



## Communitarisation

### From Intergovernmental to Community Policy-Making in Core State Powers

Lewis Gordon Miller

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

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**Department of Political and Social Sciences**

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## ABSTRACT

In 1970, the Foreign Ministers of the European Economic Community's Member States began meeting in a new informal structure called European Political Co-operation (EPC). EPC followed a mode of policy-making known as the 'intergovernmental method', a mode with substantial differences to the more orthodox supranational mode of policy-making used in the European Economic Community (EEC). After EPC, intergovernmental policy-making was established in new areas of collaboration including fiscal policy, defence policy, and internal security.

What differentiated the intergovernmental method was its emphasis on the co-ordination of national policies over the emphasis on compromise, package deals, and collective policy-making epitomised by supranational governance. This was achieved using national vetoes, allowing Member States to veto costly new policies, avoid compliance where common policies became too costly, and limit supranational agencies in their ability to cultivate further integration. Intergovernmental policy-making thus allowed Member States to protect their national interests in sensitive areas of policy closely related to state sovereignty.

After nearly fifty years of intergovernmental policy-making in Europe, these distinctive characteristics of the intergovernmental method have changed; decision-making procedures emphasising collective decision-making have become more common, there has been an increase in the formalisation and legalisation of structures and decisions, and an increase in the use of supranational agencies. This thesis labels this process of institutional change as 'communitarisation' and asks; how and why do the EU Member States move intergovernmental policy-making processes, emphasising the co-ordination of national policies, towards more communitarised (though not strictly supranational) structures emphasising co-operation through common policies?

In answering this, the thesis has three main aims. Firstly, it argues that the intergovernmental method should be understood as existing not as an alternate mode of policy-making but as part of a wider process of integration called communitarisation. Secondly, it claims that communitarisation is a general phenomenon found across differing sensitive areas of policies and offers a generalised conceptualisation of this phenomenon. Thirdly, it contends that communitarisation is primarily driven by Member State interests through a process of bargaining, reflecting the bargaining power of Member States and their attempts to balance the costs of interdependence with the potential adjustment costs associated with integration.

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## **LIST OF ABBREVIATIONS**

- AFSJ: Area of Freedom Security and Justice
- BEPGs: Broad Economic Policy Guidelines
- CFSP: Common Foreign and Security Policy
- COREPER: Committee of Permanent Representatives
- CSDP: Common Security and Defence Policy
- EC: European Communities
- ECOFIN: Economics and Financial Affairs Council
- ECB: European Central Bank
- ECJ: European Court of Justice
- EDA: European Defence Agency
- EDC: European Defence Community
- EDP: Excessive Deficit Procedure
- EEAS: European External Action Service
- EEC: European Economic Community
- EMU: Economic and Monetary Union
- EPC: European Political Co-operation
- EU: European Union
- HR: High Representative for Foreign Affairs
- JHA: Justice and Home Affairs
- PESCO: Permanent Structured Co-operation
- PJCCM: Police and Justice Co-operation in Criminal Matters
- PSC: Political and Security Committee



QMV: Qualified Majority Voting

rQMV: Reverse Qualified Majority Voting

SEA: Single European Act

SGP: Stability and Growth Pact

TEU: Treaty on European Union

TFEU: Treaty on the Functioning of the European Union

Trevi: *Terrorisme, Radicalisme, et Violence Internationale*

WEU: Western European Union



## CHAPTER ONE

### Introduction

#### 1.1 Introduction

On July 23<sup>rd</sup> 1975, the Foreign Ministers of the European Communities (EC) boarded an infamously unnecessary flight. That morning, the Ministers had met in Copenhagen as part of the intergovernmental body called European Political Co-operation (EPC), through which they co-ordinated their national foreign policies. In the afternoon, those very same Ministers flew all the way to Brussels to meet in their capacities as Foreign Ministers of the EC. Despite meeting in the same roles with the same people, it was so important to the Ministers that these two bodies be kept separate that they deliberately chose to hold meet in two separate locations five hundred miles apart on the same day.

This classic story represents the extent to which the EU's Ministers have sought to keep key areas of state sovereignty separate from the EU's structures. Unlike areas of market integration, the realm of foreign policy was highly sensitive and to be closely guarded. As Smith observed, some Member State governments traditionally sought to 'keep EPC (and the CFSP) a strictly intergovernmental mechanism (at least in legal terms) to avoid "contaminating" it with existing supranational organisations and procedures in the EC' (2004a, 7). Keeping the meetings physically separate was one means of preventing such contamination.

The distinction between EPC and the EC is further visible in the policy process outlined in EPC's founding document; the Luxembourg Report (1970). This intergovernmental method of policy-making differed from the supranational method of the EC in three main respects. Firstly, while the supranational European Commission could initiate legislation and perform other tasks in the EC, EPC gave no formal role to the European Commission in any of these tasks. Secondly, while the EC's processes were clearly laid out in the Treaty of Rome and underpinned by the European Court of Justice (ECJ), the processes of EPC were largely informal, outside of the EC's Treaties, and its decisions lacking coercive procedures for enforcement. Lastly, rather than take decisions through the systems of majority voting characterising supranational decision-making, the Member States opted to reach decisions unanimously. Each of these features ensured that individual Member States remained in control of the policy process, being able to veto or avoid compliance with policies that they deemed threatening to their interests.

EPC represents an archetypical case of a mode of policy-making called the ‘intergovernmental method’, found in areas of core state powers, including foreign policy, internal security, defence policy, and fiscal policy. What underpins this mode of policy-making is that it is designed to promote the *co-ordination of national* policies, rather than facilitate the *co-operation of common policies* through collective decision-making, package deals, and the ‘upgrading of common interests’ associated with supranational governance (Haas, 1964). This mode of policy-making is most commonly associated with areas of ‘core state powers’ concerning the state’s positive powers over taxation and the use of force, powers which go to the heart of what it means to be a state (Genschel and Jachtenfuchs, 2014). The intergovernmental method therefore reflects a certain desire of the Member States to more effectively protect their interests in specific policy areas.

There is a puzzling element to the intergovernmental method’s story which marks the departure point for this thesis. Since the establishment of European intergovernmental bodies in the 1970s, intergovernmental policy-making processes have undergone an integrative process of ‘mission creep’. EPC, for example, has since been formalised into the EU’s treaties as the Common Foreign and Security Policy (CFSP), featuring a supranational High Representative and External Action Service (EEAS), with the Member States in the 1993 Maastricht Treaty seeking to move beyond the co-ordination of national policies through ‘common positions’ towards ‘joint actions’. The principles which the Foreign Ministers of the 1970s appeared so willing to defend have since changed. Furthermore, this process of institutional change has featured in the histories of other cases of intergovernmental policy-making. Co-ordination through the intergovernmental Trevi forum on internal security has since developed into the modern ‘Area of Freedom Security and Justice’, featuring the ECJ and Qualified Majority Voting (QMV). The Eurogroup of Finance Ministers established in 1997 has since become increasingly formal, with Member States becoming less able to overturn the imposition of sanctions when in breach of common rules. Even in the sensitive areas of defence, policy-making now includes the supranational European Defence Agency (EDA) and the new Permanent Structured Co-operation (PESCO) structures feature means of avoiding non-compliance. In sum, despite the intergovernmental method being designed to limit the scope for Member States losing control over an area of policy, the Member States have incorporated structures which go beyond their original red lines. This thesis asks what explains this process of mission creep? Why do the Member States of the EU so frequently choose to begin co-

operation intergovernmentally before incorporating increasingly communitarised, but not necessarily supranational, structures?

This thesis will explore this changing face of intergovernmental policy-making processes over time, providing a conceptual framework for its analysis and three hypotheses explaining its integrative tendency. Specifically, the thesis has three central aims. Firstly, the thesis argues that the intergovernmental method is too commonly analysed as simply being a distinct *system* of policy-making. Understanding intergovernmental policy-making as existing within a wider *process* of integration, often referred to as ‘communitarisation’ by EU officials, offers a conceptually and empirically more accurate image when analysing how intergovernmental policy-making on the EU works (on this distinction, see Lindberg, 1963, 5; Haas, 2004, 11). Secondly, the thesis argues that communitarisation should be understood as a *general process* of institutional change visible across areas of ‘core state powers’ (Genschel and Jachtenfuchs, 2014), something not adequately captured by current case-specific accounts of this phenomenon. Lastly, the thesis provides a generalised model for communitarisation, whereby Member States become increasingly disposed to institutional change in the light of inefficiencies in the policy process, increases in their exposure to interdependence, and the reduction of their abilities to manage shared problems through other means.

## **1.2 The Puzzle of Communitarisation**

The example of EPC shows how intergovernmental policy-making structures act to serve as a means of protecting Member State interests. Given the importance of these limitations, the question is why the Member States would involve structures which would contradict these initial goals. Namely, the study considers the extent to which institutional structures which facilitate the *co-ordination* of individual Member State policies are eroded in place of structures which facilitate the *co-operation* of common policies through the creation of structures emphasising compromise and shared interests. This change embodies what Haas (1964) called the ‘upgrading of common interests’ over lowest-common denominator decision-making, something underpinning supranational but not intergovernmental policy-process. Co-ordination entails the attempt to align nationally generated policies through processes of inter-departmental and ministerial consultation using an institutionalised process. Co-operation, meanwhile, implies the shared enterprise of creating common policies which regulate national behaviour through processes of bargaining, compromise, and package deals (see; Haas, 1964; Puchala, 1971, 277). Three key features facilitate these two approaches to policy-making; the

use of an informal institutional structure with few enforcement mechanisms, the limitation of delegation to supranational agencies in the policy-making process, and the use of unanimity in taking decisions.

In the Luxembourg Report, which detailed the structures of EPC, only the main instruments facilitating co-ordination were detailed; the general aims, the frequency of meetings, the bodies through which departments and ministers would meet, and the rotating presidency system. The report itself was situated outside of the treaties of the EC, with neither the structures of the report nor the decisions taken through it being enforceable through the ECJ. Importantly, these structures represented several general features underpinning the intergovernmental method as a mode of governance (see; Trieb et al., 2007). Firstly, the intergovernmental is generally structured upon *informal* institutional practices, meaning that they are not codified, and lack *legalisation*, as there are no means of enforcing common decisions through formally agreed processes of coercion beyond peer pressure. This has the effect of lowering the costs of non-compliance in situations where common decisions or practices are judged to be harmful to a Member State's interests. By comparison, in areas of supranational policy-making structures are commonly underpinned by codified practices and decisions detailed in the EU's treaties and *acquis communautaire* which are enforced by the ECJ.

Regarding delegation, the intergovernmental method is characterised by the exclusion or severe limitation of supranational agencies in the policy-making process. Such agencies lack the formal right to influence the policy process outlined in the body's structures, they are informally constrained due to a lack of trust from within national departments, and are limited in terms of the fiscal and human resources available with which they can influence the policy process. In the early systems of EPC, for example, two bodies were absent from its structures; the Council Secretariat and the European Commission. Firstly, when establishing a new intergovernmental body, Member States tend to avoid the creation of a secretariat which would have the purpose of managing the meetings and summits taking place within that body, frequently citing a desire to avoid 'formalisation' or the addition of 'bureaucracy' to the body (for example, see; Regelsberger, 1997, 71; Oberloskamp, 2017, 187; Hodson, 2010). Instead, summits and meetings are administered through a rotating presidency system held by each Member State. Secondly, Member States similarly exclude the European Commission from intergovernmental structures, as was the case in defence, foreign policy, and police co-operation. In fiscal policy co-ordination, the Eurogroup's founding decision only invited the Commission 'when appropriate' (European Council, 12/1997). The right to initiate legislation

or agreements in the intergovernmental method sits with the individual Member State ministries, rather than with the European Commission as occurs in systems of supranational co-operation.

The third most common feature of intergovernmental policy-making is unanimity. The requirement for unanimity requires no Member State to oppose a policy for it to be accepted, resulting in each state holding a veto over decisions. This veto allows Member States to prevent the adoption of new practices and policies which they see as detrimental to their national interests, something important in areas of policy which carry high potential costs of capacity building and national adjustment (Genschel and Jachtenfuchs, 2014). Decisions in the wider EU, meanwhile, generally take decisions through Qualified Majority Voting, which currently requires the consent of 55% of Member States representing 65% of the EU's population. Furthermore, such decisions are taken according to the informal convention of requiring consensus, although the threat of being outvoted makes reaching a consensus easier to achieve (Lewis, 2003).

Each of these elements of the intergovernmental method serve to preserve the ability of Member States to avoid compliance in costly situations, limit the ability of supranational agencies to foster policies which may run against their interests, and veto policies which run against their interests. As such, the resulting decisions which are likely to emerge from this system reflect the lowest common denominator, with structures allowing Member States to consult one another during crises and co-ordinate their responses rather than generate new common regulatory standards through bargaining and package deals.

In studying this mode of governance, scholars have provided several differing theories for its emergence. The first of these relates to functional efficiency. Dahrendorf (1972) in one of the earliest pieces engaging with this phenomenon argued that intergovernmental policy-making rose in response to the bureaucratic and byzantine decision-making processes associated with the EC. Due to the formal constraints placed upon policy-making, Dahrendorf claimed that the treaties had become 'exhausted' resulting in a period of stagnation and a desire to seek new more engaging means of discussing salient issues. Puetter (2012) has similarly noted the advantages of intergovernmental policy-making in spawning frank discussions, noting that it fosters an informal atmosphere through which Ministers can more effectively debate and deliberate upon fundamental ideas. A second approach has related the emergence of this policy-making process in relation to the type of policy or resource being mobilised in these policy

areas, with Wallace and Wallace (2006) highlighting its tendency to appear in sensitive areas of state sovereignty. More recently, Genschel and Jachtenfuchs (2014; 2018) have provided a more detailed connection, noting the difference in actor constellation found in these areas and types of resources being mobilised due to such policies relating to the positive powers of the state. Lastly, the adoption of intergovernmental procedures has been linked with the increasing politicisation of integration itself, with ‘new’ forms of intergovernmental policy-making coming into existence in response to these pressures (Bickerton et al., 2014).

Underpinning many of these analyses is the conceptualisation of intergovernmental policy-making as a deviant mode of policy-making which requires explaining. Such accounts, however, do not capture the vast degree of institutional change found in each of the cases presented in this thesis. This project began with the observation that both the Eurogroup and EPC were established with an intention to limit co-operation which had not prevented substantial institutional changes in each field. The most fitting case considered in this thesis, Justice and Home Affairs (JHA), shows that even in the sensitive area of police co-operation, decisions are now made through QMV, with the Commission sharing the right of initiative, with four Member States being required to submit a proposal, and with decisions in Police and Justice Co-operation in Criminal Matters (PJCCM) being under the jurisdiction of the ECJ after 2014. Even in the least fitting case of the CSDP, the recent innovation of Permanent Structured Co-operation (PESCO) includes both measures to increase the credibility of commitments through the possibility of suspension and increase consistency through the right of initiative being shared with the High Representative. While some scholars were initially surprised that limited means of policy-making could occur in such sensitive areas at all, what is more puzzling is that co-operation appears to show a general towards more integrated structures over time.

This observation of the intergovernmental method’s tendency to change over time lays the basis of the thesis’ research question; *how and why do the EU Member States move intergovernmental policy-making processes, emphasising the co-ordination of national policies, towards more communitarised (though not strictly supranational) structures emphasising co-operation through common policies?* Who is driving this process of institutional change? What does this mean for our understanding of intergovernmental policy-making in the EU? Do the Member States have no control over the integration process in these realms after all? Considering that co-operation in sensitive policy areas has potential costs high enough to require these limiting institutional structures, why alter these at all?



This research question and puzzle underpins the three aims of the thesis now detailed; to reconceptualise the intergovernmental method as being part of a wider process of integration, to conceptualise this process of institutional change comparatively, and to build a model which accounts for the timing and scope of specific institutional changes over time.

### **1.3 Intergovernmental Policy-Making and the Process of Communitarisation**

During the 1950s, scholars sought to understand the emerging system of co-operation between European states. The older generation of functionalist scholars sought to explain the factors which had given rise to this new form of institutionalised international co-operation, seeking to demonstrate the conditions in which bodies arise and to describe their institutional structures (see; Mitrany, 1998; Deutsch, 1998). By the 1960s, the focus of such studies changed as scholars contended with theorising an ongoing *process* of integration, rather than analysing the specific institutional outcomes which were present at that time (Lindberg, 1963, 5; Haas, 2005, 11). As such, the focus of scholars' endeavours was to identify the driving forces and actors underpinning this process of integration and through which mechanisms they occurred. This change of focus is observable in Lindberg's (1963, 6) definition of political integration as 'a *process*, but without reference to an end point'. In a nutshell, this thesis conceives the intergovernmental method as existing within a broad and distinctive process of integration specific to areas relating to the state's positive powers of force and taxation (see; Genschel and Jachtenfuchs, 2014). As such, it attempts to move beyond questions of how the intergovernmental method works over time and why, but rather asks what processes and conditions cause it to move from a system of co-ordination to one of co-operation.

While there have long been discussions surrounding a generalised process of integration found in areas of market integration (see; Moravcsik, 1998; Sandholtz and Stone Sweet, 1998; Haas, 2004), contemporary debates on intergovernmental policy-making have only recently have seen a shift towards a general discussion of the factors driving and limiting integration in these fields (Genschel and Jachtenfuchs, 2014). Current debates frequently centre on the contribution of Bickerton, Hodson, and Puetter (2014), who conceptualise a 'New Intergovernmentalism', consisting of several new practices which have emerged since the signing of the Maastricht Treaty in 1993. At the heart of their project is the aim of delineating new trends in European policy-making and explaining why such trends have emerged over time. While some scholars have taken issue with their conception of modern EU policy-making (see; Schimmelfennig, 2015), this thesis argues that intergovernmental policy-making, new and old, can be better

understood in general terms if the focus of analysis is on the conditions which facilitate and constrain the policy-method's communitarisation. The subject of study should be on the change from systems of co-ordination to co-operation, rather than the adoption of new specific practices in the policy-process.

Similar contributions have historically been made surrounding the 'old' intergovernmentalism. Hoffman (1982), for example, stated that integration was likely to be limited in areas of policy which were salient with respect to the ability of the state to preserve itself in the international arena, granting one hypothesis for this method's rise. Dahrendorf (1972), for example, suggested that efficiency concerns were at the heart of the rise of the intergovernmental method through the Davignon Report of 1970. The result of conceiving such practices as being a condition is that scholars receive little analytical leverage in explaining why structures depart and move beyond their outlined model of intergovernmental policy-making.

The first contribution of this thesis to the existing literature is to expand upon current discussions of the EU's intergovernmental method, demonstrating it to be part of a wider process of institutional change. In labelling this phenomenon, the thesis utilises a term already in use for this phenomenon within the EU which is not in use for other processes; communitarisation. Communitarisation is defined as *a process of institutional change found in areas of core state powers whereby institutions which facilitate the co-ordination of national policies are eroded and replaced by institutions facilitating collective decision-making and the upgrading of common interests*. Thus, communitarisation can be considered a specific process of integration endemic to policy areas utilising the intergovernmental method, namely those which relate to the state's positive power to raise taxes and use coercive force (Genschel and Jachtenfuchs, 2014). To highlight this, the first section of each chapter outlines the historic development of each different case study.

#### **1.4 Communitarisation as a General Phenomenon**

Although the intergovernmental method as a general concept is often studied as an alternate mode of doing business rather than a constituent part of a wider process, scholars have indeed traced its development in relation to specific case studies. In the realm of CFSP, Smith (2004a) and Nuttall (1992; 2000) have traced the development of the CFSP from EPC's intergovernmental beginnings. Similarly, Puetter (2006) and Hodson (2010) have presented longer term narratives of institution building and 'formalisation' within the structures of the Eurogroup. In JHA, Occhipinti (2003) and Oberloskamp (2017) have presented similar

narratives, with the latter focusing primarily on the very early years. Lastly, in defence Duke (2000) has presented a long-term evolutionary story of the development of European defence policy, being joined in analysis of its intergovernmental beginnings by Rees (1998) and Aybet (1997).

One result of this case-specific literature is that each area of policy has developed their own 'different analytical lenses and empirical reference points' when analysing development of intergovernmental policy-making (Wallace and Wallace, 2006, 354). This variance can be demonstrated by the varying terms utilised for the dependent variable within each literature; 'supranationalisation' featuring in the CSDP literature (Ojanen, 2006), 'communitarisation' in the Justice and Home Affairs literature (Trauner and Ripoll Servent, 2018), 'formalisation' in the literature regarding the Eurogroup (Puetter, 2004; Hodson, 2010), and 'institutionalisation' in the CFSP literature (Smith, 2004a). Indeed, these terms themselves highlight the different emphases required by the processes and approaches present within these case-specific literatures. The result this case-specific theorising is a reduced ability to explain the broad trend away from strict co-ordination in intergovernmental policy-making over time.

Contemporary debates, however, have attempted to bring the study of these areas into a more comparative scope. The 'New Intergovernmentalism' of Bickerton, Hodson, and Puetter (2014) attempts to discuss the emerging mode of governance in these fields in a comparative and more abstract manner than individual literatures. The notion of 'core state powers' put forward by Genschel and Jachtenfuchs (2015) presents a general conception of the actors, interests, and resources which feature in processes of integration related to areas of policy relating to the state's positive powers of taxation and the use of force. In doing so, they highlight specific tendencies in these realms, including the effect of national publics on integration in these areas (2015) and the tendency for integration in these realms to result in distributive conflict (2018).

Matching these debates, this thesis attempts to create a general framework for analysing institutional change in areas of core state powers. As such it attempts to create a research agenda highlighting the general processes and patterns of integration found specifically in core state powers. Such a comparative approach is both logical, as each policy area shows similar patterns across each, and of great utility to scholars, as the experiences in one field may provide greater analytical leverage when understanding another. For example, the general approach taken by this thesis highlights the similarities between different changing functions within

policy-making processes in core state powers, such as the growth of secretariats and the empowerment of the European Commission. This opens ground for further research in considering how these processes of delegation differ from areas of market integration, what similarities are found across areas of core state powers, and why these differences exist. Similarly, it is hoped that by highlighting the similarities between these cases, attention can be paid to the transferability of particular concepts beyond the policy field in which they were initially designed. The consequence of this is that this thesis has a very wide scope and, as a result, discusses each case in very broad terms. This has been an intentional trade-off, as it has been viewed as the most effective means of drawing attention to the broad trends of communitarisation over time.

To create this more general conception of both the intergovernmental method and communitarisation, this thesis has taken a universal case selection approach. Arguably environmental policy could have been included, however this area switched to supranational processes when environmental policy became a trade issue (see; Jordan and Adelle, 2013). Across each case study, the thesis demonstrates that each has undergone, to differing extents, a process whereby the central institutional properties of the intergovernmental method have been eroded. Similarly, the thesis demonstrates that similar actors and processes underpin the process of communitarisation.

### **1.5 Communitarisation and the Process of Integration**

While these first two aims of this thesis are conceptual, the third aim of the thesis relates to the provision of a model of communitarisation and a set of hypotheses as to why it occurs. In analysing communitarisation, the thesis adopts two perspectives both derived from rational choice theory; the functional and distributive (see; Héritier, 2010). The functional approach suggests that communitarisation is driven by the limited ability of the intergovernmental method to manage the increasing scope and quantity of transactions, coupled with a growing number of transactors. The result is a costly process of policy-making developing with limited degrees of consistency. The distributive perspective builds on these claims, outlining the timing and scope of institutional change in relation to Member State interests and bargaining power.

The first challenge of communitarisation lies in the differences between actors in core state powers and in traditional areas of integration. In constructing this component of the analytical framework, the thesis builds upon the work of Genschel and Jachtenfuchs (2014). Namely, Genschel and Jachtenfuchs note that in areas of core state powers, the transactors and the

bearers of the costs of integration come from within the state rather than from the market (2014). The result is that theories of market integration which emphasise national or trans-national industry as providing the demand for integration are less applicable. Similarly, supranational agencies are often entirely absent in the initial stages of integration and are therefore less able to ‘cultivate’ integration, as occurs in the Neo-Functionalist model of integration (Haas, 1964). While these agencies often appear later in the process of integration, they are often formally limited in their ability to influence the policy process, for example through sharing the right of initiative with the Member States, informally bounded through the requirement to avoid undermining the trust in them granted by the Member States, and lack adequate resources to influence policy outcomes.

The second challenge of communitarisation relates to the informal nature of institutional changes in each policy area. In the development of each case, the process of institutional change rarely occurs simply through the formal revision of structures at Inter-Governmental Conferences (IGCs). Instead, institutional changes frequently emerge informally between IGCs in the form of *ad hoc* informal practices. These rules are informal insofar as they are uncodified, yet they represent ‘systematic departures’ from established formal institutional practices (Farrell and Héritier, 2003; Stone, 2013; Kleine, 2014, 304. See also; Smith, 2001). This emphasis limits the utility of bargaining theories which emphasise IGCs as the centres for institutional change, particularly Liberal Intergovernmentalism (Moravcsik, 1998). Instead, the thesis builds upon the framework put forward by Héritier (2010; 2012) whereby institutions are assumed to be continually reviewed by actors within these structures, but that some actors have more power over institutional change than others.

The third challenge in analysing communitarisation lies in the explanation of the timing and scope of communitarising reforms. In explaining this, the thesis highlights the functionalist approach’s limitations in explaining why communitarising changes are not chosen at a specific point in time, or why they are limited despite the high transaction costs associated with intergovernmental policy-making. Why, for example, was a secretariat not created in EPC throughout the 1970s despite issues of ‘presidential overload’ but created during the 1980s with limited resources (Bonvicini, 1988, 58; Smith, 2004a, 166)? A theory of communitarisation must be able to explain both why communitarising changes occur at one time and not another, as well as the degree of change which occurs at a specific time.

The distributive approach is argued to provide greater insight in explaining communitarisation due to it meeting the demands of these three criteria most effectively. Timing and scope can be explained in relation to clear independent variables, namely the bargaining power of Member States in relation to a specific institutional reform. While functional approaches emphasising how ‘form’ follows the demand for efficient decision-making allows for a clear understanding of the benefits of any particular reform, it does not easily demonstrate why a sub-optimal system of policy-making might continue for so long. Even the additional inclusion of incomplete information within this functional tale carries issues in explaining why change does *not* occur. Why, for example, did the Member States not embark upon more substantive reforms after the failures to respond to the 1979 Soviet invasion of Afghanistan and the Iranian Revolution? The resulting London Report largely formalised existing procedures, despite the recognition of Member States of clear faults in the body’s systems.

Bringing these points together, chapter 3 outlines a general model of communitarisation. A system of intergovernmental policy making at *tn* is assumed to be an equilibrium outcome of the preferences and bargaining power of the Member States of the EU. Member States with strong bargaining power are said to be those with access to alternative means of managing issues of interdependence and which face the highest potential costs of communitarisation versus the potential benefits. This is because if a communitarising change fails, they stand to lose the least from the break-down in negotiations (Knight, 1992, Moravcsik, 1998; Héritier, 2010). As a result, these Member States are judged to be the key actors in facilitating communitarisation in the bargaining process. When their preferences change, communitarisation is therefore likely to occur. Preference change is seen to arise from; an increase in the costs of managing the political system, reduction in the credibility of alternative means of managing interdependence, and an increase in the exposure of the state to a particular cross-border issue.

These factors are incorporated into the thesis’ three hypotheses. Hypothesis one provides an explanation as to why the intergovernmental method arises in the first place, establishing a logic against which communitarising institutional changes can be measured. It argues that intergovernmental policy-making is likely to occur in areas of policy where Member States have access to credible alternatives or where there are high potential domestic adjustment costs or supranational capacity building costs (see; Genschel and Jachtenfuchs, 2018). Hypothesis two argues that as the density, complexity, and scope of agreements reached in intergovernmental bodies increase, so too will the demand for communitarisation. Hypothesis

three argues that the scope, timing, and form of communitarisation is likely to be determined by those Member States with access to alternate means of managing issues and which face the highest costs. Communitarisation therefore reflects their changing exposure to international issues and their ability to manage this exposure.

## **1.6 Methodology and Chapter Outline**

In demonstrating the three arguments presented above, this thesis has utilised a deductive approach analysing the applicability of the model and hypotheses to explaining communitarisation in core state powers. Data has been collected from a mix of primary and secondary sources. In relation to secondary sources, the research began by reviewing the literatures of each policy area. Secondly, primary data was gathered from several sources, making use of the archives of the European Council and Commission, the online Archive of European Integration, the online and printed Agence Europe archives, the online archives of the Financial Times and European Voice, as well as the online database LexisNexis. The findings of the initial stage were then verified with the findings in the primary research phase. In cases where the literature is less developed, particularly that surrounding the Eurogroup, a heavier reliance was put upon primary sources compared to secondary ones. Such an approach was required largely due to the long time-span of each case study and the large differences between each of the individual case studies.

The thesis is organised as follows. Chapters 2 and 3 provide an in-depth review of the literature, conceptual basis, and theoretical framework. Chapters 4-7 constitute the empirical chapters of the thesis, covering the evolution of Justice and Home Affairs, the Common Foreign and Security Policy, the Common Security and Defence Policy (CSDP), and fiscal policy in the Eurozone. Each chapter begins with a historical overview of each policy area, followed by an outline of the conditions leading to the selection of the intergovernmental method, then providing a discussion of the key interests and mechanisms underpinning the communitarisation of each element of the dependent variable. Chapter 8 summarises the findings of the thesis and presents a short discussion surrounding the past, present, and future of communitarisation in the EU.

## CHAPTER TWO

### The Intergovernmental Method and European Integration

#### 2.1 Introduction

This thesis has two conceptual aims. The first aim is to highlight and conceptualise the dynamic nature of the intergovernmental policy process, whereby the EU's Member States tend to incorporate practices over time which run against the principles of the intergovernmental method. In doing so, it provides a framework to analyse this movement towards the co-operation of common policies over the co-ordination of national policies. Its second conceptual aim is to provide an explanation as to why the Member States of the EU move from systems of intergovernmental policy-making towards more communitarised, although not necessarily supranational, policy processes.

The function of this chapter is to develop the conceptual aim of this thesis, defining communitarisation and relating it to the wider literature on EU policy-making. It begins by highlighting the importance of the changing nature of the intergovernmental method. Following this, it discusses traditional approaches to understanding the intergovernmental method as an alternate mode of policy-making in the EU. In doing so, it highlights that while these conceptions give a useful guide as to how the EU functions in core state powers, they do not adequately capture the changing principles underpinning institutional change in core state powers. Conceiving the intergovernmental method as undergoing a process of communitarisation has three main benefits. Firstly, it provides a more dynamic conception of intergovernmental governance which can explain variation over time. Secondly, it provides a framework which can better analyse variation between cases. Thirdly, the focus of analysis moves away from debates around whether 'intergovernmental policy-making' is an acceptable label for contemporary governance in core state powers, towards debates over what causes the intergovernmental method to change over time.

Following this discussion, the chapter highlights existing conceptions of communitarisation within the literature. In doing so, it highlights the fact that many discussions of communitarisation suffer from a lack of comparativism, limiting the generalisability of their findings and concepts. To deal with this, the chapter highlights the central properties of intergovernmental areas of governance and the key actors and processes underpinning communitarisation. This is done by identifying the central challenges in applying traditional



theories of integration, namely as the actors, resources, and processes underpinning governance in core state powers differ from those in market integration (Genschel and Jachtenfuchs, 2018). It notes the limitations of three key theoretical approaches which have underpinned the study of European integration in the EU; Neo-Functionalism, ‘Classical’ Intergovernmentalism, and Liberal Intergovernmentalism. Following this, it notes the difficulties in applying contemporary theories of integration, namely the perspective of Post-Functionalism.

## 2.2 Why study Communitarisation?

The central objective of this thesis is to conceptualise and explain a process of institutional change which begins with the Member States of the EU establishing an intergovernmental system of policy-making. What is of interest is that over time the Member States of the EU alter their shared policy-making structures away from principles of *co-ordination* through the incorporation of practices which emphasise the *co-operation* of common structures through compromise and the ‘upgrading of common interests’ (Haas, 1964). In doing so, the thesis analyses a mode of integration exclusive to core state powers; areas which affect the ability of the state to gather and deploy coercive resources (Genschel and Jachtenfuchs, 2014). Why study this process?

Firstly, international politics is a ‘matter of wealth and poverty, life and death (Keohane, 1988, 379). Co-operation in areas such as defence, foreign policy, internal security, and fiscal policy all affect both what it means to be a state, the ability of the state to guarantee its own existence, and the state’s ability to protect the physical welfare of its citizens. For this reason, Hoffman (1966, 874) claimed that integration would be unlikely when it would ‘go beyond... purely internal economic problems of little impact or dependence on relations with America’, because integration in this area would interfere with the fundamental aspects of sovereignty.

Similarly, these policies go to the heart of what it means to be a state, what Genschel and Jachtenfuchs label ‘core state powers’ (2014). Such powers relate to the Weberian notion of the state being defined by the ‘monopoly of the legitimate use of physical force’ (Weber, 1946) and the Schumpeterian idea that ‘fiscal demands are the first sign of life of the modern state’ (Schumpeter, 1991, 110). Integrating core state powers areas place high potential costs on state’s coffers, as they relate to the state’s positive powers in governing. As Genschel and Jachtenfuchs summarise it, ‘every Euro of public revenue can only be spent once; every border guard can only be in one place at one time’ (2018, 181). Given the centrality of core state

powers to areas so close to notions of sovereignty and the state's mission for survival, it is puzzling that integration occurs in these areas at all.

The failure to integrate foreign and defence policy in the 1950s and 60s seemed to show that the prospects for integration in these fields were limited. While EU integration with respect to regulating international trade was considered inoffensive to the notion of the state preserving its own existence, areas of policy central to the preservation of the state were deemed unlikely avenues for integration (Hoffman, 1966; 1982). Not only were these areas central to the state's central goal in the realist perspective, self-preservation, but the Member States of the EU carried their own long histories and experiences in these realms, experiences which would not easily be eroded. The long-term result was that co-operation in these areas would remain 'intergovernmental', granting individual Member States power over the policy process through the option of veto, non-compliance, and the avoidance of competence maximising supranational agencies. All that would be likely in these fields is the limited co-ordination of state policies.

In analysing the tendency of the intergovernmental method to change over time, the thesis focuses on the institutions which constitute their policy processes. Institutions are defined as 'the rules of the game' in the process of co-operation between states (North, 1990), rules which direct the behaviour of political actors and which are recognised by all members within a political system (Knight, 1992). Institutions are important as they aid in the co-ordination of Member State policies by providing them with a more efficient means of transacting with one another and increasing their ability to anticipate the actions of one another (Williamson, 1979). Yet, institutions might not simply be efficiency driven, instead reflecting the preferences of one or a few powerful Member States (Moe, 1990; 2005). In this sense, institutions can grant some Member States more voting power within decision-making processes or impose standards which place higher adjustment costs on some Member States compared to others. Put simply, institutions constrain behaviour and as a result affect the manner which the EU's Member States pursue their interests in key areas of policy. They, therefore, got to the heart of how EU collaboration in core state powers affects state sovereignty.

Communitarisation, at its heart, contends with how Member States balance their concerns over sovereignty with the need to co-operate in an increasingly interdependent world. As states become increasingly affected by the decisions of other states, they require more effective means for managing these interdependences and providing for collective benefits. As Keohane

and Nye (1977, 9) summarised it, ‘interdependent relationships always involve costs, since interdependence restricts autonomy’. The rise of cross-border terror in the 1960s and 70s, for example, fundamentally challenged the notion that Western Europe could maintain internal security through traditional means (Wittendorp, 2016). Similarly, a move towards unilateralism by the American government within NATO challenged European Member States to find means of influencing the US and maintaining external security (Rees, 1998).

As such, communitarisation offers an insight into how this balance between interdependence and autonomy is managed by the EU’s Member States. It considers how Member States solve the dilemma between the need for minimising the potential costs that collective action could have on the state and the costs of failing to act effectively on issues which threaten the lives and welfare of their citizens. On the one hand, the intergovernmental method reflects a means of allowing for greater co-ordination between national policies and the increased calculability of other Member State actions, with Member States retaining ultimate control over their own policies through vetoes and the option of non-compliance. On the other, communitarisation reflects the high potential costs of non-compliance and national vetoes in policy areas with strong degrees of interdependence. The Euro crisis is a perfect example of this, where states attempt to balance their power to control their own fiscal policies with the possibility that economic mismanagement by other Member States may have costly negative externalities. How, then, does the EU’s structure respond to these competing demands?

### **2.3 The Intergovernmental Method as a Mode of Policy-Making**

This thesis specifically relates to the intergovernmental policy-process or the intergovernmental method. The label ‘intergovernmentalism’ is reserved for the theory of integration which emphasises the role of the EU’s Member States in moving the EU’s integration process forward.

Historically, intergovernmental policy-making has been characterised as an alternative to supranational governance, the more common form of EU policy-making found in areas of market integration (table 2.1). Supranational governance is traditionally characterised as having several key properties; a strong formalised policy process bound up in treaties, highly enforceable institutions detailing clear enforcement mechanisms, and a strong role for supranational agencies in the policy-process, such as the ECJ and European Commission (Stone Sweet, 1994). The notion that the intergovernmental method is a deviation from this norm is visible in the language of the Treaty of Lisbon, which formally outlines the modes of

*Table 2.1: Intergovernmental vs Supranational Policy-Making in the EU*

	Intergovernmental Policy-Making	Supranational Policy-Making
Delegation	No delegation to supranational agencies. Preparation of meetings by national diplomats and rotating presidency.	Delegation to Commission of right of legislative initiative; to Secretariat in preparing summits; to ECJ in arbitrating disputes.
Institutional Structure	Informal institutional structure outside of the EU's treaties, unenforced by ECJ.	Formal institutional structure embodied by the Treaties of the EU, enforced by the ECJ.
Decision-Making	Voting through unanimity in the Council.	Voting through QMV; co-decision with the European Parliament.

policy-making in the EU. Namely, the Treaty distinguishes between the 'Ordinary Legislative Procedure' utilised mainly in areas of market integration and the 'Special Legislative Procedures', utilised in exceptional circumstances and which include intergovernmental modes of co-operation (TFEU, Article 289).

