divided on how to reform it. As clearly seen in the process findings, many of the smaller states continued to defend their fundamental principle of one Commissioner per Member State, which would give substance to equality between all Members of the Union, whereas some other proposals included a provision for two levels of Commissioners. The idea of a Commission reduced in size was tabled in January 2003 by a Franco-German proposal for the Union’s institutional architecture. It was later argued by the supporters of a smaller college that the Commission could in practice easily become a sort of Permanent Representatives Committee (Coreper) if the principle of one Commissioner per Member State were retained.\footnote{CONV (477/03), CONV (489/03) and CONV (748/03).} This time also the accession countries appealed for their rights to nominate a representative to the college that had worked in close proximity with them during the enlargement negotiations. It was maintained that the principle of one Commissioner per Member State would also assist the Commission in managing the integration of the accession countries and help them to familiarize themselves with Union processes.\footnote{CONV (508/03).}

The need for the Commission to be democratically legitimate was widely recognized throughout the Convention negotiations. New arrangements were also required for the election of the Commission President and several Conventioneers maintained that both Heads of State/Government and the European Parliament should be involved in the procedure.\footnote{CONV (508/03).} A number of Convention members wanted the European Parliament to designate the Commission President directly.\footnote{CONV (508/03).} Article I-26 of Title IV in draft Constitutional Treaty states that the European Council must put forward to the European Parliament its proposed candidate for the Presidency of the Commission, deciding on this by a qualified majority. When nominating a candidate, the Council should take into
account the elections to the European Parliament. The European Parliament must elect this candidate by majority. If the candidate does not receive the required majority support, the European Council must put forward a new candidate within one month.\footnote{CONV (820/03).} Compared to the present system, the new proposal does not actually change the position of the European Parliament, as only one candidate is forwarded to the Parliament. Therefore the only options for the Parliament are either to approve it or not to approve it. According to some Member States, the Parliament should be given more options with a choice between several candidates.

The draft Constitutional Treaty stated that the change in the composition of the Commission would not take effect before 1 November 2009. From then on, however, it was decided that the Commission will consist of a President, a Minister of Foreign Affairs/Vice President and thirteen Commissioners selected on the basis of a rotation between the Member States. Each College will be composed so as to reflect satisfactorily the demographic and geographical range of all the Member States, with a two-tier Commission, with all the Member States having at least one associate Commissioner. Each Member State will submit a list of three persons whom it considers qualified to be a European Commissioner. Until then, each Member State will keep one full member of the Commission. The system will be established by a decision of the European Council.\footnote{CONV (820/03).}

All in all, the Commission issue was complicated, yet relatively quickly resolved issue at the Convention. It has been argued that Giscard d’Estaing was particularly concerned by the political problem of so many small states about to embody a college that could make decisions by just a simple majority. He skeptically questioned what kind of a legitimacy such a Commission would have in front of the citizens of the larger states if their interests could be outvoted by states with a total population of fewer than 50 million in a Union of 450 million. (Norman 2005, 120.)

\footnote{CONV (820/03).}
\footnote{CONV (820/03).}
The question of whether to increase qualified majority voting in the Union was discussed in the Convention under the ‘Simplification’ working group as supervised by Giuliano Amato. The working group together with the Convention in general tended to support a considerable extension of QMV in the Council.\footnote{CONV (477/03).} Nearly all of the small Member States agreed that the scope of the QMV should be extended, admitting that everything would be paralyzed if individual countries were able to block decisions in the Union with 25 or more Member States. A great amount of decisions made within the Council of Ministers deal with legislative issues, i.e. regulations and directives, which are inherently subject to lower levels of conflict. This might partly explain the fact that even the small states have in overall terms been willing to expand the scope of QMV, as already seen in the Amsterdam and Nice negotiations. Nevertheless, many of the smaller Member States again exposed a number of domestically important areas in which unanimity must, in their view, be required.\footnote{CONV (646/03).} These domains, which the small states have not been eager to move under the QMV rule, often deal with important and vital national issues and thus subject to higher levels of conflict. On decision-making in the area of Common Foreign and Security Policy, to give an example, there was on the one hand a demand for more QMV and on the other hand a strong opposition to move into that direction.\footnote{CONV (748/03).}

Apparently the most critical decision as made by the Convention to the realm of QMV concerned the abolishment of the decision-making principle known as *Luxembourg Compromise*. Until then it had guaranteed each Member State a right to use an ‘emergency veto’, but the Constitutional Treaty formally abolished the principle by making the QMV as a general rule. Originally, the Luxembourg Compromise was founded to allow each country to veto such decisions in which vital national interests were at stake. It was devised to resolve the ‘empty chair crisis’ resulting from French dissatisfaction with the EU’s willingness to guarantee protected market for its agricultural products in the mid-1960’s. Although the compromise had no legal status in the Union decision-making, it
worked quite efficiently as a silent agreement between the Member States all the way until the mid-1980’s.

As its major innovation, the Convention proposed a number of bridging clauses, *passerelle provisions*, to extend the scope of QMV and the ordinary legislative procedure to particular cases where unanimity were normally supposed to apply, without needing to amend the Treaties. These bridging clauses enable the European Council, by a unanimous decision, to apply QMV also in the areas of Common Foreign and Security Policy, budget and literally all other policies except defence or matters with military implications. It was decided by the Convention that the national Parliaments will be kept informed as to what decisions would be transferred under the QMV and when. Even if the QMV was now rendered as a general rule, the exceptions were introduced in several issues, including non-discrimination and citizenship, taxation, social policy, immigration, foreign policy, international trade agreements and culture. It has been argued by one of the informants that in the issue of QMV, the concessions as permitted in the Convention to particular Member States in their domestically important issue areas were, nevertheless, rather minor and cosmetic ones (Conv8).

### 6.3.2.3 Towards an Elected President?

One of the most significant changes the Convention’s draft Constitutional Treaty made in the area of the Council of Ministers was the abolishment of the system of the rotating Presidency. It was decided that the Council Presidencies would no longer automatically rotate between the Member States. According to the draft Treaty, the Presidency of a Council formation other than that of Foreign Affairs must be held by Member State representatives within the Council on the basis of equal rotation, for periods of at least a year. The European political and geographical balance and the diversity of Member States must also be taken into account when deciding about the rules of rotation.²⁹⁶

The election of a permanent President was supported in the Convention especially by the President Giscard d’Estaing. According to him, several developments – e.g. the

²⁹⁶ CONV (820/03).
ongoing crisis in Iraq and the subsequent division between the EU Member States – fairly well indicated the necessity of a single, permanent President to ensure the external representation of the Union. The idea of a permanent President as chosen by the European Council from among its former members was originally launched by the French President Jacques Chirac and Prime Ministers Tony Blair of Britain and José Maria Aznar of Spain. Chirac announced his idea of a President for the European Union only a week after the Convention’s launch, whereas Aznar presented it in his speech in Oxford and Blair in his first speech to the Convention in March 2002. The proposal was thus labelled as an ABC, later tabled by a Franco-German coalition.\footnote{297} As with this plan, the big Member States were once again able to demonstrate their agenda-setting power. (Conv2.)

The idea of a permanent President was widely opposed by small Member States. Their representatives could see literally no additional value to be provided by creating such a position. The Luxembourg Prime Minister Juncker stated that there is no need for a Council President who “congratulates the American President on his birthday”\footnote{298}. In general, the exact role of the permanent President was illustrated rather weakly throughout the Convention process and there were several doubts presented as regards the formulation of the President’s ultimate competence, responsibilities and duties. The questions were posed such as would he have ‘open hands’ in creating the EU foreign policy on his own or would he work as a spokesperson of the European Council or may be a broker between the Council Members in foreign policy issues? It was also asked whether the post would fulfil a managerial function, or was it to provide political day-to-day leadership or to ensure continuity of strategic direction. A large number of representatives considered that the establishment of a permanent post would create confusion over the respective roles of the European Council and Commission or even institutionalize rivalry between the two along damaging the coherence of the EU institutional set-up. In addition, several members questioned the democratic legitimacy and accountability of such a powerful post elected only by his peers, as well as the degree and type of administrative support it may require. The Article I-21 was judged to be too vague and inconsistent as to describe precisely the President’s role. To justify retention of the current system of six-monthly rotating

\footnote{297 CONV (489/03) and Norman (2005, 111).}
\footnote{298 Agence Europe, 17 January 2003.}
Presidencies, a number of speakers drew attention to its value in providing visibility for the EU at the national level, as well as in giving all Member States an equal degree of access to the function of Presidency, in spreading awareness of the Union and creating a sense of ownership in Member States.\textsuperscript{299}

The reform of the Presidency was discussed by the EU leaders at the Athens European Council on 16 April 2003, where the Convention President’s proposal ran into strong opposition. His draft articles for the institutional reform were inspired largely by the Franco-German prospectus and they had not been agreed even by other members of the Praesidium.\textsuperscript{300} As a result, eighteen Member States out of twenty-five rejected the idea of a permanent President, after which Giscard d’Estaing noted that those who oppose or are about to reject the idea of a permanent President for the Council represent only about a quarter of the EU population. Due to this, they should in his view not be allowed to prevent the formation of a ‘consensus’. As is perhaps obvious, this argument could not be tolerated by the smaller Member States, and their following reaction was thus very passionate.

One of the decisive questions in the Convention hence remained whether the EU should have a permanent, elected President of the European Council. The presidency was at the heart of all the institutional questions until the end. After long negotiations in the Convention and despite hundreds of proposed amendments, the Praesidium included a proposal in the draft regarding the permanent President of the European Council. Article I-21 of Title IV in the draft Constitutional Treaty states that the European Council will elect its President by qualified majority for a term of two-and-a-half years, renewable once only. The President chairs the European Council and drives forward its work. He must ensure a proper preparation and continuity in cooperation with the Commission President, as well as facilitating cohesion and consensus within the European Council.\textsuperscript{301}

At the very least, a presumption for a reserved consensus procedure of decision-making in the Convention becomes here empirically verified. If this turned out any kind of a rule, the minorities would certainly feel that the process does not respect their rights but rather ruins the legitimacy of the whole enterprise. (Magnette & Nicolaidis 2003.)

\textsuperscript{299} CONV (477/03), CONV (508/03) and CONV (748/03).
\textsuperscript{300} CONV (489/03) and Gray (2004, 48).
\textsuperscript{301} CONV (820/03).
6.4 The Intergovernmental Conference 2003-04

A post-Convention Intergovernmental Conference was started on 4 October 2003 by the Italian Presidency, the major aim of the conference being to revise the draft Constitutional Treaty that was adopted by the Convention on 10 July 2003. The Thessaloniki European Council had declared in June that the draft Treaty was a good basis for the following IGC. The follow-up IGC started its work on 4 October by restricting the attention to the most important questions, including that of the institutional reform. The participants consisted of the governmental representatives from the then 15 Member States, 10 acceding countries, and the observers from Bulgaria, Romania, Turkey, the European Parliament and the Commission. It was the sixth Intergovernmental Conference in the history of the EU, and the first one that was preceded by a Convention.

The IGC was envisaged to be concluded in the Brussels European Council in December 2003, and the Constitutional Treaty to be signed in May 2004. However, during the negotiation session on 12-13 December, the Heads of State and Government failed to agree. The IGC was brought to a conclusion under the Irish Presidency in the European Council on 17-18 June 2004, when the Constitutional Treaty was formally agreed. The ratification of the Treaty began after its signing in Rome on 29 October 2004.

6.4.1 National Positions, Preferences and Contributions

After the Convention had finished its work, the Member States were asked to announce their specific difficulties through examining the Convention’s proposals. A number of questionnaires were sent to the national delegations with an aim to receive updated estimations on the potential legal aspects of the draft Treaty, as well as the indications on which issues would be especially problematic for them. The Italian Presidency required each government to nominate a “focal point” at senior official level in its capital. By so doing it was attempted to keep the preparatory discussions solely at political level. Two

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302 Intergovernmental Conference (2003j).
meetings of these national focal points were later convened in Rome. (McDonagh 2007, 90.)

Regarding its composition and working rules, the 2003-04 IGC differed slightly from previous Conferences. Since the preparatory phase was already carried out by the Convention, the negotiations took place exclusively among the high-level political decision-makers, i.e. the Heads of States or Governments assisted by the Ministers of Foreign Affairs. The governmental representatives or civil servants were not intended to take part in the decision-making process.

6.4.1.1 A ‘Balanced Political Compromise’ for Belgium

As in a number of previous IGCs, the strengthening of the institutions and reinforcement of the Community Method were the guiding principles of all Benelux countries. Their proposals have been based on the conviction that strong institutions can best guard the general European interest.  

In the beginning of the negotiations, Belgian government had a couple of major principles regarding the institutional issues. It stated that the outcome of the Convention was definitely not perfect but it was unexpected and reflects a balanced political compromise: due to this, it should not be opened up in the IGC.  

The Commission

With respect to the issue of the Commission, no significant changes were observed in the Belgian attitudes or orientation. According to Belgium, a Commission must be effective, and a college reduced in size would thus be acceptable in its view. In so stating, it agreed with the principles regarding the composition of the Commission as formulated by the Convention. The Benelux countries have generally been of the opinion that the small states’ interests can be better defended in a smaller Commission (Milton & Keller-Noëllet

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304 European Commission (2003m).
2005, 107). Compared to other small states, they have adopted a somewhat diverging attitude in confronting with the provisions concerning the Commission reform.

**The Extension of Qualified Majority Voting**

Belgium supported a broader extension of QMV, especially into the domains of social policy, taxation, the CFSP, police and judicial cooperation, as well as asylum and migration. In particular, it regretted the preservation of the emergency brake within the social policy issues, since the Declaration on Social Policy describes the powers of the Union in too restrictive a manner. In general terms, Belgium criticized the proposals tending to back-tracing from the results achieved by the Convention and wished to have “more QMV”.

**The Presidency of the European Council and the Council of Ministers**

Regarding the formations of Council Presidencies, the Benelux considered the basic choice to be between three options: the current system of rotation, elected Presidents and team Presidents, from which only the latter was explored in greater detail. In their opinion, both suggestions of elected Presidents and the rotation principle carry distinct advantages that need to be taken into consideration. As a conclusion, Belgium seemed to be in favour of an electoral system. In the Belgian view, the advantage of an elected President is that its post would last longer than six months enabling it to better ensure coherence of the Council-agenda. Moreover, their quality would be ensured by the procedure according to which the Presidents could be chosen by their peers on the basis of the merits.

Since the Presidency matter had not been thoroughly discussed during the Convention, Belgium proposed together with other Benelux countries it to be taken up again at the ongoing IGC. In particular, the procedure for electing the President, and the principles that should be observed in the election process, had not been properly examined. As from their point of view, the elections of the Council and Commission Presidents should be considered in conjunction with the appointment of the Minister for

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309 Intergovernmental Conference (2003c).
310 European Commission (2003m) and Intergovernmental Conference (2003c).
Foreign Affairs. Belgium even pushed forward an idea that the Commission President could also work as a President of the European Council. According to Belgium, the geographical and demographic diversity of the Union and its members had in any case to be respected in these nominations.\(^{311}\)

6.4.1.2 Cautious Denmark

Domestic political coordination for the 2003-04 IGC in Denmark followed the embedded paths of administrative procedures. Prior to the formulation of the government’s policy positions for the IGC, the draft Constitutional Treaty was first submitted to the Ministry of Foreign Affairs – the leading unit in domestic coordination – after which it was passed on to other relevant Ministries, as well as to the government’s Presidency Committee and European Affairs Committee. The European Affairs Committee, a standing body of Parliament, kept track of the entire negotiations and remained in close contact with the Danish IGC delegation. (Lenz & Dorusse 2006, 71-73.)

During the IGC, Denmark worried about opening any unnecessary parts of the package as formulated in the Convention; that is to say that the Danish government was fairly supportive for the Convention’s draft proposal for a Constitutional Treaty. This approach originated in a political agreement between five EU-positive parties in the Danish Parliament (Nat12). It was acknowledged by the Danish delegation, however, that any deal on a future EU Constitutional Treaty needs to pass the domestic ratification process, which was likely to be challenging (Lenz & Dorusse 2006, 69). As a result, one more position change was witnessed at the start of the IGC, when Denmark adjusted its view on the composition of the Commission because of domestic demands for maintaining a Commissioner per Member State. Otherwise, the main Danish objective was again to maintain its existing opt-outs: the exemptions on the euro, defence policy and Justice and Home Affairs cooperation in the form of protocols to the Treaty. (Laursen 2005, 2-3 and Nat-12.)

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\(^{311}\) Intergovernmental Conference (2003I) and interview (Nat13).
The Commission

As the IGC started, the pressure from domestic politics forced the Danish government to change its position and, unlike in previous negotiations, again demand a Commissioner for each Member State. Opinion polls indicated that a majority of the Danish citizens considered it important for the country. (Laursen 2005, 15 and Nat12). Certain pressure was felt also from other small Member States who favoured a full Commission. Consequently, the Danish government decided to review its position as a result of both domestic and external political forces. (Nat15.)

In the end, Denmark was one of the delegations that took the view that a large Commission, i.e. that consisting of one member with equal rights from each Member State, should be maintained also after 2014, since it has got such a high symbolic value for the citizens. The Commissioners could share the important portfolios and policy areas. Denmark contended that the composition should be changed only if experience would prove that it does not work.312

The Extension of Qualified Majority Voting

In general, Denmark was satisfied with the proposal made by the Italian Presidency and did not feel like opening the package once again.313 Within the social policy issues, in particular, Denmark stated that it could only accept the Presidency’s proposal of the abolishment of unanimity rule as a part of an overall package and that this package should not be changed anymore. The clause on social security for migrant workers was an important issue for Denmark and it still supported unanimity for this area, i.e. in Article III-21 in the draft Constitutional Treaty.314

As is already known, the Danes are generally in favour of the widest possible integration also in terms of the QMV extension, but at the same time they seek to protect their version of the welfare state, which is somewhat different from most other European states. The Danish welfare system allows everyone who lives in Denmark to enjoy particular benefits. There is a political fear in Denmark that harmonization does more

harm than good, and as soon as it comes to suggestions or discussions on potential changes of rules, Denmark turns vulnerable. (Nat12.)