This sense of distinction underpins traditional definitions of the intergovernmental method. The earliest discussion of a specifically intergovernmental mode of policy-making in the EU was put forward by Dahrendorf (1972) who referred to this mode as constituting a 'Second Europe'. In Dahrendorf's view, the 'First Europe' was the traditional areas of market integration embodied in the Treaty of Rome. By the 1970s, integration and co-operation in these areas had stagnated, with the EU having 'exhausted the possibilities of the treaties' and supranational governance being viewed as having 'constricted rather than spurred on genuine political co-operation' (1972, 76). The creation of EPC in 1970 through the Davignon Report symbolised the nascence of the 'Second Europe', embodying a solution to the EU's difficulties. Namely, the new structures of EPC brought national Ministers together as representatives able to engage in an active bargaining process, allowing for a genuine exchange of views in clear

language instead of the ‘*Euro-chinesisch*’ found in market integration, and allowing for flexibility due to discussions not being bound by the limits placed upon discussions by the treaties (1972, 78-79). Thus, the intergovernmental method was characterised an oppositional response to the ‘First Europe’.

Since then, there has been a sizeable literature which has grown to describe and explain this alternate way of doing business in the EU. These contributions can be grouped according to the key properties which each of these attributes to the intergovernmental method; the predominance of Member State actors within the method, the use of informal institutional structures, and decision-making through unanimity.

### 2.3.1 Intergovernmental Policy-Making and Delegation

One of the most notable characteristics of supranational governance is the powers and roles delegated to bodies constituted at the supranational level; the European Commission (the Commission), the European Parliament, and the European Court of Justice (ECJ) (see also, Dehousse, 2013; also Puetter, 2014, 36). In the EU’s own ‘White Paper on European Governance’ (2001), it defines the ‘Community Method’ according to the principle of delegation; ‘the general interest at the level of the Commission; and democratic representation, European and national, at the level of the Council and European Parliament’ (2001).

Supranational governance grants a strong role to the Commission, namely in granting the sole right of initiating legislation in areas of market policies. Majone highlights this empowerment of the Commission as central to the supranational method, arguing that this sole empowerment to initiate legislation ‘has not analog either in parliamentary or presidential democracies’ (2005, 44-45). This does not, however, imply that the Member States of the EU are side-lined in this process. As Weiler highlights (1982, 270-272), the original treaties kept the Member States in a central position in the policy-process yet sought ‘to achieve a model of “*Community* decision-making”’ (1982, 272) which would result in decisions taking place above the level of the individual Member State. As such, the Member States are involved in the collective operation of community procedures granting decisions more closely reflecting their general interest. Through acting as a broker in the bargaining process and guiding the legislative process through its command of the right of initiative, the Commission aids in the creation of policies that represented the common good (Haas, 1964, 65-66).

During the 1970s, Member States sought to diverge from this original system in new areas related to their sense of statehood. In these new systems, the powers of the Commission were

severely restrained. Several scholars have focused on this characteristic when defining intergovernmental policy-making in the EU. In their definition of this mode of governance, Wallace and Wallace (2006; more recently, Wallace and Reh, 2014) have opted to utilise term ‘intensive transgovernmentalism’, building on the concept of Transgovernmentalism put forward by Keohane and Nye (1974). In their discussion of this method, they highlight the lack of involvement of traditional EU bodies such as the Commission, the European Parliament, and the ECJ in intergovernmental policy processes (Wallace and Wallace, 2006, 351). Similarly, Goebel (2013, 82) discusses the ‘retention and exercise by Member States of their autonomous sovereign power in acting upon legislation, setting policies or tacking decisions, even though the States may often voluntarily collaborate in promoting the common goals of the EU’ (see also; Fabbrini, 2015, 127). Puetter (2014, 43) similarly defines intergovernmental institutions in terms of being ‘populated by member state representatives and take decisions—formal or informal—on the basis of agreement among these representatives’. Thus, relating to actors, the intergovernmental method is characterised by the predominance of national Ministers and civil servants in formulating, bargaining over, implementing, and enforcing decisions (Wallace and Wallace, 2006, 352; also; Smith, 2004a, 40-41). The Council is therefore the key decision body, with the European Commission either being absent or extremely limited in its capacity to influence the policy process (Commission, 2001, 2012). This reduces the scope for the general interest of Member States to result the policy-process, instead with decisions generally reflecting the lowest common denominator.

### 2.3.2 Intergovernmental Policy-Making and Formalisation

The second structural element of supranational policy-making is its emphasis on ‘hard law’; its emphasis on codified rules backed up by the European Court of Justice. While the ECJ is an agency with delegated powers, like the Commission, the primary effect of its empowerment relates to the reduction of the ability of Member States to avoid compliance with common agreements. As a result, delegation to the ECJ is categorised in this thesis as part of a means of enhancing the legal power of common decisions and structures.

Weiler defined the EU’s ‘foundational period’ in terms of the ‘closure of selective exit’ (1991, 2413), whereby the ability of Member States to avoid compliance with common agreements became increasingly limited. In this sense, the EU became ‘constitutionalised’ through principles such as ‘direct effect’, whereby ‘Community norms may be invoked by individuals before their state courts’ (1991, 2414), and ‘supremacy, whereby EU law took precedence over

national law, came into being. Using the terminology of Abbott et al (2000), this gives the EU a legalised quality insofar as the EU's structures are codified clearly in terms of their obligations and meanings as well as being enforced through a third party, the ECJ.

Of course, this does not imply that all rules and practices are codified within the Treaties of the EU. Kleine (2013, 48) has highlighted that the EU's treaties are supplemented by various informal practices. This has resulted in a strengthening of the Member States contrary to the expectations one might have reading the treaties alone. Informal practices are, therefore, endemic to all systems of policy-making in the EU. What is important about supranational governance is the extent to which structures are codified into the treaties, with its decisions and practices being enforceable by the ECJ. Hard law forms the backbone of supranational governance.

By comparison, informal procedures and structures form the basis of intergovernmental policy-making processes. Its policy process relies on uncodified practices rather than formalised systems of governance and characterised by the EU's treaties. Where it takes decisions, the power of the ECJ is either curbed or non-existent. In Borezel's (2012; 621-622) definition of intergovernmental policy-making, emphasis is placed on the 'voluntary co-ordination of the Member States (unanimity or consent) and often do not have legally binding character (*soft law*)' as a defining property of the intergovernmental method. Similarly, Smith (2004b) has noted that in intergovernmental systems 'heads of government bargain among themselves in weakly institutionalised settings (periodic summits)'. Building on this element, Fabbrini (2013a, 1008) points to the emphasis placed upon 'intergovernmental' and 'voluntary co-ordination' rather than the 'rule through law' emphasised by supranational policy-making. Puetter similarly notes the ends of intergovernmental policy-making relating to 'policy co-ordination as opposed to law-making' (2012, 162).

What characterises this element of intergovernmental policy-making is that the Member States follow unwritten conventions rather than codified and mutually agreed procedures (Helmke and Levistky, 2004) and that the costs of non-compliance in these structures is lower as common practices are harder to enforce (Abbott and Snidal, 2000). This ability of Member States to avoid compliance when necessary is important for Weiler (1991, 2426) as when law becomes 'hard' and real' it can substantially alter the political process and increase the potential costs of the decisions made by Member States. This may be important to Member States not simply in avoiding compliance with rules they oppose but also where agreements turn out to

be unexpectedly costly (Falkner et al., 2004, 457). This can, as a result, slow decision-making procedures and substantially alter the practices through which policy-making occurs. Similarly, the reduced costs of non-compliance do not mean that there is no capacity for the creation of credible commitments. As Majone highlights, in intergovernmental arrangements Member States rely more heavily upon building and maintaining reputation, developing credibility over time through common practice, and keeping commitments small and manageable (Majone, 2005, 174).

### 2.3.3 Intergovernmental Policy-Making and Voting Procedures

The third characteristic which defines the differences between supranational and intergovernmental policy-making is the way in which decisions are taken. Traditionally, supranational governance is characterised by Qualified Majority Voting (QMV), a form of voting where there is a threshold both in terms of the number of votes held by each Member State and their respective population. The threshold of this system has changed over time, but what is important is that there is the possibility that one or several Member States may be outvoted on an issue. This is supplemented by the informal convention of consensus. While Member States attempt to reach a consensus on any given issue, these negotiations occur in ‘the shadow of the vote’ (Lewis, 2003, 1007), where a Member State in the minority negotiates in the knowledge that it may be outvoted if it chooses a path of intransigence.

In the intergovernmental method, several scholars have highlighted the importance of unanimity in intergovernmental policy-making processes. Diedrichs et al (2011, 21), for example, distance intergovernmental decision-making from ‘majority voting’. Similarly, Smith (2004b, 97) notes a strong relationship between intergovernmental policy-making and ‘unanimous procedures’. Central to this element of the intergovernmental method is the ability of the Member States to veto policies which run against their interests. While QMV allows for the ‘upgrading of common interests’ through creating the conditions for compromise, unanimity allows Member States to veto policies which run contrary to national interests. The result is policies which reflect the preferences of the lowest common denominator rather than the collective interests of the Member States.

### 2.3.4 Contemporary Intergovernmental Policy-Making

In recent years, Bickerton, Hodson, and Puetter (2015; Lequesne, 2016) have highlighted new practices in intergovernmental policy-processes which they label a ‘new intergovernmentalism’. Like those definitions above, this mode of governance is



intergovernmental as it does ‘not involve further delegation of competences to supranational institutions’ (2015, 1, 7) and functions on the basis of informal policy co-ordination (2015, 11). The ‘new’ intergovernmentalism observes new practices in the intergovernmental policy-process, including delegation to *de novo* institutions, a greater emphasis on consensus building as a ‘dominant procedural norm’ (2015; 2), an acceptance of intergovernmental policy-making by supranational agencies, and issues of politicisation and domestic politics becoming an input to the integration process (Bickerton et al., 2014, 9-15). What their work fundamentally does is outline the development of these new intergovernmental features and provides an image of how intergovernmentalism functions in this new era. This happens in relation to, firstly, a perspective which highlights the importance of deliberation and social construction in their approach to understanding governance (see; Schmidt, 2018). Secondly, Bickerton, Hodson, and Puetter highlight the importance of the contested nature of integration in this era and its effect on policy-making in the EU (see; Hooghe and Marks, 2010).

What underpins this ‘new’ intergovernmentalism is the continuing prevalence of the Member States in the policy process. While they have identified some new processes in the EU, the novelty of all aspects must not be overstated. Both EPC (Smith, 2004a) and Trevi (Oberloskamp, 2017) placed a large emphasis on generating shared norms for consultation and consensus building as an end, before later moving towards ‘joint actions’ as an aim as part of the Maastricht Treaty. This thesis pays close attention to the pre-Maastricht era because of its importance in showing the initial conditions which gave rise to collective policy-making and because it is in this context that the fundamental principles of intergovernmental policy-making first came under pressure. EPC, for example, became increasingly intertwined and then formally associated with the EU as part of the Single European Act in 1986.

### 2.3.5 The Principle of Intergovernmental Policy-Making

Underpinning these properties is a general principle of intergovernmental policy-making (for a similar discussion see Fabbrini, 2015). To repeat these features, intergovernmental policy-making has low costs of non-compliance, a small scope for supranational agencies to shape integration, and limits decisions to the lowest common denominator by using vetoes. Alternately, supranational governance encourages collective decision-making through majority voting rather than lowest common denominator decision-making, has high non-compliance costs facilitated by formal rules and enforcement by the ECJ, and features the right of legislative initiative being granted to the Commission allowing for common interests to be

reflected in proposals. These empower the Member State to limit the scope of agreements to the point where they will be unlikely to incur the state high capacity building costs at the supranational level or adjustment costs at the national level.

From these differences, one can see that the principle underpinning the intergovernmental method is one which emphasises the *co-ordination of national policies* rather than collective decision-making and the ‘upgrading of common interests’ (Haas, 1964). Rather than promoting the co-operation of common policies, the intergovernmental method gives space for Member States to discuss their own national policies with one another, vetoing or avoiding compliance when such decisions run against their interests. It exists to promote dialogue, consultation, and even common actions, but not to limit the ability of the state to act in a certain manner when and where it sees fit.

Several scholars, such as Puetter (2014, 42-43), Howorth (2012, 24), and Schout and Wolff (2011) argue that this dichotomy between supranational and intergovernmental policy-making does not capture the changed nature of contemporary intergovernmental governance. Specifically, these authors highlight the growing nature of consensus generating procedures in intergovernmental systems of policy-making in recent years. Similarly, Falkner (2002), contends that intergovernmental conferences themselves may have strong influence from both supranational actors and common perspectives. While these arguments highlight a clear ambiguity in terms of some of the distinguishing features between intergovernmental and supranational policy-making in the contemporary era, this does not necessarily imply a redundancy of the intergovernmental method as a heuristic for understanding policy-making. As will be argued, the conceptual fault with the intergovernmental method lies not in its specific properties, but in the context in which we place it. Viewed as existing within a wider process of integration, the ideal-type intergovernmental method exists as something which new structures can be measured against and which can form the basis of an explanation of why intergovernmental structures become more communitarised over time.

#### **2.4 The Emergence of the Intergovernmental Method**

In analysing this mode of governance, one of the central tasks of scholars has been to explain the emergence of this mode of policy-making over more traditional modes. Such an approach to analysing the intergovernmental method conceptualises this mode of policy-making as deviant, with the initial selection forming the basis of the dependent variable. In explaining this emergence, four broad perspectives have arisen; a functional case relating to the benefits of

this method in relation to supranational governance, a case relating this emergence to the type of policy area concerned, the politicisation of integration in a particular field, and a distributional case noting the heterogeneity of the preferences and costs associated with these policy areas.

In his examination of the emerging intergovernmental 'Second Europe', Dahrendorf laid out what was essentially a functionalist case for the emergence of this new mode of policy-making. Specifically, Dahrendorf posited that the intergovernmental method was a response to the inefficiencies which had emerged in EC policy-making during the 1960s and 70s. Foreign Ministers were portrayed as frustrated with the politics of 'frozen sides of beef' and their debates stymied by technical and bureaucratic procedures (1972, 78). The intergovernmental method was favoured in this context because it offered the opportunity for Ministers to 'meet in their political consultations as foreign ministers', discussing salient issues in a direct and flexible manner (*ibid.*). Puetter (2012) has highlighted this discursive benefit of intergovernmental policy-making through the development of an idea of 'deliberative intergovernmentalism'. In this account, the informal structures and direct nature of the confidential discussions featuring in the intergovernmental method aid a more open and frank style of deliberation. In turn, this allows for more effective consensus building within the Council. Both cases therefore highlight a recognition from Ministers that supranational policy-making processes have their own efficiencies (see also; von der Gabletz, 1979).

Abbott and Snidal (2000, 434-444) differ in their approach to highlighting the efficiencies associated with intergovernmental policy-making, noting that both 'hard' legalised modes of co-operation and 'soft' informal modes carry their own benefits. In relation to the 'soft' informal structures associated with the intergovernmental method, these structures are said to involve a reduction in contracting costs faced by Member States due to the lack of a requirement for lengthy processes of legal review and ratification, a reduction in sovereignty costs through the limiting of the effect of shared rules on national policies, and an element of flexibility stemming from the ability of states to complete their initial agreement as they gain more information about the problems they collectively face. These are particularly useful in situations where the Member States face a high degree of uncertainty surrounding the potential effects of collaboration in this field (Abbott and Snidal, 2004). Thus, where states wish to minimise these costs, they are likely to choose the intergovernmental method.

The second theory for the emergence of the intergovernmental method relates to the extension of integration into areas of state sovereignty. Hoffman (1966; 1982) stands as a key scholar in distinguishing between those likely to be managed through supranational and intergovernmental policy-making. Specifically, Hoffman differentiated between ‘low’ and ‘high’ politics, dividing these on the basis of ‘the politics which aims at or allows for the maximisation of the common good, from the politics of either *do ut des* (strict reciprocity) or the zero-sum game. Whether an issue falls into one or the other category depends on its momentary saliency – on how essential it appears to the government for the survival of the nation... as well as on the specific features of the issue (some do not lend themselves to “maximisation of the common good” or “upgrading the common interest”), and on the economic conjuncture’ (1982, 29). In this definition, ‘high’ politics related to areas which important in facilitating the state to preserve itself in the international arena. Areas such as defence were not necessarily wholly related to ‘high politics’ unless they affected this need for survival, just as all economic policies were not strictly ‘low political’ (ibid). This relationship between policy area and mode of governance has been similarly noted by other scholars. Wallace and Wallace (2006, 351; also, Wallace and Reh, 2014), for example, note that the intergovernmental method has used primarily in areas ‘that touch sensitive areas of state sovereignty, and that lie beyond the core competences of the Union for market-making and market-regulating’.

In the account of Bickerton, Hodson, and Puetter, what underpins the rise of the ‘new’ intergovernmentalism is said to be a change in the EU’s political economy and a ‘politicisation of European integration’ (2015, 25). Firstly, they argue that integration in areas featuring strongly heterogeneous national practices such as fiscal and foreign policy gave rise to a requirement for consensus building institutions (2014, 7). Secondly, they argue that intergovernmental policy-making reflects a general movement away from the ‘permissive consensus’ between citizens and their governments (Lindberg and Scheingold, 1971) and towards a ‘constraining dissensus’ (Hooghe and Marks, 2010). Bickerton et al. argue that this has ‘strengthened the commitments of national executives to European policy-making’, particularly in areas of interdependence, but resulted in intergovernmental policy-making at the executive level instead of centralising power through supranational governance (2015, 26-27; also, Crum, 2013).

The final perspective explaining the selection of intergovernmental policy-making modes is that concerning the idea of ‘core state powers’ (Genschel and Jachtenfuchs, 2014; 2015; 2018).

In this conception, Genschel and Jachtenfuchs define core state powers in relation to the positive powers of the state; the power to raise taxes and utilise its monopoly over the use of force (2014; 2015). What differentiates this conception from that of the ‘high’ versus ‘low’ politics divide is the rationale for why core state powers are attached to differing policy-making modes. Specifically, areas of core state powers feature a lower influence of market-dominated actors such as those found in areas of market integration (2014) and feature a higher incidence of distributive conflict due to the importance of the deployment of limited resources in these fields. In the words of Genschel and Jachtenfuchs; ‘every Euro of public revenue can only be spent once; every border guard can only be in one place at one time’ (2018, 181). It should be highlighted in the context of the following argument that beyond simply stating that such differences will likely result in the selection of other modes of co-operation, Genschel and Jachtenfuchs similarly seek to explain the ensuing patterns of integration occurring in areas of core state powers (2015).

## **2.5 Situating the Intergovernmental Method within the Process of Communitarisation**

While many of the accounts presented situate their analysis of intergovernmental policy-making over wide time-periods, their conceptual and theoretical image of intergovernmental policy-making is substantially different to the one presented in this thesis. This thesis does not aim to show that the modern system of intergovernmental policy-making has new procedures different to those in the past. This has already been demonstrated within the previously mentioned literature. What it argues is that there is a process whereby the principle underpinning intergovernmental co-ordination has been eroded as Member States have included new practices which emphasise the co-operation of common policies. It does not describe and explain a new system of intergovernmental system in Europe, rather it identifies a *process* of integration whereby policy-making processes in core state powers change over time and incorporate principles commonly associated with supranational governance. Its dependent variable is this process of institutional change, asking why it occurs and under what conditions it stagnates or proceeds.

This point is important because it forms the basis of this thesis’ conceptual contribution to the literature. It is a conceptual point based on the arguments of Haas (2004, 11) and Lindberg (1963, 5). What Haas and Lindberg did was change the focus of integration study away from questions of *how and why co-operation functions* towards *how and why integration proceeds*. They achieved this by presenting early integration theories as a ‘condition’; a picture of what

integrated systems looked like and why it appeared that way. In this sense, ‘condition’ refers to a state of being which is to be conceptualised and then explained. Deutsch (2014, 126-144), for example, laid out an image of what a security community would look like and set out a number of functional reasons as to why such communities were likely to come into existence. Similarly, Mitrany (2014, 105-123) highlighted the characteristics of ‘integration’ in the post war world by demonstrating how multi-national governance would likely emerge and the reasons for doing so. What they do by presenting integration as a ‘condition’ is twofold. Firstly, they seek to describe the properties of integrated political systems. They highlight key processes, properties, and practices, thus identifying the key properties of integrated communities. Deutsch, for example, sees integration as the ‘attainment... of a sense of community and of institutions and practices... to assure, for a ‘long’ time dependable expectations of “peaceful change”’ (2014, 127), or the creation of a situation where differences are solved by peaceful means (Lindberg, 1963, 4). Secondly, they seek to explain how that system emerged or could emerge alongside why it is structured that way. In both accounts, these conditions are largely functional; they reflect some form of demand from states for co-operation and their supply through the construction of international organisations.

The label ‘condition’ reflects the idea that it gives a description of how a system works, one which has a tremendous amount of utility. These early theories of integration were concerned with mapping out what Taylor called ‘the desirable end-situation and the methods of achieving it’ (1984, 1), giving scholars a good grasp over what integrated structures looked like and why or how they could function that way. As such, the utility of a conditional approach to studying the EU is that it gives grounds for comparing and explaining differences in structure and rationale between, for example, supranational structures and federal ones.

The innovation of this thesis is that it highlights that there is a specific mode of integration in areas of core state powers which is observable from the changing nature of intergovernmental governance in Europe. What these changing structures represent is not simply that new structures of governance are emerging, but that there is an underlying changing logic of policy-making in core state powers. The dependent variable of this thesis is not the explanation of why specific institutional changes have come to pass, but what conditions push forward the process of integration in core state powers towards systems which emphasise co-operation. It asks, under what conditions and why do intergovernmental policy-making structures become more communitarised over time? It is an open-ended process, insofar as the conditions for further communitarisation may exist at present or in the future. As such, it attempts to structure

debates surrounding core state powers in a similar manner to those which have existed for some time in areas of market integration.

Lindberg defined integration in relation to ‘the development of devices and processes for arriving at collective decisions by means other than autonomous action by national governments’ (1963, 5). Similarly, Sandholtz and Stone Sweet’s neo-functionalism conceptualises integration as occurring between two ideal types of supranational and intergovernmental politics, with their theory seeking to explain why movement occurs between these two poles (1998, 8-10). Such an open-ended approach changes the dependent variable from the emergence of a specific political system instead to understanding the conditions under which a process is likely to continue, stagnate, or retrench. Haas summarised his perspective by stating ‘the decision to proceed with integration or to oppose it rests on the perception of interests and on the articulation of specific values on the part of existing political actors’ (2004, 13). What was of interest to these studies was the conditions that integration was likely to *proceed* rather than what it would look like when *achieved*. That is the aim of this thesis.

## **2.6 Process and Conditional Approaches to the Intergovernmental Method**

### 2.6.1 Limitations of Existing Accounts

Present theories of intergovernmental co-operation in the EU largely sit within the confines of this conditional approach. While the work of Bickerton, Hodson, and Puetter highlights the development of the ‘new intergovernmentalism’ over the entire post-Maastricht era, what is notable is the way which they define the new intergovernmentalism.

The puzzle at the heart of their work is the ‘integration paradox’ where ‘Member States pursue more integration but stubbornly resist further supranationalism’ (Bickerton et al., 2014, 3). In characterising this, they put forward six hypotheses which embody ‘expectations about European integration in the Post-Maastricht period’ (2014, 9). These are; that ‘deliberation and consensus are guiding norms in day-to-day decision-making’, that ‘supranational institutions are not hard-wired to seek ever-closer union’, that delegation tends to occur in relation to *de novo* supranational agencies, that ‘problems in domestic preference formation have become standalone inputs into the... integration process’, that ‘the differences between high and low politics have become blurred’, and lastly that ‘the EU is in a state of disequilibrium’ (Bickerton et al., 2014, 9-15). Explaining this, the new intergovernmentalism builds upon the idea put forward by Hooghe and Marks (2010; Bickerton et al., 2014, 7-8) whereby integration no longer functions on the basis of a ‘permissive consensus’ between publics and political elites,

but instead has become characterised by a ‘constraining dissensus’. As they state, ‘although there is no shortage of scholarship on how European integration is contested, less attention has been paid to the question of whether such contestation has reshaped integration itself’ (Bickerton et al., 2015, 26). What they alter from that account is that integration, rather than slowing or stopping, has simply occurred in a new manner.

While the new intergovernmentalism is conceptualised over a time-horizon between 1992 and the post-Lisbon Treaty era, the dependent variable and subject of their enquiry is ultimately the creation of several new norms in policy-making at the EU level. Indeed, several hypotheses exist as claims about what characterises these new modes of policy-making (Schimmelfennig, 2015, 728). What their work does is it outlines key aspects of policy-making in contemporary Europe and explains these new practices in relation to the integration paradox and the issues of politicisation of the integration process in contemporary Europe.

It is for this reason that, while differing from the traditional Dahrendorfian account of intergovernmentalism (1973), the new intergovernmentalism appears as a conditional theory rather than one conceptualising the post-Maastricht era as part of a wider process of European integration. The utility of the new intergovernmentalism is in the describing and explaining of new practices in the governance of Europe. In this sense, it is useful in explaining these new practices and in interrogating patterns of co-operation in the post-Maastricht era. What it does not do is situate an open-ended process of institutional change as its dependent variable. As such, it does not provide a flexible framework which can explain variation in degrees of integration between cases, variation in the timing of integration, and the conditions under which the new intergovernmentalism is expected to continue evolving into more communitarised modes of governance.

In a similar vein, Genschel and Jachtenfuchs’ (2014; 2015) approach demonstrates the key differences between areas of core state powers and market integration. They highlight what areas of policy are core state powers, the properties which typify governance in areas of core state powers, and the mechanisms that lead for areas of core state powers to be governed in such manners. Although they are less explicit in demonstrating the core properties of what intergovernmental governance is structured as, the theoretical approach largely demonstrates under what conditions one would expect to see an area of policy governed either as a core state power or as an area of market integration. They similarly show the conditions under which the Member States are likely to proceed through integration by stealth versus integration by



publicity. It therefore has much in common with conditional theories of integration rather than conceptualising a new process of integration.

### 2.6.2 The Limitations of the Intergovernmental-Supranational Dichotomy

The central problem with the conception of the intergovernmental method as a conditional mode of policy-making is that it presents an unrepresentatively static picture to the analyst. In each of the policy-areas utilising the intergovernmental method, one can observe both dramatic variation between cases and dramatic changes in the degree of how intergovernmental these bodies are over time. While EPC and Trevi reflected the ideal type mode of intergovernmental co-ordination presented above, over the following decades both have incorporated institutional practices which run contrary to these features. Trevi has evolved into a system involving the wide-spread gifting of the right of initiative to the Commission, a strong formalisation of procedures within the treaties, and the introduction of co-decision and the joint right of initiative. Similarly, EPC has developed into an increasingly formalised mode of decision-making, incorporating QMV on issues of implementation, with the Member States sharing the right of initiative with the supranational High Representative.

The result of this inconsistent nature of contemporary intergovernmental policy-making has been the emergence of debates surrounding how best to label the system of governance present in core state powers. The highly communitarised area of internal security is telling in this regard. Some scholars argue that this policy area has been ‘progressively communitarised and brought in line with the traditional ‘regulatory’ mode of EU policy-making’, implying the adoption of supranational practices (Kraft-Kasack and Shisheva, 2008; Trauner and Ripoll-Servent, 2016; 2018, 6). Conversely, Ucarer has described JHA as remaining ‘intrinsically intergovernmental (2013, 293). In contending with these changes, Schout and Wolff (2012, 21) have observed that ‘Lisbon started out as a reinforcement of supranationalism... but seemed to have strengthened [intergovernmentalism]’ (see also; Risse-Kappen, 1996; Occipinti, 2003, 12-13). To solve this paradox, Schout and Wolff (2012) conceptualise a new mode of governance labelled ‘supranationalism-intergovernmentalism’, a term which undermines the analytical utility of the supranational/intergovernmental typology.

The experience of internal security demonstrates that there has been both an erosion of intergovernmental principles in its policy-process governing and a retention of aspects of the intergovernmental method. The Commission has become more powerful in relation to the initiation of legislation, QMV has become more widespread, and the ECJ has become

increasingly empowered in this area. Simultaneously, four Member States may still initiate a proposal in the field of police co-operation and QMV can be circumvented by an ‘emergency brake’. Thus, even in an area that has become highly communitarised, there remain key intergovernmental practices. It is thus communitarised but not supranational. The resulting question is, how do we define the intergovernmental method in a way which both captures its central properties and its tendency to change over time?

### 2.6.3 Defining Communitarisation

One simple solution to this problem is to situate the intergovernmental method within a wider process of institutional change as Haas and Lindberg did in their works. Rather than understand the intergovernmental method solely as an alternate system of policy-making at the EU level, this thesis situates it within a distinct process of integration, reflecting the differing actors, resources, and institutions endemic to policy-making in these realms. As a result, debates over what the ‘end point’ of integration become less central to discussion, as the object of study moves towards broad trends in intergovernmental policy-making. This allows for the intergovernmental method to be conceptualised in a manner which shows how and why the intergovernmental method’s processes and principles change over time.

This process of integration is labelled ‘communitarisation’, borrowing from the JHA literature, a term which is not currently in use for alternate phenomena, is utilised by practitioners (e.g. Corbett, 1992; Donnelly 2008), and in other fields of policy (e.g. de La Serre, 1996; Whitman, 2016). This thesis defines communitarisation as *an integrative process of institutional change generally found in areas of core state powers whereby the emphasis on the co-ordination of individual Member State policies is replaced with institutions emphasising collective decision-making, compromise, and the ‘upgrading of common interests’* (Haas, 1964). Such an approach opens ground for theoretical debates surrounding the processes and actors underpinning this process of institutional change, as well as the degrees to which traditional theories or market integration are applicable to core state powers.

This process is different to the process of Europeanisation, in which new European norms are generated and proliferated across the EU’s Member States. Communitarisation relates to the generation of a more communitarian way of policy-making in the EU’s areas of core state powers. Similarly, it differs from supranationalisation as it does not suppose that the essential end-result of this process will be supranational governance, only that communitarised structures feature a similar principle of co-operation over co-ordination. The embeddedness of

particular formal and informal practices in areas of core state powers is likely to result in long-term differences between areas of market co-operation and core state powers, thus supranationalisation would represent a mischaracterisation of this process.

#### 2.6.4 Differences with Existing Accounts of Communitarisation

While this thesis is not the first to attempt such a conceptualisation of this process of change, previous attempts suffer from two main problems; a lack of comparativism and the lack of a thorough study into this phenomenon.

Firstly, studies into communitarisation are often case-specific, resulting in ‘different analytical lenses and empirical reference points’ according to each case (Wallace and Wallace, 2006, 354). As a result, the process of communitarisation has not been sufficiently conceptualised in a comparative way, evident in the differing labels granted to this process within different fields, as well as the different focuses on specific aspects of the process.

In the literature on CFSP, Smith’s (2004a) study of the development of co-operation from EPC to the CFSP focuses little on wider developments in other related policy fields, despite co-operation on internal security emerging in 1976 through Trevi and defence co-operation re-starting in 1984 through the WEU in a similar context through similar processes. Indeed, many of the claims Smith makes about EPC and foreign policy co-operation are valid in their application to Trevi and the WEU, both in terms of the puzzle in and of itself that institutionalised co-operation might emerge in these fields, and in the general narrative of these bodies moving from informal intergovernmental forums towards formalised decision-making arms of the EU (2004a, 37-49). Missing out the transferability of these ideas to other cases might have aided both Smith’s case in distancing the findings of this study from neo-realist assumptions which might not easily apply to JHA policy and might therefore generate a more generalisable theory of institutionalisation in core state powers.

The underappreciation of this work in the field of JHA is evident in the differing term for the dependent variable. In JHA, communitarisation tends to the label for the process of integration occurring first in Trevi and then in the JHA ‘pillar’. Occipinti’s study of integration in the field of police co-operation (2003) emerges at a similar period to Smith’s analysis of EPC, yet makes little reference to Smith despite similarities on the dependent and independent variables. Instead of discussing institutionalisation, Occipinti analyses ‘a shift to’ or ‘the development of supranationalism’ (2003, 20-22; see also, Julien-Laferrière, 2008). In line with the more

general trend in analysis in JHA, analysis also focuses more upon formal institutional structures rather than the informal norms and practices emphasised by Smith (2004a).

One function of research is not simply to test and generate new theories, but to reorganise existing research and concepts to highlight broader trends and missing elements. In this regard, one central aim of this thesis is not only to put forward a general explanation for the phenomenon of communitarisation but also to provide a common conceptual language for further comparison between modes of governance in core state powers. In this sense, one of the contributions of this thesis is to highlight the fact that concepts specific to one field of intergovernmental policy-making may be applicable to other areas of core state powers, such as the idea of the ‘capability-expectations gap’ in CFSP (Hill, 1993) or ongoing discussions of the accountability of intergovernmental processes in the Eurogroup (Craig, 2017). The gap in the literature which this thesis seeks to speak to is, therefore, one of offering a comparative basis for the conception of communitarisation in areas of core state powers.

Most similar to this project is the contribution of Diedrichs, Reiners and Wessels (2011) who argue that ‘new modes of governance’ show a tendency to change and integrate over time. As such, the dependent variable relates to a more general change in ‘new modes of governance’ more generally, rather than specifically to the changing nature of the intergovernmental method over time. Specifically, they consider the Open Method of Co-ordination (OMC), soft law, and the emergence of ‘private actors’ within integration (2011, 19), conceptualising the dependent variable as new forms of decision-making, new tools of decision-making, and an alteration of the ‘sphere of authority’ (2011, 23). Furthermore, they consider the differences between the emergence of new tools from within and outside of the treaty frameworks (2011, 35). Thus, while there are similarities both in the argumentations and findings of their contribution, the focus and formulation of the dependent variable and model differs substantially from this thesis. Thus, it is limited in its ability to solve the theoretical puzzle put forward at the beginning of this thesis.

Similarly, the focus of Puetter’s (2014) work on the Council machinery in the European Union has a rather different focus than this thesis. Puetter’s work focuses upon a concept of ‘deliberative intergovernmentalism’ seeking to ‘identify a series of attempts at institutional engineering that are aimed at modifying established decision-making routines which originally evolved in the context of community making decision making’ (2014, 56). As such, Puetter demonstrates the growth of deliberation as a key part of the EU’s policy-making process,

particularly in relation to several classic intergovernmental areas such as the CFSP and the Eurogroup. In this way, Puetter describes and explains new specific practices emerging in the EU's realms of intergovernmental policy-making.

In this sense, the scope of Puetter's later work into the Council differs in some fundamental manners from the interest of this thesis. Firstly, the dependent variable of this thesis builds upon the assumption that there are clearly identifiable areas of intergovernmental policy-making in the EU versus areas of supranational co-operation. This is not seen as a function of contestation alone, rather a result of the actors and interests at the heart of these policy areas (see; Genschel and Jachtenfuchs, 2014). Secondly, it shares an appreciation for work highlighting that what has evolved is neither the intergovernmental method of the 1970s nor the wholesale adoption of supranational policy-making processes but recognises that each of these methods represents a fundamental logic of either co-ordination of national policies or co-operation through shared institutional frameworks. Furthermore, it keeps the question of how power is exercised within a larger context of potential future communitarisation, through trying to demonstrate and explain the movement of power away from individual Member States. Puetter, meanwhile, highlights emerging practices of deliberation within the European Council and Council of Ministers and explains how these have come about.

## **2.7 Traditional Integration Theories and Communitarisation**

One of the challenges in analysing communitarisation is the difficulty in applying traditional theories of market integration. These difficulties centre on the features, actors, and processes associated with integration in areas of core state powers as compared to those concerning legislation in the single market (Genschel and Jachtenfuchs, 2014; 2018). Specifically, there are four central problems; the differences on the demand side of integration, differences on the supply side of integration, the differing departure point for communitarisation, and the reliance upon informal institutional practices.

Firstly, in traditional theories of market integration, the demand for integration is generally seen as emerging from domestic or trans-national industrial sectors. In the traditional Neo-Functionalist model of integration, the demand for integration increases with the density of trans-national transactions between social and industrial actors (Sandholtz and Stone Sweet, 1998, 10). Similarly, in the Liberal Intergovernmentalist model of integration, national industrial and societal actors form the basis of Member State bargaining positions when identifying avenues for future integration (Moravcsik, 1993, 482). In both cases, trans-national

standards act as a barrier to trade increasing the transaction costs of these domestic actors in carrying out their day-to-day activities.

Yet as Genschel and Jachtenfuchs note (2014; Moravcsik and Nicolaidis, 1999, 61), the transactors in areas of core state powers are state elites rather than market transactors. Thus, those who bear responsibility over these policy areas are also those whose powers are limited by the integration of a policy in these areas. Thus, the demand for integration in areas of core state powers is likely to be motivated by national departments seeking to more effectively fulfil national policy goals in areas of interdependence. Similarly, state elites are likely 'to oppose integration moves that threaten their interests', namely the avoidance of their own redundancy and the reduction of national adjustment costs (2014, 52).

Secondly, on the supply side of integration, there is a similar difference in the actor constellations and interests at play. In the Neo-Functionalist model of integration, supranational agencies take on a central role in 'cultivating' integration through the activation of new interest groups, the promotion of integrative responses to inter-state bargains and crises, and the linking of different issue areas to promote 'functional spill-over' (Haas, 1964; Sandholtz and Stone Sweet, 1998). Yet, as noted previously, one of the central issues for the process of communitarisation is the absence or constraints placed upon supranational actors, at least in the initial stages of integration. Formally, supranational agencies are excluded from decisions, allowing few avenues for the 'cultivation' of spill-over and integration found in traditional modes of integration. In addition, the Commission in particular might be lacking in resources and capacity to produce and influence the policy process. One example is that of the shared right of initiative, which opens the Commission to the threat of having its proposals 'pre-empted' by Member State proposals (Markert, 2014). Informally, this weakened position results in a reliance of supranational agencies on trust to retain a seat at the table, something which may be undone if an overt strategy of promoting integration is taken (e.g. Monar, 1994, 71). Despite this, once incorporated into the structures of co-operation, the Commission can play a limited role in promoting further communitarisation (see; Kaunert, 2007; Riddervold, 2016).

Thirdly, institutional change in communitarisation takes place both from a different departure point and through a different set of circumstances to integration in market integration. Namely, integration begins through the intergovernmental method with the purpose of co-ordinating national policies rather than creating new regulatory practices at the supranational level. Thus,

the development of institutions in the intergovernmental method is initially geared towards a different 'end' to that occurring in market integration.

Similarly, the actors emphasised in this mode of governance differ, with work being largely carried out through working groups composed of national departments, with ministerial meeting being prepared by national diplomats and organised through a rotating presidency. As the school of Historical Institutionalism shows, institutional developments are frequently 'path dependent' meaning that 'the farther into a process we are, the harder it becomes to shift from one path to another' (Pierson, 2004, 18). The changing nature of the intergovernmental method therefore requires established practices and bodies to be eroded over time, bodies which frequently have developed their own strong identities and roles within the policy-making process. One example of this includes the Political and Security Committee (PSC) of the CFSP, which developed as the preparatory body within EPC and then found itself overlapping with the responsibilities of the Committee of Permanent Representatives (COREPER) (Duke, 2005). Thus, after the incorporation of Maastricht, new procedures had to be found which could retain the PCS's contribution to the policy process but manage this degree of institutional overlap. Similarly, the modern High Representative for Foreign Affairs was initially established as an agent of the Council Secretariat rather than the Commission, with the modern post holder as a result being 'dual-hatted' both in this traditional role and as Vice President of the European Commission.

The result of this difference in institutional form is likely to emerge with respect to the institutional structures which are likely to emerge once these bodies have become incorporated into the treaties. In gauging the extent of communitarisation, the focus should not be upon the extent to which intergovernmental co-operation reflects the specific structures associated with EU policy-making structures in market policies (see; Trauner and Ripoll Servent, 2016; 2018). Rather, analysts should consider the extent to which the policy-making process reflects the fundamental principles of the intergovernmental method; an emphasis on the co-ordination of national policies rather than joint policy-making and the upgrading of common interests. The movement towards 'joint actions' in the Maastricht Treaty, for example, represents such an intent to move beyond co-ordination through means not reflected in areas of market integration. In sum, the utility of normal procedures associated with supranational governance as a heuristic should not solely be relied upon.

Lastly, one important aspect differentiating the intergovernmental method from supranational policy-making is the increased reliance upon informal institutional structures. Due to only the most fundamental of tasks being outlined in the initial document on which co-operation is structured, the Member States must update these institutions as co-operation continues. What underpins these informal practices is that they are uncodified and not enforceable through third parties (Helmke and Levitsky, 2004), yet they are commonly recognised by all participants in the body (Knight, 1992). These new institutional structures can supplement the existing set of institutions, adding to the efficiency of the body, or can subvert existing institutional practices thus altering the mode of decision-making (Helmke and Levitsky, 2004; Kleine, 2014). The result is that many of the structures which emerge within these forums occur ‘interstitially’, or between formal revisions of the working methods of these bodies (see Stacey and Rittberger, 2003). An analysis of communitarisation must therefore place a heavier emphasis on alterations to informal practices than one looking primarily at areas of market co-operation.

This departure requires the amendment of approaches which place a high emphasis on formal treaty revisions at Inter-Governmental Conferences (IGC), associated with the Liberal Intergovernmentalist approach (Moravcsik, 1998). In this model, central decisions surrounding the institutional structure of co-operation are decided by the Member States as they revise the EU’s treaties, rather than on an ad hoc manner witnessed in intergovernmental bodies, particularly before Maastricht. For example, this emphasis on IGC bargaining gives little scope for the analysis of institutional change in Trevi, through which most institutional practices emerged without formal revisions throughout the late 1970s and early-to-mid 1980s at the level of Trevi’s working groups (Oberloskamp, 2016).

The approach taken in this thesis therefore departs slightly from the emphasis on Intergovernmental Conferences and national domestic groups associated with Liberal Intergovernmentalism but builds upon its theoretical assumptions focusing upon bargaining power in determining the scope, form, and timing of integration. Due to the centrality of the Member States in the intergovernmental policy-method, intergovernmentalist theories of integration such as Liberal Intergovernmentalism give good grounds for building an initial theory of why communitarisation occurs. As such, the thesis will progress with an amended Liberal Intergovernmentalist model better suited to areas of core state powers (for example, see Moravcsik and Nicolaidis, 1999).







## **CHAPTER THREE**

### **The Process of Communitarisation**

#### **3.1 Introduction**

Communitarisation is a process of institutional change. Specifically, it is a process whereby the Member States of the EU increasingly incorporate institutions which emphasise the principles of collective policy-making and the ‘upgrading of common interests’ over those emphasising the co-ordination of Member State policies. This chapter will build on this basic definition by outlining in more detail what is meant by an institution, what constitutes institutional change, and how these can be observed and measured. Specifically, the thesis will measure the extent of communitarisation based upon the movement away from the institutional features which emphasise the co-ordination of national policies; the formalisation and subsequent legalisation of procedures, the delegation of authority to supranational agencies, and the adoption of voting procedures which increase better facilitate compromise.

Following this, the chapter will discuss the rational choice approach chosen through which the process of institutional change will be analysed. In selecting this framework, the thesis utilises a primarily deductive approach, where hypotheses compare the applicability of functional and distributive approaches to institution building. In detailing these approaches, three independent variables are specifically considered; the transaction costs of the policy process, the credibility of unilateral action or institutional alternatives, and the costs of interdependence in relation to the potential national adjustment costs in this field. This will be first detailed in a model outlining how communitarisation is expected to take place, followed by three hypotheses relating to the rationale for choosing the intergovernmental method, the functional pressures for communitarisation, and the distributive pressures for institutional change.

Finally, the chapter will put forward the logic behind the case selection of the thesis, providing a brief outline of the four cases considered; the Common Foreign and Security Policy (CFSP), Justice and Home Affairs (JHA), fiscal policy in the Eurozone, and the Common Security and Defence Policy (CSDP). A final remark will be made regarding the data collection and analysis techniques chosen, alongside their strengths and weaknesses.

#### **3.2 Institutions and European Governance**

When defining communitarisation as a process of institutional change, this thesis uses the definition of institutions used by North (1990), referring to institutions as ‘the rules of the

game'. They are 'script[s] that names the actors, their respective behavioural repertoires (or strategies), the sequence in which the actors choose from them, the information they possess when they make their selections, and the outcome resulting from the combination of actor choices' (Shepsle, 2006, 23), recognised in their existence by all actors within the community they applies to (Knight, 1992). What is central is the assumption that 'institutions create elements of order and predictability' which are worthy of study, as the existence of such rules creates patterns of behaviour which affect the distribution of power in a political system (March and Olsen, 2006, 4-5).

Institutional structures can be formal, meaning that they have been come into existence as 'conscious creations' through a specific policy process (Stacey and Rittberger, 2003, 861), normally resulting in their codification (Williamson, 1979, 236; also, Helmke and Levitsky, 2004; also Stone, 2011, 12-15). Such formal rules are observable in intergovernmental policy-making, through the codified working procedures of EPC in the *coutumier* (Smith, 2001) or in the Eurogroup with the Eurogroup Working Methods document (Council of Ministers, 2008). Furthermore, these structures can become 'legalised', whereby these rules become increasingly binding upon the members they apply to through the expansion of obligations, a reduction in their scope for multiple interpretations, and the delegation of authority to enforce those rules (Abbott et al., 2000; Goldstein et al, 2000; Smith, 2001; Abbott and Snidal, 2004). The extension of the ECJ's jurisdiction over Police and Justice Co-operation in Criminal Matters (PJCCM) in 2014, for example, represents a move towards decisions in this area as it reduces the scope for non-compliance.

Formal procedures only constitute part of the picture of how modes of governance operate in the EU and more widely (Kleine, 2013; 2014; Stone, 2013). Indeed, the formal contract on which co-operation is based may be incomplete. It may, therefore, require subsequent revision and the supplementing of written practices with new uncodified conventions. Institutions can be informal, existing as mutually recognised yet uncodified conventions or as unconsciously created patterns of behaviour (North, 1990; Stacey and Rittberger, 2003, 861; Helmke and Levitsky, 2004). Formally, for example, the constitution of EPC excluded the Commission from its decision-making procedures, with the Commission only gaining 'full association' by 1986. Informally, the Commission had gained a role within its procedures as early as 1974 (Bonvicini, 1982). As seen in this example, informal rules might not simply supplement the incomplete nature of the formal contract decided by political actors but may represent a 'systematic departure from formal rules' (Kleine, 2014, 304).

Communitarisation occurs both through informal and formal means. Formally, the EU's Member States continually update and alter the codified basis on which they operate, through the publication of working methods, the revision of founding documents, and the inclusion of their body's procedures into the EU's treaties. Institutional change in this sense is relatively simple to observe as such documents can be compared with one another to show a gradual evolution away from the ideal type intergovernmental method. Indeed, once such formal structures have developed, they may pass relatively easily into 'hard' law (Dehousse and Weiler, 1991). In this sense, communitarisation can be assumed to have occurred when new sustained practices come into effect such as when unanimity is abandoned as a voting procedure, when supranational agencies are granted responsibilities in the decision-making process, and when structures gain new means of being enforced.

Informal institutions are comparably hard to observe. Firstly, the lack of codification of such rules means that the identification of new practices is relatively difficult to detect. As such, an analysis of a move towards communitarisation must take note of sustained changes in behaviour which alter or expand upon the established formal institutional structures within a body. Secondly, once such changes have been identified it must be considered whether these do in fact relate to a change in governing structures. As Kleine (2014, 310-311) notes, 'not every rule departure automatically serves a governance function'. The one-off involvement of the Commission in the discussion of a specific EPC policy in the 1970s, for example, might not constitute an informal sustained amendment of the Commission's non-involvement in these structures. This thesis therefore considers informal amendments in relation to sustained changes in practices which can be viewed over time as evidence of an informal institutional amendment, rather than simply a one-off alteration to existing rules.

### **3.3 The Elements of Communitarisation**

In Chapter 2, the properties associated with the intergovernmental method were noted, each of which contributed in their own way to a system of policy-making emphasising the co-ordination of Member State policies. Particularly, this was achieved by granting each Member State the means through which key national interests could be protected against costly common decisions; the option of non-compliance with unexpectedly costly policies, the ability to avoid the potential engineering of policies against the interests of the Member States by supranational agencies, and the option of vetoing potentially costly policy. These properties form the basis

of the operationalised dependent variable, how communitarisation can be gauged and measured over time.

This conceptualisation of the dependent variable takes place as part of a continuum between the properties associated with intergovernmental policy-making processes and those constituting supranational policy-making. While this implies an end-point in terms of communitarisation, what is intended by this continuum is to demonstrate and measure the extent to which structures which emphasise co-operation rather than co-ordination take hold. As highlighted in the previous chapter, the objective of the thesis is to understand the changing principle of policy-making rather than the specific institutional outcomes of the communitarisation process. While a policy area might rank closely to practices associated with supranational governance, this does not preclude the possibility of unusual practices existing in the policy process which are not apparent in supranational systems. Ranking these on a scale simply allows for comparison with other works in the field of integration as well as with areas of market integration, building on the comparable scale of Lindberg and Schiengold (1970, 69), Boerzel (2005), and Sandholtz and Stone Sweet (1998, 8).

Secondly, in measuring this departure from intergovernmental policy-making procedures, the scales concern themselves with the central policy which epitomises each policy area. In most intergovernmental bodies, the intergovernmental organisation will often aggregate new issues over time related to its initial area of interest. For example, immigration was eventually included into the apparatus of Trevi, despite Trevi's initial interest being in counter-terrorism. To simplify the analysis, each policy area focuses most upon the key area of policy concerned which the intergovernmental method was chosen for; police and justice co-operation in Trevi, fiscal policy in the Eurozone, common responses to international crises in the CFSP, and the creation and use of common military capabilities in the CSDP. It is therefore possible for future research to measure variance in communitarisation across only one policy area. As this project is designed to show the common features across many cases, it considers the essential areas of policy for body.

### 3.3.1 Formalisation and Legalisation

The first element of the dependent variable refers to the formalisation and legalisation of structures over time. While these two processes go by different labels, one is viewed as being closely related to one another. Formalisation consists of the process through which institutional practices take on a codified nature through a commonly agreed upon process (Helmke and

Levitsky, 2004). Thus, formalised practices include codes of conduct, decisions of the European Council and Council of Ministers surrounding new structures, and the initial reports on which further co-operation takes place. Unlike the emergence of new informal institutions occurring generally interstitially (Farrell and Héritier, 2007), formalisation tends to occur at inter-governmental conferences and summits where institutional structures are reviewed through an intentional and specified processes.

What is notable about the concept of formalisation is that it grants little attention to the enforcement of these formal procedures. For example, there is a substantial difference between a formal decision through the intergovernmental Trevi forum and decisions taken through the modern Area of Freedom Security and Justice (AFSJ). Namely, Trevi decisions were not enforced through any formal given procedure, while modern decisions of the AFSJ are

*Table 3.1: Scale of Formalisation and Legalisation in Communitarisation*

Score	Label	Definition
0	Informal Relations	No formal structures through which co-operation occurs.
1	Intergovernmental Co-ordination	Limited formal structures relating to central tasks of body. No enforcement procedures. Body is extra-treaty.
2	Formal Association	Codified internal procedures. Referenced by the Treaties of the EU. No enforcement procedures.
3	Pillarised Co-ordination	Codified internal procedures. Contained within the Treaties in the EU. No enforcement procedures. No power to ECJ.
4	Semi-legal Co-operation	Codified internal procedures. Contained within Treaties of EU. Limited enforcement procedures. Limited role for the ECJ.
5	Supranational Co-operation	Codified procedures. Constituted in EU Treaties. Clear enforcement procedures adjudicated by the ECJ.

enforced through clear given procedures stated in the Lisbon Treaty, based upon the judgements of the ECJ. Abbott et al (2000; see also Goldstein et al, 2000) give a three-dimensional view of legalisation; in the increase of obligations required by rules, the precision in which these rules have, and the delegation of enforcement procedures. Similar to how the properties of the intergovernmental method reflect an underlying principle, these principles suggest a system whereby the potential for non-compliance is reduced through the limiting of opportunity for re-interpretation and through procedures for the enforcement of rules.

In the ideal type intergovernmental method, most practices and structures are expected to be informal, existing as unwritten conventions and practices which guide behaviour. In practice, only the most fundamental principles are likely to be codified; the frequency of meetings, the broad systems of administration, and the general goals of the body. The Eurogroup's initial formal structure, for example, rested on the decision of the December 1997 Luxembourg European Council, which noted the general aims of the Eurogroup, the membership, and re-stated its status as an extension of the wider Economic and Financial Affairs Council (ECOFIN) in which decisions were to be taken. The substantive practices which took place within the Eurogroup were created on an *ad hoc* basis and existed informally until the codification of internal practices in 2004.

The communitarisation of these forums implies a reduction in the available opportunities of the Member States to avoid compliance with both the internal practices and agreements of the relevant intergovernmental body. This is visible through the inclusion of structures into the Treaties of the EU and the resulting practices being enforceable by the ECJ, the introduction of formal procedures for the supervision of implementation and enforcement of penalties in cases of non-compliance, and the granting of adjudication rights to the ECJ. While the granting of rights to the ECJ appears as a process of delegation, it has been included under the heading of formalisation. This is because the principle of this act of delegation is to reduce the possibility of non-compliance, in line with the principles of this element of the dependent variable.

In measuring the process of communitarisation in respect to a body's formalisation and legalisation, the scale outlined in table 3.1 is utilised. This scale was formulated inductively, reflecting a generalised picture of how formalisation and legalisation increases in each case. Movement upwards on the scale represents a movement towards communitarisation, with each of the respective indicators of formalisation and legalisation representing the increasing



precision and scope of the body's rules, alongside the increasing costs of non-compliance (Abbott et al., 2000).

### 3.3.2 Delegation

With respect to delegation, this element of the dependent variable represents the specific granting of administrative and legislative tasks to the supranational level. In terms of administrative tasks, the intergovernmental method utilises a system whereby the management of the political system falls into the hands of national departments and a rotating presidency.

*Table 3.2: Scale of Delegation in Communitarisation*

Score	Label	Definition
0	No Delegation	Supranational Agencies have no responsibilities.
1	Informal Inclusion	Supranational Agencies have an informal role in the aiding of the policy process, but are formally excluded.
2	Formal Support	Supranational Agencies have a formal role in the organisation in aiding the Member States in carrying out their duties. A formal secretariat has been established.
3	Joint Right of Initiative	Each Member State and the Commission may table a legislative proposal. A formal secretariat has been established.
4	Joint Right of Initiative with quorum	The Commission may table a legislative proposal and so may a quorum of Member States. A formal secretariat has been established.
5	Supranational Co-operation	Commission has sole right of initiative. Secretariat has normal responsibilities as witnessed in market integration.

The delegation of legislative tasks, meanwhile, focuses on the right of initiative, which is either held by the Member States, shared with the European Commission, or is exclusively granted to the European Commission.

Like other elements of the dependent variable, this element relates to a specific logic underpinning the intergovernmental method. Specifically, this element of the dependent variable refers to the ability of individual Member States to manage the political process and set its agenda, thus keeping the broad political process in their own interests. In the terms of the literature on delegation, Member States seek to avoid the potential of the Commission in particular to 'shirk' on its responsibilities. In such a scenario, the Commission represents an agent which has been entrusted certain tasks by its 'principals', the Member States. Shirking occurs when the interests of the agent differs from those of its principals and as a result the agency follows its own preferences rather than those of the principals (Kiewit and McCubbins, 1991, 26-27; Pollack, 2003, 26). In this case, Member States who wish to avoid the promotion of further integration or proposals which undermine their interests can be expected to seek the limiting of supranational agencies in the policy-process. This is particularly pertinent considering that in the traditional Neo-Functionalist approach, the Commission has a central role as an engine of integration (Haas, 1964).

Yet delegation has its own particular advantages in the policy process. As discussed above, delegation to the ECJ can act to further strengthen institutional structures through monitoring compliance and enforcing sanctions (Pollack, 2003, 21-22). One advantage, for example, of delegation is in better managing issues of policy consistency. In the cases of EPC, the Eurogroup, and JHA, complaints have emerged regarding the 'coherence' of policy across time (Hix and Niessen, 1996; Nuttall, 2005). Of the differing dimensions of coherence which have been considered in the literature on this concept (see Gebhard, 2017, 107-108), of specific interest is 'horizontal coherence' or coherence between the EU policies and policies in intergovernmental areas of co-operation, 'internal coherence' or the coherence of the work of the differing groups constituting the EU's policy process (see; Peek, 1994), and an additional form of coherence which this thesis labels 'temporal coherence' or coherence in policies over time.

Delegation in relation to each of these aids the increase in the coherence of policies in relation to each of these in differing ways. Firstly, the granting of agenda setting powers to the Commission aids the 'horizontal' coherence of policies between supranational and

intergovernmental policy areas as the Commission represents a single organising body across each. In the case of EPC, the proposals in the intergovernmental areas represented the specific concerns of the Member States during each crisis, with the chosen solutions reflecting the national preferences and positions over these crises rather than the wider approach already taken by the EU more generally. Thus, ceding the power over legislative initiative allows for there to be a single agenda setter in each realm ensuring the consistency between community and intergovernmental realms.

Secondly, the rotating presidency system grants Member States control over intergovernmental policy areas for around 6 months. In this time, the Member States must co-ordinate the various specialised working groups which feed into the wider decision-making structures at the diplomatic and ministerial level. A supranational agency can therefore bring consistency to working groups due to its specific task due to its longer time horizons and expertise within these given policy areas.

Thirdly, with each rotating presidency Member States bring their own priorities to the agenda of intergovernmental bodies. In the Eurogroup, for example, the Finnish Presidency placed an emphasis on improving the transparency of the Eurogroup's meetings, while the French and Belgian Presidencies presented their own 'blueprint' for reforming its structures. In addition, the institutional experiences gained during a presidency are eventually lost, with each new Presidency having to learn the ropes. One way of improving this consistency over time is to involve a secretariat, with this body acting as a 'keeper of the books' (Nuttall, 2000, 23) and provider of long-term information.

This mode of analysing delegation has been selected as it is both indicative of the level of communitarisation found in a policy area and is focused upon two central tasks epitomising intergovernmental co-operation. The European Parliament has not been chosen as a supranational agency, despite its growing influence in areas of core state powers, due to its role in traditional areas of supranational governance having grown over the same time period as the communitarisation of intergovernmental bodies. Thus, an idealised image of supranational governance no longer serves as a useful heuristic which the intergovernmental method can be measured against. Similarly, the thesis has chosen to focus primarily on these tasks as they both represent clear avenues for the influence of the policy process by supranational agencies and represent a fundamental step away from the ideal type intergovernmental method.

In analysing the delegation of responsibilities to supranational agencies, the thesis includes the delegation of these tasks to de novo agencies. The High Representative for Foreign Affairs, for example, was an agent of the Secretariat in 1999 before being ‘dual-hatted’ as Vice President of the European Commission as part of the Lisbon Treaty. Similarly, the European External Action Service was established independent of the Commission but serves a similar role in supporting the High Representative in their activities. Thus, the fundamental logic and potential agency losses are not considered different enough to the ‘normal’ mode of delegation to warrant a further complication of the model.

### 3.3.3 Voting Rules

Lastly, one of the central features of the intergovernmental method is its use of unanimity as a voting procedure. Unanimity allows for Member States to veto proposals which they view as running against their interests, thus limiting decision-making to the lowest common denominator. As Weiler notes, this does ‘not necessarily paralyse the Council because... the Council *must* at the end of the day take a decision if entire policies are not to come to a halt’ (Weiler, 1981, 286). As a result, this allows Member States to avoid the undermining of national interests, existing ties with third countries, and the imposition of policies with high adjustment costs, limiting the scope for compromise and the ‘upgrading of common interests’ at the decision-making stage. This mode of decision-making differs from ‘consensus’, whereby the Member States will take a decision only when all Member States have approved but where Member States do not have access to the national veto (Lewis, 2003).

The effect of majority voting is thus that Member States must negotiate in the ‘shadow of the vote’ (Lewis, 2003, 1007). Put simply, if a Member State chooses not to compromise in the pursuit of consensus and finds itself in the minority, then the threat hangs that the Member State may be outvoted and have none of its aims considered. Thus, the use of majority voting systems increases the likelihood of compromise and collective decision-making beyond the lowest common denominator.

Yet not every majority voting procedure is equal at the supranational level (Table 3.3). Voting procedures vary in the size of blocking minority required to prevent a proposal from being adopted. In the case of Qualified Majority Voting (QMV), for a legislative proposal to be rejected Member States the minority must constitute four Member States representing 35% of the EU’s population (European Council, accessed 06/2018). This means that larger Member States have a better ability to prevent the adoption of laws due to their larger population size.

*Table 3.3: Scale of Voting Procedure in Communitarisation*

Score	Label	Definition
0	No Co-operation	No voting procedures.
1	Unanimity	All Member States hold the veto over the adoption of new proposals.
2	Consensus	Unanimity is required, but procedures exist to facilitate co-operation between smaller groups. This includes the ‘Constructive Abstention’ allowing abstainers to opt-out of the policy and the creation of ‘coalitions of the willing’ through ‘enhanced co-operation’.
3	Qualified Majority Voting (QMV)	Voting follows the established procedures for QMV detailed in the EU Treaties. At Lisbon a proposal needs the support of 55% of the Member States’ votes representing 65% of the population.
4	Simple Majority	A proposal requires the support of a majority of Member States. Presently 15 of the 28.
5	Reversed Qualified Majority	A qualified majority of Member States is required to reject a proposal from the Commission.

Simple majority, however, requires a higher threshold of Member States to oppose a piece of legislation than in a QMV. Finally, in the case of reverse QMV, the threshold has been increased further, requiring further compromise on the part of the Member States for a proposal to be prevented.

Similarly, there is variation between procedures utilising unanimity. In the case of the CFSP, Member States can choose to abstain from a policy and therefore not be bound by its consequences so long as they do not contradict the Council’s decision. As a result, this raises the ‘lowest common denominator’ in cases where Member States wholeheartedly oppose intervention or action, particularly those which take a stance of neutrality. Similarly, in the

CSDP the Council may ‘entrust the implementation of a task to a group of Member States which are willing and have the necessary capability’ for a task (TEU, 2009, Article 44). Thus, these procedures do not necessarily represent unanimous decision-making as it allows for an exit option to those states wishing not to take part in such decisions.

### **3.4 The Engines of Communitarisation**

The underlying puzzle of communitarisation is why Member States at first choose a mode of policy-making which emphasises the role of individual Member States before incorporating structures emphasising collective decision-making and the co-operation of shared machinery. In traditional accounts of communitarisation, this puzzle is presented as a tension between the demands of supranationalism and intergovernmentalism. As Majone emphasises (2005, 162-180), intergovernmental modes of co-ordination do give grounds for both Member States to co-operate on certain issues efficiently and to make sure there is a degree of credibility to their commitments. Yet at the same, time, Majone highlights that (2005, 179) ‘the price of operating free of the constraints of the Community method is a loss of legal certainty and the opaqueness of the process’. Similarly, Weiler (1991) highlights that during the growth of intergovernmental systems in the 1970s, this mode of policy-making allowed Member States ‘near total control’ over these areas with the added advantage of escaping ‘the strictures, or nuisance, of parliamentary accountability’ (1991, 2449). In this sense, communitarisation is an equilibrium outcome between the demands for loose intergovernmental systems and the demands for more traditional systems guaranteeing more credible commitments, lower barriers to passing agreement, and lower administrative costs.

The question then is; what are the actors and processes that alter this equilibrium? Regarding the actors, due to the differences between market integration and the intergovernmental method, this thesis takes a primarily intergovernmentalist approach to the analysis of communitarisation. This decision has been made for several reasons. Firstly, as noted by Genschel and Jachtenfuchs (2014), the demand for integration in areas of core state powers comes from within the state itself. The negative externalities and transaction costs associated with interdependence in core state powers are primarily felt by the national departments which seek to co-operate in these fields (2014, 50-52); by national police forces navigating different legal systems and traditions in the pursuit of a criminal, by national diplomats in attempting to reach a co-ordinated response to an international crisis, or by national finance ministries in co-ordinating their responses to a financial crash. As a result, a focus on domestic interest groups

in shaping this demand for integration, as emphasised by Liberal Intergovernmentalism and Neo-Functionalism, is inappropriate.

Secondly, in the supply of integration the role of supranational agencies is constrained. This occurs formally through the exclusion or limitation of their roles, through the lack of coercive and administrative resources available to influence the policy process, and informally through their requirement to build trust to retain influence. Thus, the avenues and opportunities for supranational agencies to ‘engineer’ or ‘cultivate’ integration through responses to crises are limited. Yet, at later stages in the integration process supranational agencies do find these potential avenues strengthened (Kaunert, 2007; Riddervold, 2016). Even in these cases, the Member States remain the central decision-makers and drivers of integration. For example, despite the presence of supranational agencies during the Maastricht Treaty negotiations, the resulting institutional changes reflected a formalisation of the existing machinery rather than a significant abandonment of the intergovernmental method. Thus, to keep the model of communitarisation as parsimonious as possible, the thesis assumes that the central drivers throughout the process of communitarisation are the Member States.

As such, the Member States are considered the central actors in driving the process of communitarisation forward. In analysing the Member States, in line with other intergovernmentalist approaches it assumes that states are *unitary*, therefore allowing for a stylised approach which can more effectively analyse bargaining within the Council. As Moravcsik (1998, 22-23) notes, this does not lead to the assumption that preferences are not contested at the national level, but only that Member States pursue these preferences in a unitary manner once formulated. Secondly, this does not imply that different types of national representative may not hold differing preferences, but that such preferences will represent a relatively stable ‘net national position’ (1998, 23).

In analysing institutional change, this thesis takes both a primarily rationalist approach and an approach emphasising change over time influenced by historical institutionalism (Pierson, 2004). Two rationalist approaches have been chosen; the functionalist and distributive perspectives. As will be further detailed below, the former approach highlights the differing efficiency demands placed upon policy processes at each specific time, allowing institutional change to be explained according to the common demands placed upon the policy process. It can therefore be understood under what conditions the intergovernmental method is considered inefficient. The second perspective highlights the inequality of bargaining power and demands

between Member States. Not all Member States prefer intergovernmental modes of policy-making when these structures arise, nor do others fully endorse communitarising moves. This second perspective, therefore, emphasises how the costs of interdependence alter at the national level and then affect Member State preferences for communitarisation. Through comparing these approaches, a clearer understanding of what underlying changes are resulting in communitarisation.

#### 3.4.1 Functionalism and Communitarisation

The first approach to understanding institutional change is that of functionalism. This theoretical perspective highlights the collective advantages and disadvantages of intergovernmental policy-making. In the functional approach, it is argued that the form of a political system follows the demands placed upon it by the constituent members. Thus, institutions are understood in their ability to efficiently solve collective action problems (see; Coase, 1937; Arrow, 1962). The institutional structure at any particular time in this approach represents an equilibrium outcome reached between actors with even bargaining power (Hériteir, 2010, 12).

One manner of conceptualising the problems with policy-processes has been the problem of transaction costs, defined by Arrow as ‘the costs of running the economic system’ (1969, 48). In this case, institutions provide increased calculability, clearer means of adapting incomplete contracts, and an increase in the credibility of commitments (Williamson, 1979). Institutions thus serve an important social function in providing a more efficient basis for human interaction. The functionalist approach provides an intuitive basis for describing and evaluating these efficiencies. For example, Pollack (2003) outlines the value added of supranational agencies, using transaction cost theory to analyse their specific roles in aiding the EU’s policy process; in monitoring compliance and increasing the credibility of commitments, in solving issues of incomplete contracting, in providing objective specialised information, and in providing legislative proposals from a standpoint beyond that of individual Member States (see also; Majone, 2000).

The underlying theoretical argument underpinning the equilibrium outcome of communitarisation relates to the efficiency of common machinery in facilitating the demands of the policy-process. Hypothesis two builds on the assumption that the intergovernmental method is inefficient in the long-term by arguing that as the intensity of co-operation in terms of the quantity and complexity of agreements increase, so too increases the demand for more



efficient structures for the meeting of these needs. This will be elaborated further later in this chapter.

There is, however, a deficiency that underpins this approach. Firstly, functionalism struggles to explain the specific timing of institutional changes in relation to the failure for communitarisation to occur where decision-making structures are sub-optimal. For example, the burden of the presidency in EPC was recognised as problematic as early as 1973, yet a solution did not emerge until the late 1970s. In this case, the theoretical approach requires an explanation for sub-optimal results following a crisis in which practices in the policy-process are recognised as inefficient. Similarly, functionalism is limited in utility when explaining the form or scope of changes once these had occurred. Why, for example, has the response to the financial and sovereign debt crisis been a strengthening of fiscal rules rather than a move towards a system of fiscal transfers or the pooling of debt (De Grauwe, 2010)? To answer these problems without resorting to tautological claims proved immensely difficult when applying this approach.

What this approach does to is explain the underpinning logic of specific institutional changes. When deciding to alter the decision-making structures of one body, Member States are likely to appeal to logics of efficiency or specific problems associated with existing structures which are functional in nature. As a result, it allows for a comprehension of the logic of communitarisation in terms of what specific demands are not met by intergovernmental structures over time.

### 3.4.2 The Distributive Approach

The central issue with the functionalist approach is the lack of politics and bargaining power within this model. In Lasswell's classic definition of politics, the object of study for political scientists was 'who gets what, when, and how' (1936), a definition which stresses the importance of the distribution of resources within the political system. As Moe has argued (1990; 2005), part of what makes political institutions political is this very competition between actors over the distribution of rights and resources implied by that definition. Understanding political institutions in this manner aids analysts in understanding what exactly the 'sovereignty costs' protected by the intergovernmental method might be. Thus, it provides a basis on which to identify the independent variables and processes when constructing an initial model. In this case, it highlights that the uneven distribution of resources and the uneven distributional effects of institutional structure are likely to affect the results of institutional design (Moe, 2005).

Political institutions might, for example, grant one Member State an uneven degree of influence over the political system than another, thus allowing that actor to act in a manner it might not have otherwise acted in (Dahl, 1957; Moe, 2005, 227).

Thus, in constructing this theoretical framework, the thesis makes several assumptions about the Member States in the EU. Firstly, it assumes that these Member States are rational. This means that the thesis assumes that the Member States are goal oriented and take decisions aiming to maximise the resulting benefits of a decision versus the costs (Hindmoor and Taylor, 2015, 2). Secondly, it assumes that institutions are exogenous to actor preferences, unlike Sociological Institutionalism, limiting actor behaviour through incentivising or disincentivising particular courses of action (North, 1990; Scharpf, 1997, 38-39). Furthermore, these rules are recognised by all members of the relevant political community (Knight, 1992, 2-4). Additionally, the approach utilised conceptualises institutions as ‘contracts’ (Williamson, 1979) which are updated and amended as actors repeatedly interact with one another (Héritier, 2010, 10). These contracts exist in an incomplete nature, requiring adjustment when new unforeseen circumstances or outcomes are witnessed (Cooley and Spruyt, 2009).

Secondly, it assumes that the bargaining power of the Member States is distributed unevenly across each of them. Thus, Member States are seen to have varying ability to alter the institutional structure of policy-making in the EU. In conceptualising how bargaining power is distributed, this thesis primarily builds upon the contributions of Keohane and Nye (1977; 11-22), Knight (1992; 2005) Moravcsik (1998), and Héritier (2010; 40-66). In this model, interdependence creates a demand for co-operation to manage the potential costs of these interdependences. In attempting to manage interdependences, the Member States are expected to choose between multiple potential solutions based upon the potential costs and benefits of these changes relative to their preferences (Héritier, 2010, 40).

In affecting these outcomes, the Member States show a degree of variance between them. Firstly, they vary in their exposure or ‘sensitivity’ (Keohane and Nye, 1972, 160) towards a particular problem. The West German government in the early-to-mid 1970s, for example, was highly exposed to the issues of cross-border terror in the form of left-wing and Palestinian terror groups. Secondly, Member States vary in their capacity to tackle such a problem unilaterally or using alternate forums or relationships (Keohane and Nye, 1973, 160; Moravcsik, 1998, 60-67), labelled ‘fall-back options’ (Héritier, 2010, 41; 2012) or credible alternatives. As a result, Member States vary in the requirement to seek agreement when

coming to agreement over a new institutional structure due to the potential costs of negotiations collapsing, what Moravcsik (1998, 62) as well as Keohane and Nye (1973) label ‘asymmetric interdependence’. Thus, even though all Member States have the veto over institutional changes as well as over policies in the ideal type intergovernmental method, not all Member States are equally able to credibly wield it (see, Tallberg, 2008).

Thirdly, as a rational choice theory it assumes that Member States will attempt to minimise the potential costs of adjusting national policies and costs of capacity building at the supranational level (Héritier, 2010; Genschel and Jachtenfuchs, 2018). Adjustment costs at the national level are considered to constitute the costs suffered by a government in altering existing practices at the national level or in reforming relationships with third bodies (see; Boerzel, 2002). Similarly, Member States are assumed to wish to minimise the potential costs of co-operation at the supranational level, either through the transfer of funds between Member States or in shouldering the costs of new EU structures (Genschel and Jachtenfuchs, 2018).

As a result, the thesis expects the timing, scope, and form of communitarisation to reflect the preferences and bargaining power of the Member States. Related to timing, communitarisation is generally likely to reflect the preferences of the lowest common denominator. Secondly, the scope of communitarisation is likely to reflect the distribution of bargaining power as well. The empowerment of the commission at a particular time, for example, is likely to be determined by those Member States most comfortable with existing arrangements. Lastly, as there are multiple institutional solutions to a problem of interdependence, the form of a communitarising measure is also likely to reflect the bargaining power of the Member States. This form includes the three elements of the dependent variable, or whether the Member States decide to increase the degree of formalisation or delegation, and the general aims and functions of these new procedures. The Euro area, for example, sees a high degree of communitarisation in its procedures for altering the budget practices of Member States in breach of the Stability and Growth Pact (SGP), but few for influencing those Member States not in breach of those rules. As will be argued, this reflects the distribution of bargaining power and preferences in the EU, rather than simply a functional demand for such structures.