*The Presidency of the European Council and the Council of Ministers*

As already seen in the previous negotiations, Denmark has adopted a rather positive standpoint towards the abolishment of the automatically rotating Presidency. The reasons behind this view are largely pragmatic. It has been admitted that the rotating Presidency would not be sustainable in the EU with 27 Member States, and there would be far too large an interval between each country’s Presidencies. (Nat11 and Nat15.) The Danish position had already become to shift at one point in the Convention proceedings. This revision was estimated to have resulted from their experiences in holding the Presidency in the fall of 2002. According to an interviewee, it was soon realized that:

“*The continuation of the existing system would not be efficient. […] Notably our Prime Minister came into that conclusion after he had presided the European Council [even with fifteen Member States]. He could see it was hardly possible for him to do that in an efficient way. […] To some extent he could not concentrate on his normal political dealings and the Danish politics, since he had spent all his time travelling around and talking to other colleagues in preparing the Presidency and the European Council decisions and conclusions.*” (Nat15.)

Denmark supported the model in which three countries would share the Presidency for about 18 months in a rotation system as based on equality. In this, the Danish delegation was open towards the idea of team Presidencies, expecting that they would require clear measures to ensure efficient and coherent decision-making and coordination. Consequently, it was ready to discuss various ways of organizing the Presidencies in practice, again requiring that the principles for the composition of the teams and for the allocation of the Council formations must be transparent. The Danish also favoured the idea of creating a permanent President (which, in Danish language would rather be a *Formand*, not a *President* literally) who would prepare and lead the European Council meetings. In point of fact, the Danish change of position was claimed to be an outcome

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315 European Commission (2003o) and Intergovernmental Conference (2003d).
316 European Commission (2003o) and interview (Nat15).
of a longer process. It was admitted that the major part of the final proposal concerning the Presidency reform was accepted as an overall compromise. (Nat15.)

### 6.4.1.3 Finland: “Outcome Better than in the Convention”

Finland announced that it was satisfied with the solutions and results of the European Council IGC meeting in June 2004, although its primary interests on the definition of QMV were not completely met. Nevertheless, Finland reached its national goals in the issues of agriculture, trade policy, public services and regional policy. Only the fact that it was failed to agree on the Commission President was disappointing the Finnish government.317

*The Commission*

The impartiality and capability of the Commission to function in an enlarged Union must be ensured according to the Finnish statement. Yet, the Finnish delegation reiterated its support to the principle of ‘one Commissioner per Member State with full voting rights’ all the way until the end, and did not accept the proposal made by the Convention, in which the Commissioners would be divided into voting and non-voting ones.318 On the other hand, Finland made an explicit link between the composition of the Commission and the voting issue stating that any discussion on detailed arrangement would be premature, since the outcome should be part of a comprehensive package.319

In a similar manner to Ireland, Finland pointed out that a larger Commission might by far provide it with wider expertise. Irrespective of the fact that the Commission is theoretically an independent and supranational body, its knowledge of specific features of different countries would certainly be of higher quality should every Member State have an own representative in the college. (Nat4.)

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318 Intergovernmental Conference (2003b).
The Extension of Qualified Majority Voting

Throughout the past three IGCs, Finland has generally been of the opinion that an easy development of blocking minorities in the Council’s decision-making structures should be prevented in the name of efficient decision-making (Nat2 and Nat4). In this respect, Finland has favoured an overall extension of QMV, which in its view is finally to be considered as a rather fundamental question, even if from time to time the national preferences appear to be somewhat distinctive in particular policy-areas. (Nat2.) Therefore, even if the QMV should be made a general rule and extended as much as possible, a ‘qualified minority’ should also be able to block the decision-making. Particular security clauses must hence be preserved according to a Finnish perspective. (Nat4.)

The Presidency of the European Council and the Council of Ministers

Finland did not support the nomination of any fixed Presidencies. Also, the Council Presidency should in the future be based on a system of strictly equal rotation between the Member States. The proposal of a permanent, longer-term President for the European Council was still seen as negative (Nat4).

As soon as the team Presidencies could provide with some added value, or prove out to be more coherent and transparent management of Council’s work, Finland could consider these proposals and the suggestions for different models as well. After all, Finland was ready to accept the permanent Presidency as a part of the overall compromise, and appreciated the arguments as presented by those Member States seeing it highly essential for the reasons of guaranteeing the continuity of the system (Nat4). In the Finnish model, the team could consist of 4-5 Member States sharing a Presidency for a period of 2-2.5 years. Every member of the team would chair all Council formations on a ministerial level as well as Coreper I and II for six months.\(^{321}\)

\(^{320}\) Intergovernmental Conference (2003f).

\(^{321}\) Intergovernmental Conference (2003f).
6.4.1.4 The Irish Presidency: Assessing the State of the Play

During the IGC 2003-04, Ireland held the Presidency in fall 2004. It succeeded in assessing the state of the play after a slightly unsuccessful Presidency held by the Italians. In particular, the Irish Presidency consulted the governmental delegations on a regular basis in order to find a leeway for a compromise. It brought to the table a number of institutional issues, i.e. narrowing the scope of QMV in taxation, social security and the common commercial policy, that had so far been completely untackled. Many had noted that the Irish government succeeded to whittle over 30 outstanding issues down to only nine gradually during one week-end. The general perception in Ireland was that the IGC was extremely successful.\textsuperscript{322}

The Commission

During the 2003-04 IGC, Ireland considered the issue of Commission size carefully. After all, it was insisted that Ireland felt comfortable with the outcome of the whole process, as well as in the issue of moving towards a Commission of two-thirds of the Member States (Nat3).

The Extension of Qualified Majority Voting

Ireland opposed further movement to QMV and required a return to unanimity decision-making in financial perspectives, modalities relating to the Union’s own resources, taxation, Justice and Home Affairs (criminal law and some aspects of police cooperation), social policy (Article III-21 on social security) and commercial policy (services in the health and education fields). In the issue of judicial cooperation, Ireland was concerned that the introduction of QMV would be a step too far.\textsuperscript{323}

The Presidency of the European Council and the Council of Ministers

In spite of its provisional compliance with the new terms of the Council Presidencies, Ireland stated that it does not support the approach agreed at the Convention to provide for

\textsuperscript{322} European Commission (2004d).
\textsuperscript{323} Intergovernmental Conference (2003h) and Milton & Keller-Noëllet (2005, 104).
elected Presidencies in the Council formations. Instead of that, the Presidency should be carried out under a system of Member States’ equal rotation.\textsuperscript{324}

Yet, Ireland was still open to consideration of a system of team Presidencies. Should such a system be adopted at one point of time, in the Irish view each Member State must have an opportunity to chair every Council formation under its term in office. Moreover, the team Presidency will need to strike an appropriate balance between the need for coherence and the need for each team to be representative of the Union in terms of geographic and demographic balance.\textsuperscript{325} The requirement for continuity was thus once again highlighted (Nat10).

An Irish interviewee pointed out that even though the issue of rotating Presidency has been deliberated throughout all the previous IGCs and the Convention, no-one has ever been able to offer anything better. Indeed, it has been regularly argued that something different is needed without any identifications of what it would actually be. (Nat3.)

\subsection*{6.4.1.5 Large Member States}

Polish President Kwasniewski called the Constitutional Treaty a good compromise for Poland. Prime Minister Belka reportedly contended that, although he would have been prepared to break up the summit a couple of times, he decided to hold out in order not to weaken Poland’s future negotiating position on the budget and the Treaty. Britain fought for its red-line issues throughout the entire IGC, namely unanimity to remain for treaty change, taxation, social security, defence and the system of own resources. Germany opposed Britain strongly by pushing for the extension of QMV to foreign policy decisions. Nevertheless, Germany insisted on the right of veto for decisions in the area of immigration. Poland was left isolated with its reluctance to accept the double majority voting system after the Spanish national elections on March 2004, which resulted to the win of the Socialist party. Following this victory, the new Prime Minister of Spain pronounced his intention to rapidly find an agreement on the new EU Constitution.\textsuperscript{326}

\begin{footnotesize}
\textsuperscript{324} Intergovernmental Conference (2003e).
\textsuperscript{325} Intergovernmental Conference (2003e).
\textsuperscript{326} Intergovernmental Conference (2004b).
\end{footnotesize}
By the end of the negotiations, Germany and France exclaimed their desire to maintain the text as formulated in the draft Constitutional Treaty, while Poland and Spain were literally fighting for their rights to keep the vote-weighting as promised to them in Nice.

6.4.2 Negotiating under Unanimity Rule: The Process and Outcome of the IGC 2003-04

In contrast to the previous IGCs, most of the negotiations in the IGC 2003-04 were based exclusively on the text of the draft Constitutional Treaty, and a particular attempt was to sort out its most controversial parts. Significant movement away from the status quo was only possible when skeptical actors were able to credible threaten to veto the whole Constitutional Treaty. Therefore, many issues were tackled only if it was anticipated that one of the governments would veto the whole project. These sensitive issues concerned primarily the size of the Commission and the re-weighting of Council votes. (Beach 2004, 3-6; 2005, 189.)

Again it is to be noted that the small Member States succeeded in finding a number of common interests and denominators, and they tended to support each others particularly within the institutional issues. This time Austria and Finland attempted to work as brokers in order to form the necessary small state coalitions. Although the small states’ cooperation was not as firm and systematic as possible, it was considered as having had a balancing effect on the overall institutional outcome. (Nat2.)

The IGC was scheduled to reach its final stage in an informal Foreign Minister meeting in the end of November 2003. Yet, a significant part of the institutional issues still awaited to be discussed, and the Italian Presidency was blamed for not having arranged negotiations on the most contestable and questionable topics.\(^{327}\) One of the key issues brought to a stalemate in December 2003 turned out to be the complex and sensitive question of voting weights in the Council, which divided the four largest countries from those of the two next largest and the rest (McDonagh 2007, 97-98). The primary source of

\(^{327}\) Agende Europe, 17 October 2003.
great disagreement related to the requirements of Poland and Spain, who were not willing to give up the voting weight granted to them by the Nice Treaty.

Three days before the European Council meeting on 12 and 13 December, the Presidency put forward its consolidated set of proposals designed to help the Conference reach an overall compromise. Italian Prime Minister Berlusconi made a last-minute compromise proposal to extend this vote weighting to 2014 as soon as it became evident that the Polish and Spanish support would not gained otherwise. Addendum 2, which was published only in the eve of the Council meeting, dealt solely with the unresolved sensitive political issues: the preamble, the composition of the Commission, QMV and the minimum number of seats in the European Parliament. The only real issue of disagreement, however, turned out to be QMV in the Council. Faced with the deadlock, the Presidency soon found out that it was unable to offer a compromise that would be acceptable to everyone. The negotiations were deemed failed and the Irish Presidency was asked to continue with the Member States’ consultations. Finally the Irish Presidency came up with a suggestion for a European Council Summit in March 2004.

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328 Intergovernmental Conference (2004b).
329 Intergovernmental Conference (2003m).
330 Intergovernmental Conference (2004a).
Table 11: The Outcome of the IGC 2003-04

<table>
<thead>
<tr>
<th>The Composition of The Commission</th>
<th>The Extension of QMV</th>
<th>The Rotating Presidency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Two-Thirds principle Rotation model → National representatives from two-thirds of the Member States appointed on the basis of equal rotation. The non-voting Commissioners participate fully in the work of the Commission with substantive dossiers and real responsibilities. Postponement of the actual launching of a new system. The arrangements come into effect in 2014.</td>
<td><strong>Extension of QMV:</strong> (Status Quo) New legal bases introduced for: Operation of services of general interest Space policy Energy Humanitarian aid</td>
<td>Permanent President to the European Council for two-and-a-half-year terms, (renewable once) Team Presidencies Three Member States hold a Presidency for a period of 18 months Each MS chairs all the configurations for a period of six months with the assistance of the two other MS</td>
</tr>
<tr>
<td><strong>Limited Extension to QMV:</strong></td>
<td><strong>Maintaining of Unanimity:</strong> Taxation Laws setting own resources and the financial perspective</td>
<td></td>
</tr>
<tr>
<td>Common Foreign and Security Policy Social Policy (‘Emergency breaks’ kept in the area of judicial cooperation in criminal matters and the coordination of social security of migrant workers)</td>
<td><strong>Other:</strong> Reducing the effectiveness of the bridging clauses: only one national parliament may block the European Council decisions and to prevent the move to QMV.</td>
<td></td>
</tr>
</tbody>
</table>

6.4.2.1 The Commission of the ‘Two-Thirds’ Principle

The system of a two-tier Commission as proposed by the Convention was not in line with many of the smaller Member States’ wishes. As the IGC started, it was thus rather obvious that the formula of a two-tier Commission would soon be re-considered, and according to the most optimistic evaluations all the Member States – large and small – would finally end up having an own Commissioner with full voting rights. Prior to the second IGC meeting on 14 October 2003, the Italian Presidency circulated the delegations a
questionnaire concerning the composition of the Commission. The compound suggestion put forward by the Convention was no longer on the table.

Even if considerable attempts were made in order to simplify the system, the provisions were soon discovered to be too complex and unacceptable to most Member States. The Commission size remained a sensitive issue and it was linked to the Council voting weight question until the end of the negotiations (McDonagh 2007, 100). At the end of the day, the proposal of a two-tier Commission was abandoned as expected, and it was decided that there would be a move to a rotation principle. According to the rotation model, there will be national representatives from two-thirds of the Member States in any one Commission at a time. It was announced that the Treaty will make it clear, as it was agreed in the Treaty of Nice, that a reduced Commission would be appointed on the basis of equal rotation among the Member States. Yet, in terms of the absolute number of excluded Member States, ‘two-thirds’ is far more acceptable than the ‘half’, as suggested by the Convention. Given this, the outcome of the IGC was at least a semi-victory for small states.

In addition to the substantial amendments that were made into the proposal, it was decided to postpone the actual launching of a new system. While the Convention had suggested that a renewed Commission will come into office in 2009, the IGC stated that the arrangements will come into effect in 2014. As is obvious, ten years is – if not an eternity – a relatively long period in European politics. In addition, the European Council acting unanimously will be able to change the number of Commissioners also in the future. Besides these clauses, the delegations’ concerns regarding the downsized Commission were addressed by clarifying the provisions of the Convention text on the role and responsibilities of the non-voting Commissioners. The non-voting Commissioners were given a right to fully participate in the work of the Commission along with an assignment by the President of substantive dossiers with real responsibilities.

331 Intergovernmental Conference (2003b).
333 On the contrary, as suggested by Milton and Keller-Noëllet (2005, 107), the compromise might equally, and in fact, paradoxically, enhance the frustration among that relatively smaller amount of Member States that are temporarily excluded from influence.
334 Intergovernmental Conference (2003k).
On the issue of qualified majority voting, some delegations wished to maintain the provisions as made by the Convention, while the others again attempted to extend its scope even further, i.e. to the issues of CFSP, taxation, social policy, environment and Justice and Home Affairs. According to the most ambitious negotiators, the areas of commercial policy, intellectual property, flexibility clause and future accessions to the European Union should also be subject to the extension of QMV, although a notable number of delegations were in favour of returning to unanimity in sensitive policy issues. Most delegations agreed, however, that they would not be able to keep demanding unanimity in particular areas, and acknowledged the need to accept the maintenance of QMV in the areas less significant to themselves. Trading one area against another was thus the basis of the overall compromise (Milton & Keller-Noëllet 2005, 104).

Furthermore, some delegations were against further introduction of bridging clauses, passerelles, which were actually seen as the most important innovations of the Convention. The bridging clauses would allow the European Council unanimously to change the voting rules in a given area from unanimity to qualified majority. Consequently, a proposal was made that the national Parliaments should still be able to oppose any suggestions to the use of the clause within a period of six months except in the CFSP, social and environmental policies, and that the use of a bridging clause would not be possible if only one of the national parliaments objects it. In the end, the proposal was accepted and the use of a clause thus rendered more difficult than under the Convention’s solution, according to which the national Parliaments were only to be kept informed. The implementation of this condition reduces significantly the effectiveness and the overall purpose of the passerelle.

During the summit on 12-13 December two issues were left unresolved. This led the EU’s Heads of States to admit that the IGC could not be concluded during the mandate of the Italian Presidency. One issue was the disagreement over whether to extend the QMV in the areas of social policy and taxation. The unanimity was maintained in taxation,
and partly in the areas of social policy and the CFSP. The system of ‘emergency breaks’ was kept in the area of judicial cooperation in criminal matters and the coordination of social security of migrant workers.

### 6.4.2.3 The Presidency of the European Council and the Council of Ministers

The opening of the IGC by the Heads of State or Government was followed by the first working meeting of the Ministers of Foreign Affairs. In this meeting, a document containing answers from the national delegations to the questionnaires on the formations of the Council and its Presidency was put forward by the Presidency. The responses to the questionnaire fell into three categories: 1) The maintenance of the system of rotating six-month Presidencies (either in its current form or, alternatively, in a team format designed to ensure effective coordination between a group of successive Presidencies); 2) Presidency by election within each Council formation; or 3) a team Presidency system by which the chairmanship of individual Council formations is shared out amongst a group of Member States within a given period.\(^{337}\)

The first IGC discussions were based exclusively on the issue of Presidency organization. In the May Ministerial meeting, the Presidency asked Ministers to react to three possible ways of organizing a team Presidency with three Member States for 18 months, and again three options were put forward: 1) Each Member State of the team holds Presidency of a number of Councils for the full 18 months, with CAG and Coreper rotating among them at six months interval; 2) each Member State chairs all formations for six months with assistance of the other team-members (*status quo*); and 3) each Member State holds the Presidency of a number of Councils for six months, with rotation within the 18 months period, so that each Member State has the opportunity to chair each Council. The basic elements of the proposals, i.e. a team Presidency made up of three Member States over a period of 18 months with a form of equal rotation, seemed to be accepted by all except Finland and Portugal, who opposed the QMV rule when deciding

\(^{337}\) Intergovernmental Conference (2003a).
the modalities of the rotation.\textsuperscript{338}

Later on, the Presidency attempted to reach a compromise by providing several options for potential agreement with respect to the Council formations. It came up with the proposal of team Presidencies adopting a ‘three-tier’ approach, the arrangement seeming to be the most widely accepted by delegations.\textsuperscript{339} After all, it still provided a revised version of the (team-)proposal on the Council formations in taking into account the further comments made by the national delegations. It pointed out that any proposals on the Presidency issue will, together with all other issues within the IGC, be submitted to delegations “as part of the final overall package”.\textsuperscript{340} The IGC disclosed as follows: “Three Member States hold a Presidency for a period of 18 months, allowing each Member State to chair all the configurations for a period of six months with the assistance of the two other Member States. These two “vice-Presidencies” ensure greater continuity of the Presidency-institution.”