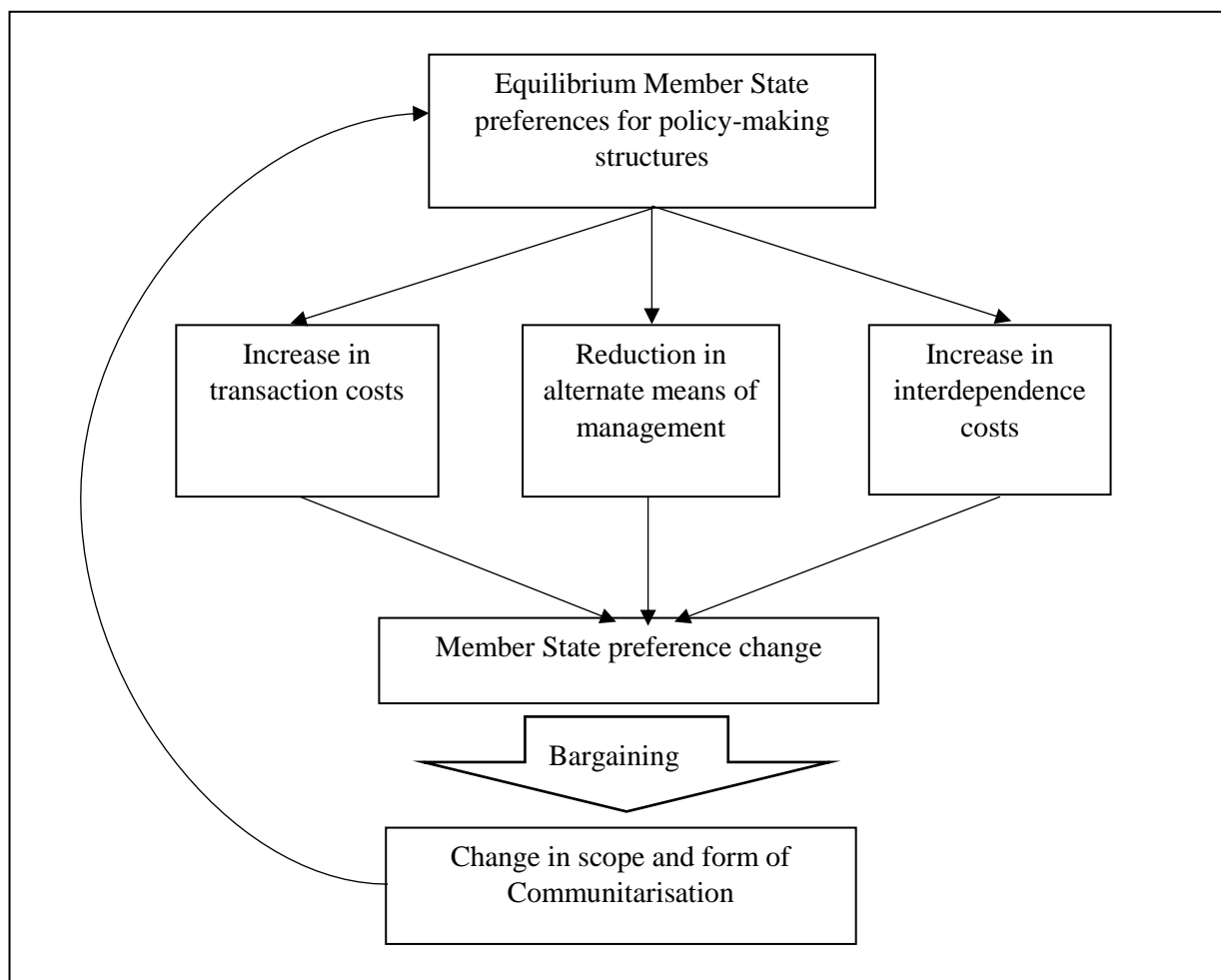
The re-activation of the WEU as a forum for defence in 1984 further exemplifies these factors in action. In this case, traditionally pro-NATO bodies suffered an increased exposure to the problem of defence as the United States took a unilateral and self-interested approach to defence. Thus, their demand for European co-operation was increased. Yet at this time, the

Irish government had both no demand and requirement for such co-operation due to its policy of neutrality. Thus, the Irish government had a high degree of bargaining power in this scenario. Similarly, the costs of adjustment at the national level would have been high due to membership of such a body requiring the revision of the Irish constitution. Thus, rather than expand EPC to include defence issues, those Member States wishing to co-operate chose to re-activate a body independent of the EU not affecting the neutrality of the Irish state.

### 3.4.3 A Model of Communitarisation

Figure 3.1 details the model in which the functional and distributive pressures are expected to drive communitarisation forward. Communitarisation reflects an equilibrium between the demand for communitarisation from the Member States and the ability for this to be supplied through bargaining. Each communitarising step takes place in relation to an existing equilibrium outcome, whether that be in the form of the initial structures set up for co-ordination at  $t_0$  or after several communitarising steps at  $tn$ .

*Figure 3.1: Model of Communitarisation in Core State Powers.*



Before outlining the conditions for change, what is evident in both the functional and distributive perspectives is that the nation state is limited in managing certain cross border issues (Keohane and Nye, 1973). Common institutions and policies act to better co-ordinate or facilitate collective action in managing these issues which cannot be solved by states alone. In the field of internal security, for example, terrorism in the 1970s became increasingly cross-border. Not only would terrorist cells move across borders to carry out attacks but could withdraw to other territories to avoid extradition to the state which they had targeted. Similarly, in the Eurozone the economic policies of one Member State can have effects on other Member States, whether that be in the maintenance of their public debts or in the management of their national wage policies. Any degree of communitarisation, low or high, therefore reflects this fundamental limitation of the non-collaborative nation state and the existence of some form of interdependence.

The demand side for communitarisation reflects the cost-benefit analysis of the Member State governments in assessing the desirability of further communitarisation. It is expected that changes in the extent of functional and distributive pressures are expected to result in preference change in national governments. The key mechanism causing a change in communitarisation is therefore national preference change. Preference change is induced by three key independent variables; the transaction costs in the policy-process, the availability of alternate means of managing interdependence, and the costs incurred in an area where it is interdependent with other Member States.

The transaction cost element reflects the functional approach to understanding communitarisation. In this approach, the complexity and density of policy-making within the intergovernmental policy-process. As a result of the features of the intergovernmental method, the policy process selected in core state powers is assumed to be inefficient in the medium to long term in managing large complex workloads due to the limitations of the rotating presidency in managing working groups, the prevalence of the veto, and the lack of neutral expertise and suggestions due to the absence of the Commission. Thus, Member State preferences are expected to change where the costs of conducting the policy-making inhibit the ability of the Member States to effectively manage common interests.

The second and third independent variables relate to the distributive perspective, whereby the Member State's ability to manage interdependence through other means and the costs of this interdependence is expected to vary over time. A fall in the reliability of NATO in credibly

guaranteeing a state's defence, for example, is expected to increase demand for communitarisation because it reduces the existing means of several Member States in guaranteeing their collective security. Similarly, a fall in the national capacities to manage particular events unilaterally, such as the ability of the state to manage its economy unilaterally within a currency union, should also affect demand for communitarisation. Put simply, a fall in the ability to manage interdependence through other means increases the likelihood that Member States demand communitarisation in the EU.

Similarly, an increase in the exposure of a Member State to a particular cross-border problem is expected to increase the demand for communitarisation. Communitarising structures reflects a means of more efficiently managing interdependence, through removing the potential that individual Member States might stall the policy-process during times of crisis with the veto, that some Member States may fail to comply with common goals and thus undermine the effectiveness of collective policies, and that policy proposals in these new areas may be too heavily imbued with the preferences of individual Member States instead of the wider EU interest. In this sense, the potential costs of communitarisation fall in relation to the increasing costs of the existing policy process.

All of these costs are balanced against the potential cost of adjustment at the national level and the potential costs of capacity building (Genschel and Jachtenfuchs, 2018). Communitarisation may result in costs of adjustment at the national level, through the possibility that Member States might decide on a costly practice at some future point affecting national budgets or resources. Even accepting a degree of communitarisation in the short term might either result in the necessity of adjusting national constitutional or policy positions, such as Irish accession to the WEU threatening the state's policy of neutrality (see; Abbott and Snidal, 2004). Similarly, common policies may result in a need for capacity building at the supranational level, such as with the creation of new bureaucracies or resources (Genschel and Jachtenfuchs, 2018). Thus, the Member State demand for communitarisation is a cost-benefit calculation between the costs of managing interdependence versus the potential costs which communitarised structures might have on state apparatuses.

The supply of communitarisation comes in the bargaining process. As the distributive perspective highlights, the costs and benefits of communitarisation are not distributed evenly across each Member State. Some Member States, for example, have a more credible means of managing a particular issue than others, either unilaterally or through alternate forums.

Similarly, the costs of burden sharing might be relatively higher in a communitarised system for some Member States than the existing intergovernmental systems of managing a particular problem.

The model of bargaining power put forward by Knight (1992), Moravscik (1998), and H  ritier (2010) provides a useful means of explaining how variations in demand for communitarisation affects its supply. As highlighted in the previous explanation of the distributive approach, those Member States which are affected least by a negotiation either dragging on or failing are naturally in a stronger bargaining position because they have a smaller need for compromise. Those Member States that require a stronger degree of communitarisation are in a weaker position, as it is better for them to compromise and have a degree of communitarisation than no institutional changes at all. Thus, in this model the supply of communitarisation is determined by the Member States with the highest potential costs of communitarisation on national budgets and capacities, the most effective means of managing the policy process through differing means, and/or the lowest exposure to that particular issue of interdependence. Where the preferences of these Member States are altered through the model's independent variables, communitarisation is expected to occur.

One important element in the literature surrounding communitarisation in specific case studies is the role of crisis. The attacks of September 11<sup>th</sup> 2001, for example, are seen as a key point in the development in of internal security in Occhipinti's account (2003). Similarly, the crisis of the Gulf War and the Member States' inability to coordinate a response is cited as an important factor affecting the Maastricht negotiations over foreign policy (Nuttall, 2000, 129). As will be highlighted below, crisis is important to both the functionalist and distributive perspectives in differing ways. For the functionalist account, crisis highlights the inefficiencies of the policy and creates specific demands for institutional changes. In the distributive approach, crises increase the demand of Member States for closer co-ordination to seek a solution to existing and future crises as it represents a sudden increase in the costs of interdependence.

While crisis is an important part of the story of communitarisation, the distributive account highlights that crisis may not affect Member States evenly. Thus, in responding to a crisis, the scope and form of communitarising changes is likely to reflect the bargaining power and exposure of the Member States to a particular crisis. Thus, while a functional demand for Eurobonds might be created during the Eurozone's debt crisis, the potential cost to Member

States with strong bargaining power is seen to be the underlying reason as to why such a change did not occur (see; Schimmelfennig, 2014).

Similarly, the policy process itself may be updated without specific reference to crisis. The Amsterdam Treaty negotiations with JHA, for example, are not tied to specific crises rather than the Maastricht Treaty's commitment to revisit its contents at a future date and the observed failures of Maastricht over its initial few years. Preference change may be motivated by new anticipated costs, such as the potential internal security effects of the Single Market or Schengen Area. Due to expected examples of institutional change occurring without crisis, the analysis will try not to overly emphasise the role of crises and institutional change. This is because policy problems may exist without immediately threatening the welfare of the Member States and its citizens. Crisis is seen to instead represent conditions where the policy-process comes under unusually heavy strain due to the increased costs of failure faced by the Member States.

### **3.5 Hypotheses**

This model can be reduced to three main hypotheses which provide a basis of explaining why communitarisation occurs. The first of these relates to the initial choice of the intergovernmental method. This hypothesis has been included because it helps establish the initial conditions and logic against which further communitarisation takes place. As was highlighted, communitarisation is an integrative process whereby the initial logic behind intergovernmentalism is broken down. The latter two hypotheses build upon this by offering functionalist and distributive rationales as to why this logic is gradually undermined.

#### **3.5.1: Hypothesis One**

The first hypothesis provides an explanation for why intergovernmental procedures appear in the first place. While it could be argued that such a hypothesis is not necessary in a thesis primarily concerning the latter developments of this mode of policy-making, analysing the conditions at which these systems arise provides a useful base for communitarising stems to be understood in relation to their *ex ante* conditions. Through clearly understanding the logic and conditions which bring about the intergovernmental method, a clearer understanding of what new conditions can cause them to change can be derived.



*H1: The intergovernmental method is chosen in areas where Member States are likely to face high costs of domestic adjustment and potential supranational capacity building costs.*

This first hypothesis is influenced by the work of Genschel and Jachtenfuchs (2014, 2015) who outline the effect which integration in core state powers is likely to have on the integration process. In their work, they highlight that core state powers are defined according to their tendency to limit and pull upon the national positive resources of the state, rather than demanding strong adjustment to national interest groups and industries. As a result, they expect to see a greater degree of zero-sum conflict between Member States (2018), a stronger role for national elites in the integration process, and integration by stealth (2015).

In applying this to the selection of the intergovernmental method, it is possible to delineate the key conflicts and concerns that are likely to bring about the choice of the intergovernmental method. Mainly, *Member States which expect high adjustment costs or costs on national budgets are expected to prefer more intergovernmental structures.* As these Member States have stronger fall-back options, they are expected to have stronger bargaining power. Similarly, *demand for communitarisation is expected to be low in fields where there are alternate means of managing interdependence.* Those is not to say that all Member States are expected to prefer the intergovernmental policy process. Those Member States facing higher costs of interdependence in these fields relative to their abilities to manage them are likely to accept the intergovernmental method with the desire to see further communitarisation in the future. Due to their weaker bargaining power, this is a trade-off that they are deemed likely to make.

The expected reason for the strength of intergovernmentalist Member States is highlighted by the distributive approach. As it shows, there are clear costs associated with co-operating on particular issues. In a situation where Member States of the EU have a common interest on a specific international issue, for example, there are both transaction costs associated with reaching agreement between several states and costs in failing to reach a common position in a situation where common action would lead to results more in fitting to the community's interest. Yet the capacity to respond to particular issues varies between Member States, as does the effect that particular issues have on one Member State to the next. As the distributive perspective holds, actors which are better able to accept the *status quo* have an advantage in negotiations as they are affected least by a negotiation either drawing out or failing (Héritier, 2010). As a result, these Member States have strong bargaining power as they have less reason

to compromise. Member States which either have a greater exposure to a particular problem or a poorer ability to manage this problem are therefore likely to propose systems which better enable collective action but which may incur higher short and long term costs. At the time of formation, it is therefore expected that *there are enough common costs for Member States to seek a body for common action on an issue, but that the bargaining power of Member States best placed to manage these issues unilaterally and/or which face the highest costs of co-operation is likely to result in an intergovernmental policy-process.*

For this to be proven, those Member States which oppose more communitarised systems of collective action must have clear demonstrable costs being present and articulated during the initial negotiations surrounding structures for collective action. Member States tending towards intergovernmental policy-processes are likely to have interests in maintaining existing international organisations which sit closer to their national preferences or interests, be able to satisfactorily manage an issue of interdependence to a degree where strong systems of co-operation are not required, and/or be likely to suffer high costs of adjustment in relation to national budgets or practices.

A useful null-hypothesis in this regard relates to the functionalist explanation for why intergovernmental structures are chosen. Primarily, in this account intergovernmental structures require less effort in terms of negotiating the legal obligations sitting at the heart of these organisations (Abbott and Snidal, 2000) or may even be preferable due to the perceived efficiency of the flexibility associated with intergovernmentalism over existing supranational practices (Dahrendorf, 1972). These preferences for efficient negotiations should be visible during the initial negotiations and should be visible even in Member States which have either a high exposure to a specific problem or a low ability to respond to these issues unilaterally.

### 3.5.2: Hypothesis Two

The second hypothesis highlights the contribution of the functionalist perspective to understanding the increasing scope of communitarisation over time. Primarily it engages with the idea that communitarisation is the result of a functional demand for a more efficient means to manage transactions between Member States as the complexity and quantity of their transactions increase over time. By including this hypothesis, it is possible to compare the differing demands for communitarisation and assess whether communitarisation is primarily driven by efficiency concerns or by distributive interests.

*H2: As the volume and complexity of transactions increase, so too does the demand for communitarisation.*

As a functionalist hypothesis, the expectation is that proposals for institutional change over time should primarily reflect the demand for a more efficient means of policy-making. These demands can be fleshed out in relation to three specific problems. Firstly, an increase in the quantity and scope of transactions are likely to place strain on existing decision-making procedures. The use of national vetoes, for example, is likely to limit or slow policy-making processes as negotiations take place without the threat of a Member State being outvoted. Particularly during times of enlargement, the increase in the number of veto players in the Council may increase a demand for a move away from unanimity towards consensus. Similarly, as these transactions intensify and grow more complex, the intergovernmental system of rotating presidencies is expected to come under strain as the quantity of information being managed from presidency to presidency increases. As such, as the quantity and scope of transactions increase, so should demand from Member States for procedures and institutions which better facilitate those transactions.

It must be remembered that the intergovernmental method may have its own efficiencies for the Member States. The intergovernmental method, for example, grants Member States the ability to conduct negotiations in a franker and more open atmosphere, which can be conducive to more effective policy-making (Puetter, 2012). Similarly, the intergovernmental method does not require lengthy processes of formal treaty revision for its structures to be amended, only requiring the unanimity of its Member States. As a result, it is often portrayed as being more 'flexible'. Lastly, informal structures also exist to mitigate potential costs in areas of great uncertainty, where information surrounding the potential costs of co-operation are not clear (Abbott and Snidal, 2004). Member States can, therefore, avoid tying themselves to costly commitments where they are uncertain surrounding the most efficient means of tackling an issue. Thus, the decision to communitarise structures in this functionalist account reflects a tension between the benefits of intergovernmental and communitarised policy-making.

In the long term, intergovernmental procedures are expected to be sub-optimal in dealing with an increase in the intensity of co-operation in three respects. Firstly, informal procedures, a lack of common information, and a lack of mediatory bodies results in costly and slow policy-making processes. While there are clear initial benefits in opting for the intergovernmental method, the increasing costs of maintaining such systems in light of these pressures increases

demand for institutional change. Secondly, rotating presidency systems without access to secretariats and supranational agencies are likely to find it harder to manage the increasingly complex and diverse instruments, procedures, and working groups associated with their body's work. Thus, the costs of capacity building at the supranational level become lower in relation to the costs shouldered by the holders of the Presidency. Lastly, issues of non-compliance are likely to undermine the ability of Member States to respond effectively to crises. Thus, while the intergovernmental method grants a means of avoiding costly future commitments, it increases the potential for failure where Member States have strong interests. As the degree of work intensifies into new areas and the demand for co-operation deepens, the costs of failure can be seen as becoming increasingly costly for the Member States. For example, the costs of non-compliance in the post-September 11<sup>th</sup> area of internal security carried high costs due to the increased threat of terrorism during this era.

Where these functional pressures result in the failure of Member States meeting their expected outcomes a communitarising adjustment should be expected. Member States which previously viewed such changes as unnecessary should alter their preferences for communitarisation in light of new information surrounding the failures in the policy-process (Héritier, 2010, 21). This new information could occur after a sudden shock to the system, such as during a crisis, where the density of transactions increase suddenly and the existing policy-process comes under increasing strain. Alternately, Member States can consensually alter institutional structures in an informal manner when realising that existing structures are insufficient and where institutional change is deemed within the spirit of the initial ruling but against the formal wording (Helmke and Levitsky, 2011). Lastly, an increase in information regarding the potential costs of such an institutional change might facilitate preference change in this regard, such as a Member State dropping opposition when the potential adjustment costs increasingly appear to be lower than first expected (Abbott and Snidal, 2004).

In this account, the timing and scope of changes are related to the inability of the policy-process to meet Member State goals. Crisis, in this regard, is important as it causes a sudden increase in the scope and complexity of problems. Thus, crisis is expected to be an important factor in terms of highlighting the inefficiencies of the policy-process and determining the form of supply of institutional change. Yet crisis alone should not explain institutional change in this regard. The failure to meet common action plans, for example, may result in the demand for Member States to alter structures to facilitate better policy-making goals and improve mechanisms for ensuring compliance.

In assessing the applicability of the second hypothesis, reference to these functional requirements must be made by actors in the negotiation of new structures. This is visible in the accounts of these changes found in primary and secondary sources. Importantly, these functional shortcomings should be stated as a concern in the relevant documents. If the Member States find other reasons to pursue institutional change or recognise communitarisation as more efficient but undesirable for other reasons, then the functionalist approach on its own will be considered insufficient at providing an explanation for institutional change in core state powers.

### 3.5.3 Hypothesis Three

The third hypothesis seeks to explain with better accuracy the scope, timing, and form of communitarisation over time. In this sense, this hypothesis hopes to better predict when and to what extent communitarisation is likely to occur when compared to hypothesis 2. As such, it will be judged during the analysis at the end of this thesis whether the distributive or functionalist hypothesis provided a better explanation for the process of communitarisation over time.

*H3: The timing, scope, and form of communitarisation is determined by the Member State with the highest capacity to manage interdependencies unilaterally or through other means.*

This hypothesis is based on the distributive bargaining perspectives of Knight (1992), Moravcsik (1998), and Héritier (2010) predicting that the Member State with most bargaining power over a specific area will be best placed to determine the scope and form of communitarising measures. What is effective about this model is it gives clear variables which links preferences, demand, and bargaining power together. In terms of preferences, it is expected that Member States will be affected by certain issues to an uneven degree, and thus those with a greater exposure to a particular problem are likely to be motivated to seek greater communitarisation. Conversely, those with a low exposure are likely to face a lower demand for communitarisation, as the potential costs associated with integration in core state powers in terms of capacity building and national adjustment are likely to be higher than those incurred by inaction in that policy area. As the distributive model expects, it is the latter group that holds greater bargaining power as they are left best off if a negotiation stalls or collapses, thus are less likely to require compromise. Communitarisation is therefore likely to be paced according to the Member States with the greatest bargaining power.

What is important about this is not simply that bargaining power and demand are factored into this explanation, but that it similarly accounts for the fact that there are several outcomes to bargains which can be chosen at a specific time. In the design of the European Stability Mechanism, for example, there were numerous conditions and institutional choices to be made surrounding with what conditions bailouts are likely to have attached, how the distribution of voting is to be determined, and even whether this should be constituted within or outside of the EU's treaties. There may, therefore, be more than one solution to a policy problem which provide for a more effective means of managing a policy problem than the *status quo ante*. In this sense, it is not simply the scope and timing of communitarising measures that can be explained by this perspective, but also the form in which communitarisation takes shape in each policy area.

Such an element should be visible in the negotiations over such structures, in the form of the red lines set when discussing institutional change and in analysing the reasons as to why one or more Member States were successful in blocking or altering a specific communitarising measure. Analysis should highlight the capability of Member States to manage particular problems through either alternate forums or through unilateral means. Secondly, it should highlight the potential national costs of adjustment faced in these policy areas as well as the potential costs of capacity building at the supranational level. Thirdly, it should measure the exposure of Member States to particular problems, highlighting long-term interests in more efficiently promoting collective action towards particular international issues, whether these be in third countries or domestic.

By its very nature, the distributive element carries an element of bargaining, which can occur both at times of formal treaty revision and during periods between treaty revision. Such preferences are assumed to be relatively stable over time unless a specific Member State faces higher functional costs relative to their adjustment costs or ability to manage these costs, a reduction in the ability to manage these costs through existing means, or a reduction in the costs of adjustment relative to the costs of interdependence.

Communitarisation therefore results from changes to these equilibrium positions over time. A Member State may, for example, experience a falling capacity to manage problems of interdependence over time relative to either other actors or the scale of these problems. As with functional issues, these problems might become more acute during times of crisis. This would occur with a sudden increase in terrorist activities or the failure of competing international

bodies to effectively resolve issues related to that Member State's national interests. Similarly, institutional change at the domestic level may reduce the costs of adjustment associated with communitarisation, either as national departments see their practices gradually align with broader European trends or as existing national responses to these problems prove ineffective. This, as a result, changes to a state's exposure to a particular problem of interdependence or an alteration of domestic norms and practices are likely to increase the scope for communitarisation.

In evaluating this hypothesis, the thesis sees the functionalist approach as the competing null hypothesis during negotiations. If Member States appear to be motivated by the need for more efficient means of managing interdependence despite a high degree of variation of exposure to these problems, then the distributive perspective can be considered limited. Similarly, if Member States have low potential costs of adjustment relative to others and yet still oppose communitarisation, then there is similarly likely to be a limitation to the distributive perspective in explaining institutional change.

### **3.6 Case Studies**

Due to the theory building nature of this thesis, the case selection approach taken relates to four typical cases which to some extent reflect a universal case selection (Gerring and Seawright, 2008); the development of foreign policy from EPC to the CFSP, the development of co-operation in policing from Trevi to the modern AFSJ, the development of fiscal policy co-operation in the Euro through the Eurogroup and its associated policy structures, and the development of defence policy through the WEU through to the Common Security and Defence Policy. The debatability over whether this reflect a universal case selection reflects the exclusion of the case of environmental policy in the EU, which briefly utilised such a formation during the 1970s. This case has been excluded due to the short timeframe through which this transformation took place.

In analysing these cases, a long time-horizon has been chosen due to the ability to demonstrate the general trend towards communitarisation across each. This allows for the conditions for the establishment of intergovernmental structures to be analysed, then a full picture of the movement away from these structures to be observed. As Weiler (1991, 2436) highlights, it was during the 1970s and the 1980s that the 'extension' of EU competencies into these new areas of core state powers really took hold and when the basis for post-1992 integration was formed. Due to the importance of this time period for the formation and characterisation of

intergovernmental policy-making, a longer time-horizon has been chosen than simply one considering post-1992 integration.

The thesis in the analysis section over this period considers the key ‘critical junctures’ at which communitarising changes took place upon each, to reduce the scope of the explanation. Similarly, the thesis considers cases where institutional changes were proposed and rejected. The strength of this approach is that a more complete image of the process can be offered, discussing the general processes underpinning communitarisation. The central weakness of this approach is the quantity of data and the depth of analysis which can be entered into due to such a long-term time-horizon. The more general scope of the research question and aims of the thesis forms the basis of why this choice was made.

Foreign Policy through EPC represents the archetypical case of intergovernmental co-operation in the EU. The forum began functioning in 1970, specifically created to ‘bring closer the day where Europe can speak with one voice’, namely through providing a means through which its Member States could co-ordinate their foreign policies (Luxembourg Report, 1970). Its initial structures were bound up in the Luxembourg Report, also known as the Davignon Report, which laid the basis for the twice-yearly meeting of Foreign Ministers supported by national diplomats and various inter-departmental working groups. Since the 1970s, the CFSP has developed numerous features of communitarisation, including a supranational High Representative and EEAS, the Constructive Abstention, the limited use of QMV, and a formal place within the Treaties of the EU. In analysing this case, the thesis considers developments from EPC towards the CFSP from the period of 1970 to the changes brought about by the Lisbon Treaty in 2009.

Similarly, co-operation in internal security through Trevi represents a similar typical case of communitarisation. While co-operation in this field began across several bodies (Monar, 2001), this thesis focuses primarily upon Trevi, due to the significance of the areas of policing, counter-terrorism, and migration policies to the integration of core state powers. Of all the cases considered, Trevi has become the most communitarised, with the areas covered by Trevi now including the inclusion of a legalised structure underpinned by the ECJ, either the exclusive or joint right of initiative with quorum being granted to the Commission, and extensive use of QMV in many areas of JHA policy. Despite being highly communitarised and granting the concept its name, the literature on Trevi’s early years is relatively limited, and thus the project has relied more heavily upon the triangulation of these limited sources with the use of publicly



accessible documents through Statewatch, the EC, and the CIA, alongside newspaper articles. The most complete history of Trevi has been compiled by Oberloskamp (2016; 2017), with the body's existence following its 'pillarisation' being substantially more detailed, although generally legalistic in tone (Monar, 1994; Trauner and Ripoll Servent, 2014). The analysis of Trevi begins with its founding in 1976 and continues to the full implementation of the provisions of the Lisbon Treaty in 2014.

Fiscal policy in the Eurozone represents the development of governance structures established in the Maastricht Treaty through to the implementation of current fiscal structures in 2014, thus including the six-pack and two-pack regulations, the European Stability Mechanism, as well as the Fiscal Compact. In this case two types of structures are analysed. Firstly, the thesis considers the development of the ministerial forum established through which fiscal policy in the Eurozone is co-ordinated; the Eurogroup. Additionally, the thesis considers the policy processes established by the Maastricht Treaty and developed afterwards through which Eurozone Members co-ordinate their economies. Across each, a general strengthening of fiscal rules and formalisation of structures can be observed, albeit with soft informal modes of co-ordination continuing where budgets are not in breach of common rules.

Lastly, the thesis considers the development of co-operation in the field of defence policy through the structures of the WEU, the European Security and Defence Policy (ESDP), and lastly the Common Security and Defence Policy (CSDP). Of all cases, this case shows the lowest degree of communitarisation, yet still shows a general formalisation of structures, a movement towards enforcement procedures through PESCO, delegation of the shared right of initiative to the High Representative in PESCO, and the limited inclusion of QMV in determining the membership of PESCO. As such, the case study considers the main developments from the re-activation of the WEU in 1984 to the establishment of PESCO in late 2017.

### **3.7 Data Collection and Analysis**

One of the specific issues relating to the case studies considered in this thesis is the limited availability of primary resources in these fields. In particular, contemporary issues of defence, foreign policy, and police co-operation are not available to the public. Similarly, the minutes and documents of the Eurogroup are not openly accessible. On top of this, the broad scope of the project both in terms of case selection and timescale has meant that the generation of reliable data through interviews would require considerable resources beyond those available

in the thesis. As a result, this thesis has had to rely on a mix of primary and secondary sources where available. These sources of data have been judged appropriate to meet the aims of the study; to reconceptualise communitarisation and the intergovernmental method as well as putting forward some initial hypotheses as to why this process occurs. There is scope in future for greater detail to be taken in the sub-processes of communitarisation. Following an overview of the sources of information utilised in this thesis, the method of analysis will be considered.

### 3.7.1 Primary and Secondary Data

Analysis of each of the existing case studies began with an overview of the existing historical and analytical accounts of each case. Across each of the cases there was considerable variance in the scope of information considered. In particular, information relating to police co-operation through the Trevi ministerial forum as well as contemporary accounts of the development and politics of the Eurogroup were lacking. Secondary accounts of the development of the WEU, the CSDP, EPC, and the CSFP were comparably abundant allowing for these texts to be compared to one another. Where possible, the thesis attempted to locate and verify the sources put forward in the accounts put forward in these accounts.

These secondary accounts were supplemented by the ensuing use of primary resources. Of these, several sources were used. Firstly, the thesis made use of archives of newspaper and journalistic reporting for each case, making use of Agence Europe, LexisNexis, as well as the archives of European Voice and the Financial Times. These articles were utilised to give a broad picture of the development of each body, as well as an indication of the major concerns faced by each body at specific times. Secondly, the thesis has utilised documents from treaty negotiations wherever accessible, particularly those relating to the European Constitutional Convention, the Treaty of Nice, and the Treaty of Amsterdam. Similarly, the thesis has looked through the available decisions and accounts of the European Council and Council of Ministers where available. Thirdly, the thesis made use of the working papers and primary documents available at the 'Archive of European Integration', specifically in relation to Trevi, EPC, and the development of PESCO. Lastly, several other differing online archives were considered, including the Central Intelligence Agency online archives, compendiums of British and German Foreign Policy Documents, as well as the online database of primary Trevi documents held by Statewatch.

The choice of these resources for generating data has resulted both from the variety of cases considered and the time-scales of which the analysis has taken place. Interview data in

particular was not utilised due to the quantity and scope of interviews required to generate such a broad and long-term picture of developments across cases. While limited interviews might have contributed some more primary data to the study, due to the scope of the project in terms of timescale and case selection, the benefits of conducting a handful of interviews were not judged to be sufficient. Secondary and primary written data gave sufficient information as to what processes were occurring and allowed for the creation of some initial hypotheses that can be expanded upon in future research.

### 3.7.2 Process Tracing

The selection of process tracing as a method for the analysis of data reflects the aims of the thesis in building a generalised conceptualisation of communitarisation and in providing an initial explanation. By process tracing, the thesis refers to the attempt to ‘identify the causal process... between an independent variable (or variables) and the outcome of the dependent variable’ (George and Bennett, 2005, 206) through the construction of a historical narrative noting the ‘temporal sequence of events or phenomena’ (Vennesson, 2008; Collier, 2011, 823-824). In carrying out this method, analysts generate ‘causal process observations’ which ‘researchers can draw on to evaluate particular assumptions or hypotheses’ (Dunning, 2014, 216-217).

In applying this method to the analysis of the data, this method has been chosen due to the relationship between the aims of this method and the aims of the process. Specifically, this method fits well in relation to the initial puzzle, contrasting a heavily intergovernmental mode of co-operation with a modern communitarised mode of decision-making and seeking to explain the process connecting them. In addition, the use of process tracing and comparison between cases allows for a more abstract and generalised conception of communitarisation to be generated (George and Bennett, 2005, 211). Lastly, in analysing these processes over time, the resulting observations across each can be compared to build general theoretical claims about why communitarisation occurs. The use of comparative case studies in this analysis further strengthens these observations as observations in one case can be confirmed by their presence in others (Vennesson, 2008).

In applying this method to the analytical chapters, each chapter begins with a long-term overview of the development of each of the cases from intergovernmental forum to a stage representative of the degree of communitarisation at the time of this project. Thus, a broad narrative can be granted highlighting the central moments and periods of change which can be

further analysed. In the following sections, the processes of institutional selection and change are covered in more detail. Following the overview of the case, each chapter considers the conditions which gave rise to the intergovernmental method, if possible noting the differences to previous attempts to co-operate which failed. Then, building on the introductory overview, each chapter considers the central moments of change during the development of each element of the dependent variable. In this section, the chapters attempt to demonstrate how the distribution of bargaining power and demands for more communitarised co-operation resulted in incremental movements towards communitarisation over time. A more generalised overview of the findings of each case is given in the conclusions.

## CHAPTER FOUR

### Foreign Policy: From EPC to CFSP

#### 4.1 Introduction

The EU's Common Foreign and Security Policy (CFSP) began as the archetypical system of intergovernmental co-ordination in the EU. Its transformation from an informal gathering of foreign ministers in national capitals into its modern highly institutionalised form has generated a sizeable literature, both from institutional and 'content driven' approaches (Denza, 2002). In addition to this broad literature, the CFSP has been studied through theoretical approaches developed in relation to wider processes in integration, particularly with Smith's work on the 'institutionalisation' of Europe's foreign policy (see; Smith in Sandholtz and Stone Sweet, 1998; Smith, 2004a) and in comparison to the other 'intergovernmental pillar' of JHA (Denza, 2002). Similarly, the CFSP has a sizeable historical literature noting the idiosyncrasies in this field's evolution (see; Nuttall, 1992, 2000; Duke, 2000; Smith, 2004a; Keukeleire and MacNaughtan, 2008, 35-66; Bindi, 2012).

Similarly, its foundation as the first intergovernmental arm of the EU influenced other policy-making procedures in both internal security and defence. The body's beginnings being a result of the failures to establish a body through the EDC and Fouchet Plans serves as a useful means of gauging what institutional properties allowed for EPC to be an effective solution to the initial bargaining problem *vis-à-vis* previous alternatives. In addition, the emerging EPC framework represented the 'Second Europe' analysed by Dahrendorf (1972), thus has been put forward as a functionally superior alternative to the struggling and byzantine policy-process of the supranational 'First Europe'.

This chapter will begin by giving a brief overview of the pre and post-Maastricht systems of foreign policy co-ordination in the EU. The objective of this will to give a broad outline of its development over time, showing the extent of communitarisation and allowing the main times of interest to be identified. Following the demonstration of the extent of communitarisation, the chapter will then consider the conditions which gave rise to EPC and the differing preferences which existed at this time. Finally, the chapter will consider the evidence for whether this process of communitarisation has been primarily driven by functional or distributive concerns and whether it reflects the process of communitarisation put forward in this thesis' model.

## 4.2 Pre-Maastricht Foreign Policy Co-ordination in Europe

Table 4.1: Pre-EPC Structures for Co-operation in Foreign Policy

	Competence	Formality	Delegation	Voting Procedure
European Defence Community (1954)	Foreign and Defence Policy co-operation. Maintenance of the European Defence Force.	Formalised treaty-based body with detailed tasks and procedures. Court of Justice enforces legislation. (5)	Commission established which administers the body, implements legislation, and submits legislation. (5)	Council takes most key decisions through unanimity. Limited use of majority voting. (2.5)
Fouchet Plan I (1961)	Structure for ministries to take decisions in foreign and defence policy.	Formal treaty-based body. Has 'legal personality' but no role for the Court of Justice. (3)	Commission of national officials prepare and implement the decisions of the Council. (5)	Unanimity. Abstention of up to two Member States does not prevent decision. (2)
Treaty of Rome (1957) – Foreign Policy.	Responsibility over external trade, international development, and accession to the EEC.	Highly formalised, with competences and roles being laid out clearly and being enforceable by the ECJ. (5)	Commission has sole right to engage in trade negotiations. Council of Foreign Ministers takes decisions in GAERC (from 1960). (5)	Commission has right of initiative, as well as right to conduct negotiations with third parties. (5)

Note: The values in each box correspond with the tables outlined in Chapter three.

#### 4.2.1 Pre-History

As Europe emerged from the devastation of the Second World War, one of the immediate priorities for the French and British governments was the avoidance of a third continental conflict. While initial structures for defence and foreign policy co-operation were primarily geared towards avoiding conflict with Germany, the increasing aggression of the Soviet Union in the late 1940s altered Western Europe's threat perception. Primarily, states in Western Europe were concerned by actions such as the armament of the East German Volkspolizei band the blockade of West Berlin by the Soviet Union between 1948 and 1949 (Fursdon, 1980, 30; Nuttall, 1992; 33; Duke, 2000, 15). This, coupled with the outbreak of the Korean War in 1950, raised the question of how West German manpower could be integrated into the defence of Western Europe in the context of potential war with the Eastern Bloc.

The first solution to this problem was the Pleven Plan, which laid the basis of what would become the European Defence Community (Table 4.1). Importantly for foreign policy, this would create a mechanism through which Western European powers, with the exclusion of the United Kingdom, would be able to respond to international crises. As such, the formality and extent of delegation in these structures were high, despite a general utilisation of unanimity in taking decisions. Yet, by 1954 this plan would eventually be voted down in the French Parliament as the French government became embroiled in the conflicts in Indo-China and Algeria and as the threat of war with the Soviet Union receded (Duke, 2000, 34).

Following this failure, the French government once more proposed a structure for the pooling of defence and foreign policy in Europe; the Fouchet Plans. This time, De Gaulle had proposed an intergovernmental 'Union of States' which would sit as 'one of the three global powers' (Fouchet Plan I, CVCE, 2014; Nuttall, 1992, 38 De Gaulle in Teasdale, 2016, 7). Meetings would be intergovernmental, taking decisions through unanimity during their thrice-yearly meetings, chaired by a President chosen from amongst the Member States (Moeckli, 2009, 21; CVCE, 2014). These meetings would be supported by a 'European Political Commission' of national officials based in Paris, rather than the Brussels-based EC Commission, responsible for preparing and enacting the decisions of the Council (Fouchet Plan I, CVCE, 2014; Teasdale, 2016, 29). Yet, this time it would be Europe's Atlanticist states which would oppose the plan, with the Dutch government in particular concerned that this would reduce its ability to rely on both the UK and USA for its defence (Hellema, 2009, 201-209, 213-214; Teasdale 2016, 31).

#### 4.2.2 European Political Co-operation

Following the departure of President De Gaulle from office in 1969, there was ground for a new attempt to construct a body for political co-operation between the EC's Member States. This time, Belgian Foreign Minister Davignon was tasked with drawing up the report on which negotiations could be based. In these discussions, the French government took on a 'defensive' approach, seeking to avoid the possibility of EPC being 'sucked into the community' (Ifestos, 1987, 154; Nuttall, 1992, 53). Through largely avoiding the bone of contention over whether the body would end up intergovernmental or supranational, the eventual Luxembourg Report was able to lay the grounds for a very minimalistic basis for co-ordinating foreign policies. EPC was to be external to the treaties of the EC, working intergovernmentally through a rotating presidency and ministerial meetings supported by working groups and a preparatory body of diplomats, and would take decisions through unanimity.

The Davignon Report passed in 1970 left the structures of EPC deliberately incomplete, allowing for the Member States to revisit its prescriptions after three years. At its core, the Davignon Report simply created a basic machinery through which Member States could co-ordinate their policies and nothing more. As Nuttall (1992, 55) notes, at the first meeting 'the Ministers had never met before in that format; they were not certain what they were supposed to achieve nor in what conventions they would be operating'. EPC simply had two key aims; to promote the consultation and co-ordination of policies and to provide a mechanism for the 'harmonisation' of views. This was to be achieved through the twice-yearly meetings of Foreign Ministers in the capital of the Member State holding the rotating presidency, changing every six months. These meetings were to be supported by the Political Committee, of permanent representatives, which could in turn create working parties concerning specific international issues, such as the creation of the Conference on Security and Co-operation in Europe (CSCE). In addition, the meetings would be confidential, a norm upheld through a trust that Ministers would not leak to 'embarrass or blame' one another (Smith, 2004a, 122).

During the following decade, EPC would informally develop several new factors which would be codified into its evolving *acquis*. Perhaps the most important of these was the 'consultation reflex', whereby Member States committed to consulting one another before taking positions on international issues. In 1973, this practice was codified into the Copenhagen Report alongside various adjustments to meeting frequencies. Smith (2004a) notes two further informal practices which emerged over these early years; a refusal to discuss highly sensitive areas and a prohibition against bargaining. The first of these required states to avoid highly sensitive areas of policy for states, for example that of Northern Ireland. The latter required



Table 4.2: Formal developments of EPC 1970-1992

Act	Scope	Formal Status	Delegation	Voting Procedure
Luxembourg Report (1970)	To promote co-ordination between foreign policies.	Outside of the Treaties and the structures of EC. No ECJ jurisdiction. (1)	Consultation with Commission where EC competences affected. (0)	Unanimity. (1)
Copenhagen Report (1973)	Codifies informal changes over first years.	Clarifies distinct nature of EPC from EC. (1)	Role of Commission clarified, but tasks not formally extended. (0)	Unanimity. (1)
Tindemans Report (1975) (Rejected)	Brings EPC into EC and incorporates defence issues.	Merges EPC procedures with EC. Legal obligation to consult. (4)	Proposes 'considerable use of the Community institutional machinery'. (2)	Limited majority voting. (2.5)
London Report (1981)	Amends internal functions of EPC.	Obliges consultation before taking positions on international issues. (1)	Commission 'fully associated' with EPC on 'all levels' and creates formal secretarial system. (2)	Unanimity. (1)
Single European Act (1987)	Formally associates EPC with the EC.	Incorporates EPC under Title III of treaties, although remaining legally distinct. Codifies EPC's procedures. (2)	Permanent secretariat. Commission ensures 'consistency' between EPC & EC. (2)	Unanimity. (1)

Note: Numerical values reflect the categories of communitarisation outlined in chapter 3.

Ministers to avoid trading across issue areas of foreign policy, which was seen as 'inappropriate'. Despite this, trade-offs can be seen in conflicts such as the Falklands War (Martin, 1992).

These burgeoning new practices were then codified into the '*coutumier*', or customs. This document outlined the internal procedures of EPC, being introduced by the Belgian Presidency of 1976 (Nuttall, 1992, 147; Smith, 2004a, 124). By the late 1970s, the *coutumier* had taken on a 'quasi-legal' status, being presented as part of the texts underpinning the Greek accession of the EC in 1981 (Dehousse and Weiler, 1991; Nuttall, 1992, 173-174; Smith, 2004a, 125). As such, the document provided a useful basis for the provision of information to new participants in the body, as well as a means for the rotating Presidency to understand its role clearly. A second document, the *recueil*, was introduced by the British Presidency of 1977. This text simply consisted of the collected agreements taken by the Ministers, a sort of EPC *acquis communautaire*.

Further to this evolving codified institutional framework, EPC saw its exclusion of supranational agencies gradually undermined through creating a secretariat and increasingly involving the Commission in its work. Regarding the former, while the rotating presidency system had put strain on national foreign ministries since the early 1970s, by the late 70s the strain had resulted in 'presidential overload' (Regelsberger, 1997, 71), with the presidency having become increasingly 'onerous' task (Bonvicini, 1988, 57-58). Initially, the secretariat system emerged informally through the creation of a system whereby in 1977 the Member States sent a few officials to the next presidency holder to aid with the transition (Smith, 2004a, 166). This process was formalised as part of the London Report, then expanded upon in the Single European Act in 1986 through the introduction of a small permanent Secretariat placed in Brussels with its own resources (da Costa Pereira, 1988; see also, Nuttall, 2000, 20-24).

The Commission, while deliberately excluded from the Luxembourg Report's machinery, had become informally involved by 1974 in assisting national presidencies and in representing the EC as part of the Helsinki Accords (Bonvicini, 1988). At this conference, the Commission was to speak on behalf of the Community and the President of EPC on matters of foreign policy, something created 'as a stopgap measure; it survived for sixteen years' (Nuttall, 1992, 111). By the late 1970s, the Commission's responsibility over trade showed the increasing relationship between EC and EPC business as EC Member States sought to respond to the

Iranian hostage affair (Ifestos, 1987, 217). By 1986, this role was codified into the treaties, with the Commission being tasked with ensuring ‘consistency’ between EC and EPC policies.

While this story suggests a gradual movement forward for EPC during this period, the voting down of the Tindemans Report in 1975 represented continuing reluctances in the field of foreign policy. This report was drawn up to explore the potential for further progress towards European Union, with its author Leo Tindemans highlighting frequently the ‘pragmatic’ approach taken (Nuttall, 1992, 143-145). Tindemans’ suggestions would have represented a significant step forward for the communitarisation of EPC, including a greater role for the Commission, limited majority voting, and transforming the consultation reflex into a legal obligation. Even though many of these proposals were to be implemented in time, the report was rejected in 1975 (Smith, 2004a, 122).

### **4.3 Post-Maastricht Foreign Policy Co-ordination**

#### **4.3.1 The Maastricht System of Co-ordination**

The formal association of the CFSP as part of the SEA was shortly confronted historic changes to global affairs. The fall of the Berlin wall in 1989 heralded a new post-Cold War order, with the invasion of Kuwait by Saddam Hussein’s Iraqi dictatorship in 1990 immediately testing these new procedures. In the context of these challenges, the CFSP was reformed to incorporate structures which would help it meet these challenges (Duke, 2000, 103).

Relating to decision-making procedures, the Maastricht Treaty introduced ‘joint actions’ and ‘common positions’ as the main legislative foreign policy tools, with the former’s implementation being carried out through QMV. Yet these tools were not clearly defined in the treaties, leaving them difficult to operationalise (Nuttall, 2000, 184-188). ‘Common positions’ (TEU, J.2) represented the norm of EPC decision-making previous to the treaty, whereby foreign policy co-operation represented the attempt to align Member State positions. ‘Joint Actions’ (TEU, 2009, Article J.3.1), meanwhile, symbolised a commitment by the Member States towards a more active foreign policy through an instrument facilitating actions with specified means, durations, objectives, and conditions.

Relating to the formal status of these processes, the CFSP moved to a ‘pillarised’ system of decision-making, with its legal status remaining separate to that of the ‘first pillar’ covering market integration. In enforcing decisions, the ECJ had no role in monitoring and enforcing practices, with this role being for the Council. Two other amendments to the decision-making

Table 4.3: CFSP in the Post-Maastricht Era

Treaty	Scope	Legal Status	Delegation	Voting Procedure
Maastricht Treaty (1993)	Unites EPC and EC frameworks, creating 'pillar' system.	Intergovernmental 'pillar' of the EU outside of ECJ jurisdiction. (3)	Commission joint right of initiative. (3)	Unanimity on Common Positions and Joint Actions. QMV on implementing Joint Actions. (2)
Amsterdam Treaty (1999)	Clarifies Maastricht structures and increases 'coherence'.	Retains intergovernmental pillar structure. (3)	Post of 'High Representative' created in Council Secretariat. (3)	Constructive Abstention introduced. (2)
Constitutional Treaty (2005) (Rejected)	Formally abolished 'pillar' structure.	Abolishes 'pillar' structure but retains intergovernmental legal status.  ECJ right to interpret legality of acts.  EU gains legal personality. (4)	High Representative now 'Minister for Foreign Affairs' and Vice President of the Commission. Supported by EEAS. (3)	Abolishes Common Positions and Joint Actions in place of 'European Decisions'. QMV can be used for a decision if agreed by unanimity. (2)
Treaty of Lisbon (2009)	Carries forward changes from Constitutional Treaty.	ECJ's right to implementation limited to the legality of decisions affecting non-CFSP structures. (4)	Foreign Minister becomes 'High Representative'. (3)	Same as Constitutional Treaty. (2)

Note: Numerical values reflect the categories of communitarisation outlined in chapter 3.

procedures of the CFSP included the ability of up to one-third of Member States to abstain from decisions without the failure of those decisions, thus more easily facilitating consensus-formation (Nuttall, 2000, 185). Additionally, the Commission was granted the joint right of initiative in this field (2000, 188).

Over the early years of co-operation through this system, the new provisions of the Maastricht Treaty had to be ironed out. Clarification and amendment of procedures was particularly needed as Foreign Ministers saw a growth in their activity in these immediate years, with eight joint actions being approved by May 1995 (Smith, 2004a, 190-191; Bindi, 2012, 28). The first of these changes related to the conflict between the Political Committee and COREPER (Duke, 2005), with their overlapping competences leading to a turf war only resolved in writing by 1996 (Nuttall, 2000, 246). The merging of the Council Secretariat with the EPC Secretariat was less controversial, with the secretarial services for the political and economic policies of the CFSP remaining separate (Nuttall, 2000, 251).

Relating to voting procedures, the decision-making rules emphasising QMV were not implemented. As Smith (2001, 177) noted, ‘qualified majority voting for CFSP joint actions, and JHA joint actions as well, has not been utilised’ (see also; Spence and Spence, 1998). Additionally, in areas of conflict between the two pillars’ procedures, unanimity and the CFSP means of conducting business tended to win out (2001, 177). Despite this, Smith (2001, 185) notes a series of further informal innovations, such as the creation of ‘model common positions’ to speed up decision-making and the tendency to avoid forcing votes so to invoke the unanimity rule. Similarly, while the Commission had been granted new powers, these were largely not utilised. Instead, the Presidency largely remained in charge of setting the agenda in foreign policy (2001; 178).

#### 4.3.2 Reform of the Maastricht System

After the implementation of the Lisbon Treaty, several changes were made to the CFSP’s structures. In the immediate years following Maastricht, three particular tools were introduced to improve the effective of foreign policy-making in the EU. Firstly, the idea of a ‘common strategy’ was introduced, whereby the European Council could outline areas of shared interest with the Council of Ministers implementing these through QMV. Despite this apparent increase in the scope of QMV, the option of blocking the use of majority voting was allowed where a decision clashed with ‘important and stated reasons of national policy’ (Dehousse, 1998, 532). Secondly, the option of the ‘constructive abstention’ was included, whereby a Member State

could abstain on a policy without blocking it, although with a policy failing if more than one third of Member States abstained. Notably, this granted abstaining Member States an opt-out of policies they chose not to endorse (Dehousse, 1998, 532). Lastly, in 1999 the Member States created a ‘Ms/Mr CFSP’ as part of the Council Secretariat (Gourlay and Remacle, 1998, 61-62; Christiansen, 2002, 82-83). This actor would improve the CFSP’s external representation while similarly being supported by a Policy Planning and Early Warning Unit, drawn from the staff of the Secretariat, Member States, the Commission, and WEU (Dehousse, 1998, 532).

These changes were further built on during the Constitutional Convention. The CFSP was high on the agenda during the Constitutional Convention, particularly following the September 11<sup>th</sup> attacks on the World Trade Centre in New York. While the changes from the Convention were eventually codified into the Constitutional Treaty and rejected in two national referendums in 2005, they were carried over to the Lisbon Treaty which entered force in 2009.

While the Lisbon Treaty formally abolished the ‘pillar’ structure of the Maastricht Era, the CFSP retained a strongly intergovernmental and distinct character (Keukeliere and MacNaughtan, 2008, 62). In terms of legalisation, while the ECJ found itself finally empowered in the field of the CFSP, albeit with its powers were limited to the policing of legal acts and making sure that EU actions stayed within the stated field of competences (European Convention, Article III-270, 2003b). Similarly, the treaty codified the commitment to follow the common decisions of the EU, while doing little to increase the costs of non-compliance beyond what had previously existed.

Regarding the extent of delegation outlined in the treaties, the Convention ‘dual hatted’ the High Representative as being both an agent of the Council and Vice President of the European Commission. Even the title of High Representative was altered to Minister of Foreign affairs, although this was revised back during the Lisbon Treaty. The High Representative was to be supported by a new European External Action Service at the EU level, increasing the resources at their disposal. In the legislative process, the Minister could initiate proposals to the Council of Ministers, thus giving the Commission a legislative right of initiative through the dual-hatted Minister (European Convention, 2003b, Article I-39, 7). As a result of the Lisbon Treaty, this Minister became the ‘High Representative for Foreign Affairs’.

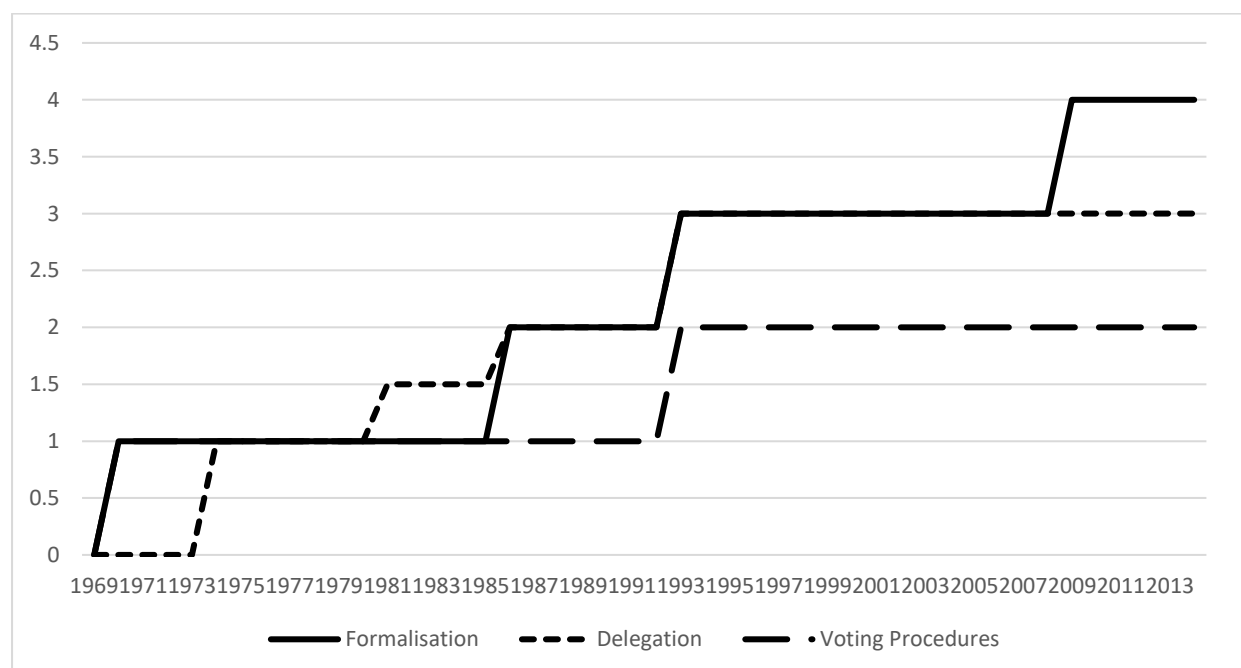
In the decision-making process, the Constitutional Treaty rolled the confusing Maastricht-era decision-making procedures into ‘European decisions’ which could be used in other areas of policy, which are defined as being ‘non-legislative acts’ binding on those who are signatories.

Like the Maastricht system, the broad interests of the EU lay with the European Council, which would guide the actions of the Council of Ministers responsible for reaching ‘European decisions’ (Constitutional Convention, 2003b, Article I-39, 2-3). European Decisions themselves were to be taken unanimously on the initiation of either a Member State or the Minister for Foreign Affairs, with the Member States being able to decide on the use of Qualified Majority Voting (QMV) through a unanimous decision on a policy requiring unanimity at the time of the treaty. The European Parliament thus retained its consultation role (2003b, I-39. 6) despite gaining increased co-decision powers in the ‘third pillar’ of Justice and Home Affairs (JHA). QMV could be utilised where the European Council had determined the EU’s interest, when implementing a unanimously agreed position, when appointing special representatives, although an ‘emergency brake’ was added whereby a Member State could oppose the adoption of these decisions if it interfered with a ‘vital and stated reason of national policy’ (European Convention, 2003b, Article III-201).

#### 4.4 Communitarisation and the CFSP

The discussion outlining the development of the dependent variable shows that foreign policy has seen a notable degree of communitarisation (see figure 4.1). Formally, there has been a significant departure from the limited structures outlined in the Luxembourg Report, with means being created to circumvent unanimity, to support the legislative process through

*Figure 4.1: Communitarisation and the CFSP*



delegation, and to formalise and clarify the increasingly complex machinery of EU foreign policy. In practice, however, the CFSP retains a strongly intergovernmental character, thus demonstrating a moderate degree of communitarisation. Thus, there has been a small but observable move away from the pure co-ordination of national policies in this field.

While the Member States remain firmly in charge in this area of policy, three notable changes are worth considering when observing communitarisation in this field. Firstly, the inclusion of the constructive abstention procedure and QMV on issues of implementation has opened the possibility of the Member States moving away from unanimity. It offers Member States with significantly divergent views on a matter a means of 'exit' without the reputational costs of undermining a common position of the EU. However, in practice the constructive abstention has been used in only one circumstance (European Commission, 2018, 8), with Member States still choosing to find consensus on most issues rather choosing to opt-out of policy initiatives. The informal rule in decision-making terms remains one based largely upon unanimity, reducing the scope of potential agreement and limiting policy-making towards systems of co-ordination.

Secondly, the story above demonstrates that delegation has a long developing history within this field. The HR and EEAS of today is significantly more influential than the initial secretariat machinery created in the early 1980s, creating some ground for agents at the supranational level to cultivate common interests and perspectives in response to international crises. Accounts like that of Riddervold and Rosen highlight how in relation to the Atalanta mission and EU Maritime Strategy 'the Commission's influence was foremost linked to its ability to reframe issues; its expertise and competences in interlinked community policy areas, and its successful cooperation with other actors' (2016, 698; see also, Chou and Riddervold, 2015). The growing influence over the foreign policy process has thus proceeded both formally and informally, giving greater scope for agreement between Member States and moving beyond negotiations primarily dependent upon the rotating presidency and competing national policy positions.

Lastly, the practices of the CFSP have grown increasingly more complex and codified over this long development. The CFSP increasingly operates in a formalised system of policy-making on the basis of soft law, rather than the hard law associated with supranational governance. This lack of hard law is visible in the continuing limited role of the ECJ, which is 'largely excluded by the treaty provisions' (Wessel, 2015, 400). The Lisbon Treaty largely strengthened



the wording of Member State commitments and further clarified the procedures of the CFSP, but with the lack of formal means of enforcement, the costs of non-compliance in this field remain rather limited. The limits of these commitments have resulted in what Orenstein and Keleman (2017) refer to as ‘Trojan horses’, where the continuing power of Member States in these fields to act against the spirit but not the letter of EU foreign policy allows external powers to limit the EU’s ability to conduct foreign affairs.

#### **4.5 The Selection of the Intergovernmental Method in Foreign Policy**

The first hypothesis of this thesis outlined the conditions under which the intergovernmental method was expected to be selected. What this hypothesis highlighted was the importance of distributive costs in the initial bargaining process in structuring the demand and supply of intergovernmental policy structures. Two specific costs were highlighted in this hypothesis; the costs of domestic adjustment and potential costs of supranational capacity building. Member States are expected to support more intergovernmental structures when these costs are higher relative to the costs of interdependence in this field. To see whether this hypothesis holds explanatory power, it is worth first considering the costs of interdependence in this area alongside the varying national positions, costs, and means of managing this interdependence.

##### **4.5.1 Demand for Co-operation between the EC’s Member States**

In post-war Europe, there had been a continued demand for European states ‘to speak with one voice’ (Wessels, 1981, 3). In the context of the EDC, this demand emerged primarily from the question of German re-armament, with a supranational body for foreign and defence policy integrating the German armed forces into a common European Defence Force. Tying the nascent West German state to multilateral institutions, particularly a European Army, was one means of preventing a return to war following the end of the Second World War. This concern existed not only with the EDC but also in relation to EPC (Moeckli, 2009, 355). Similarly, the West German government under Adenauer was keen to see closer foreign-policy co-operation on the understanding that ‘NATO could not be prejudiced’ and that West Germany would have similar treatment to other states (Teasdale, 2016, 12).

Additionally, the Member States of the EC had recognised the existence of shared interests and the benefit of co-operation in this field as part of the EDC and Fouchet Plans. Before the creation of EPC, this desire for a common voice and the inability to speak with one was highlighted during the 1967 Six Day War between Israel and several of its neighbours (Smith, 2004a, 63). Concerns aired during the EDC and Fouchet Plans did not surround whether there

should or should not be co-operation on foreign policy in Europe, but rather how that co-operation should be structured and what role Europe should aspire to in relation to both NATO and the two Cold War powers. That general recognition of the benefits of co-operation is visible in the aims of the various proposals for co-operation. The first Fouchet Plan outlined an agreement between all parties that they had a common interest in 'bring[ing] about the adoption of a common foreign policy in matters that are of common interest to Member States' (Fouchet Plan I, 1961). EPC similarly echoed this shared recognition that it was necessary for Member States to co-operate 'to show the whole world that Europe has a political mission' (Allen and Wallace, 1981, 21).

While there were clear recognised benefits in speaking with one voice in a world dominated by two major superpowers, how this co-operation would be structured and to what ends these voices should speak were subject to debate. During the initial negotiations, several key positions emerged.

First amongst these were the primarily Atlanticist Member States, with the Dutch government having a strong role in pursuing this line. The Dutch government in the negotiation of these bodies sought the role of the United Kingdom and NATO to be preserved in its defence, having a strong interest in seeking a third power to balance Franco-German power in EPC and an interest in protecting NATO as it relied heavily upon its structures for its defence. This reliance came following the 'trauma of decolonisation', during which the Dutch government found its armed forces committed to numerous foreign conflicts and reliant upon NATO for its defence (Pijpers, 2013). As Dutch Prime Minister De Quay stated 'anything that might weaken NATO, and especially the close co-operation of the United States and the United Kingdom, [should] be rejected' (in Hellema, 2009, 199; Fleischer, 2015, 119). Similarly, during the negotiations on the EDC, the Dutch government argued that 'a complete common budget appears to be unnecessary', reflecting the unwillingness to commit to such costs due to broader concerns surrounding the undermining of NATO (Fleischer, 2015, 119). As a result of these concerns, the EDC treaty required additional treaties on its relationship with both NATO and the UK so to gain the support of the Benelux governments.

The effect of these concerns was important for the Dutch government's bargaining power. Firstly, it had high potential costs of domestic adjustment as the government relied heavily on the United States for its defence, opening questions as to how its security could be guaranteed through this new forum. Simultaneously, NATO provided a means of securing the Netherlands'

interests in defence, as with a largely Atlanticist perspective there was a smaller demand for close European co-operation on foreign policy matters relative to other Member States. This limited demand, putting put the Dutch government in a strong position relative to other Member States, as these factors reflected strong fallback options in the case of negotiation failure. Despite this, the Dutch government still saw co-operation in foreign policy between European states as desirable.

The French government, meanwhile, had a higher demand for co-operation both during the EDC and Fouchet negotiations. In the case of the EDC, this proposal was created as a means of protecting the French government against the threat of renewed conflict with Germany. With the last veteran of the Franco-Prussian War dying in 1955, it meant that the French government had witnessed three catastrophic invasions within living memory by the time Pleven's plan was published (Fursdon, 1980). The EDC was a means of making sure that the new German state would be tied to multilateral institutions and its armed forces incorporated into a wider European Defence Force. Yet, with the cessation of fighting of the Korean War, the outbreak of fighting in France's colonies, and the death of Stalin, the French National Assembly chose to vote down the EDC in 1954.

What came after reflected the Gaullist approach to integration. France was to be 'sovereign, independent and free' (in Teasdale, 2016, 6), with Europe acting as 'one of the three global powers and, if necessary one day, the arbiter between the Soviet and Anglo-Saxon camps' (2016, 7). The preference of Gaullist thinking was for a Europe which acted as a 'third power', governed intergovernmentally so that its Member States would retain veto power over policy-making and their own national militaries. This approach was evident in the Fouchet Plans of the 1960s and France's strong capacity to conduct its affairs independently evident in De Gaulle's decision to choose to ignore the grounds for compromise and propose the Second Fouchet Plan in 1962, concerned that these compromises would open the door to British membership of the EC (Teasdale, 2016, 37).

In the negotiations over EPC, the French government chose to take a 'defensive' approach to the negotiations, focusing largely upon the desire to avoid the possibility that EPC would be 'sucked into the Community' (Ifestos, 1987, 154; Moeckli, 2009, 46). In their approach to the negotiations, they retained their demand for a body which could maintain Europe's role in the world as a 'balance' to 'international order' (Nuttall, 1992, 48). Similarly, the removal of

defence policy from the equation and the acceptance of British accession acted as a means of ensuring the support of the Dutch government.

It must be noted that these two particular Member States feature so prominently in the literature on the formation of EPC due to their strong bargaining power. Both states were involved in the failure of the EDC and Fouchet Plans because of the threats to their existing arrangements on international matters. Despite this, both parties understood the necessity for collaboration in this field, particularly following their failure to co-operate during the Six-Day War and Soviet intervention in Czechoslovakia. Due to their high costs relative to the benefits of co-operation, these Member States were thus critical in shaping the shape of EPC's intergovernmental structures.

For the West German government, Chancellor Keisinger sought a means of 'complementing the Common Market with a political and security framework', having a strong demand for closer integration in this field due to an 'unwillingness to rely solely on the US for the defence of Europe' (Moeckli, 2009, 32-33). His successor, Chancellor Brandt, similarly supported closer co-operation but as a means of promoting the country's *Ostpolitik* policy; a policy of pursuing improved diplomatic relations with the Eastern Bloc. Brandt took a pragmatic approach to the negotiations, with his mantra that 'the desirable must not prevent us from doing the possible' (2009, 33). With a foreign policy ultimately entwined with notions of multilateralism, the West German government thus had relatively weak bargaining power as their foreign policy relied more heavily upon the success of the EPC negotiations. As such, the Auswaertige Amt took a lead role in attempting to bring together the Member States early in the negotiations (2009, 43), taking special effort to account for the French government's reluctance to be bound to supranational institutions and the Dutch government's preference for British accession to the EC (Moeckli, 2009, 37-38).

#### 4.5.2 Supply through Bargaining

The Member States of the EC therefore all recognised that there was a clear utility in pursuing closer co-operation in the field of foreign policy, particularly in the context of the failures to respond to the crises of the late 1960s. Yet, as is visible from above, Member States which relied heavily on alternate forums or had a strong capacity for action in the international arena had strong opinions about what the limitations of such co-operation should be.

Responding to these pressures, the resulting structures of EPC were very limited. As Allen and Wallace (1981, 25) highlighted, national governments were able 'both to pursue common

policies and to preserve the freedom to opt out when it suited them'. On the whole, the Member States in the negotiations got what they saw as important during previous negotiations. Enlargement was allowed as a *quid pro quo* for the use of an intergovernmental structure on which co-operation could be based. For those states which sought closer future structures, like the West German government, the limited structure of represented a departure point which could be the basis of further development. The language of the Luxembourg Report was similarly vague on issues of where the destination of EPC would be, making woolly commitments on 'bringing closer the day when Europe can speak with one voice' (Luxembourg Report, 1970).

The functionalist argument, as highlighted in chapter 3, would contend that the Luxembourg Report represented an easier and more efficient solution to beginning co-operation. The EDC, after all, was a complex treaty which took several years to negotiate and design. As Abbott and Snidal summarised (2000, 434), in hard legalised structures 'legal specialists must be consulted, bureaucratic reviews are often lengthy. Different legal traditions across states complicate the exercise. Approval and ratification processes, typically involving legislative authorization, are more complex than for purely political agreements'. This is reflected in the several years the EDC took to negotiate and ratify. EPC, meanwhile, was a simpler solution to contracting in a complex and potentially costly area.

Yet, as accounts of the negotiation show (Allen and Wallace, 1981; Moeckli, 2009), the desire to avoid these lengthy procedures stemmed from the historic role national interests had played failing to create any policy-making structures. Foreign policy integration had clear potential effects on the ability of the state to pursue its interest internationally and guarantee its own security. The Luxembourg Report's aim to avoid the 'theological' (Allen and Wallace, 1981, 30) arguments surrounding supranationalism and intergovernmentalism and instead focus on 'machinery rather than purpose' (Moeckli, 2009, 43) were means of finding common ground as a means to begin co-operation because of the strong national interests at play. Indeed, even the choice of Davignon to write the report was an attempt to rise above the political disagreements of the EDC and Fouchet Plans. Thus, while the intergovernmental method was a useful way of avoiding the long process of negotiation associated with supranational systems of governance, the strong interests which had underpinned the EDC and Fouchet negotiations had created the conditions under which this decision was taken. Thus, there seems to be sufficient evidence to show these structures being a result of preferences and bargaining power.

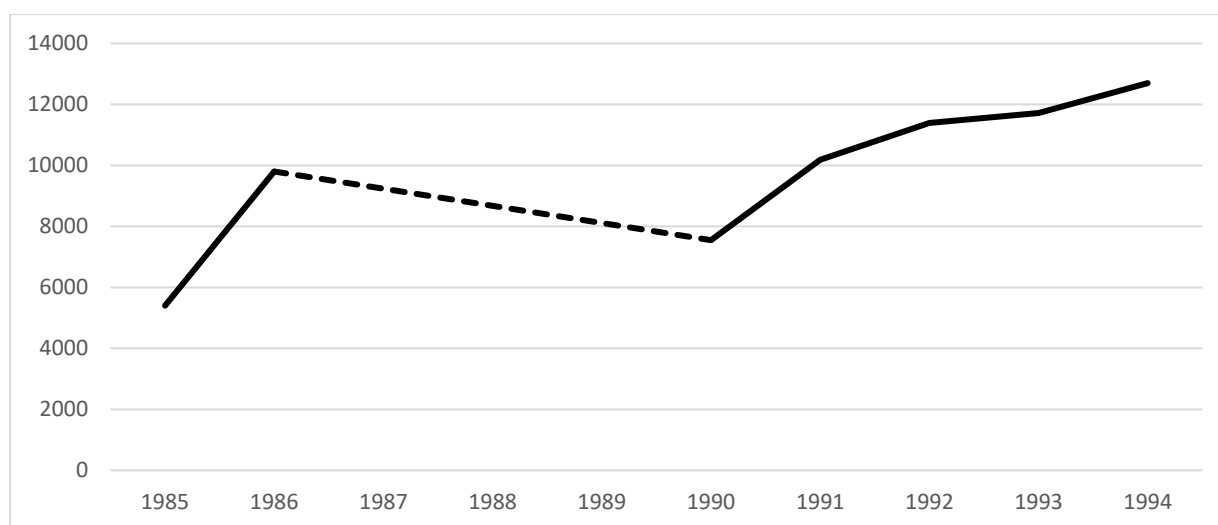
## 4.6 Efficiency Concerns and Communitarisation

In the functionalist account, communitarisation is an attempt to solve the emerging problems and inefficiencies associated with intergovernmental policy-making. At the stage of choosing the intergovernmental method, the functional advantage of this system was the provision of lower bargaining costs, limiting the scope of agreement to the essential core features required for the co-ordination of national foreign policies (Abbott and Snidal, 2000, 434). Yet, as the functionalist hypothesis holds, when the complexity and volume of transactions increase, so too should the pressure on these initial structures. Specifically, the three features of intergovernmental policy-making processes increase transaction costs in three manners; the ongoing high contracting costs associated with unanimity and the separation between community and intergovernmental procedures, administrative and contracting costs resulting from the lack of formalisation of procedures and a lack of delegation, and a high scope for non-compliance resulting from a low degree of legalisation.

### 4.6.1 EPC, the CFSP, and Contracting Costs

As highlighted in the previous chapter, the initial agreement which intergovernmental co-ordination procedures are based is normally an incomplete contract (Cooley and Spruyt, 2009). Indeed, in the case of the London Report, Member States were aware that their initial structures would require revisiting at a later stage, an awareness that laid the basis of the Copenhagen Report. In functionalist terms, the Member States at this stage can be understood to be lacking

*Figure 4.2: Quantity COREUs between 1985 and 1994*



*Source: Regelsberger, 1997, 69. Note: No data for 1987, 1988, and 1989.*

information surrounding the most efficient means of organising their procedures for co-ordination. Additionally, the intensification of co-ordination highlighted in fig 4.2 in relation to messages sent over EPC's COREU system further demonstrates the increasing strain which informal structures had come under during surrounding the Maastricht Treaty.

One means of reducing these costs is the provision of clearer information as to the practices and responsibilities of Member States in the policy-making process. Formalising practices allows for a clearer understanding of how common procedures work, allowing existing actors to take on new tasks and new actors to enter the body with greater ease. The creation of the *coutumier* is a classic example of this, providing a 'bible' to those taking part in EPC's processes and aid the transition between presidencies (Smith, 2004a, 124; 124-125; Haagerup and Thune, 1987, 110). Similarly, during the accession of the Greek government, the *coutumier* was part of the accession agreement, aiding the information costs associated with joining a new body and taking part in its processes. The *recueil* functions on a similar basis, providing the participating actors in EPC a point of reference when drafting new agreements, both to act in accordance with existing decisions and to use this precedent for further agreements (Nuttall, 1992, 174). The third important document, the report on which EPC's procedures was based, was similarly updated to include new practices. Most important amongst these was the 'consultation reflex' which found itself in the Copenhagen Report, highlighting its status as a core practice expected of Member States and similarly coming into existence as three new Member States were acceding to EPC's structures.

The creation of new procedures in the form of joint actions as part of the Maastricht Treaty can similarly be framed as an attempt to respond to new pressures on existing policy-making structures. In this case, the Member States sought to move beyond the reactive foreign policy which had characterised EPC. Yet, the divide between joint actions and common positions was not clearly enough demonstrated within the Maastricht Treaty, requiring these procedures and the areas of common interest to be amended and expanded upon at a later date (Nuttall, 2000, 240). The Lisbon Treaty removed this distinction, signalling the recognition of Member States over time that one single 'European Decision' was more efficient in practice.