The Convention’s proposal to create a post for a permanent President to the EU was surprisingly not seriously challenged in the IGC. Yet, the unsatisfactory provision gave some overall negotiating power to small Member States, which had been against the idea all the way from the beginning. Besides, a suggestion for a feasible package-deal was explicitly made in the negotiations.

\begin{footnotesize}
\begin{footnotes}
\item[338] European Commission (2004a).
\item[339] Intergovernmental Conference (2003g).
\item[340] Intergovernmental Conference (2003i).
\end{footnotes}
\end{footnotesize}
DISCUSSING THE TYPES OF TREATY-MAKING METHODS IN RELATION TO THE DYNAMICS OF THE PROCESSES

This study has made an attempt to assess the formal nature of two types of the Treaty-making methods used in the European Union; those of the intergovernmental and the Convention-like models, and to relate them in small Member States’ opportunities for influencing outcomes owing to the decision-making rules as used in the negotiations. The impact of these two types of conduct is now discussed together with their hypothesized effects with regard to small states’ influence. Regarding the process factors, the (non-)existence of argumentative, deliberative and bargaining dynamics of the negotiations has been subject to elaborations throughout the study. The extent to which they have been applied in the IGC and Convention proceedings, and their explicit role as played in the decision-making processes, will now be evaluated. The relationship between the eventual findings and theoretical foundation is then discerned.

At this point, the major questions emerge as follows: In what ways did the decision-making rules and practices finally matter for the ability of a small Member State to translate its influence over outcomes? With respect to this, which process factors seemed to be most prominent in explaining the small states’ success in the light of the findings? To put the results in a nutshell, the leading explanatory factor appears to be the decision-making rules, while the overall process endowed with particular mode of interaction makes a good contribution in explaining the eventual influence. This is to say that the formal decision-making conditions – consisting of specific rules and negotiation context – provide particular opportunities for the states holding particular preferences, just as originally expected, but in order to maximize the likelihood for having an impact on substantial outcomes, decision-makers have to use these opportunities wisely and skillfully.

After all, with a view to those Treaty-making negotiations examined in this study, the IGC processes clearly reflected the intensity of domestic preferences and the substantial issues were negotiated using the practices of traditional bargaining. Moreover, the outcomes were frequently marked by the lowest common denominator, and directed by the reluctant Member States and the threat of veto. In the Convention proceeding, in turn,
argumentation and deliberation were not adopted as primary modes of interaction and the small Member States were eventually not able to skew the institutional outcome close to their own preferences. To this end, the main RCI and LI expectations can be confirmed, as will be proved out in the following table. It is drawn in order to illustrate in detail the empirical indicators to confirm and disconfirm the hypotheses through individual indicators as displayed in the data.
Table 12: Overview of the Results: Confirming and Disconfirming the Hypotheses in the IGCs

<table>
<thead>
<tr>
<th>Independent Variables</th>
<th>Intermediate Variables</th>
<th>Dependent Variables</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Unanimity</strong></td>
<td>Bargaining → Two types of bargaining:</td>
<td>1 GAINS FOR SMALL STATES</td>
</tr>
<tr>
<td>Empirical indicators: Use of veto-right</td>
<td>1. Cooperative/integrative bargaining (Confirming: H4)</td>
<td>Amsterdam</td>
</tr>
<tr>
<td>IGC-context</td>
<td>Empirical indicators: Clear interest-based statements</td>
<td>- The Commission</td>
</tr>
<tr>
<td>Domestic constraints</td>
<td>Credible commitments</td>
<td>- status quo minus</td>
</tr>
<tr>
<td>Restricted mandates</td>
<td>Well-reasoned positions</td>
<td>(Confirming: H1a-b, H2, H3a-b, H4)</td>
</tr>
<tr>
<td>Governmental views</td>
<td>Rational and principled justifications</td>
<td>- The QMV</td>
</tr>
<tr>
<td>Lowest common</td>
<td>Plausible and convincing reasoning</td>
<td>- status quo in the most sensitive issues, i.e.</td>
</tr>
<tr>
<td>denominator</td>
<td>Argumentative rationality</td>
<td>taxation, social and foreign policies</td>
</tr>
<tr>
<td>Asymmetric</td>
<td>Value-claiming, Compromises</td>
<td>(Confirming: H1a-b, H2, H3a-b, H4)</td>
</tr>
<tr>
<td>interdependence</td>
<td>Adaptation of positions →</td>
<td>- protocols on the positions of Denmark and Ireland → exclusion of JHA actions</td>
</tr>
<tr>
<td>National referenda</td>
<td>a) for domestic reasons</td>
<td>(Confirming: H1a-b, H2, H3a-b, H4)</td>
</tr>
<tr>
<td>- Denmark, Maastricht 1992</td>
<td>b) in order to facilitate compromises</td>
<td>• Rotating Presidency</td>
</tr>
<tr>
<td>- Ireland, Nice 2000</td>
<td>- Belgium/The Composition of the Commission in Amsterdam</td>
<td>- no decisions taken</td>
</tr>
<tr>
<td><strong>Asymmetric</strong></td>
<td>- Denmark/The Composition of the Commission in Nice and 2003-04 IGC (Confirming: H3a-b, H4)</td>
<td>(Confirming: H1a-b, H2, H3a-b, H4)</td>
</tr>
<tr>
<td><strong>distribution</strong></td>
<td>2. Competitive/distributive bargaining (Confirming: H4)</td>
<td>Nice</td>
</tr>
<tr>
<td>of information</td>
<td>Empirical indicators: Reluctant behavior</td>
<td>- The Commission</td>
</tr>
<tr>
<td>Intensity of preferences</td>
<td>Threatening with a veto</td>
<td>- status quo minus</td>
</tr>
<tr>
<td>Policy types</td>
<td>Package-dealing through concession-trading and side-payments (Confirming: H3a-b, H4)</td>
<td>(Confirming: H1a-b, H2, H3a-b, H4)</td>
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European University Institute
DOI: 10.2870/2709
7.1 The Intergovernmental Arenas

This section will discuss the findings and analyze the dynamics of the bargaining processes in three intergovernmental Treaty-making arenas, those of Amsterdam, Nice and 2003-04 IGCs. It introduces the elements of typical mode of interaction, means of reasoning, manners for reaching a compromise and the experienced key success factors in the intergovernmental settings, a specific focus being on assessments and evaluations as made during the interviews. The empirical findings are introduced so as to confirm or disconfirm the hypotheses.

Regarding the decision-making rule, to begin, the unanimity-based Treaty-making method as conducted through the IGCs adheres to the commonly acknowledged, strictly defined rule of procedure. In relation to the Convention-method, it was assessed in the interviews as highly predictive, safer, more conservative (Nat11), and more technical (Nat13). In addition, the IGC negotiation processes were in many respects perceived as much easier due to the fact that the Member States dominate the settings (Nat10).

"The IGCs are more prudent and the national pre-occupations are clearly pronounced. The strength of the Intergovernmental Conference is that it does reflect the governmental views. The weakness of IGCs of course is that since they reflect governmental views, [they are...] not very far-reaching." (Nat11.)

By being forced to provide scope for all the substantive issues, the IGC-method offers everyone equal opportunities to influence proceedings. By the very option for veto, the most important point of influence is presented in accordance with liberal
intergovernmentalist expectations. Those who say ‘no’ have an advantage, because their strong opinions must be taken onboard (Nat13). Given the unanimity decision-making rule, the outcomes are skewed towards the interests of most reluctant governments. A direct bearing of the use of unanimity rule and the inherent strive after the lowest common denominator between the actors is that also the most skeptical governments will have to be taken into account; otherwise the Treaty will fail, as suggested by Slapin (2006, 55). The existence of asymmetric interdependence can easily be seen here, as well as in the following quotation:

"The decision-making under Article 48 provides with brilliant opportunities for reluctant behaviour and even for troublemaking, since a lowest common denominator needs to be found out. [...] But so far I do not know anything better.” (Nat2.)

The unanimity rule is formally needed for Treaty-changes, it is ‘self-evident’ and it would be completely unrealistic to use any other decision-making practice in the foreseeable future (Nat2-5 and Nat15). As long as the Union consists of Member States that have a full authority to decide whether to pool their sovereignty, the ultimate decision-making power must and will lie exclusively under their control. A majority of Member States would not seriously think about changing the basis on which the Treaty negotiations are operated, i.e. that of the unanimity rule.

In sum, if the results or efficient outcomes are wanted, the unanimity rule was seen as most appropriate, since it engages the governmental system as a whole (Nat5-6 and Nat11). The ultimate aim in the negotiations is to get a Treaty which will be agreed by all of the Member States, subsequently ratified in their national parliaments or in some cases through the respective referenda (Nat8). Should the outcomes turn out to be undesired or unacceptable, there is always a simple risk that the governments decided not to implement them (Nat15). Most assessments on the unanimity practice were principally positive, yet, some additional aspects were also presented, some of which contrasted those sticking exclusively to its constructive effects. Lengthy decision-making processes and the overall meaningfulness of the ‘nocturnal negotiations’, i.e. reaching the conclusions repeatedly at five o’clock in the morning to get each Member State’s reasoned approval were, in particular, stressed. It was considered neither reasonable nor convenient way of working.
since “[–] the decision-makers are definitely not too rational at that point of time”. (Nat3 and Nat6-7.) Even if individual negotiators are deemed less rational at particular moments in the actual IGCs, the well-extended negotiations imply that bargaining comes out on top and the shadow of veto determines the process and its outcomes.

7.1.1 The Means of Reasoning: Arguing or Bargaining?

This section describes the adopted modes of communication and intersubjective dynamics in the IGC negotiations when the positions had been set and the preferences mostly revealed. It seeks to conclude whether it was typical to apply bargaining rather than argumentation or deliberation as a means of reasoning, or whether either mode of interaction had greater effect regarding the eventual outcomes for small Member States. It also explores the role of the adopted decision-making rule in advancing or impeding either type of communication.

By and large, it has been confirmed by the interviewees that the process on the whole can certainly be labelled as sincere bargaining, since a common agreement needs to be established among so many countries. In intergovernmental arenas, each Member State begins the negotiation from a certain position in trying to get as much as it can (Nat13). It is self-evident that under these conditions the balance of political forces counts rather than the power of individual arguments (Nat10). The negotiation-process in the IGCs proceeds through clear statements that are based on the interests of individual Member States. The scope for the discussion in substantial issue-areas is usually made as narrow as possible in order to achieve an agreement (Nat4). In general, one does not go very far and the negotiation is direct in manner (Nat14). One of the national representatives indicated that:

"I would not be able to imagine that the domestic mandates as given to the German or French negotiators could be disregarded just by practicing some sort of excellent or convincing 'argumentation'. Threats, extortion and the methods alike are, in fact, widely applied in the negotiations as principles of decision-making. [...] The adopted negotiation tactics play an important role in generating the outcomes.” (Nat2.)
Language or argumentative tactics, as potential process factors, were not considered as having been effectively used as negotiation strategies, at least in the intergovernmental arenas. Neither was it felt that convincing argumentation would have lead to eventual changes of positions (Nat13). Nonetheless, a number of evaluations made during the interviews deviate to a certain extent from those made by the majority of informants. Some of the participants felt that the amount and role of individual speech acts are roughly underestimated. Therefore, to analyze the de facto mode of communication in order to draw the subsequent conclusions, we need to take a closer look at the specific features of the actual language and speech acts most typically exercised by the negotiators.

In some cases, to be sure, the interviewees admitted both the weight of original national positions and the force of skillful argumentation in the Treaty negotiations. Nevertheless, it was pointed out that the very argumentation needs to be principled and the reasoning based on rational justifications. As one of the interviewees argued, one would simply make no progress by coming to the stage and stating the types of demands as: ‘One Commissioner per Member State is the position of our country. Thank you very much.’ (Nat6.) These kinds of statements, according to the interviewee, do not exist in the real negotiations. Clearly, it would be of no help if each Member State decided to put its positions or top-level demands down to the table simply by stating that ‘this is what I want’, and it would not be a negotiation by definition, if everyone declared their positions in announcing that they will, however, not be discussed. Instead of that, one has to give reasons and justifications to the adopted positions, and to explain why is it holding out on them and how it actually ended up possessing such preferences. (Nat4, Nat8, Nat11 and Nat13.) In this kind of a process, it can be argued, a lot depends on how an individual political actor presents his or her claims. It is worth quoting in-length how one of the informants described the emergence of argumentation and the nature of speeches:

"The better you reason, the better you succeed. If you just sort of say we want such and such, and then leave it back, it does not have as much weight as when you explain the rational behind it. [...] You do not bring people with you as much as you can bring them with rational arguments. [...] You cannot just say 'this is
my view’ – you have to have rational arguments. The more rational your arguments, the better.’” (Nat3.)

It has now become evident that the Member States’ positions need to be well-reasoned, thoroughly explained and easily understood (Nat15). The decision-makers both try to and do present their cases in the most reasonable and rational way (Nat8), otherwise they are in trouble (Nat11), as claimed. Equally, one needs to reason in comparative terms to figure out why a particular opinion or a solution would be better than another (Nat4). As already pointed out, individual decision-makers do proclaim that if they have serious political problems on particular issues in their respect countries, and they do ask the others not to force them on these matters. Normally, however, their argumentation attempts to render as plausible and convincing as possible, since it is believed that a better position in the basic bargaining is gained through such reasoning. In the negotiations majority of the decision-makers – including those who may have originally opposed – is often prepared to listen and come along should the underlying rationale of the argument be sensible enough. (Nat8.) The most typical mode of reasoning was described by one of the interviewees in the following way:

“Let’s say our country has a particular position. [...] We want to persuade others about the taxation [...] and] that it should not be taken on as a subject for the Treaty change. [...] We argue that the EU does not really have full responsibility on our country’s economy and it would be wrong therefore that the EU should take a responsibility for the taxation, [...] which has to be an instrument for the [national] government in trying to manage the economy.” (Nat8.)

Once again, this statement indicates that bargaining prevails as a mode of interaction. From this illustration it becomes evident that even when persuasion implicitly seems to occur, the domestic causes and commitments are principally brought to the table and, as in this case, backed up with the statements of the EU’s legitimate role and competences in order to reach the maximum credibility for an argument. Therefore, it can be argued that it is not the plain form of a deliberative argument that matters, as the mainstream constructivists suggest, but the extent to which those arguments ultimately signal the truth

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341 What is indeed striking here is the distinctive and repeated emphasis on rational argumentation instead of (sincere/pure) argumentation. The interviewee appears to have a particular incentive to stress the rational character of the average speech acts, even if labelled as argumentation.
of substantive claims (see Moravcsik 2001, 16). Ever more crucial is that a persuader makes a credible commitment to its preferences and so signals the truth of its underlying claims. Under these circumstances, theoretically, the governments will usually believe one another, exactly as pointed out and confirmed by one of the interviewees (Nat8).

Here, persuasion was not a synonym to manipulation nor did it lead to preference changes in the IGCs as expected by constructivists. Instead, persuasion translated into the means to convince other actors by principled debate in order to create room for potential package-deals as posited by intergovernmentalist predictions. If an actor is successful at persuading another under particular circumstances, it is usually because that effort at persuasion fits within a broader structure of incentives imposed by, for example, a market, a political institution, or an information set (Moravcsik 2001, 238). This type of integrative bargaining is cooperative by definition, since it ultimately includes issue-linking, package-deals and log-rolling. In cooperative mode of bargaining, the goal is not to change anyone’s initial preferences but to clarify them by way of putting all the needs onto the table and involve a common effort to reach a solution. In the end, it usually leads to a compromise. (Naurin 2007, 24.) On institutional issues, the most typical mode of interaction within the IGC settings thus resembled that of argumentative rationality, as labelled by Lewis (2008), and the act itself can be categorized as cooperative bargaining in Naurin’s terms. These presumptions have been clearly verified in the data as derived from the documentary sources and interviews.

What seems to count is therefore the overall dynamics of the negotiations which, in turn, depend on the individual negotiators and the way how they present their arguments. Different people have different ways of talking, some of them being more argumentative, the others more persuasive. In practise the persuasive speech acts would imply the frequent use of norm-based arguments and references to normative principles, while argumentation would involve convincing reasoning through an extensive and skillful use of language in general. The IGC negotiators have broadly been equated with the lawyers arguing a case for their clients in the court. (Nat8.) The IGC is seen as highly equivalent to everyday life and likewise in any social reality, the manner in which someone speaks his or her opinions out has an influence on whether he or she is listened to by the others. (Nat6 and Nat8.) Most of the time the decision-makers are easy to understand, while sometimes
it may prove difficult to comprehend what particular “hopeless ’guys’ are speaking about”, as expressed by one of the interviewees (Nat12).

These findings are thoroughly covered by LI expectations. The argumentative rationality is now pointed out in the IGCs, and the eventual pattern of communication did not resemble what constructivists mean by pure, sincere argumentation. Argumentation occurs, but it is part of the bargaining, as one of the interviewees advised (Nat15). Besides, as proposed by Schimmelfenning (2001; 2004), even the acts labeled as argumentation and deliberation can take place under the conditions of self-interested actors. The use of deliberative practices can be viewed as strategic intention as long as it is used to achieve better results or coherent package-agreements in the negotiations. Bargaining, in turn, can also be communicative in mode, since it is composed of speech acts and their exchange. In view of the empirical data, it can be concluded that once cooperative interaction and argumentative language were conducted in actual IGCs, the decision-makers had for some reasons become aware of the effectiveness of these practices and, at that point, considered them as useful devices for maximizing their utilities in a given institutional issue. The argumentative tactics were, on the whole, used opportunistically in order to advance the given self-interests.

7.1.2 Adaptation of Strategic Positions

It has been acknowledged that the national positions may evolve during the IGC negotiations. However, at this point of analysis the fundamental question remains: does the preference, by definition, change, or is it just a position that for clearly identifiable reasons gets adjusted to the overall circumstances as the rational choice theorizing would suggest? None of the respondents – neither national nor the Conventioneer – admitted that the preferences either of their own or their respective countries would have changed as a consequence of convincing argumentation, social learning or in the name of a common good, as suggested by constructivists.