Delegation is another means of reducing contracting costs, through the provision of a neutral broker which aid the building of consensus between negotiators and through the provision of expert information during and between negotiations (Pollack, 1998; Dijskstra, 2009; Dijsktra, 2013). Bonvicini (1982, 36-37), for example, highlights these two roles in explaining how the

Commission gained an informal role in EPC during 1974. The first of these was the requirement of national governments with smaller foreign ministries to utilise the expertise of the Commission, particularly the Irish government (1982, 36). In addition, the Commission's reputation with foreign ministries had improved during the European Security Conference, which the Commission had attended in its role as trade negotiator for the EC. As Bonvicini writes, 'Commission officials proved to be extremely competent in mediating between diverse national interests. Because this task brought such satisfactory results, after the Helsinki Conference the group continued to function regularly' (1982, 37). In each case, Member States sought to utilise the Commission as it reduced information costs and eased the costs of reaching agreement, despite an initial aim of keeping intergovernmental and community structures separate.

Lastly, the strict rule of unanimity has been eroded, allowing greater scope to reach decisions between the EU's Member States in this field. Disagreement over how to respond to the Soviet invasion of Afghanistan in 1979 highlighted the difficulties in reaching foreign policy decisions unanimously, with the community taking some three weeks to formulate a response, deciding only that Afghanistan be declared neutral and that Member States should boycott Moscow Olympics (Nuttall, 1992, 156; Bindi 2012, 22). In the words of British Foreign Ministers Lord Carrington, the manner in which EPC ministers were co-operating was said to be 'a bit of a mess' (in Nuttall, 1992, 175). Such impotence is frequently cited as a central motivating factor for the Ministers revisiting the structures of EPC in the early 1980s (Ifestos, 1987, 292).

Despite this recognition, there has been little movement towards the widespread use of QMV. While QMV was on the agenda during the Maastricht negotiations, its role ended up limited to issues concerning the implementation of joint actions. QMV was ultimately rejected at the Rome II European Council in 1990, with a commitment that Member States would not prevent a unanimous decision where a qualified majority exists taking its place (Wessel, 2003, 9), particularly with the reticence of France and the United Kingdom. Such a reluctance in adopting QMV procedures in decision-making represents a limitation for the functionalist argument in the CFSP, as this procedure has been adopted in other areas of policy. With the expansion of the number of Member States involved with policy-making and the continuing failures to reach agreement during crises, such as during 2014 with the Libyan Civil War, unanimity has managed to persist in this field.



The main step forward in voting procedures in CFSP has been constructive abstention. Constructive abstention was introduced as one means to allow for more effective decision making as part of the Amsterdam Treaty. Put simply, constructive abstention allows for a Member State to abstain from a CFSP decision and then not be bound to that agreement. As such, the provision allows for ‘coalitions of the willing’ and the option of opting out of particular policies. Stubb (2000) notes that one of the advantages of the constructive abstention system is that it provided for ‘flexibility’ in decision making. Both Ireland and Austria having a role in supporting this system, each being constitutionally neutral, with the notion being pushed for by the German government at the Amsterdam IGC (Soetendorp, 1999, 148). Thus, constructive abstention has increased the ability of decisions to be reached by ‘coalitions of the willing’ and allowed an ‘exit’ option to Member States unwilling to take part. Despite this, informally the constructive abstention rule is rarely utilised, with the Member States often choosing to take decisions through unanimity.

As well as failing to move beyond a decision-making structure based upon unanimity, the CFSP has retained a number of other features despite the transaction costs associated with them. The High Representative, for example, holds only the shared right of initiative rather than the sole right of initiative. This opens proposals to the potential for pre-emption by Member States, reducing the ability of the High Representative to guarantee consistency between legislative proposals (see; Markert, 2014). Similarly, while the option of QMV was added to the CFSP alongside the joint right of initiative to the Commission as part of the Maastricht Treaty, this did not result in their frequent use, despite the potential for efficiency savings. As such, there are clear limits to the functionalist approach in demonstrating the choice to knowingly maintain costly procedures.

#### 4.6.2 EPC, the CFSP, and Administrative Costs

If the continuing contracting costs are the costs of making deals through the system, administrative costs are the costs of managing the system. In this respect, EPC faced two particular administrative costs; the costs of holding the Presidency and managing meetings and the costs of maintaining the distinction between EPC and community procedures. As is visible in the discussion below, these costs did drive a number of significant reforms.

Firstly, as EPC continued throughout the 1970s, the number of working groups, the quantity of transactions, and the number of summits increased. During this period, the administration of this machinery was the responsibility of the rotating Presidency. By the late 1970s, however,

the gradual increase in the responsibilities associated with the Presidency had resulted in Regelsberger termed ‘presidential overload’ (1997, 71), as the machinery and tasks which the Presidency had been created to oversee had ballooned. The first solution which emerged in the late 1970s was to second national bureaucrats to the proceeding Presidency (Smith, 2004a, 166). The notion of a secretariat was discussed ‘more or less permanently since 1971’ but was only introduced by the 1980s as the tasks of the EPC Presidency grew ever more ‘onerous’ (Ifestos, 1987, 231; Nuttall, 1992, 19-20; Bonvicini, 1988, 58). After the London Report this system was formalised and given additional resources as part of the Single European Act. In aiding the presidency, the Secretariat acted as a ‘keeper of the books’ as well as assisting the Presidency with the organisation of EPC’s meetings and working groups, reducing the strain placed upon national departments and aiding the consistency of actions between presidencies (Nuttall, 1992; da Costa Pereira, 1988).

The second cost related to the maintenance of the distinction between community and intergovernmental policy spheres, and the consistency between these two. One clear example of this distinction is that of the Falklands War (Martin, 1992), whereby the requirement to impose sanctions upon the Argentinian government pulled upon community resources in the field of trade. As such procedures were required by the Member States, the arbitrary divide between different areas of foreign policy became increasingly strained. Thus, in the SEA, the Commission was granted the task of ensuring ‘consistency’ between these two organisations, a role it had already informally developed over the preceding years. Alongside involving the Commission in maintaining this divide, the gradual erosion of the divide between foreign policy and community policy-making can be seen in the ‘pillarisation’ of the policy-area and the erosion of this distinction in the Lisbon Treaty. Although the CFSP retains a distinct identity in the Lisbon Treaty, the merging of Council formulations and solving of overlapping consequences between preparatory bodies (see; Duke, 2005) has aided in the reduction of the costs associated with managing a divide between community policies and foreign policy-making in the EU.

#### 4.6.3 Non-Compliance and Foreign Policy Co-ordination

Transaction costs do not simply occur while negotiations are ongoing but can appear *ex post* in the form of the credibility of the commitments made by the agents involved with the body (Williamson, 1985, 15-17). In this sense, co-operation may be difficult if there are not means of deterring actors from circumventing common procedures once they have been agreed. The

process of legalisation facilitates this through increasing the costs of non-compliance through more efficient supervision, dispute resolution, and sanctioning (Abbott et al., 2000).

For EPC, the formalisation of internal structures did contribute to the better structuring of behaviour. When internal structures were formalised during the 1970s, they took on a ‘quasi-legal’ dimension insofar as actors treated the *coutumier* as a ‘kind of law of customs’ (Smith, 2004a, 124-125). Thus, while it did not have a formal legal character insofar as it was enforceable by an independent court, these customs did foster a degree of obligation on the part of its members as well as containing a degree of precision as to what practices were expected of them (see; Abbott et al., 2000).

Despite this, there are examples of non-compliance to be found in the realm of foreign policy. Saurugger and Terpan (2015) note a number of examples of such non-compliance, including British resistance to the EUFOR RD Congo Mission in 2006 through not assigning proper resources and the German government not living up to commitments on defence spending (see also; Wagner, 2003, 563). Similarly, in 1991 the German government failed to follow common policy on the recognition of Yugoslav successor states (Wagner, 2003, 584). Notably, these examples do not necessarily outline contravention, but rather the ‘resistance’ towards implementing common policies. Despite this, the failure to commit adequate resources to common policies undermines the effectiveness of community decision-making in this field.

While the functional approach fails to explain the failure to move beyond unanimous voting and the granting of the sole right of initiative to the Commission or High Representative, it is in the field of credible commitments that there is least progress to track. The Treaty of Lisbon itself merely contains a number of strongly worded commitments by the Member States to consult one another and to respect and avoid acting against their agreed policies. Similarly, the means of enforcing these commitments is not clearly laid out (Wessel, 2015, 5). Thus, the Member States are responsible for enforcing these agreements through unclear mechanisms, with the ECJ having a role limited to a number of specific areas. Similar attempts to legalise elements of EPC procedures as part of the Tindemans Report also failed, further implying that efficiency concerns on their own were not driving factors in communitarisation.

#### **4.7 Distribution and Communitarisation in Foreign Policy**

While the functionalist approach emphasises the requirement for efficient solutions to collective action problems, the distributive approach emphasises the uneven distribution of power and the uneven costs of institutional change on particular actors (Héritier, 2010, 40). As

highlighted in Chapter 3, the functionalist account is limited in its explanatory power because it faces difficulty in explaining why change does not happen in times of crisis or where there is shared information surrounding the inefficiency of existing policy-making processes. To account for this, hypothesis three relates communitarisation to preference change from within Member States with the highest bargaining power. Before considering the conditions for change, it is worth highlighting how national preferences resulted in initial equilibria before communitarisation.

#### 4.7.1 Factors Limiting Communitarisation in Foreign Policy

When analysing the evolution of EPC from the Luxembourg Report to the Maastricht Treaty, it is easy to consider the gradual steps forward in the 1973 Copenhagen Report and the 1981 London Report. Yet, both reports were viewed to largely be codifications of evolving informal practices rather than substantial steps forward in reforming EPC's machinery. Similarly, the failure of the Tindemans Report in 1975 highlights that there were clear limits to what the Member States were willing to accept despite documented problems in EPC's ability to respond to the Arab Oil crisis in 1974. It is therefore worth analysing the limitations to communitarisation during the evolution of the CFSP.

One important episode involves the creation of the EPC Secretariat. As Héritier highlights about functionalism, institutional change in this approach often occurs as a either the result of a crisis highlighting inefficiencies or through a process whereby actors learn that a particular process is inefficient (2010, 18-21). In the case of the Secretariat, some Member States had argued since 1971 that there should be such a body, with the West German and British Governments being in support of such an idea (Smith, 2004a, 166). Yet the continuing sticking point remained where such a body should be based, with the French government insisting that it be based in Paris, eventually choosing to prefer no secretariat to one located in Brussels (Nuttall, 1992, 72). While some participants in the EPC process eventually saw this absence of a secretariat as a strength due the maintenance of informality (von der Gablentz, 1979, 689-690), the French government's position in terms of the distribution of benefits in the body's location limited the scope for the body to form. The support for an EPC secretariat in Paris sits in line with longer term French policy of using European foreign policy co-operation as a 'multiplier of power' for France, with France taking a leading role in this area (Brummer, 2006, 12).

A similar failure to integrate includes the 1975 Tindemans Report. The report claimed to represent a 'pragmatic' way to proceed with integration (Ifestos, 1987, 193) that represented only 'an extension and intensification of what exist' (Mitchell, 1976) and which later would enter practice anyway (Smith, 2004a, 122). It was, however, voted down primarily by the French and British governments, with the French government '[disliking] almost everything in the report' and the British government opposing the way forward on differentiated integration and majority voting (Dinan, 2014, 155-156). Thus, while it represented well recognised inefficiencies in EPC's machinery, it fell due to the opinions of states with historically strong identities and capacities in this field. This failure to adapt EPC's policy-process demonstrates how theories of integration need to explain both why integration does and does not occur at certain times.

More widely, there have been similar reservations more widely with communitarisation. With respect to legalisation; the European Convention of 2003 showed a significant degree of discord over the extension over the role of the Court of Justice can be witnessed (Conv 689/1/03), with the resulting agreement reflecting the position of the lowest common denominator. In this case, the British government was the important actor in securing the limitation of ECJ jurisdiction (House of Lords, 2004). In their view, allowing decisions to have legal status and primacy over national positions would have fundamentally limited the ability of the Member States to act independently where their national interests were limited by EU law, through increasing the costs of non-compliance. Thus, this would have a limiting effect on the ability of the Member States to conduct their foreign policies in a manner not represented by simply formalising the procedures of the CFSP. In addition, Member States were suspicious of involving the ECJ on the basis that it opens opportunities for judicial activism (Saltinyte, 2010, 263; Wessel, 2015, 6).

Similarly, on the extension of QMV in this area, France and the United Kingdom have historically blocked the introduction of QMV despite the clear benefits it might bring (see; Wessel, 2003). At the constitutional convention, however, the French government relaxed their opposition during the constitutional convention to accept the extension of QMV to 'all matters except on security and defence issues' (2003, 4), a model similar to that which has occurred gradually in the field of JHA. Guérot et al. (2003), however, explain this as a 'concession' to the German government, with Krotz and Schild noting that 'it is difficult to assess whether this concession reflected a genuine change of French thinking on sovereignty issues in CFSP or if Paris simply relied on the British to veto such a move, which they indeed did' (2013, 220).

Such a position can be seen in the comment of one French diplomat, who stated that 'France is also reluctant to accept QMV in the CFSP field despite the fact that in the proposal presented jointly with Germany it had subscribed to this idea' (Eerste Kamer, 2003, 6).

For the British government, opposition to the extension of QMV beyond technical issues has remained, as the British Government has sought to retain its strong ties to the United States (Geddes, 2013, 194-195). At the constitutional convention, despite recognising the benefits of QMV in a system with an increasing number of Member States, its line hardened with respect to its introduction (Oliver, 2003).

Britain and France have not been the sole opponents to the extension of QMV. The Danish government has historically been supportive of EPC along intergovernmental lines (Heurlin, 1996), relying heavily on NATO for its defence. Similarly, Portugal's government in the Maastricht negotiations felt that 'purely extending the mechanisms of Community decision-making to encompass foreign policy would not sufficiently safeguard the specifics of Portugal's international experience and its traditional ties', notably to its former colonies (de Vasconcelos, 1996, 283). Lastly, neutral Ireland has also frequently opposed the utilisation of majority voting in CFSP. As with the larger Member States with more bargaining power, those Member States with strong existing positions, ties, and institutions have been reluctant to see a spread of majority voting (Nuttall, 2000, 150).

What is notable about these blockages to communitarisation is twofold. Firstly, in many of these cases the strongest advocates for intergovernmental procedures have been the French and British governments. Both governments retain strong positions and identities in the field of foreign policy; retaining seats on the UN Security Council and continuing post-colonial ties to many countries beyond Europe. Both states have developed their own approaches to Europe within this context. The French government has promoted a 'strong Europe', but one which does not undermine the state's ability 'to develop its own national ambitions' (Guérot et al., 2003). Similarly, the British government's role in EPC was based on an aim 'to promote the harmonisation of national foreign policies so long as that does not call into questions the sovereign right to go it alone where that might be deemed necessary' and that foreign policy 'is only communitarised at the margin' (Hill, 1996, 69-70).

This links in with the secondary issue of the costs of domestic adjustment and burden sharing. European powers beyond Britain and France retain strong identities in this field of policy, as highlighted above by the examples of Portugal and Denmark, citing key interests in this field.

The Greek government under PASOK during the 1980s similarly took a strongly intergovernmentalist view in the early years of its EPC membership (Nuttall, 1992, 2), reflecting its government's opposition to imposing sanctions on the USSR (Tsakaloyannis, 1996, 189). Similarly, the Irish government's policy of neutrality represents something requiring substantive conflict at the domestic level if needing amended. There is, therefore, the dual problem of both the strong identities and bargaining power held by many of the EU's Member States and the continuing heterogeneity of interests and preferences in this field.

#### 4.7.2 Preference Change and Communitarisation

With such a pessimistic view of communitarisation in the field of foreign policy, what explains the moderate degree of communitarisation that has occurred? As highlighted in hypothesis three, preference change and bargaining power have a deep connection. When a Member State becomes less able to manage an issue of interdependence, its preferences are likely to change altering the equilibrium outcome of a negotiation. Similarly, when the costs of a particular institutional change domestically or in terms of capacity building change relative to their benefits, so too do the preferences of Member State governments. Thus, integration is likely to increase in the field of foreign policy as Member States become increasingly unable to contend with common issues unilaterally or through alternate means and when the costs of these new institutions fall as a result of change at the domestic level or the increasing costs of the status quo at the supranational level.

In one way, the formalisation of existing norms throughout EPC's history reflects a form of preference change through learning. The expansion of working group meetings and the codification of the 'consultation reflex' with the Copenhagen Report reflects Member States accepting new institutional practices which respect the spirit of their initial agreement, despite altering the letter. While these formalisations have the effect of reducing the scope for non-compliance, what is important in terms of the acceptance of new practices is that these have already come into existence and are complied with before formalisation. There is, therefore, a banal form of communitarisation whereby new practices which originally were not on the agenda are accepted as they break the rule but not the principle of the *status quo ante*.

In relation to the changing costs of institutional change, it is worth considering how the EPC Secretariat changed from a system which was opposed by the Member States in the early-to-mid 1970s, to one that eventually became formalised with the London report and SEA. Towards the late 1970s, the French government experienced first-hand the problem of

‘presidential overload’ which had come to typify the EPC presidency (Regelsberger, 1997, 71). While the functionalist case highlighted these increased costs, the distributive perspective demonstrates how this increased information for the lowest moving Member State facilitated institutional change.

Once agreement was finally reached on the requirement for such a body in Brussels, distributive questions remained surrounding what type of secretariat would come into existence. Specifically, the question surrounded what role it would have and what resources it would have at its disposal; ‘heavy’ or ‘light’ (Bonvicini, 1988, 58). By the SEA, the French government had proposed a strong secretariat but attached to the European Council machinery (Nuttall, 1992, 241), with the British and Italian governments supporting a lighter machinery closer to that which prevailed (Smith, 2004a, 167). As expected, while there was agreement upon the requirement for such a body, the resulting structures sat towards the lowest common denominator with there being a minimalist secretariat with only 17 staff. Yet, importantly, this new structure reflected the change in the preference of the French government as a result of the burdensome nature of holding the Presidency.

Similarly, crises in policy-making before major renegotiations of EPC and CFSP structures have aided in sharpening the minds of the Member States during their negotiations through highlighting specific challenges for the EU’s Member States. The Gulf War, for example, has an important role in accounts of the Maastricht Treaty and the CFSP in moving the second pillar high on the agenda for discussion (Nuttall, 1992, 273-274; Dinan, 2014, 239). Underpinning the changes at Maastricht comes the changing post-Cold War world in which the CFSP had to develop itself. As Hill (1996, 79) notes about the British government’s view of the CFSP, while the intergovernmental structures of the 1980s suited the British perspective in relation to EPC, the reunification of Germany played an important role in altering how the British government viewed the role of foreign policy co-operation in the EC. This rationale is similarly attributed to the French government’s interest in strengthening EPC during the Maastricht negotiations (de la Serre, 1996, 31). In this sense, reunification increased the demand from these two states to find means to work more closely with this empowered state in Europe as the distribution of power in Europe had been altered, altering their demand for communitarised structures due to the changing nature of competition between states.

Similarly, the attacks of September 11<sup>th</sup> 2001 and the invasions of Afghanistan in 2001 of Iraq in 2003 are associated with the timing and agenda of the European Convention process which



led to the eventual Constitutional Treaty and Lisbon Treaty. Yet, the changes of the Convention should not be overstated in terms of preference change. While the French government appeared to support QMV, as Krotz and Schild surmised ‘it is difficult to assess whether this concession reflected a genuine change of French thinking on sovereignty issues in CFSP or if Paris simply relied on the British to veto such a move, which they indeed did’ (2013, 220). In the case of the High Representative, while substantially empowered, this empowerment occurred without the formal extension of their right of initiative, as the Commission had gained in areas of internal security. The Anglo-French proposal which formed the basis of this compromise was, notably, not motivated by strengthening the Commission but in strengthening the Council (Duke, 2003, 41). In this case, the expansion of the High Representative role can be seen as one where the letter of the existing arrangement is updated without significant movement away from the spirit in which that agreement was reached. Yet, this strengthening has allowed the High Representative to grow as a supranational actor, aiding the alignment of Member State views and promoting the ‘upgrading of common interests’.

Thus, communitarisation in relation to the distributive perspective reflects the thesis’ model of distributive concerns. The CFSP has frequently failed to respond due to the continuing power of several the Member States in foreign affairs. Despite this, the limited formalisations and delegation of power to supranational agencies have acted in response to both changes in the international state of affairs, particularly that of reunification, and more effectively allow for co-ordination without curtailing the power of the Council in this field. The desire to see increased efficiency through the ‘dual hatting’ of the High Representative, for example, had to occur with the anticipation that such empowerment would not occur at the loss of the Council’s policy-making power (Morillas, 2011, 246).

#### **4.8 Conclusions**

The CFSP of today has become a substantially different beast to the EPC of the 1970s. Today, the body finds itself increasingly formalised and now part of the ‘de-pillarised’ EU Treaties. It has seen an expansion in the role of the Commission beyond the initial consultative role outlined in the Luxembourg Report, and has incorporated procedures designed to allow a movement beyond ‘lowest common denominator’ decision-making. Yet, the CFSP retains a strongly intergovernmental character; the CFSP’s decisions and structures are limited in the extent of procedures increasing non-compliance costs, the High Representative still shares the

right of initiative with the Member States, and unanimity remains the rule rather than the exception.

What this analysis has shown, however, is that this evolution has been led forward by several factors. Firstly, there has been a functional element to many of the changes to the CFSP. The inefficiencies of intergovernmental policy-making have long been recognised, with demands for increased use of majority voting procedures continuing dating back to the Maastricht Treaty nearly three decades ago. Particularly on issues of voting reform and legalisation, despite the recognition of these inefficiencies the rule of unanimity persists in this field. Thus, there is evidence that the inefficiency of the intergovernmental method alone does not explain the process of communitarisation in this field.

Secondly, communitarisation in this regard has been held back by the strong identities of the EU's Member States in this field and their continuing ability to exercise their influence in means beyond that of the EU. Functional changes recognised by the EU's Member State, particularly in relation to delegation and voting, are good demonstrations of this fact. The Secretariat, QMV, and the evolving High Representative have all been limited in their development because of concerns about the effects that these changes may have on national policies. The credibility of Member State diplomacy and ties, therefore, has played an important role in the CFSP's development.

Yet, these limitations occur in relation to one last element. The third important factor in this evolution has been the evolving attitude of the EU's Member States towards both new practices and their changing relationship to the world around them. Many changes to EPC and the CFSP have occurred incrementally and between negotiations, growing without the requirement for fundamental preference change from the EU's Member States. In this sense, while these changes might have wide-ranging effects in the future, at the time they appear more as formalisations or adjustments to existing procedures. On top of this, the changing global context in which the CFSP has developed has challenged the Member State's initial attitudes towards policy-making in this field. The development of the CFSP is littered with examples of failures of EU Member States to effectively co-ordinate on common issues, particularly as their individual power over global events slowly declines. These challenges, most strongly seen at Maastricht, have led Member State governments to reassess the importance of policy-making in this field and adjust these procedures for more effective co-ordination of national policies in the face of these issues.

## CHAPTER FIVE

### Internal Security: From Trevi to the AFSJ

#### 5.1 Introduction

While the CFSP exists as the archetypical case of intergovernmental co-ordination in the EC, the field of internal security reflects the strongest case of communitarisation in the present EU. Indeed, it is in this field that the term ‘communitarisation’ is used most often (den Boer and Corrado, 1999; Trauner and Ripoll Servent, 2018; ‘Communitisation’ in Fijnaut, 1993, 14) and where the highest degree of it has been achieved compared to all other cases in this thesis.

Contrary to the field of foreign affairs, internal security remains relatively under-studied and theorised. Empirically, the years in which internal security operated through the intergovernmental Trevi forum lacks the deep historical analysis found in relation to EPC. Although accounts from the period itself exist, only recently have in-depth case studies occurred as scholars have gained access to newly de-classified documents from the 1970s (see; Oberloskamp, 2017). Analysis of the evolving system of Trevi in the 1980s remains relatively bare, despite its utility in comparing its development to both other cases of policy and to post-Maastricht integration. Similarly, the field of internal security lacks the in-depth theoretical discussions present in the field of foreign policy, with its work being generally more legalistic in nature.

To provide a complete picture of the development of the field of internal security, the chapter will provide an overview of the development of this field from Trevi to the modern Area of Freedom Security and Justice (AFSJ). In analysing this, the primary focus will be on the area of Police and Justice Co-operation on Criminal Matters (PJCCM), the original focus of Trevi and the area which most strongly pertains to the state’s positive powers. Following this demonstration, the chapter will move to the analysis of the conditions which gave rise to Trevi’s structures and the rationale behind Member State preferences at that time. Lastly, the chapter will consider the functional and distributive rationales which have driven communitarisation forward in this field.

#### 5.2 From Trevi to JHA

The genesis of internal security co-operation in Europe was historically spread across several ‘laboratories’; the Council of Europe, the Schengen Area, and Trevi (Monar, 2001). In addition

Table 5.1: Three Realms of Pre-Maastricht Internal Security Co-operation

	Scope	Formality	Delegation	Voting Procedure
Council of Europe (1949)	Contribution of key protocols now included into the EU's <i>acquis communautaire</i> .	Legislation and treaties exists in terms of formal hard law. Enforced by ECHR. (5)	Consultative Assembly and Secretariat. (2)	Unanimity (2/3 Majority on Membership). (1)
Schengen Agreement (1984; 1985)	Agreement to open borders between certain Members of the EC.	Initial treaty outlining intentions, followed by more detailed treaty. (2)	No delegation to supranational authorities in SIC (1985) (0)	Unanimity (1)
Trevi (1976)	Intergovernmental forum for the co-ordination of national police forces.	Functions through informal internal procedures. (1)	No delegation to supranational authorities. (0)	Unanimity (1)

Sources: Monar, 2001. Scales Correspond to those outlined in Chapter 3.

to these, from 1923, the Member States of the EC had also co-operated within the structures of Interpol, a body aiding co-operation between global police authorities. Of these, it was Trevi that primarily formed the basis of what would eventually become the 'Third Pillar', with the Schengen Area being absorbed by the EU in 1999 as part of the Amsterdam Treaty.

### 5.2.1 The Trevi Era

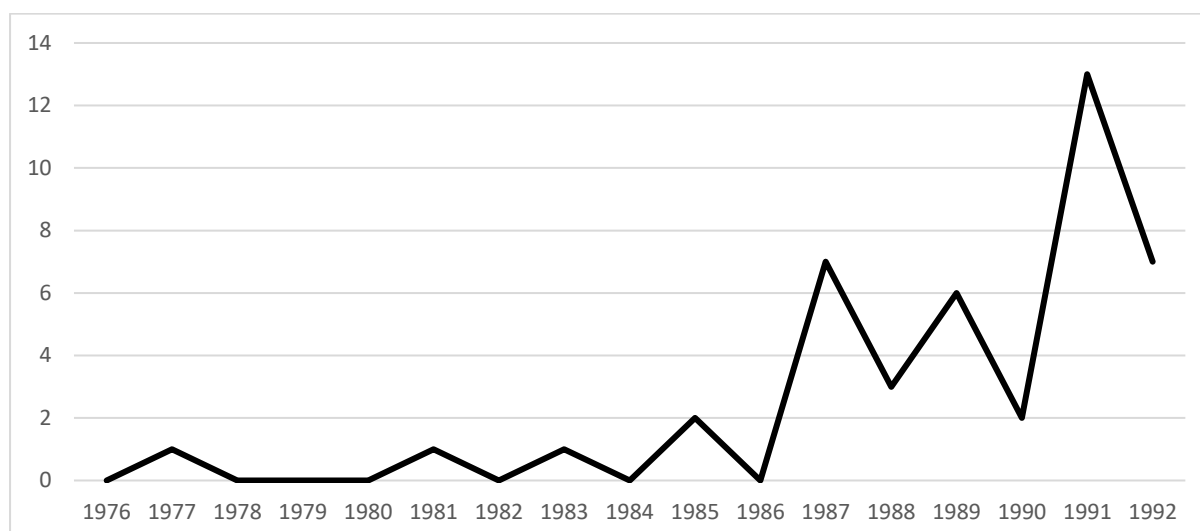
One continuing mystery surrounding Trevi pertains to where its name originated. The three main hypotheses relate to the fact that the body was founded close the Rome's Trevi fountain, that its first chairman was named A. R. Fonteijn, or assume Trevi to be an acronym of '*Terrorisme, Radicalisme, et Violence Internationale*' (Benyon et al., 1993, 152; Occhipinti, 2003, 31).

It was in the context of the emerging threat of cross-border terrorism in the 1970s that the demand for greater co-operation in this field grew (Wittendorp, 2016, 1236-1237). In particular, the Munich hostage crisis of 1972 highlighted the need for closer co-operation between European countries, spurring the West German government to propose new mechanisms for co-operation in this field (Oberloskamp, 2016, 32). The British government similarly sought to promote closer co-operation in this field, using this as an opportunity to demonstrate leadership and commitment towards building new European structures (Occhipinti, 2003, 31). While existing structures existed in the form of Interpol, the requirement for these to remain 'apolitical' acted as a limitation due to the political undertones of terrorism in Western Europe (Ahnfelt and From, 1993, 192). Thus, in 1975 the European Council accepted a proposal to instruct the interior ministers of the EC to construct a body for more effective co-ordination in the field of international terrorism.

The first meetings established a three-tier system comparable to that of EPC, with Ministerial meetings being supported by senior officials, under which operated working groups assigned to specific policy problems (for the initial communiqué, see Jenkins in Hansard, 1976, vol 914 cc235-7W). Like EPC, these structures remained outside of the Rome Treaties and excluded the Commission and ECJ from its work, being managed instead through a rotating presidency. Similarly, consultation between departments and the sharing of experience were the key tasks of the body, with working groups facilitating exchanges of information between departments (Oberloskamp, 2017, 133-134). While five working groups were established in its first meeting, by 1979 only two remained covering counter terrorism (Trevi I) and police training (Trevi II) (Oberloskamp, 2016, 35).

The early period of Trevi was somewhat unusual in comparison to other cases, with a strongly 'bottom-up' dynamic emerging and the ministerial level becoming largely dormant. Specifically, key changes occurred at the working group level, with the Working Group on Terrorism taking the lead in establishing its own Liaison Officers to facilitate more efficient co-ordination and Trevi II developing its own sub-working groups (Oberloskamp, 2016). Due to the technical nature of these tasks, much of this work was carried out at the working group level, with ministerial meetings holding less importance. By the late 1970s, debates between Ministers were largely underpinned by conflict between the French government's desire for informal systems of co-ordination and the West German government's preferences for greater formalisation (Oberloskamp, 2017, 195-196).

Figure 5.1: Quantity of Agreements Adopted by Trevi 1976-1993.



Source: *Statewatch*. Includes decisions, statements, and recommendations mentioned in *Statewatch* (2007, 29-30).

The mid-1980s saw a revitalisation of Trevi's workload as the body captured new areas of policy under its remit, specifically a working group on drug trafficking being established in 1985, and an ad hoc working group on immigration in 1986 being established at the behest of the British presidency (Bunyan, 1993). Specific problems were similarly incorporated with existing working groups, with hooliganism being added to the police training working group's remit in 1988 (*Sunday Mail*, 1988/05/29). In 1989, to cope with this expanding remit, the 'troika' presidency system was replaced with a 'piatnika'; involving close co-operation between the present, preceding two, and succeeding two presidencies (Occhipinti, 2003, 33).

During this period, the quantity of legislative output increased substantially (figure 5.1) as Member States contended with the changing Cold War and with the potential 'spill-overs' from the Single Market. Relating to the Cold War, the bombing of a German discotheque and US strikes in Libya in 1986 acted as a basis for the intensification of co-operation on counter terrorism (Hurd in the *New York Times*, 1986/04/25), with the establishment of a new fax system for information exchange and a blacklist of the most dangerous terrorists (Bunyan, 1993, 2). Politically, however, the latter list of terrorists was not in line with the Greek government's policy on avoiding 'naming names', with the Greek government effectively abstaining from the policy and its implementation (CIA, 1986; *The Times*, 1986/12/10). Similar incidences of political friction surrounding internal security included the Greek

Table 5.2: Formal Changes in JHA from Maastricht to Lisbon

	Scope	Formalisation	Delegation	Voting Procedure
Maastricht Treaty (1993)	Incorporates Trevi as ‘third pillar’ of EU.	‘Pillarised’ system formally laid out in the Treaties of the EU, but beyond ECJ jurisdiction. (3)	Commission gains joint right of initiative in certain areas and responsibilities over ‘consistency’. (3)	Unanimity. Joint Actions may be implemented by a QMV. (1)
Amsterdam Treaty (1999)	Amends the Third Pillar, allowing for transfer of policies to ‘first pillar’	ECJ gains referral rights and obligatory first ruling for national last-instance courts in communitarised areas. (4)	Commission gains sole right of initiative in communitarised areas after transition. Joint right remains in PJCCM. (3)	Qualified Majority Voting, excluding family law, legal migration and PJCCM after transition. (2)
Lisbon Treaty (2009)	Removes the third pillar, although retains several aspects of the intergovernmental method.	ECJ gains full powers, but after a transition period of 5 years. (5) Additionally, UK allowed to ‘opt-out and back in’ on policies.	Commission shared right of initiative strengthened in PJCCM with quorum introduced for Member States. (4)	QMV extended to most policies, with ‘emergency brake’ applying to PJCCM. Unanimity remains in family law, operational police co-operation, and ID cards/passports. (3)

Note: Values represent scope of communitarisation highlighted in Chapter 3.

government refusing to extradite an alleged terrorist to Italy, and the Belgian government refusing to extradite an Irish priest to the UK (The Times, 1988/12/07). In these cases, concerns existed in relation to national practices in these fields and in relation to the potential effect actions could have on relations with third countries. Similarly, in relation to immigration, the potential spill-over from the Single Market that free movement would bring with the Maastricht Treaty opened new questions in relation to the status of asylum seekers and migrants from third countries.

Particularly surrounding the negotiation of the Dublin Convention concerning issues of migration, Trevi's low degree of transparency came under significant criticism (The Times, 1990/06/20, The Guardian, 1992/06/02; Irish Times, 1994/03/22). In 1992, new British Home Secretary Kenneth Clarke responded to a journalist's description of Trevi's lack of accountability to parliament by saying 'I'm amazed that British Ministers have been allowed to get away with it for so long... are you sure that's right?' Similarly, in 1991 the body Statewatch focused on publicising the structures and decisions of the Trevi forum to increase the degree of transparency associated with it (see; Bunyan, 1993).

Delegation to supranational agencies was initially non-existent, with the Commission only receiving observer status later in its lifetime, limiting the support in coalescing support around particular ideas, depriving the body of a 'driving force' for integration, and reducing the amount of information available to all members (Bunyan, 1993; Pollack, 2003). As Monar notes (2010, 27), the Commission's informal involvement largely came from its activities in related internal market policies. In addition, Trevi did not develop a permanent secretariat as EPC had in 1987 (Benyon et al., 1993, 152). As Monar notes, "in the absence of any permanent institutions, cooperation within the TREVI framework was left to the varying impulses of the rotating presidencies and even more voluntary contributions from individual member states. This not only generated continuity problems, but also prevented TREVI from defining any concrete longer-term objectives that could have guided national policies and their coordination" (2005, 6).

Decision making was not simply slow because of a general lack of delegation, but also because of unanimity. As Peek, a senior bureaucrat in the TREVI machinery wrote; "The semi-annual meetings in the TREVI structure from working groups via senior officials to the ministers proved to be unmanageable and little flexible. It left little space for intensification of work.



One should also keep in mind that TREVI did not have a permanent staff, secretariat, headquarters, or budget” (1994, 203).

### **5.3 Post-Maastricht Co-operation on Internal Security**

In 1992, Trevi was incorporated into the EU’s treaties as the ‘third pillar’ of the EU. Behind these reforms were three main concerns (Geddes, 2000, 87); dissatisfaction with decision-making structures following the Dublin Convention, a concern over Trevi’s lack of transparency, and an inconsistency between the policies adopted in the field of internal security. Due to the salience of foreign policy at Maastricht, the third pillar largely mirrored the practices of the first (Turnbull-Henson, 1997, 9). This meant that decision-making would still occur through the Council, that the ECJ would have no jurisdiction in this area, and that the Commission would have a limited authority on JHA issues (see; Table 5.2). Maastricht thus represented something of a formalisation of existing practices rather than a re-invention (Lavenex, 2010, 460).

Nine areas of ‘common interest’ were outlined which would fall under the jurisdiction of the ‘third pillar,’ under Title VI Article K (Ucarer, 2001, 5). These included areas formerly the responsibility of Trevi, including immigration and police co-operation on criminal matters. The right of legislative initiative was shared between Member States and the Commission in most areas of policy, with decisions being ultimately taken by unanimously by the Council (Article K.4, TEU). Utilisation of the veto in such decisions was one factor which was used to explain the general failures of the Maastricht system, with it being frequently deployed by the Member States. Article K.3 offered the Council the potential of implementing ‘joint actions’ through QMV. However, as witnessed in the CFSP pillar, QMV was rarely used in the initial years being utilised only in the creation of two working groups on drugs (Turnbull-Henson, 1997).

In relation to the shared right of initiative, the Commission remained constrained formally and informally after Maastricht. Formally, the shared right of initiative was limited only to the first six policies of ‘common interest,’ excluding areas of Police and Judicial Co-operation on Criminal Matters (PJCCM) (Dinan, 2010, 534). Informally, the joint right of initiative itself reduced the Commission’s room for manoeuvre as it was under threat of proposals being ‘pre-empted’ by those of the Member States (Ucarer, 2001, 7; Markert, 2014). Additionally, the Commission found itself included into the various working groups incorporated into the Treaties, which were both numerous and diverse in relation to other areas of policy. While the Commission also gained a Commissioner for the JHA policy, no Directorate General was

created (DG), thus also limiting the Commission's capacity to act in the field, instead relying on a relatively small Task Force for JHA (TFJHA) through which to co-ordinate and plan its actions.

Of the most important articles at Maastricht was Article K.9 of the TEU, known as the 'passerelle'. This allowed for policies in the third pillar to be moved to the community's 'first pillar', creating a 'bridge' between the two pillars' responsibilities (Bieber, 1994, 42). Importantly, this article allowed for 'communitarisation' to occur without the need for treaty revision, making inter-treaty incorporation of policies a possibility. This would eventually be utilised in several areas, and eventually used to transfer visa, asylum, and immigration policies to the first pillar.

### 5.3.1 The Treaty of Amsterdam

Contained within the Maastricht Treaty was a commitment to revisit the structures of the JHA pillar after the initial years of operation. The result was the Amsterdam Treaty, which considerably reformed the way work was undertaken across the field of JHA. Structurally, Amsterdam transferred many of the policy areas in the third pillar into the first pillar, namely policies relating to visas, asylum, and immigration, with PJCCM remaining in the third pillar (Lavenex, 2010, 460).

In relation to the actors in JHA, the Amsterdam Treaty represented a substantial change for JHA. In those areas which were fully communitarised, the European Parliament earned co-decision rights with the Council alongside the Commission gaining the exclusive right of legislative initiative. In those areas which were not approved in 2004, the Commission retained its shared right of initiative and the Parliament its right to consultation. Additionally, the CJEU gained the right to interpret JHA provisions subject to the approval of the Member States (Dinan, 2010, 534). In areas of PJCCM, the retaining of the Maastricht system represented the continued legal separation between the hard law of the first pillar and the soft law, unenforceable by the CJEU, of the third.

In addition, the Amsterdam Treaty saw the incorporation of the Schengen Area into the EU's structures. As Wallace (2000, 124-125; Den Boer and Corrado, 1999) notes, the actual incorporation of the Schengen acquis took place in a rather vague manner because of two main reasons. Firstly, the acquis itself was not clearly defined in the 1996-97 IGC with there being a mere statement that the work would be incorporated by the time the Treaty entered into force. Secondly, how this incorporation would take place in relation to the differing pillars of the EU

was not clearly defined. As a result, the incorporation of the Schengen Area into the EU was a process which was not completed through the Treaty of Amsterdam (ToA), rather the ToA represents a starting point through which a process of incorporation would occur. To solve this, two working groups were created to work on the technicalities of what incorporating Schengen would entail, one with the incorporation of the *acquis* and the other on the association agreement with Norway and Iceland, who were members of Schengen but not the EU (Den Boer and Corrado, 1999). With relation to the former group, such discussions were highly political, with several differences emerging around the role of the working groups in relation to COREPER. Thus, the incorporation of the Schengen *acquis* was not completed until 1999.

In December 2004, while negotiating the Hague Programme, the Council accepted the communitarisation of all these areas with the exclusion of legal immigration and family law (European Council, 2004, Decision 2004/927/EC; Council of European Union, 2004, 15226/04). Initial discussions began in April 2004 with the agreement of the Hague Programme, with the resulting decision in December being to exclude two areas of policy. For those areas transferred fully to the first pillar, the Council's decision-making procedure changed to QMV, with family and legal migration both utilising unanimity in council decisions, the latter coming as a result of opposition from the German and Austrian governments.

### 5.3.2 The Treaty of Lisbon

In the years succeeding the Amsterdam Treaty, further attention was dedicated towards issues of internal security. Firstly, the September 11th attacks of 2001 demonstrated issues of terrorism and internal security to be of increased importance. This highlighted the need for more effective action and a desire to reduce deadlock created by national vetoes (Donnelly, 2008). In addition, the period following the adoption of the Amsterdam saw a large increase in the quantity of legislation being taken on board, with Monar (2004, 127-129) noting that in the sixteen months following the ToA, the EU adopted 500 texts in the field of JHA, compared to the 324 adopted in the 67 months between 1993 and 1999. Monar (2004, 127) also notes that the quality of these laws had also changed, with the number of texts being legally binding increasing from 10% to 36%. This created a further functional demand for a rationalisation of the policy-making process.

The Lisbon Treaty had a number of important effects on policy-making in areas of internal security. Firstly, QMV was extended from parts of visa policy, asylum policy, illegal immigration, and judicial co-operation on civil matters to now include more of the EU's visa

policies, legal immigration, judicial cooperation in criminal matters, matters relating to Eurojust, non-operational police co-operation, Europol, and civil protection (European Council, 2009). Unanimity was, however, retained in areas of passports and identity cards, family law, operational police cooperation, and the European Public Prosecutor's Office (2009, 2). In areas of PJCCM, QMV was extended but with the addition of an 'emergency brake,' alongside issues relating to Europol and Eurojust being governed through unanimity. The 'emergency brake' into existence during the negotiations on the Draft Constitutional Treaty at the insistence of the British Government, which was concerned about the potential undermining of Britain's system (Monar, 2004, 131). This brake would into practice when one Member State would see a piece of legislation as affecting its legal system, and therefore could refer the legislation to the European Council, thus delaying the decision and suspending the legislative process (Treaty of Lisbon, 2009, Art 82:3).

In terms of delegation, the Commission's power in the field of PJCCM was extended. In this area, to initiate a piece of legislation the Council now required the support of a quarter of their fellow Member States, increasing the threshold needed for such a piece of legislation to come into existence (Dinan, 2010, 542). As such, even in areas of PJCCM, the Commission can be seen to have increased its powers somewhat as competing initiatives are likely to be reduced in quantity. The years following this change demonstrates the extent which this has had on policy-making. Of the 82 decisions between Articles 82 and 89 (PJCCM) successfully agreed between 2010 and 2017, 78 were proposed by the Commission and only 4 by the Member States (Eur-Lex, Accessed 03/2018). By comparison, the data of Markert (2014, 116) demonstrates that of the legislation adopted by the Council from 1999-2011, Member State initiatives made up 61% of adopted proposals. There has, therefore, been a demonstrable shift in power in the field of PJCCM post-Lisbon.

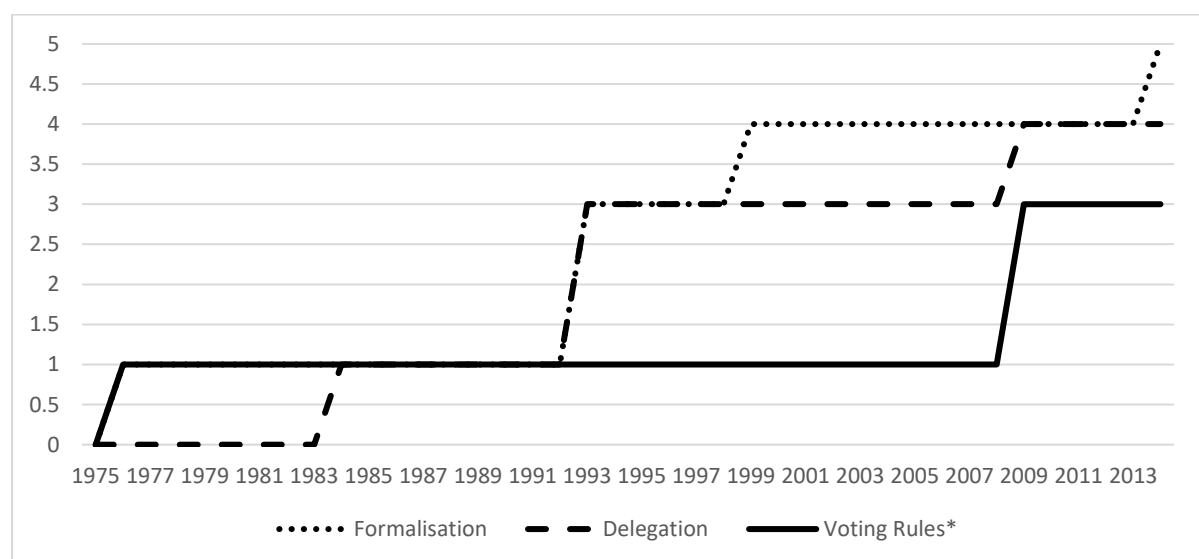
Lastly, the so-called abolition of the pillar system had some effect on the legal dimension of internal security. In terms of PJCCM, the Lisbon Treaty implemented a transition period after which the powers of the ECJ could apply to areas of internal security. Previously, in the area of PJCCM reference to the ECJ was only an available option for the national courts of 17 Member States (Peers, 2009). To facilitate the extension of the ECJ's powers in this field, the British and Irish governments chose to opt-out on most pieces of legislation in this field which they had previously opted-in on, ending the previous opt-out system on references to the ECJ from national courts.

## 5.4 Communitarisation and Internal Security

The development of the AFSJ demonstrates a high degree of communitarisation when compared to that of the CFSP (Figure 5.2). The very limited structures of the Trevi organisation have given way to a mode of policy-making which grants significant leeway to the Commission in directing the direction of policy-making, empowers the ECJ to enforce decisions, and which notably utilises QMV in taking decisions. Thus, there has been a significant move towards systems which better emphasise co-operation between national departments rather than simply the co-ordination of national policies visible in the Trevi days.

While the Commission has yet to hold the sole right of initiative in areas of PJCCM, informally the quorum has witnessed a large movement away from Council-led policy proposals. As Markert (2014) argues, the joint right of initiative increased the scope for Commission proposals to be pre-empted, with single Member State initiatives being the most common form of proposal in the pre-Lisbon era (Markert, 2014, 116-117). Replication of the methods of Markert's study post-Lisbon showed a large movement towards the Commission as being the initiator of legislation in this field (Eur-Lex, Accessed 03/2018). The similar movement away from five-year programmes in 2014 further allowed the Commission to have greater room in facilitating common interests in its proposals (Roos, 2018, 429). As was noted in Chapters 2 and 3, this reflects a movement towards the empowerment of an actor which better reflects

Figure 5.2: Communitarisation and PJCCM 1975-2014

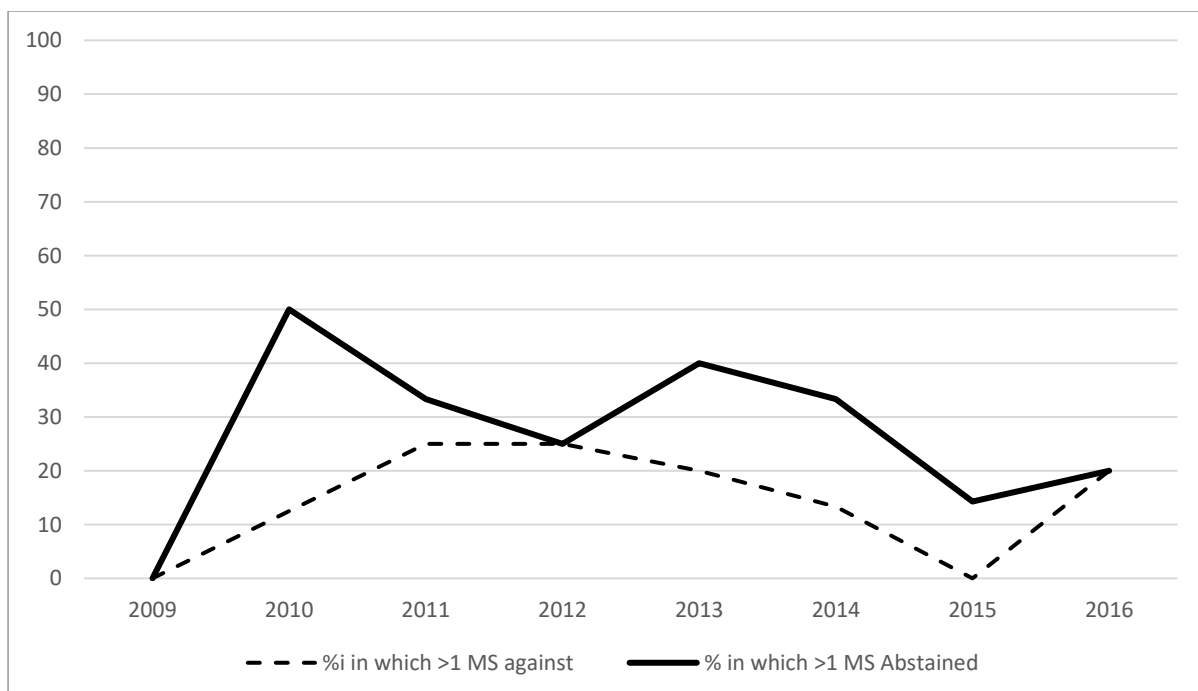


Note: \*PJCCM has an emergency brake procedure, which has not been used.

common policy goals and the ‘upgrading of common interests’, signifying a notable increase in communitarisation. What is similarly notable is that, in promoting this role, the Commission has historically taken an approach of limiting its demands for communitarisation so to maintain the trust of Member State governments. This is visible in a remark from Monar surrounding the Commission’s tactics in the Maastricht-era where ‘one cannot escape the impression that the real motive behind [the Commission’s] declared pragmatism... was a certain fear... that by insisting further on a communitarisation of parts of JHA it could [lose] any change of increasing its influence’ (Monar, 1994, 71).

On the issue of voting rules, unlike in the CFSP, there is a brighter picture than the formal rules suggest. In the treaties, there remains the option of an ‘emergency brake’ procedure where Member States feel their interests to be threatened, allowing decisions to be moved to the Council. In practice, however, this has never been used (Peers, 2018). While consensus remains the norm in JHA areas of policy, data from Vote Watch Europe (Accessed 01/2019) shows that in the post-Lisbon years to 2016, abstention and voting against common policies was not an altogether rare occurrence. This suggests a movement away from norms of strict unanimity and consensus witnessed in purely intergovernmental policy-making.

*Figure 5.3: Percentage of JHA Council Votes in which at least one Member State Abstained or Voted Against by Year.*



*Source: Vote Watch Europe (Accessed 01/2019).*

Lastly, the extension of the ECJ's powers in the field of PJCCM represents another step towards communitarisation in this field. The extension of its power over this area has both been slower than other areas of policy in the former third pillar and now occurs in a notably differentiated manner.

What is notable is that its extension of powers increased the degree of differentiation in this area, as the UK and Ireland chose to opt out of several existing EU policies in the AFSJ. Despite this, the empowerment of the ECJ represents the increasing costs of non-compliance in this field, once more reflecting a movement towards common policies over co-ordinated national policies.

### **5.5 The Selection of the Intergovernmental Method in Internal Security**

Before discussing why there is such a scope of integration in the field of internal security, it is worth beginning by considering the conditions which gave rise to the selection of the intergovernmental method. When discussing what gave rise to Trevi's initial structures, this will be done in relation to the first hypothesis of the thesis whereby the selection of the intergovernmental method is likely to be chosen in areas where some Member States face high potential costs of domestic adjustment and capacity building costs. The specific exposure of the German government to this problem and the French government's clear identifiable costs in this field show that there is strong explanatory power in this hypothesis in identifying why Trevi functioned upon an intergovernmental system of policy-making.

#### **5.5.1 Demand for Co-operation between the EC's Member States**

In the 1960s and 70s, there was a notable internationalisation of terrorism from groups related to Palestinian liberation, the far left, and nationalist groups within Member States. What is notable about this period is that their activities came to increasingly be understood as a common and cross-border problem, requiring co-operation between states to find a solution (Wittendorp, 2016). Some groups, such as the Irish Republican Army, received military aid from states such as Libya and similarly sought asylum within other European states. This international dimension became more acute in the aftermath of the Munich Hostage Crisis, which primary and secondary sources both highlight as a key event stimulating Member States in the EC to seek a common solution. Several countries in Europe were particularly exposed to these problems, with countries such as Germany and Italy developing complex anti-terrorism laws in this period and recognising the increasing need for new structures for their management (Hof, 2014, 12, 16). This increasing demand for co-operation was difficult to solve within

existing structures, with Interpol's requirement to avoid racial, religious, and political issues in Interpol's constitution limiting its utility in this field until the 1984 (Ahnfelt and From, 1993, 192). This led to an increased demand particularly from the British and West German governments for new structures in this field.

Due to its exposure to problems of both Palestinian terror activities during the Munich Hostage crisis of 1972 and exposure to left-wing terror groups in the form of the Red Army Faction, the West German government had the highest demand for co-operation in this field. This is visible in the key role taken by the West German government in the early days of the negotiations and the more formalised and maximalist preferences held throughout these negotiations (Oberloskamp, 2017, 89). These preferences reflect a stronger outline of how the roles and working groups would function before the first ministerial meeting occurred.

For the British government, there was a similarly large exposure for terrorism in the form of the Irish Republican Army, as well as hoping for 'synergy in technical fields that would lower costs and increase the know-how of all participating states' (Oberloskamp 2016, 33). Similarly, the British government sought to use Trevi as a means of demonstrating the UK's commitment to Europe through launching a new political project (2016, 33). Yet while there was a strong demand for co-operation, there was the potential threat of the undermining of the common law system of justice (Lodge, 1989, 31), meaning that there were potentially high adjustment costs in this field. Thus, their preferences reflected a more informal structure, explicitly stated as being along the lines of EPC (Oberloskamp, 2017, 84; 89).

The third actor which appears strongly in these negotiations is the French government. Presidents Pompidou and Giscard were both open to co-operation in this field, with the former establishing the 'Pompidou Group' on Drugs and the latter assenting to the Trevi group (Occipinti, 2003, 30-31). Yet, Oberloskamp notes two concerns underlying the French position; a concern surrounding French relations with the Middle East and a concern that co-operation with the West German government in counter-terrorism may affect domestic left-wing intellectuals (2017, 88). The French government's approach to international terrorism was more limited than its partner states as a result of its ties, with particularly Palestinian-related terrorists receiving light punishments or deportations (Guillaume, 1992; Gregory, 2003, 130). In addition, the French government took a less hostile approach to Interpol, 'partly because the organisation was strongly French dominated', being based in Paris (Ahnfelt and From, 1993, 192; Kaunert and Leonard, 2019, 264). Lastly, it must be noted that French



terrorism in this era originated largely domestically, with the main threat coming in the form of the National Liberation Front of Corsica and Iparretarrak (IK), a Basque separatist group (Gregory, 2003, 125-126).

#### 5.5.2 Supply through Bargaining

Unlike EPC, the available data on the initial negotiations over Trevi's structures are relatively sparse. What did emerge from the negotiations was a system which was modelled on that of EPC; one outside of the treaties and largely intergovernmental. These meetings would have a ministerial level in which the Member States could familiarise themselves with the situations and policies of one another (Oberloskamp, 2014, 227). Below this, several working groups were established, under which various sub-working groups would consider more specific questions on issues such as police training.

As noted above, while the failure of Interpol to adequately meet the problem of intensifying international terrorism was enough to motivate several Member States to seek stronger structures within Europe, Interpol retained an important significance for the French government. As noted, Interpol was both based in France and had a close relationship to the French authorities (Anfelt and From, 1993, 192). Similarly, close co-operation in this field threatened the French government's existing approach to the management of terrorism and its relationship with domestic groups and third countries. Thus, as expected this led the French government to seek more intergovernmental structures for Trevi.

Similarly, the available evidence also shows that a reluctance to see national legal norms maintained. Despite a shared desire to see close co-operation in the field of counter terrorism in the 1970s, the British government similarly believed 'that the state should retain full control of the police force' (1993, 193). As such, due to the potential costs of adjustment in this field the British government similarly can be expected to support structures for collective action, but along intergovernmental rather than more supranational lines.

What is important from the available evidence is that there is sparse information supporting the notion that the intergovernmental method was more effective. EPC was, by this point, a useful point of reference when conceiving of structures, but the ultimate structures reflected the desires both for co-ordination outside of the treaties and for co-ordination within specific areas of policy. As such, due to the bargaining power of these Member States and their concerns about potential costs, these Member States turned out to be 'reluctant with regard to the German

ambitions of basing the co-operation on official interstate agreements, preferring informal and flexible ways of working together' (Oberloskamp, 2016, 33).

## **5.6 Efficiency Concerns and the Communitarisation of Internal Security**

While Trevi established an initial structure for the coordination of efforts against terrorism, the functional account portrays its development after establishment as one of improving efficiency in the face of more complex and voluminous tasks. Throughout its history, there have been key problems with the intergovernmental manner in which internal security has been governed, with such functionalist arguments often being present both during times of treaty change and between formal changes. What the functionalist account highlights is how the increasing pressures from cross border crime in the mid-80s, the effects of the single market on policing, and the migratory impact of the break-up of the Soviet Union and the Warsaw Pact all put pressure on Member States to invent more effective means of making policy in response to these problems.

### **5.6.1 Trevi, JHA, and Contracting Costs**

While the Trevi conference established a system for co-ordinating national policies, it did not create an in-depth policy-process through which common policies could be achieved. For the first few years, this was not a particular problem for Trevi as until the mid-1980s, there were very few agreements which were actually reached through these structures at the ministerial level. These sole agreement from the 1970s in the Trevi acquis involved the creation of liaison officers to facilitate more effective co-ordination between national police departments (Bunyan, 2007, 30-31). Most of Trevi's groups were abandoned, with the groups on terrorism and police training remaining past the end of the decade.

In the mid-1980s this situation changed as Europe experienced further terrorist attacks in the form of the Berlin discotheque bombings and the potential spill-overs from the single market. In response to the demands of the SEA and evolving pressures of the 1980s, the Belgian presidency began work on creating a 'Trevi store of information', a summary of Trevi's work since its inception, and establishing new bodies (Bunyan, 2007, 11). In advance of the accession of Sweden, Austria, and Finland, Trevi's acquis was further outlined so to be incorporated into their accession agreements with the EU. Thus, during the Trevi years there was a functional pressure for codification.

Yet in comparison to EPC, both the legislative output and degree of communitarisation overall was lower. Within the existing literature there are two reasons which are alluded to which separates the work of Trevi and its sister organisation. Firstly, the work of Trevi was comparably more technical, with a more ‘bottom up’ culture emerging. The few agreements which did come from the ministerial level during Trevi’s initial years largely accepted the work which was ongoing at lower levels. Oberloskamp notes ‘formally, it was the ministerial level that made all final decisions. In practice however, it would turn out that the higher-ranking levels virtually always accepted the working level’s propositions’ (2016, 34). This was coupled with the widely varying bureaucracies of national departments, meaning that any new regulations had a dramatic number of national circumstances to take into account (Oberloskamp, 2014, 236).

Furthermore, Oberloskamp’s (2016) account paints a similar picture with the most substantive institutional developments happening in relation to the establishments of new departmental practices and liaison officers, work requiring limited ministerial input. From the mid-1980s, most ministerial work was concerned with identifying new threats and areas for co-operation. Similarly, Trevi’s scope was more limited than that of EPC. While EPC existed to align national foreign policies and responses to world events, Trevi’s ultimate mission was the sharing of experience between departments and the better co-ordination of national departments in the face of new threats.

During the 1990s this disorganisation and the growth of more controversial topics put further pressure upon existing machinery. The increase in migration from Eastern Europe after the fall of the Berlin wall increased demand for closer co-operation on immigration, with the Dublin Convention eventually being agreed through the Trevi framework. While the Maastricht Treaty had attempted to clarify decision-making procedures after the Dublin Convention and bring greater coherence to the area’s workload, the treaty left JHA with a lack of clear purpose due to the greater focus at Maastricht upon German reunification and the Gulf War (Turnbull-Henson, 1997, 9-13). Due to the continued use of unanimity and the ability for one Member State to veto progress, Ucarer noted a recognition within the EU that ‘tangible progress in terms of legislation was hard to demonstrate’ within the field of JHA (2001, 10; also Guyomarch, 1997, 127). At a Council meeting in 1995, fourteen decisions were ‘apparently blocked by the objections of a minority of Member States’ (Turnbull-Henson, 1997, 14). Similarly, solving the remaining problems with the Dublin Convention was proving difficult due to the prevalence of unanimity in this area (Niemann, 2008, 570).

The Amsterdam Treaty can therefore be understood as a means of rationalising the decision-making procedures of the JHA pillar. As the report of the IGC itself stated ‘the decision-making processes and working methods of the Council of Ministers will need review. The Union must be able to take timely and effective decisions... Many of us believe greater efficiency would be enhanced by more qualified majority voting in the Council’ (1995, 7). Yet, ‘one of us opposes extension on principle’, that country being the United Kingdom (1995, 7; Hix and Niessen, 1996, 57). In sum, at this treaty an opt-out was granted to Denmark and opt-ins to the United Kingdom and Ireland, allowing them to opt-out of specific agreements which did not suit them. Most areas of policy would be communitarised after a five-year transition period, with the exception of PJCCM. In 2004, after the transition period, PJCCM was joined by family law and legal migration as the remaining elements of the third pillar. Other areas were fully communitarised, adopting the standard modes of procedure associated with areas of market integration.

Due to the transition period at Amsterdam, similar to that of the Lisbon Treaty, there was a smaller degree of reporting surrounding the logics and debates which underpinned these decisions. Transition periods therefore, by design or otherwise, act as a convenient means of integration by stealth. In relation to the extension of QMV in the third pillar, one British Minister justified this move on the functional ground of the expanding numbers of Member States in this area (BBC, 2004/10/25). Not only was this likely to increase the potential for gridlock, but gridlock in an area which had become increasingly important in the post-September 11th world. This new context of the ‘war on terror’ had similarly increased the demand for the Commission to play a greater role in supporting the policy process of the third pillar (Lewis and Spence, 2010, 91-94). For the Commission, the ‘warm-up’ period offered an opportunity to showcase its usefulness in providing ‘technical expertise, institutional memory, and brokering between member states’ (Ucarer, 2001, 14).

The European Constitution, with most of these changes making their way into the Lisbon Treaty, further communitarised JHA shortly after Amsterdam’s changes came fully into effect. In the words of Wagner (2006, 1241), ‘the most frequently used argument in favour of communitization [sic] was ‘effectiveness/efficiency’, with critics of this method highlighting the inefficiency of intergovernmental conventions and regulations without proper legalisation. As Kaunert (2010, 195) notes, ‘there was consensus [in the convention] that unanimity voting in the Council could not be sustained after enlargement’. The Commission noted that the shared right of initiative in the field of PJCCM had been ‘demanding and disruptive’, reducing the

coherence of JHA's legislative output (Occhipinti, 2003, 194). Similarly, the decision to extend the use of QMV in PJCCM was justified on functional grounds, being implemented with a compromise with the British government in particular that an 'emergency brake' would be added to this field (Kaunert, 2010, 197). Such a guarantee, alongside other formal commitments to the maintaining of the diversity of legal systems in the EU (Mitsselegas, 2010, 459), proved sufficient to allow for a reduction in the number of veto players but with guarantees that Member States can block legislation in exceptional circumstances.

### 5.6.2 Internal Security, Communitarisation, and Administrative Costs

Both Trevi and JHA suffered from substantial organisational problems in advance of their communitarisation. This embodied itself in two important manners. Firstly, similar to the experiences of EPC, by the late-1980s it had become apparent that work on both the Schengen area and the Single Market had a strong functional relationship to the work taking place in Trevi (Occhipinti, 2003, 41). The navigation of multiple overlapping machineries in such a sensitive area of policy therefore rose in importance as these projects continued to grow. Particularly as the Member States sought to rationalise the third pillar in relation to these other machineries at Amsterdam, there was a recognition that 'introduction of Community control [in internal security] would give greater coherence', particularly since issues of migration were divided over the first and third pillar (European Council, 1995, 17; Ucarer, 2001, 5).

The incorporation of most of the JHA pillar with the Amsterdam and the remaining elements as part of the Lisbon Treaty thus has a clear functional ground. In putting forward its support for the abolition of the pillars, for example, the Commission claimed that it would 'make the EU's work and the exercise of its responsibilities easier to understand and more transparent' (European Commission, 2005, 1). The Dutch representative similarly argued that 'citizens do not want pillars but results... if the structure of [the] Treaty prevents results then it must be modified' (in Occhipinti, 2003, 194). De-pillarisation, thus, reflected a strong functional demand when put forward to streamline policy-making in JHA.

Secondly, unlike EPC, Trevi had a stronger 'bottom-up' dynamic to its working groups, creating problems in ensuring consistency between each of their remits. One former participant in Trevi's structures, Johannes Peek (1994), had several strong criticisms in relation to these tendencies. Firstly, Peek noted that 'participants in the discussions often consider and use the meetings for their own bureaucratic benefit rather than to cope with and solve existing crime problems' (1994, 205). As can be witnessed in Oberloskamp's (2016; 2017) account of Trevi,

these differing working groups had a strong degree of autonomy in defining their mission and in facilitating closer co-ordination.

Not only were these groups autonomous, but their work was not effectively co-ordinated. This was made more difficult by the fact that the group had never established a secretarial system. One former participant noted that ‘cooperation between the EC partners was very much fragmented over the great number of working groups. There was not only a denominational segregation within the cooperation in the specific fields of work... but also within the... specific spheres of work itself’ (Peek, 1994, 204). This lack of administrative capacity similarly was highlighted as a ‘consistent problem’ by Guyomarch (1997, 133) due to the body lacking any ‘institutional memory or even a common information point’.

By the time of the Amsterdam Treaty, these problems had entered the agenda of institutional reform. Most data confirm that Trevi went without a secretariat during its existence, with the Member States simply deciding to move to a ‘piatnika’ Presidency system after considering a light administrative structure in 1987 (see Peek, 1994, 205; Occhipinti, 2003, 72; Bunyan, 2007, 11). By the Amsterdam Treaty, the Member States had accepted that the number of preparatory groups required a reduction and that these should be co-ordinated by the General Secretariat of the Council (European Council, 1995, 17; Hix and Niessen, 1996, 41).

### 5.6.3 Non-Compliance and Internal Security

While non-compliance has been a frequent underpinning principle in improving the legalisation of particular fields, JHA experienced a slightly differing functional pressure. Namely, the attachment of the field of internal security to concerns over the rule of law and human rights increased pressure for legalisation in this field. In the Amsterdam Treaty, the Council recognised that issues of legal certainty, individual rights, and the rule of law as a basis for strengthening the ECJ’s power in this field (European Council, 1995, 33). By the time of the Constitutional Convention, the creation of Europol in particular highlighted the conflict between principles of judicial and parliamentary control over the police and the principles of intergovernmentalism (Wagner, 2006, 1234). This mirrored previous concerns over the secrecy under which negotiations had taken place both in Trevi and in the third pillar, particularly in areas of policy such as migration which had comparably fewer security concerns when compared to Trevi’s initial remit of terrorism. The threat of non-compliance in a field so close to fears over human rights, thus, existed as a strong pressure as the EU embedded itself more strongly in this field.

Compliance itself, however, had existed as a concern when improving the role of the ECJ. At Amsterdam, the ‘ensuring [of] uniform interpretation of and compliance with Community law’ (European Council, 1995, 33) was put forward as a justification for further legalising JHA’s structures. The Hague Programme, for example, laid the legislative basis of the Council’s activities in the realm of internal security in 2005. By 2008, the Commission had reported that ‘the overall general assessment of the Hague programme is rather unsatisfactory’ (in Terpan, 2015, 38). Despite this, while the ECJ’s power has increased in this field so to mitigate the threat of non-compliance, this empowerment has been tempered with the formal demand that national police forces should remain exempt from the ECJ’s rulings (Wagner, 2006, 1236).

## **5.7 Distribution and Communitarisation in Internal Security**

Alongside this push for efficiency came an evolving situation regarding the Member States’ abilities to manage issues of interdependence. As noted above, at the outset of Trevi there was a clear political divide within Trevi, with the French government having a notably different approach to issues of terrorism than its main partners. While the functionalist account implies that from this point there was an integrative dynamic, Trevi’s history is notably stop-start. Towards the end of the 1970s, Trevi’s machinery notably slowed and began to stagnate, before rekindling towards the mid-1980s. As noted in Chapter 3, what is more effective about the distributive approach is that it gives good reasoning as to why integration might happen and why it might not. This section will discuss the key factors limiting communitarisation over Trevi and JHA’s history, before considering the conditions that facilitated integration and the forms of policy-making which these conditions influenced.

### **5.7.1 Factors Limiting Communitarisation in Internal Security**

The period of stagnation towards the end of the 1970s is one of several situations where there have been clear limiting factors on the degree of communitarisation despite pressures on the Member States. Notably, there were several terrorist attacks in this period in the Netherlands, Italy, and Northern Ireland, thus there was no lack in demand for co-operation in this period. However, following the establishment of national Liaison Officers in Trevi, little more development occurred in terms of formal or informal communitarisation. Indeed, by 1979 after the dissolution of working groups III through V, there were questions over whether Trevi itself should continue (Oberloskamp, 2014, 233).

Underpinning accounts of this period are notable political and distributive concerns between Trevi Member States. Oberloskamp’s historical analysis notes significant problems at the

domestic level (2014, 234-235). In the West German state, for example, there were significant problems relating to the constitutional relationship between federal and state governments in the field of crime, showing there to be a notable degree of national adjustment costs in facilitating closer co-operation in the field of terrorism, particularly in relation to the centralised model on which national Liaison Officers were based (2014, 236; 2017, 200-201). This had an effect of stymying the system of co-operation within Trevi and undermining its effectiveness.

Similarly, there were issues regarding the role which Trevi was expected to fulfil by the Member States and the potential effect communitarisation might have had in relation to existing goals. The French government's concern over the potential replacement of Interpol, for example, was a notable problem in the setting up of a permanent secretariat and more widely in supporting communitarisation. Notably, the French government consistently opposed such a move for fear that this could potentially undermine Interpol and, as a result, the role of France in international affairs due to its situation in Paris (Oberloskamp, 2017, 188). This was despite the desire from both the Italian and West German governments to see an increase in the degree of co-operation within Trevi, with the West German government eventually accepting that such a move forward was not possible (2017, 191). Maintaining the system of Liaison Officers, meanwhile, stood much closer to the 'French model' of co-ordination focusing on informal discussion (2017, 193, 194).

Thus, underpinning the conflicts which led Trevi's officials to question the very existence of the body (Oberlokamp, 2014, 197; 2017, 196) was thus rooted in the early distributive conflicts of the 1970s. The French government remained concerned about the effect which Trevi could have on its standing through Interpol, as well as a concern surrounding the effect that such co-operation might have on domestic political groups and existing approaches to terrorism (Ahnfelt and From, 1993, 1922017, 88; Kaunert and Leonard, 2019, 264). Such conflicts were to continue throughout the 1980s, although in this case from the Greek government which frequently sought to opt-out of Trevi's agreements on decisions such as 'naming names' (Tsakaloyannis, 1996, 189). In this case, the issue of terrorism came close to the Greek government's policies on foreign affairs with the Middle East and USSR, presenting grounds for undermining existing government policy.

While the development of Trevi was not opposed by the British government, this did not translate into support for a supranational basis for police co-operation. At Maastricht, for example, the British government continued to support an intergovernmental basis for action on



issues of internal security, being joined importantly by the French and Danish governments (Blair, 1999, 61). This intergovernmentalist position continued through to the Amsterdam Treaty, which as noted previously was motivated in no small part due to the increased pressures of migration seen in Europe during the 1990s. Once more, while Britain supported some form of co-ordination on this, this was done insofar as the EU's structures facilitated and advanced existing goals and did not threaten to undermine existing ones (Geddes, 2005). Simultaneously, Britain's geographical location limited the demand for better means of managing cross-border migration due to the country's island nature (Moravcsik and Nicolaidis, 1999, 63). This became an important sticking point which, as will be discussed next, was overcome through the use of differentiation in the field of JHA.

Similarly, the British government maintained a relatively minimalist approach during the Constitutional Convention and Lisbon Treaty negotiations. Due to its unusual situation regarding free movement and geography, they managed to secure several limitations on the Lisbon Treaty's changes to internal security. Firstly, the Commission was only relatively empowered with the erosion of the Member States' right of initiative in this field to requiring four Member States for a proposal. Second, the 'emergency brake' procedure was introduced for this pillar. Thirdly, the British and Irish government were granted the ability to opt-out and then back in on JHA policies once the court's power over these areas had been extended. Despite these features, Lisbon represents a significant communitarisation of this field, with one scholar stating that 'the ability of individual member states to dominate decision-making on the AFSJ... has been significantly diminished' (Occhipinti, 2015, 238-239). Once more, the requirement for unanimity in amending the treaties alongside the special geographical status enjoyed by the UK facilitated a stronger bargaining position. Differentiated integration was the most efficient means to solve the impasse.

### 5.7.2 Preference Change and Communitarisation

With such difficult issues for domestic preferences, constitutions, and policies; how did Trevi communitarise? What is most notable about the history of internal security is the development of international terrorism over this period and the exposure of the EU's Member States to these problems. The initial demand for co-ordination in Trevi came as terrorism grew increasingly international and cross border, specifically demonstrated by the cross-border nature of left-wing nationalist, and Palestinian terrorism, the international supply of arms and resources to such groups, and differences in approach particularly in relation to issues of extradition. What

is notable is that there has been a continuation of such threats, particularly in the contemporary forms of far-right and religious extremist terrorism. Simultaneously, the opening of borders in relation to the Single Market acted as another intensifier of the degree of interdependence on these issues, as problems such as drug smuggling and issues of 'hot-pursuit' by police officers across borders have become more important.