The empirical evidence thus leads to an essential contention that the positions might change during the negotiation processes, but the preferences remain constant. In
addition, a number of interviewees have confirmed that revisions and adjustments in the positions are usually made within the policy-sectors that are domestically less significant. An apparent position-change could in any case almost always be considered as a realist type of a rational reaction and adaptation to the overall circumstances (Nat3). This could be considered what Moravcsik (2001, 237) has termed as a recognition of political reality within the bounds of functional imperatives and subtly shifting systemic constraints (ibid., 238) or, in Panke’s (2006, 364) words, as an adaptation of strategic positions. She notes that an instrumental adaptation of strategic positions to new ideas on the distribution and nature of external constraints is likely and facilitates compromises within bargaining structures.

"[The position-change] is not caused by persuasion. It is not so that I come out and say that I was wrong but now I have seen the light [...] and have a different position.” (Nat12.)

With regard to the four small Member States selected in this study, three eventual position-changes were discovered in actual IGC processes. To be sure, the above-mentioned logic can easily be discerned from their revisions of positions in the institutional issues. The first one concerns Belgium’s position towards the composition of the Commission in Amsterdam IGC. At the beginning of the negotiations, Belgium pushed forward the principle of one Commissioner per Member State. However, while the negotiations proceeded, it expressed its openness also to other suggestions concerning the Commission’s size, and finally declared itself ready to accept also a solution of junior and senior Commissioners, which would not guarantee the representation of all Member States with full voting rights at any one time. As a matter of fact, Belgium required side-payments by stating that it could consider giving up its Commissioner in exchange for a strengthening of the first pillar, and as a part of the overall package. Apparently, it adjusted its position in order to advance a relevant compromise, and even more importantly, presented it together with the concessions.342

Denmark, in turn, came up with amending its positions during the Nice and IGC 2003-04 negotiations. Towards the end of Nice, Denmark posited – in opposition to its

original stance – that it is prepared to accept an equal rotation of the Commissioners as a final compromise (Nat11). As the IGC 2003-04 started, it again required a full Commission, but then shifted its ground towards the end. Regarding the Danish case, the position amendments were driven both by reasons of eventual compromise and domestic politics (Laursen 2005, 2). Apart from compromizing, one of the primary interests for a national decision-maker is to figure out how to sell particular issues to the public (Nat10), and this is an aim that so often directs the actor movements at multilevel negotiations. Even though the decision-makers would have actually supported a proposal for the reasons of compromise, they are concerned with what the public exposure of their behavior will do to their reputation and credibility in domestic fields. These findings meet the theoretical presumption that the positions may change during the negotiation as a result of underlying domestic factors.

Position amendments normally precede strict calculations by the national delegations that have apparently become aware of some new areas of potential disagreement. The ostensible change of position might thus result from a particular package-proposal or a balanced institutional deal that has been put forward. (Nat2-3 and Nat12-13.) Besides, it has been contended that the governments do not change their positions at the meetings, they change them between them (Nat12). In sum, and as pointed out earlier, the positions might change but not the preferences by definition (Nat8). Theoretically, the Member States do not seek to conduct changes, but seem to adapt to varying exogenous factors.

Furthermore, the interviewees gave a number of external explanations that cannot be internalized to the model as such. It was argued that the positions sometimes evolve because the issues literally ‘present themselves’ differently both in the course of a single negotiation and in the longer run. The circumstances change, the number of Member States may change, the overall European interest might take varying forms at different stages, and different factors and actors come into play. During an IGC, the national positions might also be aligned as a result of the information provided with varying institutional actors, such as the Commission or the Council Secretariat. All in all, it has been argued that the external world changes, not the Member States’ basic approaches or views. (Nat3-4.) This is fully in line with Moravcsik’s (1998, 22-23) expectations,
according to which the actor standpoints may get adjusted in response to exogenous changes in the economic, ideological and geopolitical environment. However, since the external environment is independent of actors’ influence, an eye was kept on these issues even if they could not fully be controlled for.

7.1.3 ‘Something for Everyone’ through Package-Dealing

For all their effort and desire, an individual Member State hardly ever receives all that it initially wants in a given Treaty negotiation. Instead of that, compromises are made and the Member States’ success can be evaluated by looking at the overall package through conducting simple calculations with respect to its gains and losses. It has been contended that as long as part of the issues are on the table in the negotiations, everything is on the table, i.e. nothing is agreed until everything is agreed. This is to say that in the IGCs several issues are frequently decided at the same time (Nat1-4 and Nat9-15.) A large number of issues are put onto the table and then elaborated whether the substantial linkages can be made (Nat6) through a process of ‘give-and-take’ (Nat8-9) and trade-offs (Nat11). The advantage of this practice is that when hundreds of things are eventually solved at the same time, there will be something for everyone (Nat12). Issue-linkage is considered as ‘a way of life’ in the Community and the linkages are simply necessary in order to get the agreements done (Nat11). In an IGC, the outcome is thus always a type of a package-deal, in which Member States must also have been prepared to compromise. Obviously, also to open these packages at one point of time might have serious consequences (Nat2 and Nat4). If the institutional package, for example, is opened, it is usually a small Member State that loses (Nat6).

The European Council meets without the officials and it is highly political in its proceedings. From this it follows that at the end of the day, individual Prime Ministers or Presidents may also consent to a package-deal that goes well beyond to what their advisors were calling out. (Nat8.) The institutional issues, in particular, are known as being easy to trade-off and connect with each other in order to reach a compromise (Nat10). Some of
these issues can be linked more easily than the others, e.g. the extension of QMV has often been estimated to be an area in which the issue-linking most frequently exists.

In sum, when preparing the institutional issues, the formulation of package-deals was perceptible in all IGC negotiations. In Amsterdam IGC, the issues of re-weighting of Council votes and the composition of the Commission were tightly linked together, and relevant side-payments were required and offered when necessary. During the process, the large Member States were requested to sacrifice their second Commissioners as soon as the new Member States joined the Union, but the votes in the Council were proposed to be re-weighted in their favour. The small Member States, in turn, accepted the re-weighting of votes in return for the guarantee that they could keep their Commissioners. Belgium – having finally expressed its openness also to a down-sized Commission in Amsterdam – required side-payments by stating that it would be ready to give up its Commissioner in exchange for a strengthening of the first pillar. In the IGCs of Nice and 2003-04, an issue-linkage was again made between the matters of voting rights and the extension of QMV in the Council on the one side, and the size of the Commission on the other. In Nice IGC, Belgium and Finland exclaimed that if the subject of QMV extension did not move positively forward during the negotiations, they would not accept the proposals regarding the composition of the Commission. This can be taken as indicating a credible threat.

“Everytime you ask for something you have to pay something for it. There is no free lunch in the international negotiations. It does not exist.” (Nat15.)

These results are also fully covered by LI expectations. It has been stated by liberal intergovernmentalists that when the unanimity rule is applied, a typical outcome of bargaining is a compromise meaning that none of the parties get exactly what is wanted, but each regards the result as better than no outcome at all. The winners give side-payments and concessions to losers to compensate for their deficits and loss:

“[We may say:] If you give up in this issue, we will be able to support you in another issue that is good for you. […] And we may] not find a solution which satisfies you one-hundred-percently, but at least it satisfies your fundamental interests.” (Nat12.)
On the other hand, the previous reasoning and mode of concession-offering appear to function also the other way around. The praxis of package-dealing seem to strengthen asymmetric interdependency between the negotiators, and the governments may at times be rather mean to each other in trying to satisfy their fundamental goals and national needs. According to the previously-cited interviewee, it is also absolutely normal to state that:

“If you keep on blocking our vital interest on this issue […] we will make sure that the next time when you need our help, you will not get it.” (Nat12.)

As originally expected, employing threats as a negotiation strategy is not unusual in intergovernmental arenas. In Naurin’s conceptualization, this reasoning together with the findings above, present evidence for (distributive) competitive bargaining, where the maximization of subjective needs may be attempted at the cost of others. Apparently, the countries put their greatest effort to skew the outcome closest to their own interest in highly salient issues. The governments concede and mind the most vulnerable Member States where they have little at stake and demand concessions where they have much at stake. In this regard, even explicitly different issues are sometimes linked during the process in order to balance out the benefits. (Moravcsik 1998, Moravcsik & Nicolaïdis 1999, Schimmelfenning 2001.) The outcome is always determined by the lowest common denominator (Nat2 and Nat15). These findings lead us to confirm the very existence of asymmetric interdependence in the IGCs.

### 7.1.4 Small States’ Key Success Factors in the IGCs

The major factor determining small Member State influence in the IGCs was evidently the applied decision-making rule and, to be more precise, that of unanimity, which allowed advantageous scope conditions for influence to be exerted. In addition to the decision-making rules and institutional preconditions, a number of further factors turned out to play a role in advancing the small states’ success in the IGC negotiations. As pointed out by a couple of national representatives, the overall success of the decision-making process is to
a great extent dependent on how much information is generally available once the negotiations commence (Nat2 and Nat4). This notion is yet fully equivalent to the rational choice bargaining theories.

“The way you come out [from] the negotiations is depending on how you go in.”
(Nat15.)

Based upon a number of assessments made during the interviews, it could be contended that the preferences are usually mostly known at the beginning of the negotiation-rounds and the major surprises do not emerge. It is in everyone’s interest to let the others know what is wanted with respect to the outcomes. (Nat2-4, Nat6-8, Nat10-11 and Nat13-15.) A positive atmosphere is attempted to create already at the beginning and the decision-makers are given an opportunity to expose various demands. The areas in which particular Member States have sticking points or particular political problems will become evident and clear in time. (Nat8.)

Nevertheless, the exact amount of information as initially distributed depends to some extent on individual countries, too. Most Member States put into words their national positions weeks before, while particular states may articulate them not at all clearly (Nat4). To this end, there is also scope for some confusion and uncertainty (Nat12) as suggested also by Moravcsik (1998; 1999) and Schneider & Cederman (1994). As regards the declarations on national positions, the Member States’ tactics seem to vary between relatively open strategies on the one extreme, and hidden and secret strategies on the other. Nevertheless, even though these two poles are both applied (Nat2 and Nat12), it seemed to be more common to employ open strategies in IGCs.

Yet, even though the information is in general largely distributed, one might have to make a great individual effort in order to figure other countries’ preferences explicitly and entirely. It has been argued that wide and firm personal networks can provide a significant informational advantage in both the Convention and regular types of IGCs. In general, such networks make a difference and by using them wisely – by employing negotiation strategies attuned to any information gained – it is possible to have an impact on the decision-making process, and the outcomes later on. One needs to network especially with those who mutually agree. (Conv1, Nat2-3 and Nat9.) The importance of
the bilateral discussions, meetings and contacts were highlighted by many of the interviewees. Today the Union is so large that the smaller scale dialogues are inevitably required in order to get the stated goals and preferences through (Nat3).

In intergovernmental contexts, the development of networks is common especially at the representatives’ level that meets practically most often during a decision-making period. Furthermore, the dynamics between the groups of Permanent Representatives is estimated as more positive and productive as compared to configurations involving national representatives from the capitals. (Nat6-8.) In these informal meetings, as composed mainly of ‘lunches and dinners’, one has every opportunity to hear and explore other Member States’ positions (Nat8), and “[--] if you do not have enough information, you can only blame yourself”, as formulated by one of the informants (Nat12). For the permanent officials – often regarded as professional negotiators (Nat15) – the substantial, emerging questions are not important as such, but what counts for them is that the problem will be solved (Nat6-7). This has been noted also by Hayes-Renshaw et al. (1989, 136). They have pointed out that even if Permanent Representatives normally want their government’s position to prevail, they also want to reach an agreement often at the cost of not achieving all of their own government’s objectives in the negotiation.

With a view to the previous announcements as put forward by a number of informants, it is possible to conclude that the positions and preferences were from their point of views nearly always automatically and evenly distributed in the IGC decision-making arenas. According to Schimmelfenning’s (2004, 77) mode of theorizing, according to which the hypothesis number two was originally formulated, bargaining power is a result of the asymmetrical distribution of information. It was the underlying idea that the negotiators having more information at hand are able to skew the outcome closest to their ideal point. In the IGCs the governments knew what they wanted, revealed their goals accordingly and then tried to achieve them by means-ends calculations, whereas in real terms the national governments face scarce information being unable to access and process critical information and ideas in intergovernmental negotiations (see Moravcsik 1999, 275). Since this twofold understanding of the issue and its relevance produced bias as regards the information received from the interviewees on the one hand, and that of the primary source of documents and literature on the other, the question needs to be left open.
for further analysis. We cannot unambiously argue that the decision-makers have *de facto* benefited from the asymmetric distribution of information.

Moving on from the Danish and Irish cases, in particular, it can be seen that the domestic constraints and traditions of referenda were important factors in determining bargaining success and shaping the institutional outcomes. As suggested by a number of scholars, national ratification constraints may confer power, since the negotiators can make credible threats by proposing that their national fronts may eventually block the Treaties should their interest not be accommodated properly (Schelling 1960; Hug & König 2002; Hug & Tsebelis 2002). As clearly postulated by intergovernmentalists, the negotiation processes of the three IGCs reflected the national circumstances and the outcomes were determined by domestic politics. More often than not, national leaders were forced to consider the imperatives of the following ratification process, and to achieve an assent from their constituents for a Treaty to be agreed.

Moreover, a majority of respondents were of the opinion that the manner in which an individual negotiator behaves in the decision-making arena does have an impact on the outcome. Different countries have different negotiation styles, but the way a Member State representative decides to present its interests is certainly one of the key success or failure factors. (Nat2-3, Nat5-6, Nat8, Nat10, Nat12 and Nat14.) The style with which the eventual concerns or interests are presented and explained can add especially to the credibility of a position (Nat15), although the exact moments of influence or the respect increase in credibility might be difficult to indicate (Nat2).

In addition, this study confirms the role of a number of further factors that were originally not expected at the outset. Credibility and personality of an individual decision-maker are, to start with, variables that need to be accounted for in the IGC negotiations. Since the IGC is an extremely close practice, the social skills, personalities, human relations (Nat2, Nat6, Nat9 and Nat13-14) and even psychological factors (Nat15) play important roles in the sphere. Regarding personalities, elements such as creativity, openness to looking for compromises (Nat10), and an ability to listen and understand

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343 To the exclusion of (Nat11) only.  
344 Yet, this study does not make an attempt to explain from *where* the actual credibility of an actor ontologically stem, or which factors affect to the fact that particular politicians are perceived as more qualified, competent and charismatic than the others.
others’ positions (Nat8 and Nat12) were mentioned as significant competences in the arena. Apparently, particular Prime Ministers are admired and they enjoy better international prestige and support than others (Nat9). Some incumbents, in turn, can be difficult, arrogant and even irritating (Nat8), which does not enhance their potential to influence.

“Some decision-makers are simply rude, while the others are charming and it is obvious that the way how people act has an impact.” (Nat12).

The way a decision-maker is perceived by others has a consequent influence on the effectiveness of his or her reasoning. Apparently, the actual style may either help or damage. (Nat8.) Once someone’s trustworthy qualities are generally acknowledged, they may work as a great advantage to the person in question (Nat14). Trustful speakers often take leadership roles in the negotiations particularly if they have managed to combine credibility with competence and determination (Ulbert & Risse 2005, 360). This is why the representatives of the small states so often act as chairmen in multilateral negotiations, as they are commonly perceived as more neutral, competent for mediating effectively as honest-brokers between potentially opposing poles and possessing less vested interests than the bigger countries. In addition, a lot depends on personal chemistries and even on whether the incumbent Prime Ministers get along with each other or not (Nat7 and Nat9). Certain Heads of States just do not like each others and this is why some negotiations have failed to reach a compromise (Nat9).

“The dynamic in the Convention was much different than the dynamic in an IGC. The dynamic in the IGC is very very dependent on personalities. And if you have likes and dislikes you will not reach a conclusion in the IGC. The IGC 2004 made a decision because of the personal dynamics between Ahern and the other Heads of States. The point then is that the personal relationships have a huge bearing.” (Nat9.)

The personal features, characteristics and chemistries seem to play a role especially when the number of decision-makers is generally smaller. In the European Union, the influence

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345 The negotiation skills of the Irish Prime Minister Ahern were deemed as exceptional and crucial in order to reach the final deal in the 2003-04 IGC also by McDonagh (2007, 95).
of psychological factors on the decision-making dynamics was visible especially at the
time of twelve Member States (Nat5). From the interviews it has now become clear that
the personal factors are evident, but not yet decisive. In any case it is difficult to indicate
for how much of an impact do these variables have in the end. (Nat12).

In addition to social and psychological elements, the significant success factors for
small states are claimed to consist of appropriate preparation (Nat2, Nat4, Nat6, Nat11 and
Nat13) and timing (Nat6 and Nat15). Cautious preparation and extensive national
deliberations allow for more advantageous outcomes, and help the actors to keep their
minds (Nat11). The decision-makers’ persistence regarding their cases was maintained to
be one of the key variables leading to success. It was estimated as being fundamentally
important to be able to keep one’s own mind all the way until the end, backed up with a
clear idea or a map of where one might be able to get. (Nat10.) In this, the intensity of
preferences certainly plays a role and the significance of means-ends calculations becomes
even more evident. Moreover, the successful chairing of the Presidency was maintained to
bear favourable outcomes. (Nat8-9 and Nat11). Eventually, there are two types of
Presidencies, “[t]hose of hopeless and those of brilliant, but they do make a distinction”
(Nat12). Especially a small country can influence the outcomes by holding a good
Presidency (Nat8). Also the way an individual country cooperates with the Presidency can
make an enormous difference. It was contended that in order to have an effect on
subsequent negotiations and eventual decisions, one needs to catch the attention of those
who draft the papers. (Nat14.)

In the IGCs, coalitions are most often formed depending on the subject rather than
on the attractiveness of a specific Member State itself (Nat3-4, Nat8, Nat10 and Nat14-15).
As an illustrative example, it was pointed out that one usually cooperates with the UK
when tax issues are dealt with, whereas over the common agricultural policy France at
once assumes a similar role. In the cohesion issues, in turn, one might cooperate with
Greece, Portugal and Spain. (Nat3 and Nat8.) When it comes to protecting the issues of
smaller countries, the cooperation evidently takes place within the small states. Moreover,
small state coalitions are frequently formed particularly over institutional issues. (Nat3-4,
Nat8 and Nat12.)
The coalition partners may also depend on domestic circumstances, administrative practices or cultural determinants. Ireland has from time to time identified itself with the UK on a basis of their similar parliamentary histories and the common law systems that differ from those of the continent. In the EU, British-Irish like-mindness has been distinctive especially in the issue of Justice and Home Affairs. (Nat8 and Nat10.) Denmark has often identified itself with Germany and the Netherlands (Nat11 and Nat14). The Nordic partnership and common values are acknowledged especially in the issues of health, welfare, environment, consumer policies (Nat15) and security, and it is a well-known fact that the Benelux countries have a long tradition of acting together (Nat13). Furthermore, since each decision-maker eventually favours cooperating with like-minded countries, individual Member States may have their own, yet fluctuating, preferences regarding the potential allies. If the Member States possessing common interests present themselves uniformly in the negotiations, they are believed to have an impact on outcome (Nat4-5 and Nat8). Overall, the coalitions and common positions were felt to have at least some sort of an influence on the distributive results (Nat3 and Nat10), although their value should not be exaggerated (Nat14). The coalitions are absolutely essential (Nat10), but at times not as effective as they could be (Nat3). Particularly in the larger Union, such coalitions are becoming more and more important and a small country would soon lose out if it did not have a possibility to formulate them (Nat8).

In the light of these findings it has now become evident that the key success factors consist of particular decision-making rules together with the actor behavior and other process-related factors, as well as the ex ante type and intensity of preferences. This is in line with the suggestions of Scharpf (1997) and Panke (2005), who have pointed out that negotiation success or actor influence cannot be explained exclusively by underlying institutional rules. As pointed out also by Schneider and Bailer (2001), the combination of several explanatory features can describe actor influence more in detail. It can be concluded that in all three IGCs, particular institutional preconditions facilitated particular modes of actor behavior and, subsequently, influence.
7.1.5 The IGCs: Confirming and Disconfirming the Hypotheses

Throughout the study the main theoretical question has been: to what extent do the RCI and LI approaches capture the logic of decision-making in the EU Treaty negotiations, small Member States’ influence and the Member States’ decision-making behavior respectively? Do they satisfactorily predict the conditions under which small state influence over the outcomes increases? This section reiterates the underpinning theoretical reasoning and draws conclusions as to whether the deductively derived hypotheses are to be (dis-)confirmed in view of the empirical findings.

Regarding the impact of the decision-making rule, two hypotheses were originally made as follows: (H1a): “Given the veto-right of each negotiator, the outcomes are constrained by the positions of governments making the threat to exit. Whenever a fundamental disagreement between the participants emerges, the negotiations result in a deadlock” and (H1b): “Regarding the institutional issues, negotiation under unanimity rule in the IGCs allows for outcomes that are more favorable to small states, i.e. reaching their most preferred configurations in the issues of the composition of the Commission, rotating Council Presidency and maintaining of unanimity rule in policy areas with particular domestic significance, as compared to the negotiations under restricted consensus rule.”

On the matter of initial information in the negotiations, it was claimed in (H2) that: “Holding constant the institutional rule, the extent to which the Member States’ preferences are declared at the beginning of the negotiations matters. The wider the information on preferences is distributed at T\(^1\), the greater the possibilities for small states to obtain their most preferred outcomes at T\(^2\).”

The third hypothesis concerned the issues of intensity of preferences and asymmetrical interdependence, and was divided into three separate propositions: (H3a): “Issue saliency and intensity of preferences predict the small Member States’ distance to the outcome. While the issue saliency and intensity increase, the likelihood of an involuntary distribution decreases whenever the unanimity rule is applied.” (H3b): Given the unanimity rule, the more dependent a small Member State is on the institutional outcome, the more incentives it has to offer concessions and side-payments, and the better its possibilities to skew the result closest to its original preferences during the negotiations.
(asymmetrical interdependency).” (H3c): “Given the restricted consensus rule, the asymmetrical interdependence is expected to be insignificant or absent. The issue saliencies and preference intensities are presumed to play less decisive roles in leading to the outcomes advantageous for small states through the acts of concession-trading and side-paying.” Regarding the process and logic of communication therein, it was postulated in (H4) that: “The adopted mode of communication matters in the decision-making process. Small Member States achieve their most preferred outcomes through a traditional bargaining process, which proceeds along rational reasoning, pragmatic demands, the signaling of saliencies, and allows thus the introduction of issue-linkages, concessions and side-payments for a formulation of a package-deal types of compromises.”

With a view to the constructivist and sociologically driven institutionalist arguing, it was not the aim to develop a specific hypothesis to assess the decision-making in the Convention context or to \textit{ex ante} expect particular outcomes from the process. To (dis-)confirm the rationale of constructivist arguing, the attempt was made to examine the extent to which the Convention method differed from the traditional IGCs, and what impact did the decision-making rule of restricted consensus have over the small state influence to reach their most preferred outcomes in the institutional issues given the constant national preferences.

At the very least, the process and outcomes differed in the two types of Treaty-making practices. When measured in absolute and comparative terms on a strict case-by-case basis, the institutional outcomes did meet the small states’ initial preferences more often in the IGCs than in the Convention proceedings. By introducing the factor of issue salience, the difference between the two decision-making practices became even more distinctive. To this end, the main hypothesis can be confirmed: the small Member State influence varied with the adopted decision-making rule. From this it follows that the evidence from the IGC and the Convention proceedings supports the first hypothesis, according to which the unanimity rule in combination with an intergovernmental decision-making arena allows for more favorable outcomes to small states. Regarding the negotiation processes of all three IGCs, the national governments and domestic politics distinctly dominated the settings and the small Member States credibly used their veto-power to skew the outcome closest to their ideal point in the institutional issues. By their
very reluctance, the outcomes were more often than not directed towards their interests especially in the most delicate domestic matters.
<table>
<thead>
<tr>
<th>Country</th>
<th>Issue-Area</th>
<th>Outside Alternatives, Credibility of veto (Y/N)</th>
<th>Outcome Power of Veto (Y/N)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Amsterdam IGC</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Denmark</td>
<td>1) JHA Co-operation</td>
<td>1) National referendum (Y)</td>
<td>1) Danish Exemption clause “Protocol (No 5) on the position of Denmark” (Y)</td>
</tr>
<tr>
<td></td>
<td>“Denmark would not ratify the Treaty in a referendum if its preferences were not fulfilled”</td>
<td>2) National referendum (Y)</td>
<td>2) The Danish proposal was included in the Treaty (Y)</td>
</tr>
<tr>
<td></td>
<td>2) Environmental guarantee</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>“Denmark needs selling points to get the final Treaty ratified”</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Nice IGC</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Denmark</td>
<td>1) JHA Co-operation</td>
<td>1) National referendum (Y)</td>
<td>1) Irish Exemption clause “Protocol (No 4) on the position of Ireland” (Y)</td>
</tr>
<tr>
<td></td>
<td>“Denmark would not ratify the Treaty in a referendum if its preferences were not fulfilled”</td>
<td>2) National referendum (Y)</td>
<td>2) One Commissioner for each MS (Y)</td>
</tr>
<tr>
<td></td>
<td>2) The Commission</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>“Ireland opposes any proposals which would seek to deprive the smaller MS rights to nominate a Commissioner. The issue is non-negotiable to the government and no compromises should be expected on it”</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>The Convention</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Finland</td>
<td>Extension of QMV/Article 42</td>
<td>National referendum (Y)</td>
<td>Maintaining of unanimity in Art. 42 (Y)</td>
</tr>
<tr>
<td></td>
<td>“Poses a threat to the Danish social system. A referendum would be needed and then it becomes a common problem, not just a Danish problem”</td>
<td></td>
<td></td>
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<tr>
<td><strong>2003-04 IGC</strong></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Denmark</td>
<td>Domestic ratification process</td>
<td>National referendum (N)</td>
<td>Treaty of Nice rejected by a referendum (Y)</td>
</tr>
<tr>
<td></td>
<td>Key questions:</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Composition of the Commission</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Rotating Presidency</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>“Finland will veto any constitutional changes which are against its vital interests in the IGC”</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>“78% of the Finns support the government veto if the text goes against their preferences”</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Key question:</td>
<td></td>
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<tr>
<td></td>
<td>Composition of the Commission</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>“Any deal on a future EU Constitutional Treaty needs to pass the domestic ratification process, which is likely to be challenging”</td>
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</table>

European University Institute
DOI: 10.2870/2709
First of all, the IGCs provide numerous indicators for the hypothesized negotiation failures in most controversial issues. The Amsterdam and Nice IGCs, in particular, produced a huge number of institutional ‘leftovers’, in which decisions could not be made due to sufficient resistance from the decision-makers’ side. In the Amsterdam and Nice Treaties, finally no amendments were made to the existing system of rotating Presidencies. Originally, a combination of the unanimity rule, actors’ widely diverse interests and their potential disagreement was hypothetized to generate only modest change or to result in deadlock. Given the fact that the small Member States almost uniformly supported the continuation of equally rotating Presidencies, it seems obvious that the issue could not be tackled and a subsequent deadlock was reached in the Amsterdam and Nice negotiations. The gains were left on the table and the agreement postponed because satisfactory and mutually acceptable solutions could not be found. In conclusion, the governments succeeded in rejecting the agreements that were about to leave them worse off than unilateral policies, exactly as suggested by the LI school. It has been maintained that for each party a necessary condition for agreement is the prospect of higher subjective worth than its best course of action without agreement, and that each party expects an outcome which is at least no worse than the status quo. The conditions for negotiation failure as developed, e.g., by Héritier (1999), Scharpf (1988), Lax and Sebenius (1986) and Sebenius (1992), hold explanatory power with respect to these outcomes.

With regard to the issue of rotating Presidency, the outcome of the 2003-04 IGC, however, provides divergent evidence and, therefore, disconfirms the first hypothesis as derived from intergovernmentalist angle. The Convention’s proposal to create a post for a permanent President to the EU was not seriously challenged in the following IGC 2003-04 and the status quo was kept even if it was ostensibly unsatisfactory for some Member States. The same applies to the conclusive abolishment of equal rotation system and the creation of team Presidencies, which was not in full accordance with the stated preferences of the small Member States.

In line with the assumptions as set out in the second hypothesis, it was contended by the informants that the national interests and preferences, as determined by the domestic factors, were widely distributed at the beginning of each IGC negotiation processes. The information was deemed plentiful by them and it was asserted to have been
in everyone’s interest to reveal the real preferences at the outsets. Within the institutional issues, the Presidencies have systematically made significant efforts in attempting to collect all necessary information on Member States’ positions in all IGCs. Especially within the area of QMV, particular questionnaires were regularly circulated and national delegations were allowed to indicate all issue areas in which they had difficulties extending the scope. To this extent it is hardly surprising that the majority of the delegates felt that enough information was delivered to them. Given this affirmation made by the decision-makers on the ample distribution of the information in IGCs, and a view to the opposite empirical fact advanced by some scholars that asymmetric distribution of information does not occur in the intergovernmental arenas at least to the greatest potential extent, the hypothesis number two cannot be fully confirmed. Nevertheless, as regards the differences between the IGC and Convention methods of Treaty revisions and the eventual finding that the small states’ interests were met more often in IGCs than in the Convention process where the information delivery was even more incompetently organized, it can be confirmed that the wider the information on preferences is distributed at T\(^1\), the greater the possibilities for small states to obtain their most preferred outcome at T\(^2\).

The findings also reflect to an important extent the remaining intergovernmentalist assumptions. There has been clear evidence for asymmetric interdependence, and the small Member States have *de facto* succeeded in blocking the decision-making in order to maintain the status quo in their most sensitive issues in intergovernmental contexts under unanimity decision-making rule. As a result, the third hypothesis can be confirmed accordingly: the issue salience predicted the small states’ distance to the outcome in all three IGCs. While the issue salience increased, the likelihood for an involuntary distribution decreased. Particularly in the distributional, i.e. institutional, issues the IGC context enabled the negotiators to require side-payments or concessions whenever their national interests were threatened. The compromise types of outcomes were marked by the lowest common denominator and the package-deals were consequently formulated in the IGCs of Amsterdam, Nice and 2003-04. As seen in the following, a closer look at the individual institutional issues gives substance to these claims.
Negotiations and outcomes on the composition of the Commission systematically reflect the small states’ success in maintaining the status quo in the intergovernmental arenas. Irrespective of a notable dispute between small and large Member States, all three IGCs led to an outcome that was close to the small states’ original requests. The Amsterdam Treaty fixed the number of Commissioners at twenty, so that each Member State was still allowed a right to nominate an own Commissioner. It was then decided that after 21 members the provisions would be revised, but the exact principles were left to the table. In Nice it was decided that as long as the Union has fewer than 27 Member States, the Commission will continue to have one member from each Member State, and the larger states would have to give up their second Commissioner. It was then proclaimed that once the number of Member States rises to 27 or more, the Commission will go over to equitable rotation and none of the Member States will no longer necessarily be fully represented at any given time. In the IGC of 2003-04, the Convention’s widely unfavoured proposal of a two-tier Commission was abandoned and an agreement was made of a two-thirds principle instead. According to this, the Commission will be composed of national representatives from two-thirds of the Member States, as selected on the basis of equal rotation. In terms of the absolute number of excluded Member States, ‘two-thirds’ is far more acceptable than the ‘half’, as formulated in the draft Constitutional Treaty. Besides, the IGC stated that the arrangements will not come into effect earlier than 2014, instead of 2009 as proposed by the Convention. All of the above-mentioned provisions indicate a distinctive victory for small states, most of which considered an own Commissioner to guarantee the fundamental and much desired equality between the Member States.

The extension of qualified majority voting provides another crucial example of an issue in which the status quo was successfully maintained basically in all of the most sensitive policy areas in all three IGCs, confirming basically the sets of first, second, third and fourth hypotheses. To be sure, each negotiation round involved also a range of specific issues with particular national, yet minor, concerns that were finally not succeed to be kept subject to unanimity. This is conceivable given the fact that basically every article or policy issue usually has at least one opponent in the negotiations. The Council of Ministers has at its command a vast number of issue-areas and it is evident that all Member States’ all preferences can never be met in the final agreements. In sum, if not for
anyone else, for maximalists at least the final clauses of the Treaties with respect to the QMV areas leave much to be desired regarding the articles that are still subject to unanimity. The most controversial policy fields during the Amsterdam, Nice and 2003-04 negotiations concerned the provisions related to taxation, as well as social, trade and foreign policies. It was decided, as a result, that these very issues would remain either a subject to unanimity, or would be applicable to a limited extension of QMV. Moreover, in view of the 2003-04 IGC, the effectiveness of particular bridging clauses, passerelles, as introduced by the Convention was reduced, and each national parliament was given a right to block the European Council decisions and to prevent the move to QMV also in future if it so wishes. These clauses restricting the extension of QMV fairly indicate that, given the unanimity decision-making rule in the IGCs, the outcomes are constrained by the positions of recalcitrant governments.

The protocols on the positions of Denmark and Ireland annexed to the Amsterdam Treaty provide with indisputable and yet further empirical indications of credible uses of veto and asymmetric interdependence. These protocols guaranteed that they were not obliged to take part in particular actions in Justice and Home Affair under the first pillar. Also, the ‘environmental guarantee’ included in the Amsterdam Treaty as a result of the Danish requirement for relevant selling points to its national referendum indicates a successful use of threat of exit. In fact, Denmark has been seen as a recalcitrant player within the European decision-making arenas ever since the ratification process of the Maastricht Treaty and the launching of Edinburgh exemptions, and cannot thus seemingly be judged as a matter of indifference.

Moving on, the fourth hypothesis was formulated with a view to the process elements, presuming that the small Member States would be better off whenever the negotiation proceeds along the patterns of traditional bargaining. In the institutional issues, the small Member States de facto achieved their most preferred outcomes more often in the IGCs, i.e. through a process of bargaining. To be more explicit, in the intergovernmental arenas the most typical and frequently adopted mode of negotiating fullfilled the criteria of cooperative bargaining. Maximization of everyone’s needs and a relevant compromise were repeatedly achieved through the acts of value-claiming, issue-linking, issue-trading and package-dealing. The way in which delegates’ principled
positions and understanding on institutional facts were empirically explored in IGCs also resembled cooperative bargaining. Rational reasoning was the very means by which Member States’ actions were most often coordinated, as the positions in the issues at stake were justified by clear interest-based statements and credible commitments.

To give justice to the empirical findings, it should be noted that argumentative persuasion did to a certain extent occur, too. It is, however, a crucial point here that it was not a motive of any persuader to change other decision-makers initial preferences. Rather, persuasion was primarily used as a means for small Member States to explain, rationalize and justify particular difficulties if they existed. To this end, their aim was to present credible arguments on the issue at stake in order to reach better – not common – understanding of the right course of action. Whenever these explicit threats and demands were put forward as means of pressure in the course of an IGC process, the negotiations reflected competitive bargaining. It has been confirmed that threats, extortion and the methods alike are still widely applied as principles of decision-making. In particular, the distributive acts of concession-trading and package-dealing in the later stages of the negotiations did often translate into competitive mode of bargaining.

From this it follows that within the IGCs, there is empirical evidence for two different modes of communication, to the exclusion of cooperative and competitive arguing. The two modes of bargaining techniques, instead, did occur and usually proceeded one another in clear chronological and sequencial order. The negotiations most typically began as cooperative bargaining practices: clarifications of preferences and information-sharing acts, as followed by the examinations of actors’ varying beliefs and understandings through reasoned, principled and justified argumentation. Later on the decision-makers moved on to competitive bargaining, that is, concession-trading activities and, at times, pressuring via threats and domestic demands.

7.2 The Convention as an Exceptional Experience

How then can we account for the Convention as a type of decision-making process? The Convention was a fairly different experience, and virtually no-one outside the assembly
believed that the outcome would be signed as it was, i.e. as a *draft Constitutional Treaty*. The Convention produced one single, yet complex, text that contained basically all conceivable policy areas. As compared to the idea of the original Laeken Declaration, the outcome shifted much further away and was fairly unexceptional. (Conv3-5 and Nat4.) In this sense, the Convention struggled for more ambitious aims than the regular IGCs, and went far beyond of what was initially planned.

In a way the Convention was praised as a good and fresh procedure for various reasons. For the first time the Member States needed to move away from simply looking at what is the accountancy of an issue, and to learn to look at the philosophical aspects of their memberships, as one of the interviewees expressed (Conv7). The overall transparency and an easy access to a large number of varying documents and memorandums were seen as exceedingly positive by both the citizens and interviewees. On the other hand, it was estimated that the prerequisite for transparency may also have caused a counter-effect: since there was countless material and a huge flow of information on all kinds of points of views, the most important files were often hidden behind the less important ones. (Conv1 and Conv5.)

Many of the interviewees did not, however, express the greatest potential respect towards the Convention method. As a decision-making practice, the Convention was deemed ineffective (Conv2), less predictable (Conv12), less reliable, too far away from people’s concerns (Conv9), and a kind of a ‘strange animal’. It was also claimed that the entire body was difficult to control (Conv10) and too little attention was paid to the ‘real world of Member States’ (Conv10).

"As from my experience, the Convention method was anything but positive.”
(Conv3.)

It is generally acknowledged that the Convention-type of a decision-making method will never be allowed a competence to determine automatically the substantial issues between the Member States. It has been predicted that the most sensitive questions will always be solved between the governments, and there will always be a back-up IGC in the end. (Conv2-5, Conv9 and Nat4.) This was the procedure of the IGC 2003-04, too, and it was then clear that the Member State governments, responsible to their national electorates,
would make whatever changes to the draft Treaty they considered necessary (Magnette 2003, 11; Magnette & Nicolaïdis 2004, 394; McDonagh 2007, 89). Even so, it was envisaged that the introductory work could also in the future be delegated to a Convention-type of a body as consisting of ‘wise men’, since the combination of the Convention and IGC in preparing the Treaty-revisions has certainly demonstrated its qualities (Nat3-4, Nat7 and Nat12).

Table 14: Overview of the Results: Confirming and Disconfirming the Hypotheses in the Convention

<table>
<thead>
<tr>
<th>Independent Variables</th>
<th>Intermediate Variables</th>
<th>Dependent Variables</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Restricted Consensus</strong></td>
<td><strong>Argumentation</strong></td>
<td><strong>LOSS FOR SMALL STATES</strong></td>
</tr>
<tr>
<td>Empirical indicators:</td>
<td>Empirical indicators:</td>
<td>Empirical indicators:</td>
</tr>
<tr>
<td>Convention-context</td>
<td>Strategic use of argumentative tactics</td>
<td>• The Commission</td>
</tr>
<tr>
<td>Quasi/false/artificial consensus</td>
<td>Norm-based arguing</td>
<td>- two-tier/consisting of voting and non-voting Commissioners</td>
</tr>
<tr>
<td>Flexible decision-making rules</td>
<td>Persuasion</td>
<td>• The QMV</td>
</tr>
<tr>
<td>Absence of national mandates</td>
<td>Normative principles</td>
<td>- abolishment of the Luxembourg Compromise</td>
</tr>
<tr>
<td>Absence of voting</td>
<td>(Non-existing →)</td>
<td>- introduction of the bridging clauses</td>
</tr>
<tr>
<td>Absence (or no power) of veto</td>
<td>Absence of deliberation</td>
<td>• Rotating Presidency</td>
</tr>
<tr>
<td>Directorate of the Praesidium</td>
<td>Absence of effective counter-argumentation</td>
<td>- abolishment of the rotation</td>
</tr>
<tr>
<td>Absence of asymmetric interdependence</td>
<td>Adaptation of positions</td>
<td>- permanent President for the EU Council</td>
</tr>
<tr>
<td>Heterogeneity of participants</td>
<td>→</td>
<td>(Confirming: H1a-b, H2, H3a-c, H4)</td>
</tr>
<tr>
<td>Distribution of information</td>
<td>a) for domestic reasons</td>
<td></td>
</tr>
<tr>
<td>- inadequately distributed</td>
<td>- Denmark/Rotating Presidency</td>
<td></td>
</tr>
<tr>
<td></td>
<td>b) in order to facilitate compromises</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Ireland/The Composition of the Commission</td>
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</tr>
</tbody>
</table>

7.2.1 The Weakened Role of the Member State Governments

Once the Convention started its work, it was soon realized that drawing conclusions on Member States’ positions was not as easy as in the regular IGCs. To have 15 or 27 Member States around a table is definitely different than having a room with over 100 full members of the Convention. As a result, there was no scope for considering the specific sensitivities of each country. (Conv4.) In addition, within the European Convention, the Member State governments were finally not able to act as unitary actors and their overall status was different from those of the traditional IGCs. Towards the end of the Convention process, the Conventioneers were insisted to leave aside their initial positions influenced by their membership of any institutions, small or large country, nationality or political group and give priority to ‘common good’ (CONV 748/03). The Member States’ influence decreased at least for two discernible reasons: they were de facto in a minority, and their citizens did not want the issues to be settled in a process in which the elected governments were not going to have their say (Conv4).

In the Convention the participants consisted of a great variety of actors, while in IGCs the governmental actors are the sole players holding a right to veto. It was hence acknowledged already at the outset that the main actors in the Convention process would ultimately not be able to make the main movements (Conv12). The formal veto-option did not exist and the governmental actors could not opt out whenever their interests were threatened (Conv2). Even if one attempt was made by Finland to threaten with a veto, this expression of intention was not taken at all seriously by other members of the Convention and lead thus to no major acts, improvements or deadlocks. In September 2003, it was stated by Prime Minister Lipponen that Finland will veto any constitutional changes which are against its vital interests in the IGC, and the Finnish citizens were reported to require a referendum on the Constitutional Treaty if the final text goes against Finland’s preferences. Their key questions turned out to be the right to nominate an own Commissioner and the rotating Presidency.\(^{346}\)

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\(^{346}\) CONV (509/03), European Commission (2003n) and Finnish Government (2003a).
If the shadow of *ex post* approval would theoretically not play such an important role in the regular IGCs due to the fact that the decisions are made by those who are sooner or later responsible for the domestic ratification processes, it did play a role in the Convention. It was far less obvious and not at all clear what would be the likelihood or the eventual impact of follow-up national referenda. To the exclusion of Ireland, no Member State knew in the beginning of the process whether the draft text would have to meet the citizens’ demands and requirements in the end. The debate on this issue started right after the Convention had finished its work, yet, not at the time of the Convention process itself. For these reasons, the threats of exclusion did not have an impact for eventual decisions or outcomes.

After all, the real winners in the Convention proceeding were the national Parliaments together with the European Parliament. However, as Parliamentary bargaining power was not an original question of interest in this study, it has not been considered as an analytical unit. The major concern was to analyze the Member States’ possibilities to put through their preferences in alternative institutional settings. Yet, the above-mentioned empirical finding is a highly relevant when assessing the assets of the Convention method as an overall decision-making practice. Under the Convention method all Member States – irrespective of their size – got weakened to the advantage of both the European and national Parliaments. Institutionally, the interest division lines did not fall into the constellations of Member States vs. Member States, but divided rather the Member States’ governments and parliaments from each other. In addition to this, involving national Parliaments to the process of European constitution-building was originally advocated by large Member States, especially by France and the UK (Closa 2003b, 4).

7.2.2 **Artificial Consensus from a Collective Disharmony**

So far it has become evident that the President of the Convention was, as formulated by one of the interviewees, ‘a fan of consensus’ (Conv2). The Convention method as formally based on consensus has, nevertheless, been deemed vague and strange both by a number of academics and the majority of respondents as interviewed within this study.
Empirically, the most demanding task in the Convention proceeding was to indicate what was the consensus and when was it actually reached during the decision-making process (Conv1-2, Conv6 and Conv8). Eventually, consensus is not a synonym for unanimity, and it has been exclaimed that the consensus can easily be manipulated (Conv2 and Conv6). Yet, in the EU Convention, the consensus practise could have proved to be better, had its President implemented less personal and more objective ways to interpret it. He was judged as having used these procedural means in order to have an influence on the decision-making and its outcomes. (Conv2.) All in all, the actual achievement of this common accord or harmony often seemed to be evaluated on the basis of a ‘general feeling’ with a view to those concerns that the participants communicated towards the Praesidium in the Convention (Conv1).

The majority of the Conventioners did not feel that any kind of consensus was ever reached, at least on the institutional issues. The institutional issues did not emerge in the Convention discussions until January 2003 when they were tackled directly by the President Giscard d’Estaing. In April 2003, the Praesidium presented to the plenary its first set of draft articles for the institutional reform. The draft articles contained some of the working group conclusions but were not subject to the general ‘Conventional Method’. The draft text was finally revised only three days before the concluding session on 13 June, when notable disagreements still emerged between the small and large Member States.

The key issue of institutional reform was strikingly not attributed a working group in the Convention. Basically for all other issues working groups developed proposals that served as templates for the final draft Treaty. As it is obvious, many of the participants felt that they had very little ‘grip’ on what was going on, since it was basically impossible to act on the institutional matters (Conv5). There were no particular mechanisms to deal with the institutional concerns that were in every respect less properly debated and analyzed than other issues throughout the process. Asserted by one of the informants, an exhaustive analysis at one point of time would certainly have proved helpful. (Conv8.)

The existence of potential issue-linkages or package-deals was not easy to identify from the process overshadowed by artificial consensus. The Praesidium’s role was significant in steering, framing and addressing the discussion, as well as in establishing the
points of consensus. Also for these reasons, many had the feeling of having been directed or even manipulated. (Conv1-2 and Conv5.) The disadvantageous, detrimental and dominating role of the Praesidium was frequently repeated, and the overall outcome was considered as having been drafted by a very small group (Conv2-3, Conv6-10 and Nat7). The outcomes were seen as reflecting primarily the preferences of three large Member States: those of the United Kingdom, France and Germany (Conv2). The acting of President Giscard d’Estaing’s directorate was estimated even as “[a] dangerous example of a practice through which particular questions can eventually be solved in Europe” (Conv3).

7.2.3 The Failure of Deliberative Democracy?

According to a widely shared expectation in the constructivist and sociological institutionalist literature, the scope conditions typical to Convention allow for deliberation and arguing. Contrary to these assumptions, this study claims that the Convention did not induce argumentation to any stronger extent than the regular IGCs. As already stated in the previous section, the Praesidium was frequently blamed for having acted as an interpreter of the dominant view and as a sole drafter of the actual text, although the Convention was originally supposed to remain sovereign in this process. One of the interviewees pointed out that the Convention should not at all be called a negotiation, by definition, since very few people literally negotiated during the process. Besides that, usually one hardly even knew who they were, except a protected and hidden core-group. For these reasons, according to the respondent, the Convention should be called rather a proceeding than a negotiation, as the decision-making rules were in fact ‘non-existent’, ‘obscure’, ‘insecure’ and ‘Soviet-like’ in the Convention. (Conv5.)

The general dissatisfaction among the Conventioners was increased by the already mentioned fact that no working group was established to deal with the institutional issues. This certainly determined the amount of eventual deliberations, too. As many of the interviewees stated, deliberation did not take place and there were no regular or fixed discussions in the Convention proceedings, plenary sessions, or in smaller groups. Neither
was it felt that any kind of counter-argumentation had a particular, substantial effect on players’ preferences or subsequent outcomes. Indeed, deliberative democracy as an ideal decision-making practice prescribed by constructivists, seemed to have reached its limits especially in the institutional issues. It can be concluded that the Convention method did not suit well the addressing of such contested and sensitive questions in which the Member States possess their highly salient interests. Theoretically, the institutional issues are zero-sum solutions, de facto, and any amendment to the institutional structure automatically produces winners and losers respectively. It would hence be highly unrealistic to expect that every Member State would be able to maximize its institutional interests or that a positive-sum outcome would best be achieved through argumentative and deliberative practices.

Varying descriptions were made in the interviews in order to illustrate the dynamics of the Convention process. One of the respondents judged the overall communicative interaction in the Convention as ‘terrible’ in pointing out that particular members ended up to contemplate ‘the most meaningless matters’ in the proceedings, while the others submitted the proposals that were ‘totally out of line’. (Conv10.) In general, a great amount of new ideas and issues were, however, launched during the decision-making process (Conv13). Regarding potential influence, one of the participants expressed his concerns as follows:

“We all felt like ‘What are we doing in here’? Everybody speaks very highly about the Convention, but in fact it is so much of a dark box, and we have so little influence.” (Conv5.)

Too large a variation between the participants and their backgrounds was also thought to be disadvantageous with respect to the individual Member States’ opportunities to influence the outcomes. A comparison was made to the IGC processes which, unlike the Convention, involve players who are parallel in all crucial respects: “[they] often share the same educational background and speak the same language, so that they can at least understand each other”. (Conv10.) It is indeed a point of fact that within the regular IGCs, the preparatory stages are constrained by restricted groups of diplomats, civil servants, permanent representatives and politicians who have a relevant expertise, extended
experience, great material resources and a deep knowledge on a variety of EU affairs. Within the Convention context, the diversity between the participants was just enormous. Fundamental misconceptions and incommensurabilities took regularly place and the paramount differences between the small and large Member States, for instance, were hardly ever constructively accounted for. The lack of a common hierarchy of norms as a shared yardstick for assessing the quality of arguments was, according to Norman (2005, 235-260), seen especially in the institutional questions which did not allow effective argumentation in the Convention. As a result, the participants relied on bargaining in order to avoid a non-decision. This corresponds also to the expectations of Panke (2006, 366), who contends that decision-makers’ homogeneity is conducive to argumentation, while heterogeneity decreases the likelihood that common standards for the evaluation of truth and rightfulness are present.

The lack of real discussions can partly be explained also by simple time-constraints. Contrary to what was generally thought, the Convention suffered from the lack of time due to its large size and the tight timeframe the Member States had imposed on it. Very few people had actually time to present their ideas whenever they wished. The participants were frequently allowed to speak for no more than two or five minutes at a time to introduce their ideas or worries. This led to a problem that the Member States decided to prepare texts and papers beforehand. When these memoranda were later presented in the eventual meetings, they often turned out to be completely unrelated to what the previous speaker had just said or even to the topic of the day. (Conv5.) Against this background it also seems obvious that the national positions were often difficult to discover.

In light of these findings it can be maintained that the argumentation and deliberation types of decision-making as defined in the constructivist literature did not demonstrate its efficiency or even take place in its most-likely setting, i.e. in the Convention arena. From this it follows that the Convention method – at least as such – does not directly translate into a superior or more legitimate decision-making rule within the EU, as argued by constructivists and sociological institutionalists (e.g. Elster 1998; 347 At one point, the President Giscard d’Estaing was reported to have explicitly wondered “[why] a small country like Ireland should ever be considered equal to a country with a size of France?” (Conv7).
Apart from the slightly deviating assessments as made by some individual Conventioneers who considered the overall process as more communicative (e.g. Conv7), or by an interviewee who noted that it did actually allow an open and fundamental public discussion especially at its early stages (Conv8), the real deliberation hardly occurred in the Convention sessions, and the process did not produce an outcome that could be considered enhancing the democratic legitimacy or decreasing the democratic deficit in the EU. To this end, the Convention was not too different from regular IGCs, even though the institutional outcome was beyond the lowest common denominator. Especially when it came to reaching an agreement, the fundamental question was classically asked on whether everyone would be willing to put his or her name on the text. Yet, the existence of a veto-option was not clear at all. (Conv8.)

7.2.4 The Evolution of Positions and the Main Success Factors

Within the Convention context, the findings expose two examples of explicit changes of positions in the institutional issues, the first one being Ireland’s stance towards the issue of the Commission. At the end of the process, it accepted a Commission smaller in size, but requested more clarifications on the status of non-voting Commissioners. Ireland, it was announced, would accept a smaller Commission if, and only if, the system would function on the basis of strict equality, which was seen as an essential element of the Commission and established already at the Treaty of Rome (Conv7). Apart from Ireland, Denmark ended up accepting the suggested team Presidencies instead of sticking with its original request as regards equally rotating Presidencies. Towards the end of the Convention process, it agreed that a suggested full-time President could be appointed by the European Council, however, requesting the presented model to be subject to clear conditions and complete clarity. In addition, Denmark highlighted the demand for equality between the large and small Member States. It has been contended by one of the informants that the argumentation or persuasion did not at all play a role in Denmark’s respect amendment in
the Presidency issue (Conv9). The change of position was argued to have resulted from Denmark’s heavy experiences in holding its six-month Presidency in the fall of 2002.

After all, within the Convention context it is fundamentally problematic to assess any fixed national positions in any formal sense or to account for their apparent changes unambiguously. The national governments did not function as unitary actors in the Convention and all actors were given equally broad negotiation mandates irrespective of the stances of their countries. Wide margins of manoeuvre and imprecise positions allow for particular negotiation behavior, yet, at the same time the shadow of *ex post* approval is supposed to put the actors under certain reserve since the outcomes need to meet the national front sooner or later.

Regarding the potential success factors, it has been demonstrated by König and Slapin (2006) that delegate’s proximity to Giscard d’Estaing’s position indicated bargaining success. In the Convention, the coalitions were eagerly formed and they were often considered to matter in their respect context. The dynamic in the Convention was dependent on the alliances that were built up. (Conv7-8.) A couple of groups were established among the small and medium-size countries, e.g. the ‘Friends of Community Method’. (Conv7.) In a way it is important to build contacts, friendships and networks, but in official terms, on the other hand, it was pointed out that one still needs to be cautious and careful when creating the coalitions or divisions of two camps (Conv8). In the Convention, the personal factors did not play similar role to that in the IGCs. One of the interviewees stated that even if the Convention involved, so to say, a number of strong personalities such as its President, their real influence in creating scope conditions for a Habermasian ’common lifeworld’ or in advancing the convergence of preferences finally turned out to be rather negative. (Conv7.) Yet, in the Convention process the single persons, above all the President Giscard d’Estaing, held the key strategic positions.

Although the overall outcome of the Convention was not a type of a package-deal, it has been contended by an informant that some issue-linkages were introduced in order to reach a feasible solution in the institutional matters. Relevant offers and counter-offers were made, and some Member States had to come up with the relevant side-payments along giving up with other issues that were less salient for them. (Conv1.) On the other
hand, it was generally known that the governments would in any case make the final decisions in the subsequent IGC. (Conv9.)

It can be concluded that the Convention had serious weaknesses in its attempt to advocate democratic decision-making in the EU. As such it was not an appropriate forum for solving the most sensitive issues about power and sovereignty of Member States. (McDonagh 2007, 89.) The failure of the European Conventioneers to settle the most defensive political questions, discover their common interests, translate it to effective collective action, and to aggregate the result into a democratically acceptable form gave intergovernmental entrepreneurs a comparative advantage as soon as the Convention had finished its work, and the following IGC was about to start. The discussion on the future role of the Convention as an appropriate type of a EU Treaty-making body continues both in academic and public fields. Many of the informants as interviewed within this study were of the opinion that the decision-making rules other than those used in the Convention should be applied in the future EU Treaty revisions. The general insecurity and the lack of veto and voting were mentioned to be among the most fundamental problems that the method carried out (Conv2 and Conv5).

7.2.5 The Convention: Confirming and Disconfirming the Hypotheses

In conclusion, the analysis disconfirms the sociological and constructivist expectations to a very strong degree even in their most likely scope conditions, i.e. those of the Convention. The most prominent institutional variables as introduced by constructivists, such as plurality of actors, public and network-like settings or a novel and transparent decision-making environment, were hardly at all important for the dynamics or outcomes in the Convention process. The institutional outcome was not felt to be more legitimate by participants; in fact, the opposite was the case as will be seen in the following.

First of all, unlike in IGCs, the information on Member States’ positions in the Convention was not evenly distributed between the negotiators even though the process

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348 The expression of strong criticism can distinctively be seen in the ‘Alternative Report: The Europe of Democracies’ that was formulated by a number of Convention participants and attached to the Secretariat’s final report.
itself was deemed more transparent. An easy access to varying documents and memorandums was certainly advantageous; yet, the positions of individual Member States were difficult if not impossible to indicate, as there was a countless amount of material and a huge flow of the information on all kinds of points of views. This is to say that the second hypothesis has explanatory power also within the Convention context when stated the other way around: “Since the (small) Member States’ preferences were not appropriately distributed at $T_1$ in the Convention process, their possibilities to obtain their most preferred outcome decreased at $T_2$.”

During the Convention proceedings, the entire trade-off constellation was different from that of the IGCs. With over one-hundred full members, the Member States and their respect governments played a less dominating role. There was no scope for considering the specific sensitivities of each country, a formal veto-option did not exist and the Member States could not opt out whenever their interests were threatened. Within such a setting, the Member States simply were challenged by too great a variety of institutional actors, and therefore it was big Member States that fared better in the end.

With a view to the institutional outcomes, as already notified, the small Member States’ original preferences were less often met in the draft Constitutional Treaty than in the distributional outcomes of the IGCs respectively. After a long battle over a period of years, the small Member States definitively lost their right to nominate an own Commissioner in the Convention. It was stated in the final document that as from November 2009 onwards, the Commission would be a two-tier college consisting of fifteen members (plus an associate non-voting member for each state) selected on the basis of rotation between the Member States. It was also decided that the Council Presidencies would no longer automatically rotate between the Member States, and a proposal on the permanent President of the European Council was included in the draft by the Praesidium irrespective of a considerable disagreement between the actors. The idea of a permanent President was originally launched by the leaders of three large Member States and, apparently, widely opposed by the small Member States. Yet, the President of the Convention ended up requesting the small states to compose themselves and not to prevent the agreement, as “they only represent a quarter of the EU’s population,” as it was phrased.
by him. Indeed, considering this background of the proposal, the outcomes show signs of being ever more striking and unequal for the smaller Member States.

Regarding qualified majority voting, the draft Constitutional Treaty abolished the decision-making principle of Luxembourg Compromise for good by making the QMV a general rule. At least symbolically, this was a noteworthy issue for many of the smaller states, since the compromise had allowed everyone to veto any of such decisions, in which vital national interests were at stake. Also a number of bridging clauses were proposed by the Convention to enable the European Council, by a unanimous decision, to apply QMV in the areas where unanimity would normally apply. After all, however, the issue of QMV and its areas of extension turned out to be a matter subject to least dependence on the adopted decision-making rule. This is to say that the outcomes as produced by the IGCs on the one hand and the Convention proceedings on the other, differed least distinctively in this issue. Within particular policy fields (e.g. taxation, trade agreements, social and foreign policies), the small Member States were successful enough to maintain unanimity clause at least partly also in the Convention process, even though the QMV was rendered a general decision-making rule in the Council. Nevertheless, it is to be noted that the Convention outcome was not a consensus type of an agreement on the whole, and the development of compromises or package-deals was in any case not too obvious.

Within the Convention context the intermediate variables played a limited role in general. Had the sociological expectations turned out correct, the ‘legitimate’ outcomes should have been developed through cooperative search for truth, deliberative practices reflecting intersubjective norms, convergence of interests and genuine consensus. Instead, the Convention did not induce argumentation or deliberation, yet, the outcome was beyond lowest common denominator. It can be argued that the aim especially that of the Praesidium was rather to maximize its own wants at the cost of others. Apparently, social learning did not take place in the Convention, neither were new interest or preferences acquired in substantial institutional issues. Likewise in the IGCs, a small number of changes of positions were reported in the Convention, but their origin was strictly denied as having been derived from successful persuasion.
The aim of this study has been to develop an untested framework for small Member State influence within the EU decision-making structures. The substantial focus was on Treaty-amending negotiations and small state influence was empirically assessed through three specific institutional issues: the composition of the Commission, the extension of qualified majority voting in the Council of Ministers and the reform of the rotating Presidency. In creating the model explaining small state influence, the study incorporated existing theoretical expectations and introduced some new experiments by elaborating those aspects of the decision-making procedures that are of particular relevance for the status of small Member States in relation to their larger counterparts on the one hand, and to the European Union as a whole, on the other.

Initially, the fundamental question was: under what conditions can we expect the level of small state influence to increase in EU Treaty negotiations? The outcomes of the negotiation rounds demonstrated the variance in small state success within the institutional issues and shifted the interest towards the institutional preconditions. The major aim was thus to examine how the (in-)formal institutional conditions in general, and the decision-making rules in particular, affect the small states’ possibilities to have an impact over the negotiation outcomes. Theoretical underpinnings were employed from rational choice institutionalism (RCI) and liberal intergovernmentalism (LI), whereas the competing explanations were applied from sociological institutionalist and constructivist paradigms. Regarding the process, the main interest was on the adopted modes of interaction and communication – those of bargaining vs. argumentative negotiation practices, in theoretical terms – and their impact on small states opportunities to skew the outcomes closest to their initial preferences. It was also an aim to investigate whether the IGC or Convention method on the one hand, or particular issues on the other, are more conducive to arguing rather than bargaining.

This study has empirically examined the processes of three Treaty revisions, those of Amsterdam (1996-97), Nice (2000), the Convention on the Future of the European Union (2002-03) and the IGC 2003-04. The cases were selected according to their respective variation on the main explanatory variable, i.e. the adopted decision-making
rule that was unanimity in the IGCs and (restricted) consensus in the Convention. The negotiation processes were explored in their full length – to the exclusion of preparatory phases only – at both the Member State and institutional levels through a large variety of documents and other data drawn both from the EU and domestic sources. Also, an exhaustive number of interviews as covering different views were conducted among a number of IGC and Convention representatives including also the higher-level political decision-makers such as former Ministers and Heads of States. Apart from the decision-makers’ negotiation behavior in various arenas, the main empirical engagement was in examining the relationship between small states’ original preferences and the exact outcomes in the negotiations. The study analyzed how the issues of composition of the Commission, the extension of qualified majority voting and the rotating Presidency were negotiated in four subsequent realms of Treaty reform, and which eventual outcomes were finally generated from the processes.

The conclusions will now proceed in three subsequent steps. First, the empirical findings are reconsidered and summarized by expounding those factors that mainly dominated small state influence in the EU Treaty negotiations as from the Amsterdam IGC onwards. The main features of the negotiation dynamics as well as the results of the institutional reform will be reviewed once more. In the second section, the theoretical and conceptual discussion will be closed. This is to say that the deductively derived causal mechanisms are reconsidered again together with a re-evaluation of the relevance of the applied theories in the light of the empirical data. Finally, the unanswered questions and remaining puzzle are pointed out, and the topics for future research outlined. In addition, the last section discusses how the empirical findings could benefit the research in political science and International Relations, and what could be their overall contribution to the constitutional politics in the EU or the policy-making practices in international negotiations in general.
8.1. Negotiation Dynamics and Factors Dominating the Small State Influence

Which factors finally turned out to be most prominent in explaining small state influence in the EU Treaty negotiations? To put it briefly, the adopted decision-making rule demonstrated its weight as a leading explanatory factor, but it became evident that the overall conditions as induced by the institutional set-up provided significant potential and crucial latitude for a small Member State to direct the outcome. To this end, the key success factor determining the small state influence consisted of underlying institutional rules that provided with particular conditions for political decision-makers to bargain in order to achieve their stated aims. Finally, the \textit{ex ante} intensity of preferences, which will be here assessed once more, also had an effect on the degree of small state impact.

After all, as regards small state behavior overall, it is necessary to point out that they did not form coalitions among themselves as often and systematically as originally expected. They did not often operate as a coherent group with shared positions, and neither did they submit jointly formulated statements, declarations or memorandums to the exclusion of the Convention proceeding, in which more actions were taken in order to find common ground against the big states’ ever increasing domination. Perceptions of size are, nevertheless, important in the EU and even if the small states did not always build firm, forceful or consistent coalitions during the Treaty negotiation processes, they often shared similar ideas on the power politics between small and large Member States. More often than not the importance of the preservation and protection of small states’ interests in European integration in general and in the Treaty-negotiations in particular were called into question.

The dynamics of the IGC negotiations proceeded predominantly along the principles of cooperative and competitive bargaining, from which the former was more frequently used. The most typical mode of communication resembled that of \textit{argumentative rationality} as labeled by Lewis (2008) and Naurin (2007). It is to say that the preferences were more often than not clearly stated when the negotiations commenced and the decision-makers were given an opportunity to expose their various demands and commands. The positions were usually declared through clear statements, which were based on Member States’ domestic mandates and fundamental interests. Argumentative
types of speech acts and cooperative interaction took place only when the decision-makers considered them as useful devices for maximizing their utilities and self-interests in a given issue, allowing thus latitude for the RCI explanations. The preferences did not change as a consequence of opposing parties’ persuasion, social learning or in the name of common good. Especially in highly salient issues, the Member States kept their preferences obstinately persistent and convergence did not occur. To this end, it can be concluded that the issue salience decreased the likelihood for an involuntary distribution.

The primacy of cooperative or competitive types of bargaining dynamics appeared to vary slightly between the substantial issues in the Convention and IGC processes. This is consistent with the original assumption of Lowi (1972), who argued that policy types have an effect on the dynamics of interactions. In view of the individual subjects, the issues of composition of the Commission and Council Presidency proved to be more conducive to cooperative bargaining, whereas the issue of QMV extension – in which the scope of varying policy fields is generally just as extensive – was more conducive to competitive bargaining. In all three IGCs, however, the negotiations on the extension of QMV proceeded by means of bargaining rather than arguing. The national positions were restated without being changed by other actors’ strategies and they were brought to the table one by one at times leading to heavy and lengthy sessions. Over the issues of the Commission and the Presidency, the Member States attempted more often to justify their positions with principled, plausible and convincing reasoning. This could be seen especially when the fundamental requirement for the equality between the Member States was from time to time called out when arguing on behalf of the continuation of the automatically rotating Presidencies or when justifying the rights of each Member State to nominate its own Commissioner also in the future.

Whenever the institutional questions were dealt within the IGCs under the unanimity decision rule, it was typical to bring several issues to the table at the same time as well as to provide all the necessary information on different Member State positions to each negotiator. The discussions proceeded by means of issue-linking and -trading, allowing the formulation of compromise-typed package-deals where basically everyone gained something in the end and ultimately considered it better than no outcome at all. During these processes it was a common strategy to pressure others via credible threats.
and demands in order to maximize the potential to get the most out of the institutional outcomes. These types of distributive and strategic acts translate into competitive mode of bargaining. Whenever the agreement was in danger to prove dissatisfying, the negotiations ended up in a deadlock generating hence leftovers to be decided in the following IGCs, as the outcomes of Amsterdam and Nice satisfactorily prove out. These empirical findings confirm literally the whole range of intergovernmental hypotheses as stated to the study. First of all, the unanimity decision-making rule as combined with an IGC context gave the decision-makers a right to veto and skewed the outcomes closest to the preferences of the states making the threat. To move a step further, the amount of relevant information on Member States’ interests and preferences guaranteed an appropriate development of package-deals by means of concession-giving and side-payments through a process of bargaining. Yet, the confirmation of the hypotheses will be discussed in more detail in the following section in which the theoretical and conceptual discourses will be closed.

In the Convention proceeding, the documentation produced was vast and it was at times difficult for the participants to find the relevant information on Member States’ positions from a huge flow of data. Since the number of actors and especially the variety between them was extensive, the stated positions were generally imprecise and a great room for manoeuvre was enabled in the negotiation arenas. Due to the elevated number of participants, there was no scope for considering specific sensitivities or interests of individual Member States. On the other hand, the positions were not even properly spelled out, as the national governments could not work as unitary actors in the Convention. Asymmetric interdependence was candidly invisible, if not absent, and it played hardly a role in the Convention, since the governments could not indicate their domestic red lines or credibly threat with the veto-options in the absence of voting and clear decision-making rules. Even if one attempt was made by Finland to threat with a veto due to seemingly disadvantageous provisions concerning the questions of Commission and Council Presidencies, its expression of intention was not taken at all seriously by other members of the Convention and lead thus to no major acts, improvements or deadlock. Furthermore, the flexibility of the decision procedures and the rule of consensus allowed a striking exclusion of a whole set of institutional issues that did not emerge in the agenda until the very end. The greatest power to steer the discussion, direct the course of events and finally
draft the text was possessed by the Praesidium and in particular its President. As a result, the Convention was finally able to move beyond the lowest common denominator when formulating the final draft Treaty yet resulted in an overall dissatisfaction as regards the outcome of the negotiation.

As from the single issues, IGC negotiations and outcomes on the composition of the Commission reflected the small states’ original preferences to a great extent. The small Member States satisfactorily managed to maintain the status quo in all three IGCs and to skew the outcome close to their initial requests. It was agreed in Amsterdam, Nice and 2003-04 IGCs that, for the time being, all Member States would be able to keep their Commissioners and the mechanisms of potential rotation would be formulated later on (Amsterdam and Nice) or the launching of a new system would be crucially postponed (IGC 2003-04). These IGC outcomes on the composition of the Commission indicated a distinctive victory for small states, most of which considered a national Commissioner to guarantee the fundamental equality between the Member States. Regarding the issue of Council Presidency, finally no amendments were made to the existing practice in Amsterdam and Nice Treaties. In fact, the Presidency issue was not at all tackled at Nice IGC where it was felt to be too controversial for an agreement to be reached. Given that nearly all of the small Member States supported the continuation of automatically rotating Presidencies in Amsterdam and Nice, it was obvious that the governments would have rejected the agreements that were about to leave them worse off than unilateral policies. As a result, the gains were left on the table and the agreement postponed because satisfactory and mutually acceptable solutions could not be found. These outcomes verify the RCI and LI expectations according to which it is extremely difficult to move away from status quo under unanimity rule whenever there is an actor that prefers it to change. It can be seen here that the political stability increases together with the number of veto players as argued by Tsebelis. In the issue of Council Presidency, however, the limits of unanimity rule to explain the outcome can be recognized in the IGC 2003-04 where no decisive modifications could be made to the Convention proposal for a Permanent President to the exclusion of extending the period of three Member States’ team Presidencies from a year to 18 months.
The QMV and its areas of extension turned out to be least dependent on the adopted decision-making rule, since the outcomes produced by the IGCs on the one hand and Convention proceedings on the other differed least in this matter. Both decision-making configurations introduced limited extension of QMV retaining thus unanimity in the most important areas of particular Member States. Nevertheless, it must be pointed out that the issue of QMV also proved to be exceptionally complex making it difficult for an examiner to deal with in both empirical and theoretical terms. Apart from the fact that the number of policy areas in the Council decision-making is generally huge and the issues themselves for a potential QMV extension represented both low politics (e.g. culture, research, gender equality, transport, discrimination, space policies) and high politics (defence, taxation, social policy, Justice and Home Affairs), there was an extensive variation between the Member States’ preferences, interests, concerns and their degrees of intensity in each issue, as well as in each negotiation round. Furthermore, in this issue the major cleavages did not emerge on the basis of the Member States’ size but rather on the basis of these domestic concerns and sensitivities. Even if the original methodological aim was to indicate on which issues a move to the QMV would in each negotiation round be accepted by Member States and on which issues it would not, it turned demanding out since basically every article had at least one opponent together with a number of advocates all indicating different degrees of saliencies and rationales behind requests for maintaining the unanimity rule. Moreover, there were several minor issues on which Member States did not always declare their positions or systematically take stances in each negotiation round.

Due to this it was – if not impossible – at least challenging to make valid measures on different degrees of intensities of particular countries in order to make reliable comparisons with those of the others and, not to talk about making crucial comparisons between the initial preferences and final outcomes in order to assess the eventual success of particular actors. This is to say that within the issue of QMV extension it made little sense to make stringent numerical calculations as on how many issue areas the outcomes reflected the original preferences of particular (small) Member States. To review the negotiation outcomes in order to draw reliable conclusions on the importance of the decision-making rules respectively, it is more crucial in here to add the qualitative factor...
of issue saliency to keep the focus on the significance of overall national sensitivities and the number of absolute red-lines that particular Member States stated rather than relying strictly on quantitative calculations on the exact number of small state success areas within the QMV. The extension of QMV, however, provides one more example of an issue in which the status quo was successfully maintained basically in all of the most sensitive domestic policy areas in all three IGCs. The most controversial policy fields – those of taxation, social, trade and defence policies – were decided to remain either a subject to unanimity, or applicable to a limited extension of QMV in Amsterdam, Nice and 2003-04 negotiations. A more qualified conclusion can therefore be made that especially on issues where a particular sensitivity was declared and rational reasons given, the IGC outcomes reflected the initial preferences to a great extent.

In the Convention proceeding – once the institutional issues were finally tackled, i.e. much later than originally promised – the small state interests were systematically disregarded on almost every institutional issue. First of all, they lost their right to nominate an own Commissioner and the Commission was rendered a two-tier college consisting of fifteen members plus non-voting associate members selected on the basis of rotation. Over and above that, the agreement known as the Luxembourg Compromise – which allowed each Member State to veto any decision in which they felt their national sensitivities to be at stake – was abolished and the QMV was converted into a general rule in the Council decision-making. Apart from that, the application of the QMV rule was made significantly easier by the Convention through several bridging clauses that it proposed. The failure of the Convention method to accommodate even the most important small state concerns was distinctively demonstrated within the issue of the Council Presidency. Even if the topic was highly sensitive for many of the smaller states, it was decided in the Convention that the automatically rotating Presidencies between the Member States would be abolished once and for all. As an alternative, a proposal on the permanent President of the European Council was put forward no matter if it again preceded a lengthy battle and enduring disagreement between the small and large Member States. What is crucial here is that in the Convention these decisions were made irrespective of a fundamental and strong opposition of small states. The empirical evidence here suggests that the consensus rule

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DOI: 10.2870/2709
granted the President Giscard d’Estaing and his Praesidium exceptional power resources to influence and even manipulate the substantial outcomes.

From this it follows that with a view to the individual institutional issues of the Commission composition, qualified majority voting and Council Presidency reforms, it can be stated that it was easier for small Member States to reach their most preferred configurations under conditions of unanimity than restricted consensus. This is to say that when measured in absolute and comparative terms on a strict case-by-case basis, the institutional outcomes did meet the small states’ initial preferences more often in the IGCs than in the Convention. By introducing the factor of issue saliency, the difference between the two decision-making practices became even more distinctive. In the IGC context the issue saliency increased the likelihood for a small Member State to get its preferences through, while in the Convention it had no impact at all. In the Convention proceeding even in highly salient issues, such as the composition of the Commission or the Council Presidency – which were indicated as vital by a number of small states – they did not manage to direct the outcomes or to achieve their most wanted institutional arrangements.

In addition to what was originally expected as regards the negotiation dynamics, it became evident through process tracing that a number of supplementary factors played considerable roles in the IGC decision-making processes and, even more importantly, also for the reasons other than could be explained strictly along the conjectures of rational choice institutionalism or liberal intergovernmentalism. The significance of the psychological and personal factors, such as the social skills of individual negotiators and overall human relations, for example, were not expected to be as notable in the intergovernmental arenas as they turned out to be. The in-depth interviews, in particular, demonstrated the necessity of reconsidering social factors as an important element affecting the Member States’ successful performance around the negotiation tables or their potential influence over the distributive outcomes.

In this issue-area, however, the interviews function as an exclusive, yet hard primary source of information, since the exact role of psychological factors is almost impossible to scrutinize from any textual or documentary data. Even in the interviews the respondents considered it as notoriously challenging to try to make any systematic or valid indications on the exact moments or causalities with respect to the evolution of
psychological influence, e.g. the impact of manners, negotiation style and behavior, personality or charisma and the subsequent decrease or increase in actor’s credibility to enhance his or her capabilities and likelihood to get the respect message appropriately through. However, what is crucial here is the fact that the informants systematically verified the impact and importance of the social and psychological factors, yet, equally as systematically denied both the existence and impact of the argumentation, deliberation or other language-based tactics potentially used by other actors. The rest of the additional success factors in the IGCs that were mentioned at the interviews – those not suggested by RCI or LI theories – include cautious preparation, smaller scale dialogues and appropriate networking. Surprisingly enough, the personal, psychological or social factors were not felt to have had an impact in the Convention even if its original idea was nothing but involving a plurality of actors from different backgrounds so as to advance as lively debates and as intensive dialogues as possible.

8.2. Theoretical and Conceptual Closing

At the outset, the underlying theoretical framework was adopted from rational choice institutionalism and liberal intergovernmentalism. These approaches were contrasted with sociological institutionalism and other constructivist paradigms that explain institutional change and European integration from opposing theoretical angles. The original idea of RCI is that the institutional arrangements set up a constraining decision-making context, within which the Member States, as rational actors, negotiate with an aim to maximize their utilities. Liberal intergovernmentalism provided us with more detailed theoretical and empirical tools by laying emphasis on the weight of domestic factors and strategic intergovernmental interactions. The negotiation process was understood in terms of asymmetrical interdependence between the parties involved. Conceptually, an advanced notion of restricted consensus was introduced in the study in order to describe the principles and mode of the Convention decision-making in contrast to that of the IGCs.

With respect to the explanans of the study, it was contended that the unanimity rule based on traditional bargaining principles in the EU as negotiated within the IGCs would
prove out to be of greater advantage to the small Member States in achieving their objectives as compared to the consensual decision-making that was a rule in the European Convention. Theoretically, the unanimity rule was expected to strengthen the formal position of a small state in putting it on an equal footing with the larger ones by providing it with a crucial right to veto, and requiring all Member States’ acceptance and accommodation for an agreement to be made. It can be empirically shown that the use of a veto is both a legal instrument and a political weapon in the Treaty-making arenas. Constructivist explanations, in turn, suggest that the political actors may change their preferences as a result of good, convincing and persuasive argumentation from opposing parties. In these models, an ultimate aim of the negotiation process is to reach a commonly accepted concensual agreement through the practices of normative argumentation, value-creating and problem-solving.

In line with RCI and LI reasoning, two conditions under which a small state is most likely to gain influence over the outcomes were proposed: 1) intensity of preferences as a necessary factor, and 2) the unanimity decision-making rule as both necessary and sufficient factor. The role of institutional preconditions was combined with the explanations accounting for the overall dynamics of the negotiations as determined by the decision rule, i.e. the applied strategies, governments’ decision-making behavior or appropriate planning and timing, to mention a few. As has already been confirmed earlier, the original causal argument holds its power and the institutional factors go far in explaining the small state influence in European Treaty-making negotiations, since the small state influence factually varied with the adopted decision-making rules. The distributive outcomes were largely caused by the explanatory factors of decision-making methods and the subsequent actor behavior that they allowed in given negotiations.

Under which conditions, then, did the small Member States have the greatest impact over the outcomes? To confirm the main RCI argument and the first hypothesis, the small Member States gained their most preferred distributive outcomes more systematically under unanimity decision-making rule in the IGCs than under restricted consensus in the Convention. The IGCs resembled cooperative and distributive bargaining processes, where a clear and identifiable amount of utilities were to be allocated. In the IGCs, the domestic mandates were fixed and, to verify the asymmetric interdependence as
expected in the third hypothesis, the outcomes were more often than not constrained by the positions of recalcitrant governments and thus marked by the lowest common denominator. When the institutional issues were dealt with, each standpoint in the negotiation arena had to be accommodated in order to minimize the distributional conflict. As a result, whenever there was a striking disagreement between the participants, the negotiations resulted first in a deadlock. This was expected also in the first hypothesis stating that under the unanimity decision rule the outcomes are constrained by the positions of governments making the treaths to exit, and in case of a fundamental disagreement between the participants, the negotiations will result in a deadlock. In the end, the preferences of individual Member States did not change in the course of the IGC negotiations and a large part of the outcomes finally resembled Pareto-optimal package-deals that were developed through the acts of issue-linking, concession-trading and substantial side-payments, trade-offs, offers and counter-offers.

In view of the original argument on the power of unanimity rule as well as credible threatening and use of veto-options, it is unsurprising that the national ratification constraints – i.e. traditions of referenda – also played a significant role in conferring power configurations and determining the bargaining success of individual Member States. It directed the Member States’ negotiation behavior and improved the institutional gains under conditions of both unanimity and restricted consensus. The negative outcomes of the Danish referendum in Maastricht and Irish referendum in Nice had an impact on the following Treaty-negotiations where further rejections were attempted to avoid at any cost. It was proved that whenever the Treaty would not satisfy the fundamental concerns or constitutional constraints of particular Member States – those being typically Denmark and Ireland within this study – a potentiality for veto was expected to increase along with the subsequent referendum. The protocols on the positions of Denmark and Ireland guaranteeing their opt-outs from particular actions in Justice and Home Affairs under the first pillar in the Amsterdam Treaty, present a relevant example of the power of veto and the existence of asymmetric interdependence confirming thus the set of hypotheses as developed in the third category. Denmark has succeeded to maintain its opt-outs also in Economic and Monetary Union (EMU), European Security and Defence Policy (ESDP) and the citizenship of the EU all the way since the Maastricht Treaty.
Even if the Danish and Irish exemptions in the Treaties are exceptions rather than rules, the logic behind being able to block the negotiation whenever the paramount national interests are at stake is of great value in both theoretical and empirical terms. The national governments can easily decide not to implement the Treaties should they turn out to be unacceptable or in contradiction with domestic demands. During the negotiation process the actors can thus make credible claims to receive concessions in order to avoid the ratification problems in the domestic arenas. Given the fundamental difficulties and recent turns in the ratification process of the European constitutional project in general and the Lisbon Treaty in particular – which has no more been included in this study as a case for analysis – the necessity to consider the national referendum as an ever greater power-element in future EU is evidently increasing. In addition, the lengthy and exhaustive ratification processes in general give certainly new impetus to recurrence to the intergovernmental Treaty revision practices, as it seems that the Member States will remain the ‘Masters of the Treaties’ also, and in particular, in the future.

In sum, the underlying institutional factors explain a good deal of outcomes, yet the empirical evidence indicated that the types of institutional issues at hand and the saliencies associated to them by certain Member States played significant roles in determining the outcomes. This is to say that the formal decision-making conditions provided with particular opportunities for the states holding particular preferences, just as originally expected, but in order to maximize the likelihood for having an impact on outcomes, the preferences needed to be intense and the decision-makers did have to use their opportunities wisely and skillfully, as particular mode of communication or types of behavior well advanced gaining their goals. A bargaining process was likely to be successful for an actor whenever its positions were well-reasoned, thoroughly explained and the truth of these underlying claims signaled through credible commitments to its preferences.

Regarding constructivist theories, they clearly failed in expecting that the institutional conditions typical to the Convention would lead to argumentation and deliberation. Strictly speaking, it is now crucial here to acknowledge that since the Convention did not, after all, represent a typical example of deliberative decision-making arena in the EU, we do not therefore have empirical evidence for drawing an indisputable
conclusion on whether the argumentative practices, as defined by constructivists, had an
effect on small states’ possibilities to influence the outcomes, nor on whether they could
eventually translate to enhance democratic legitimacy in the EU Treaty-making processes.
In view of the fact that the Convention remained truly heterogeneous all the way until the
end of its work, language or argumentative tactics did not manage to constitute the
identities or interest of the Convention actors or to create specific community ethos, as
presumed by constructivists. To this end, the constructivist conjectures on the effects of
discursive decision-making practices on small Member States’ influence could strictly
speaking not be verified in the study.

After all, irrespective of which process-factors eventually featured in the
Convention proceedings, it can only be contended that the decision-making rule of
restricted consensus as applied in the Convention did not at least enhance the small
Member States’ possibilities to skew the outcome closest to their original preferences. In
fact, under the conditions of consensus in the Convention, all governmental actors got
weakened irrespective of the size of their respect Member States. It has now become
evident that consensus-building clearly remained a difficult exercise.

In spite of any indications or expectations to the contrary, it may be reasonable to
end up by asserting that rational choice and sociological institutionalism do not, however,
completely contradict in terms. The reasoning of the two has distinctively converged and
this study has proved the logic of them both to be correct to a certain extent. Considering
once again the information advanced by the interviewees, it seems that the participants
have shown at least a certain degree of willingness to listen each other’s arguments within
the EU Treaty negotiations regardless their fixed positions, fundamental interests or
eventual intentions to ‘learn’ something from others. Moreover, it has been confirmed that
the personal, psychological and social factors do have an influence on IGC actors even if it
is notoriously demanding to indicate the exact points of impact. These psychological
factors, nevertheless, de facto restrict human rationality and on that account the rationality
of the decision-making itself, but the phenomenon has by no means been explained or
even acknowledged by rational choice theories.

Rational choice and constructivist angles have both provided relevant logics of
social action and propositions for the overall European integration. It would next be an
aim to figure out exactly in what ways they compete with and in what ways they complement each other when developing models of EU decision-making and negotiation studies. The empirical findings lead to the contention that the actor influence within the EU Treaty negotiations ultimately needs to be conceived of a combination of several features even if the institutional setting turned out to be the most dominating explanatory factor. The key factors explaining the success in the negotiations consist of particular decision-making rules together with the actor behavior and the strategies that it applies, including the adopted mode of communication, as well as the Member States’ original type and intensity of preferences.

8.3. Routes for Further Research

This study investigated which factors determined small Member States’ success and failure in the EU Treaty negotiations during a specific timeframe. A theoretical eye was kept on underlying decision-making rules and practices, while the empirical interest was on tracing and working with the issues of the institutional reform. Even if this study has captured only a narrow piece of the phenomena, the range of the decision-making practices in the EU and their implications on the Member State level expose a great variety of potential areas of further research. Any of the topics dealt within this study would certainly benefit from deeper understanding. On top of that, the results on the role of the institutional conditions could be applied in wider contexts of international negotiations, especially whenever the small states are involved as an inherently less influential group in the political processes as compared to those of the large states. The analysis and outcomes of this study certainly bear significant implications by having demonstrated that it is of crucial importance for scholars of international bargaining and negotiations to take into account different veto factors of small states, whether deriving from particular decision rules or their domestic referendum constraints. With a view to the methodological concerns, a larger number of small states – or other actors relevant to the given study – could also be included in cross-country comparison in order to make hypothetical deduction easier, to minimize bias, and to draw even more precise conclusions.
It is now known that the decision-making rules have an impact on Member States’ power relations and subsequent influence in the EU Treaty negotiations. It has also been indicated that a number of process-factors, such as personalities and overall likes and dislikes between the decision-makers themselves, play a notable role in the negotiations. With regard to the further research, the circumstances under which particular small Member States gain their most preferred outcome in other stages or types of intergovernmental EU negotiations (e.g. pre-negotiation phases in the Council of Ministers) would also be a relevant topic. Although methodologically demanding, investigating the respect efficiency of the psychological and social variables at these levels would certainly enhance our understanding of the overall processes and outcomes. It would broaden the knowledge of which variables beyond the institutional ones eventually affect the small states’ abilities to influence the distributive and non-distributive outcomes in a range of EU negotiations. Moreover, instead of concentrating exclusively on the decision-making rules and institutional factors in examining the EU decision-making processes, it would be useful to shift the focus to explore and theorize further the impact and interrelations of the various domestic factors (e.g. national referenda, constitutional constraints and EU policy orientations) on negotiation outcomes in EU high politics.

Alternatively, individual issues could also be looked at by capturing a single Treaty-making process in its full length. An IGC is an extensive and cumbersome practice that involves actors from several institutional levels. Either the three issues of the institutional reform as examined within this project (the composition of the Commission, extension of QMV and rotating Presidency), or a selection of traditional Community policies, e.g. social, foreign and trade policies or environment, education and taxation, could be studied in detail from the very beginning to the end of an IGC in order to reach an even better insight as how the issues are tackled and resolved especially in the early configurations and working group stages of the EU Treaty-making processes. So far the study has been devoted mainly to final bargains and engaged the agenda-setting and pre-negotiation levels to a smaller extent. Attention has been paid to pre-negotiation phases only to the extent that particular interviewees dealt with them, as a number of informants attended the decision-making stages other than the European Council itself.
To take a further step towards more policy-relevant research, it would be both essential and fruitful to study the interplay between the European constitutional and domestic actors and structures on the major issues of the institutional reform. It would mean examining in more detail the implications of the substantial institutional changes, policy developments and adjustments – e.g. the proposals for a permanent President of the European Council and a High Representative on Foreign Affairs – on the domestic political processes and administrative structures of particular Member States. The institutional amendments made to the EU automatically affect the institutional arrangements and policy fabric of the Member States in demanding an adaptation of their various political practices, but the exact impact of these provisions at national levels is still largely unclear. This would involve investigating the interplay between the EU and national officials and civil servants. Obviously, these questions can be anticipated, and would gain us more leverage within EU research. It would thereby also be possible to employ a slightly more normative and policy-oriented aspect. The legitimacy of the European institutions as well as the status of often-cited ‘democratic deficit’ could then be reasonably assessed.
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ANNEX 1: Questionnaire

I NATIONAL POSITIONS AND PREFERENCES

1. Positions and preferences

Would you describe your initial position in the issues of:

- The Composition of the Commission (x)
- The Extension of QMV (y)
- The Rotating Presidency (z)

2. Domestic constraints and binding mandates

Given the issues of (x), (y), and (z), did you need to negotiate within the bounds of some domestic claims or requests?

3. Issue saliencies

Why did you want (a/b/c…) in the issues of (x), (y), and (z)?

Would you be able to mention some particular reasons for why it was/was not of particular importance for your country?

II THE DECISION-MAKING PROCESS

1. Distribution of information

Is it felt that a relevant amount of information was distributed regarding other negotiators’ interests, preferences and positions at the beginning of the negotiations?

2. Developments of the negotiations and agenda-shaping

Were there any unexpected developments in the negotiations?
How did you adapt to these turns, i.e. did they require new movements?

Were some completely new issues launched during the negotiations?
Were some domestically important issues not tackled at all?

3. The intensity of national preferences and de facto changes

Given the issues of (x), (y) and (z):

Did your position stay constant throughout the negotiations?
Did opposing arguments have any effect on you?

4. Negotiation behavior

How did you plan your negotiation behavior within the institutional issues?

Given the issues (x), (y) and (z), how would you describe your contributions?

Is it felt that the manner in which the decision-makers choose to behave in the actual negotiation arenas could have an effect on outcomes?

What are, in your opinion, the key success factors when it comes to gaining influence over the outcomes?

5. The mode of communication

How would you describe the speech acts, language and interventions most commonly used in the negotiations?

Did you regularly need to give particular reasons or justifications for the position you had adopted in the institutional issues, or was it enough just to state it?

6. The emergence of package-deals and issue-linkages

Does it frequently happen that:

- several issues are decided at the same time?
- some particular issues are linked together in the negotiations?

Could you come up with any examples on this?
7. Coalitions and choices of cooperation partners

Would you be able to mention particular Member States with whom you prefer to cooperate in the negotiations in order to develop common positions?

Is it felt that the coalitions or presentation of common positions could have an effect on the decision-making process or outcomes?

III THE DECISION-MAKING RULES

1. The adopted decision-making rules

How would you describe the decision-making rules as used in the Treaty negotiations?

In general terms, what is your opinion on the rule as used in the IGCs and/or in the Convention?

2. Preferences with respect to the decision-making rules

Are you happy with the adopted decision-making rules?

Would you rather have preferred other types of rules or procedures for a Treaty reform?

IV FINAL QUESTION

1. The outcome

Was your respective country happy with the outcome reached in the institutional issues?