While the late 1970s can be characterised as a period of dormancy for Trevi, the 1980s saw an important resurgence and expansion of activities beyond the core two working groups left after its reorganisation in 1979. The increasing scope of activities after the mid-1980s re-activation of the ministerial level represents a moment in which the Member States committed to a further formalisation of Trevi's legislative output, an extension of the Commission's role in Trevi, and the consideration of a light administrative structure at the European level. Evidence from both accounts of participants as well as media reports of Trevi's activities highlight that this reactivation took place over several years. Specifically, the Ministers agreed to resume their meetings and strengthen its structures around April 1986 after an attack on a German discotheque frequented by American soldiers on April 5th 1986 (EPC Documentation Bulletin, 1986, 37, 55). These records correlate exactly with a sudden increase in newspaper reporting surrounding the Trevi forum surrounding that meeting in 1986 specifically relating this resurgence to that attack (see; the Times, 1986/04/14; The Guardian, 1986/04/24; New York Times, 1986/04/25). During their December 1986 Meeting, the Trevi Ministers considered several reforms including a light secretarial structure, co-operation against drug trafficking, the development of a 'Trevi store of information' (see; Bunyan, 1993, 20), and the most effective means for increasing co-operation on migration, a competence shared with the EC.

What is important in relation to exposure to the costs of interdependence in this regard is the French government's increasing problems with cross-border terror in the 1980s. By August 1986, the French government was reported as having reassessed its position in relation to terror co-operation in lieu of a wave of bomb attacks in Paris throughout 1986, resulting in 20 deaths and 255 casualties (Toronto Star, 1986/08/29; The Guardian, 1986/09/16). Importantly, while previous terror attacks had been linked to domestic groups such as the National Liberation Front of Corsica (FLNC), these attacks were of Middle-Eastern origin, associated with the Committee for Solidarity with Arab and Middle Eastern Political Prisoners (CSPPA). This increasing number of attacks thus reflected a growing exposure to issues of international terrorism on the demand side and a recognition of the limitations with pre-existing machinery experienced by France's Trevi partners in the 1970s on the supply. Thus, France's bargaining

position and strength had altered over this period. This increased exposure opened new grounds for an expansion of work at the ministerial level.

Similarly, concerns over the Single Market and Schengen became more central to Trevi's work during the mid-1980s (Peek, 1994, 202-203). Indeed, the Ministers had recognised by December 1986 that common policies on the abolition of internal borders would have an effect on Trevi-related policies in the field of migration (Bunyan, 2007, 10). As a result, in 1988 they set up the 'Trevi 92' working group to study the potential effects of the single market on crime and find potential solutions. Indeed, the moderate communitarisation of Trevi at the Maastricht Treaty was justified in no small part on the linkages between the single market (Guyomarch, 1997, 137; Occhipinti, 2003, 33-34). This linkage between crime and the market was similarly reflected in the importance granted to issues of hot-pursuit and information sharing featured in the Schengen Implementation Convention (1985), featuring an intensification of co-operation in this field albeit in another extra-Treaty EC organisation.

The Amsterdam Treaty reflects an intensification of these problems towards the end of the decade. While the Schengen Agreement was meant to come into effect in 1993, it took several years for the convention to come into practical effect as the French government decided to maintain police controls at its borders for several years after (Zaiotti, 2013, 342). Once this had been implemented, the degree of interdependence in this field for Schengen Member States had increased. In addition to this, the German government had in recent years experienced an increase in the levels of migration from Eastern Europe, forcing its government into the position of pushing for further communitarisation in the field of asylum and refugee policy.

By the time of the Amsterdam Treaty's negotiation, the politics of the German Government's approach to refugees had altered. Firstly, the extent of exposure to this problem had decreased somewhat, reducing the demand for closer co-operation from constituent parts of the country (Mazzucelli, 2001; Boesche, 2006, 53; Hellman, 2006, 151-153). Secondly, the *Laender* of Germany feared that they might 'lose their influence on asylum and refugee policy' and 'bear more costs or lodge more asylum seekers' if the German government was to be overruled (2006, 53, 62). Their strengthening in the period of the Maastricht Treaty facilitated the blocking of their government's position, resulting in the implementation of a transition period after its agreement. Following this transition period, opposition from both the German and Austrian governments resulted in legal migration being left from the areas which were to be moved fully into the first pillar. Thus, while there were strong pressures for communitarisation,

the changed cost-benefit calculation of Germany's regional authorities facilitated a dampening of the degree of communitarisation in this field, citing fears surrounding the potential burdens relative to existing costs. Thus, while there was a communitarisation, the domestic costs of such changes altered the form in which this communitarisation took place. The eventual acceptance of the UK and Ireland of differentiation in this case turned out to be the most effective solution, with most EU Member States seeing a significant communitarisation of JHA policy with the exception of a number of areas such as PJCCM and family law.

This was similarly reflected in the growing pressures at the Constitutional Convention. The September 11<sup>th</sup> attacks in the United States is often seen as a turning point in JHA co-operation as it demonstrated the immense human cost which unpreparedness on the issue of terror could yield. Occhipinti's account of communitarisation in PJCCM, for example, cites the attacks as 'the single most significant influence on JHA' in the early 2000s (Occhipinti, 2003, 182). As such, there was an increased demand for more effective action in this field, albeit with the British government managing to gain a number of concessions as a result of its 'red lines' in the negotiation (Kaunert, 2010, 197).

## **5.8 Conclusions**

Compared to the degree of communitarisation in defence and foreign policy, the field of internal security has seen a dramatic alteration from the early days of Trevi. These early days themselves were hampered by strong national attachments and priorities in this area alongside a highly technical dimension to policing. Like in the field of defence, issues of integration and the creation of a secretariat were important for Member States with strong attachments to alternate forums for co-operation, namely the French government and its important role in Interpol. The heterogeneous exposure to this problem and access to alternate forums, therefore, underpinned Trevi's intergovernmental system.

Yet, Europe during the 1980s to present has seen several growing problems which have transcended national boundaries and changed the potential costs for intransigent Member States in this field. In the 1980s, issues of terrorism and drug smuggling increasingly strained Member State's ability to manage criminality unilaterally, particularly in the context of the opening of borders with the Schengen Agreement and Single Market. Similarly, the September 11<sup>th</sup> attacks in the United States showed the horrific effects which a failure to co-operate with other states could bring for national security.

In addition to this increasing pressure upon national machineries, the field of internal security gives some insight into the inefficiencies associated with intergovernmental policy-making. Notably, the lack of a secretariat and centralised machinery was accepted widely in the run up to the third pillar as an immensely difficult problem, with Peek's (1994) account being detailed in how this affected work; from the lack of institutional memory to the disorganisation and uncoordinated nature of its working groups. Similarly, the dramatic problems with national vetoes in this field led to an erosion of its use to matters of the most sensitive nature in this field; PJCCM, with its erosion here being facilitated at Lisbon by the emergency brake.

One final remark surrounds the nature of communitarisation in this field. While communitarisation is presented in the field of foreign affairs as one of a single policy area, JHA reflects a complex tree-like nature of this process. In the late 1970s, the key issue for the Member States was terrorism and police co-operation. By the 1980s, this had branched out to include areas as diverse as hooliganism, drug policy, visas, and passports. Some of these areas have been less associated with the clear costs to the state which are entailed by core state powers. As such, there is grounds in the future for research to consider how the varying ways these policies associate with core state powers have caused variation in the Member States' willingness to see communitarisation in this field. Similarly, this 'tree-like' nature has caused this chapter to focus primarily upon the original missions associated with Trevi. There remains ample ground for consideration to be paid to communitarisation, or the lack thereof, of other aspects of the EU's AFSJ.



## CHAPTER SIX

### Defence Policy: The EDC, WEU, and CSDP

#### 6.1 Introduction

If internal security represents the most fitting case, defence policy can be considered the least. The field of defence has had a stop-start history, pitted with failures until the re-activation of the Western European Union (WEU) in 1984. Its history dates back the longest, initially emerging in the attempt to integrate defence as part of the European Defence Community (EDC), followed by competition between the WEU and NATO Eurogroup in the 1960s. In addition to this, the communitarisation of defence begins not with a *de novo* body being created for EC Member States but through the co-optation of the existing WEU. Then, eventually in 1999, this body itself was replaced by the European Security and Defence Policy (ESDP).

Despite this, defence policy has two interesting features which are particularly worth considering in this chapter. First amongst these is the limited scope of communitarisation in this field relative to others as well as the unusual timing of its changes. Of all the cases, this field remains even less communitarised than that of foreign policy, prompting questions as to what lies at the heart of these difficulties. Timing wise, the re-activation of the WEU occurred in 1984, 14 years after the initiation of EPC. However, the initiation of PESCO in 2017 represents the Member States going much further than previous in this field in terms of communitarisation, opening questions as to what these changes mean for the scope of communitarisation in this field and what it means for the future of EU defence co-operation.

In explaining this unusual scope and timing of integration, the chapter will argue that NATO and the capacities for independent action have acted as particularly strong brakes on communitarisation in this field. The chapter will begin by discussing the history of defence integration in Europe, before looking at the conditions which caused the WEU to be chosen then eventually abandoned in 1999 for the ESDP. Following this, the functional pressures at the heart of communitarisation in this field will be considered before a discussion on the limiting factors in European defence co-operation and under what conditions these have been overcome.

#### 6.2 Cold War-era Defence Co-ordination in Europe

##### 6.2.1 The WUDO and EDC

Table 6.1: Post-War Venues for Defence Co-operation in Western Europe

	Scope	Formality	Delegation	Voting Procedure
Western Union Defence Organisation (WUDO) (1949)	Mutual defence agreement, with commitments to social and cultural exchange.	Formal Treaty. Commitments enforced by the 'International Court of Justice'. (2.5)	No delegation. Managed through a 'consultative council'. (0)	Not stipulated, but lays ground only for 'consultation'. (1)
European Defence Community (1954)	Establishes European Defence Force and supranational co-operation on defence and foreign policy.	Formal Treaty including its own Court of Justice. (5)	Creates a Commissariat with wide ranging powers to initiate policies. (5)	Most decisions require 'two thirds' majority. Unanimity reserved for specific functions (overall budget, deployments). (3)
Western European Union (WEU) (1954)	Amends the WUDO's structures. Creates formal Council structure.	Formal Treaty. (1)	Small secretariat charged with administrative functions, consultative Assembly. (2)	Unanimity introduced as the norm. (1)
NATO Eurogroup (1968)	Informal summit of European Ministers lobbying US for presence in Europe.	Informal structure without treaty within NATO structures. (1)	No delegation, tasks carried out by national staffs in NATO HQ. (0)	Unanimity. (1)

Note: Values correspond with scales in chapter 3.



Following the end of the Second World War, there was uncertainty surrounding what the future would hold for Europe. The British, French, and Benelux states in particular were concerned about the potential for renewed conflict with the German state (Aybet, 1997, 59), with the additional threat of the Soviet Union rising after its government's interference in the policy elections of 1947 (1997, 60).

These threats led to the signing of the Dunkirk Treaty of 1947, between France and the UK, which committed both countries to mutual defence alongside a limited degree of social and political co-operation (Dunkirk Treaty, 1947; Rees, 1998). This body evolved into the Western European Defence Organisation (WUDO) in 1948 with the accession of the Benelux states to the body. One motivation for this accession was uncertainty about the United States' commitment to the defence of Western Europe, acting as a means of easing President Truman's case for retaining forces on the continent (Fursdon, 1980, 30). The Vendenburg Resolution of 1949 committed the US to formal co-operation on defence, creating the North Atlantic Treaty Organisation (NATO), making the WUDO largely redundant (Duke, 2000, 14).

By the 1950s, the perceived threat to Western Europe increasingly became the Soviet Union. In 1949, the Soviet Union detonated its first nuclear weapon as well as arming the East German police force with both Armoured Personnel Carriers and artillery. Furthermore, in 1950 the North Korean government launched an attack on its southern neighbour, triggering the Korean War. In this context, a number of problems arose for European policy-makers; how to protect against the threat of Soviet expansionism, what to do about West German military manpower, and how best to organise the collective defence of Europe (Fursdon, 1980, 67-68; Rees, 1998, 6; Duke, 2000, 14-15).

The potential re-armament of West Germany as a member of NATO was an anathema to the French government, a situation which gave no assurances that renewed aggression would be avoided (Aybet, 1997, 72-73). Thus, the French government proposed a new organisation building on the existing structures of the European Coal and Steel Community. The result was the Pleven Plan of 1950, which committed all Member States to the creation of a common European Defence Force with all Member States contributing but Germany not being able to retain its own independent armed forces (Fursdon, 1980, 86-92). The body would cover both Foreign and Defence issues and would be managed with the help of both an assembly and a Commission. Such a plan met opposition from both the British Parliament, which sought non-

involvement in the project, and scepticism from German Chancellor Adenauer, who saw this as the imposition of an inferior status on Germany (HGL, 1952, 238; Aybet, 1997, 71-72).

Although ambitious, the EDC would eventually be remembered as a failure. One significant problem were the diverse views on the role and structure of the EDC. The Dutch government, for example, relied heavily on NATO for its defence and thus saw its undermining as a potential threat. Thus, in 1952, the mutual guarantee of the Brussels Treaty was extended to be included into the EDC treaty alongside a clause involving the UK in the defence of Europe, thus linking the EDC and NATO (H.G.L. 1952, 245; Aybet, 1997, 76). The second issue was the difficulties with the French Government in ratifying the treaty. By 1954, General De Gaulle had openly opposed the EDC (Fursdon, 1980, 211) with there being a simultaneous cooling in tensions after the death of Stalin (1980, 217) and the tying of French soldiers abroad in colonial conflicts. By 1954, the treaty came to a vote in the French parliament, in which an alliance of Gaullists, Communists, and Socialists managed to end the EDC through voting the proposals down by a margin of 319 to 264 votes (Fursdon, 1980, 297).

#### 6.2.2 The WEU and NATO Eurogroup in the 1960s and 70s

The failure of the EDC left a gap in the co-ordination of European defence policies in the 1960s. To fill this, British Prime Minister Anthony Eden proposed the amendment of the WUDO Treaty to form the basis of a 'Western European Union', including the West German state (Aybet, 1997, 83; Rees, 1998, 9). This new WEU held significant parallels and differences from the WUDO (Rees, 1998, 9). The most substantial difference was that both West Germany and Italy were admitted to the body, the former being mentioned in the original treaty as the primary security threat. In addition, a Council of Ministers was created through which discussions could occur intergovernmentally.

Yet, while this represented an institutionalisation of Western European defence, the body soon took on a 'peripheral' role on defence (Rees, 1998, 11), existing as a 'reserve organisation' for the negotiation of disputes, such as British accession to the EEC and the future of the Saarland (Cahen, 1990, 56). By the 1970s, the WEU had become largely defunct as an organisation. From 1973, the process of consultation between Ministers was suspended, with EPC becoming the forum in which this dialogue took place (Duke, 2000, 73), with its cultural activities being passed to the Council of Europe and arms responsibilities to NATO. Between 1974 and 1977, the WEU did not even appoint a Secretary General (Nopens, 1989, 98; also, Bailes and Messervy-Whiting, 2011, 13).

After the failure to promote co-operation in defence through the Fouchet plans (Chapter 4), the British government attempted to create a forum within NATO's structures rather than inside that of the EC; the NATO Eurogroup. The primary function of the NATO Eurogroup was to demonstrate that European member states of NATO were pulling their weight within the organisation (Duke, 2000, 55-56). Such reservations had culminated in the Mansfield Resolution of 1966 in the US which recommended a reduction of American soldiers based in Europe (Aybet, 1997, 121). The NATO Eurogroup consisted of all NATO Members in Europe with the exclusion of France and Iceland (Aybet, 1997, 122-123) and including non-EC states such as Turkey and Portugal. The French government, however, refused to join seeing the body as too close to the larger structures of NATO.

Structurally, the NATO Eurogroup was merely an informal grouping. The NATO Eurogroup consisted of ministerial summits twice a year without the support of any permanent staff. Instead, it was supported by European staff at NATO's Brussels headquarters (NATO, 1980; Cahen, 1990, 68). Substantively, the NATO Eurogroup developed two main roles during its lifetime. Firstly, as noted, it gained the role as a lobbying group for European interests in NATO, preventing the notion that European states were not pulling their weight in their own defence, instead relying on the United States (NATO, 1980; Rees, 1998, 15). Secondly, the NATO Eurogroup created a number of expert working groups to harmonise practices in differing areas including procurement and long term planning (NATO, 1980). As such, the working-group based approach mirrored the practices in both the TREVI and EPC bodies, but with the NATO Eurogroup being part of NATO rather than the EC.

### 6.2.3 The Re-Activation of the WEU

The mid-1980s saw an increase in the threat to West European security. This period saw the Soviet Union invade neighbouring Afghanistan, the imposition of martial law in Poland, as well as the downing of a Korean passenger jet over Russia (Rees, 1998, 23). Notably, the approaches taken by the United States and European state on these issues were notably divergent. Tensions were furthered by a tendency for American decisions to be made without consultation with European partners, including the unilateral decision to withdraw nuclear weapons from Europe and the Strategic Defence Initiative of 1983 (Duke, 2000, 73). British Foreign Minister Geoffrey Howe recalled that 'more and more Europeans were coming to feel that... [their] governments had no real influence on America's strategic thinking' (in Rees, 1998, 24).

Alternatives to re-activating the WEU at this time were not available. As noted by a CIA Report at the time of the reactivation of the WEU, 'since the Eurogroup is an Alliance organisation in which France does not participate, most members do not view it as an effective forum for co-ordinating views and policies on security issues' (CIA, 1984, 2). In addition, the 1981 Genscher-Colombo plan had suggested that security and defence issues could be included within the structures of EPC. Yet this proved too controversial with neutral Ireland being joined by both the British and French governments in opposition to such a radical idea (Rees, 1997, 25). Thus, the WEU was sufficiently distant from both EC and NATO structures to gain the support of both the governments of Britain and France.

The result was that in 1984 the French Ministry of Foreign Affairs proposed the re-activation of the WEU. With the acceptance of this proposal, the body was amended to include new working groups and bodies. In addition, several new *ad hoc* working groups were established to cover specific areas of policy, mirroring the established modes of policy-making in Trevi and EPC (Duke, 2000, 75). By 1987, the WEU saw its first operation as part of the Iran-Iraq War, aided by its ability to conduct out-of-area operations, 'Operation Cleansweep,' as it was named, involved the removal of mines from shipping lanes in the Gulf alongside the protection of tankers by military boats (Duke, 2000, 73). Yet, the WEU only acted as the co-ordinating body in the operation, with national ministries carrying out its duties (Rees, 1998, 32-35).

### **6.3 Post-Cold War Defence Co-ordination in Europe**

The end of the Cold War significantly altered the landscape for defence co-operation in Europe. Firstly, the new re-unified German State required means to show a commitment towards multi-lateral institutions, just as her allies wished to see a similar commitment. Secondly, the collapse of the Soviet Union changed the context of defence co-operation from one which featured a central major antagonist. No longer was the primary focus defence against the conventional attacks foresaw in the WEU's strategy, but on civil conflicts such as the one which broke out in the nearby former Yugoslavia. Thirdly, developments in the EU had signalled an intent to move beyond the position-taking of the old EPC system towards a more active foreign policy through the use of 'joint actions'. This was reflected in the failure of the WEU to respond to the Gulf War, where 'Operation Desert Storm [had]... rendered the WEU all but irrelevant as the British, French, and Italian air and ground deployments fell under a joint US-Saudi command structure' (Duke, 2000, 85).

Table 6.2: Defence Policy after Saint Malo

	Scope	Formality	Delegation	Voting Procedure
Nice Treaty (2003)	Replaces WEU with the ESDP	Outlines new basic structures. (3)	Managed by Council. Support from High Representative. (2)	Unanimity (1)
Lisbon Treaty (2009)	Formally abolishes pillar structures	Commits Member States to mutual defence. No ECJ. (3)	Formally incorporates European Defence Agency into Treaties. (2)	Unanimity (1)
PESCO	Provides a formal basis for co-operation on new EU projects.	Formally commits Member States, with enforcement by possible suspension through QMV. (4)	High Representative can submit policies, supported by the European Defence Agency. (3)	Unanimity (1)

*Note: Numbers correspond with scales in Chapter 3.*

With the Maastricht Treaty, the WEU remained outside of the treaties but acted as a ‘bridge’ between the EU and NATO. While the French and German governments sought to see its incorporation, the British and Danish governments successfully sought to preserve NATO’s role in European defence, with the Irish government concerned about the effect incorporation would have on its neutrality (Duke, 2000, 86-88). The result was that the WEU became associated with the EU as its ‘defence arm’. As such, in 1993 the WEU’s headquarters were moved to Brussels to be closer to both the EU and to NATO (CVCE, 2009).

### 6.3.1 Defence Co-operation after Saint Malo

The decision in 1998 at St Malo marked a significant turn in the creation of the CSDP. Following inaction during the humanitarian crisis in Kosovo, the French and British governments agreed to create a common policy on defence, marking a substantial change in tone particularly from the British government (Merlingen, 2012, 35). The document was short but profound, recognising the need for ‘autonomous action, backed up by credible military forces, the means to decide to use them, and a readiness to do so, in order to respond to international crises’, albeit intergovernmentally. As a result, St Malo is seen as the turning point in the development of the CSDP, with the emphasis moving away from a reliance upon the WEU (Howorth, 2012; Howorth, 2014, 7). Thus, St Malo marked the beginning of the de facto ‘fourth pillar’ of the CSDP.

Through 1999 the new European Security and Defence Policy (ESDP) began to take shape. At Cologne in 1999, the WEU’s activities were further transferred to the EU (European Council, 1999; van Eekelen and Kurpas, 2008, 3; Keukeliere, 2009, 56), as previously provided for in the Treaty of Amsterdam, by asking the GAERC to draw up the necessary functions to be transferred to the EU. Importantly for the incorporation of the body’s activity, the Cologne Council saw that at that point ‘the WEU as an organisation would have completed its purpose’ (European Council, 1999, 42). Additionally, the Cologne summit recognised the need for further capacity building, with the creation of the Political and Security Committee of representatives and an EU Military Committee reporting to them (European Council, 1999). By November that year, the GAERC had both appointed the new High Representative for CFSP as the WEU’s Secretary General, thus merging the leadership of each body.

The Helsinki European Council held at the end of 1999 again expanded upon and formalised these developing structures, marking ‘the formal birth of the ESDP’ (Merlingen, 2012, 36). Once more, NATO was central to the agreement with the EU being said to act ‘where NATO as a whole is not engaged’ (European Council, 1999, 82). Yet, in terms of capacity, the Corps for the fulfilment of the Petersberg tasks was affirmed, alongside the creation of new bodies to aid the work of the EU in the field of defence, forming the basis of the Helsinki headline goal. Those new bodies created included the Political and Security Committee of senior national representatives gaining purview over of issues of ESDP and the Military Committee of Defence Chiefs advising the PSC (Howorth, 2007, 67-68). In addition, the Nice Treaty abolished references to the WEU, making the ESDP an EU policy rather than one of a distinct separate body (Wessel, 2003, 274).

These structures would be supplemented with several subsequent structures through which to coordinate policy. The first of these related to the creation of action plans in the various field of the CSDP. In 1999, the Member States set the Helsinki headline goal of deploying up to 60,000 men within 60 days. Due to difficulties in implementing this, this goal laid the basis of further commitments such as the European Capabilities Action Plan in 2003 and the 2010 Headline Goal (Reynolds, 2006, 11-12; Menon, 2009, 232-233; Bickerton et al., 2011). Secondly, the formal decision-making procedures were updated over time. The Treaty of Nice formally introduced a body in which national diplomats could co-ordinate policies vis-à-vis their national capitals, laying the grounds for ministerial decisions; the Political and Security Committee (PSC) (Duke, 2005; Howorth, 2014, 9). This body was supplemented by the EU Military Committee (EUMC), which was created to give advice to the PSC on military and technical matters. In 2002, a Council of Defence Ministers was introduced, taking more specifically military tasks away from the Foreign Ministers in the General Affairs Council (Howorth, 2014, 12). Thirdly, this period saw the creation of new institutions and agencies aiding the CSDP in achieving its goals. The European Defence Agency (EDA) was introduced in 2004, providing expertise in meeting common goals on common capabilities and allow for more effective networking between governments (Batora, 2009; Howorth, 2014). Yet the lack of power of initiative of the EDA limited its influence over the CSDP's policy process (Biscop, 2015)

### 6.3.2 Defence Co-operation in the Constitutional and Lisbon Treaties

Ten months following the Nice Treaty, the Member States of the EU signed the Laeken Declaration, forming a basis for the discussion for the reform of the new ESDP structures as well as setting out the general challenges for the EU following Nice (Berman, 2012, 10; Koutrakos, 2013, 23). At this time, the EU had become increasingly complex since Maastricht and required adaptation to a growing membership (Berman, 2012, 11). As such, Laeken laid the basis for a new round of treaty negotiations, forming the basis for a restructuring of the EU.

One of the central debates during the constitution was the idea of permanent structured cooperation (PESCO). This innovation would allow for a group of Member States to cooperate on specific overseas operations and defence projects (Howorth, 2004, 4-10). These structures would be supported both by the High Representative and the European Defence Agency. The negotiation of this structure required the British government to seek guarantees that this would not become an alternative to NATO, something achieved in 2003 by the French and German

governments (Howorth, 2004, 6-7). Importantly, PESCO allowed means of enforcement whereby Member States could be suspended by a qualified majority if they do not follow their commitments (Menon, 2015, 72). In addition to PESCO, the Lisbon Treaty included a mutual assistance clause, replacing the requirement for this through the WEU, as well as the ability to entrust a group of Member States to carry out a specific mission.

While one of the core objectives of the Lisbon Treaty was to abolish the pillar structure, in practical terms some policy areas retained strongly intergovernmental features. This was particularly notable in the field of defence policy. Regarding the EU's competency in the field, as Koutrakos notes (2013, 27), the CSDP follows its own set of arrangements, rather than the general types outlined at the beginning of the treaty. Decisions under the CSDP clause are taken solely by unanimity, with the right of initiative being shared between the high Representative and the Member States. Additionally, both the legal nature of agreements made in the policy areas of CFSP/CSDP had not changed substantially with the ECJ having no powers within this field.

In 2011, the Civil War in Libya presented itself as an opportunity for the new structures of the CSDP to be tested, with the result being underwhelming. As Menon (2011, 86-87) argued, disputes between Member States on the use of force in Libya curtailed the ability of a swift response to the crisis, with the United States and NATO framework providing 'a degree of confidence' which was not there for the EU's structures. The requirement for unanimity of all Member States surrounding the general and specific details still ultimately undermined cooperation on this specific issue, a pattern reflected in other cases throughout this thesis. Similarly, the 2014 mission in the Central African Republic (EUFOR CAR) was plagued by scepticism from Member States, resulting in a reduced budget for the mission and limited participation (Faleg, 2014).

Dissatisfaction with the pace and structure of defence co-ordination was evident throughout this period, as evidenced by the European Council's request to revisit the structures of the CSDP in December 2013 (Faleg, 2014). From that point, the CSDP has had three further challenges to contemplate; the threat of Russian aggression following the annexation of Crimea from Ukraine, the future of defence co-operation in a union without the United Kingdom, and an American presidency with a lacking commitment towards the North Atlantic Alliance. In this context, the activation of PESCO, including all EU Members with the exception of Malta, Denmark, and the UK, represents a further formalisation of co-operation due to the activation



of projects with the threat of enforcement. The likely contribution of its structures will be discussed below.

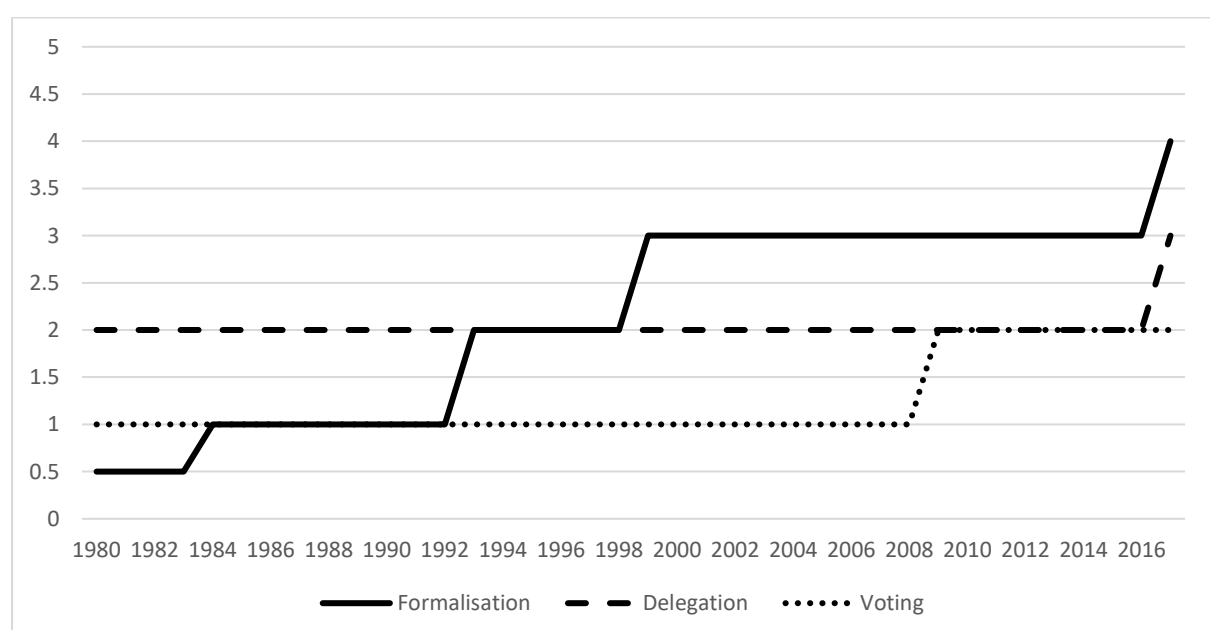
#### 6.4 Communitarisation and Defence Policy

Compared to other cases, the field of defence policy shows the lowest degree of communitarisation in any case (Figure 6.1). The above outline of the dependent variable shows that defence has long had difficulty due to its stop-start nature, with many of its projects failing to meet their expected targets. However, the changes with PESCO do represent some important communitarising changes which go beyond the largely intergovernmental structure which previously underpinned defence co-ordination.

The first major change of PESCO relates to the involvement of the High Representative and EDA in its structures. This change signifies a move beyond simple co-ordination of national policies to the creation of new EU capacities, albeit with most of these projects being limited in scope so far. Both bodies can better facilitate these joint projects through the mediation of Member State preferences, the provision of expertise on these issues, and through aiding in the supervision of compliance in these areas.

In addition to the extent of delegation, the inclusion of potential costs for non-compliance is an important alteration to PESCO's structures. Should one Member State not pull its weight on particular projects, there now exists the option of exclusion should a qualified majority of Member States choose to implement such a sanction. What should be noted about such a change

Figure 6.1: Communitarisation and Defence Policy 1980-2017



is that this mode of enforcement has yielded mixed results in the field of fiscal policy. Notably, in 2003, when a qualified majority of Member States were in breach of common rules, the Stability and Growth Pact was suspended rather than enforced. This means that this degree of legalisation is only limited in scope and does not eliminate the possibility of non-compliance. It remains to be seen how enforcement of PESCO projects progresses after their beginning in 2017.

## **6.5 The Selection of the Intergovernmental Method in Defence Policy**

In chapter 3, it was expected that the intergovernmental method would be chosen in areas where there are high costs of domestic adjustment and supranational capacity building costs versus the costs of interdependence. As was outlined then, the costs of interdependence must be high enough across all Member States for support for intergovernmental co-ordination to exist. In determining how communitarised these structures will be, Member States with capacities to manage these costs unilaterally or through other forums will have the lowest demand for computerised structures and thus will have the highest bargaining power due to their fall-back options in the initial negotiation. It is therefore worth considering the costs of these interdependencies in terms of driving demand and how Member State preferences determined the supply of the initial institutional structures for policy-making; the re-activated WEU of 1984.

### **6.5.1 Demand for Co-operation between the Member States**

As seen above, the demand for some form of multilateral forum for defence co-operation has underpinned most of the post-war era; from the attempt to form the EDC to the recent beginnings of PESCO. In the context of the immediate aftermath of the Second World War, this was in relation to fears surrounding a renewed conflict with Germany, as seen in the Dunkirk Treaty. From the 1950s, the primary threat to Western Europe was potential conflict with the nuclear-armed Soviet Union. Later, after the collapse of the Soviet Union, Europe has had to contend both with managing crises further afield as part of the ‘Petersberg Tasks’, alongside a more recent concern with potential conflict with Russia following the invasion of Ukraine in 2014.

Notably there is a clear functionalist case for integration in the field of defence, particularly in relation to military capacities. Notably, each EU Member State has its own armed forces, each with their own respective naval, air, and logistical forces. This historically has created a problem of replication of the same defence capabilities across each Member State, something

incredibly inefficient in terms of costs when compared to the purely fiscal costs of shared resources. This has been exacerbated both by the increasing costs of technology in the field of defence over time and the tightening of European budgets following the financial crisis in 2008 (Menon, 2014, 68-69).

In terms of the wider demand for co-operation on defence in Europe, what has been notable when compared to other cases is the presence of other credible forums in this field. Defence goes to the heart of what it means to be a state and what is seen by realists as the state's main goal; survival. The role of the United States in this story has, therefore, been central due to the ability of this superpower to credibly provide for the defence of Europe in the case of attack by the Soviet Union or, more recently, Russia. This left open what Howorth labelled 'the Euro-Atlantic Security Dilemma' (2005): If European states were to go too far in the communitarisation of their defence policy, they risk allowing the United States to become isolationist. If European States over-relied on the US for their defence, they would not be taken seriously as powers in their own right.

The ability of European states to solve this dilemma was vital in the decision to re-activate the WEU. During the early-1980s, the US government had taken an increasingly unilateral role in terms of its relations with the Soviet Union. As Rees (1998, 23) highlights, the US had become increasingly abrasive in relation to events such as the shooting down of Korean flight 007 and the imposition of martial law in Poland, while European states preferred the process of détente pursued in the 1970s. As the United States chose to negotiate the deployment of nuclear weapons on the European continent without the input of European governments, there was a clear demand for a stronger European identity in this field which could better provide for the defence of its Member States.

Notably, demand has varied across three sets of actors in this field. The first of these has been notably pronounced when compared to other cases; neutral Member States. In the case for demand for co-operation in the WEU, what is notable is that the Irish government in particular sought to both avoid the inclusion of defence issues into EPC (Cahen, 1990, 58). Irish opposition had limited the ability of EPC to be expanded to issues of security as part of the London Report (Nuttall, 1992, 176-177), thus the report only discussing the 'political aspects of security'. As Laffan and O'Mahoney put it 'neutrality within EPC proved unproblematic so long as EPC stayed away from military matters (2008, 183).

The effect of neutral Member States in the field of defence is particularly acute because of the specific costs and benefits associated with neutrality. Firstly, neutrality is commonly written into the constitution of a Member State and exists as a longer term set of institutional norms and practices within a Member State. Thus, co-operation in the field of defence opens up the potential for costly constitutional debates and revision processes, costly alterations to national defence ministries, and costly adjustments to the manner in which foreign affairs more generally is conducted. Similarly, neutrality creates little demand for closer co-operation in the field of defence, as this approach to defence relies less upon the use of force in guaranteeing security. The effect of these costs is that neutral Member States have a strong degree of bargaining power; if negotiations collapse, neutrality is maintained and the costs of adjustment are minimised. As will be highlighted, this is particularly pertinent in the case of Ireland and the WEU.

The second group in this field have been those Member States prepared to secure their defence through NATO. Historically, the British government has taken an important role in this regard, taking a strongly pro-NATO and Atlanticist line historically on matters of defence. Despite this, the British government has not altogether been against any collective action in this field in Europe, being behind the NATO Eurogroup and choosing to be part of the WEU so to steer the WEU project in the right direction rather than protest its creation in 1984 (Bailes and Messervy-Whiting, 2011, 15). On the issue of re-activating the WEU, the British government was not alone, with the Greek government similarly seeking to preserve the role of the US in the defence of Europe (Cahen, 1990, 58; Duke, 2000, 66).

Notably, a reliance upon NATO, and in-turn the US, for defence increases the potential costs for Member States in terms of guaranteeing their own national security. This is evident in the classic dilemma in European defence; too much co-operation in Europe might disincentivise US commitments to Europe, too little might lead to an over-reliance on the US in times where preferences are divergent (Hoffman, viii-ix, in Grosser, 1982; Wallace, 1984, 254; Howorth, 2005, 40). Conversely, the existence of NATO as a credible alternative to EU co-operation strengthens the bargaining power of such actors, for if communitarising changes fail, there are means of guaranteeing national defence.

Lastly, there has historically been a strong role for the French government in promoting European integration outside of NATO structures. As Howorth summarised (2005, 40), while the 1956 Suez Crisis caused the UK to avoid confrontation with the US, for the French

government 'sought never again to be dependent on the USA'. The French government notably did not participate in the NATO Eurogroup's meetings, having withdrawn from military command in 1966. Instead, French approaches to promoting integration in the field of defence are historically seen in relation to the promotion of Europe as a 'third power', visible in the wording and aims of the Fouchet plans of the 1960s (Chapter 4; Teasdale, 2016). This is similarly visible in the original plans of PESCO to be a 'defence Eurozone', which would allow a select number of EU states to go further in this field than others in terms of military capabilities and actions (Howorth, 2004, 4-5).

Alongside the French government have been actors with a limited degree of power in the field of defence but which have supported increased co-operation. As will be noted before, this has often been dependent on timing, particularly when the US government has taken a unilateral approach to the defence of Europe. The German government during and after the Cold War has been constrained in this field by historical experiences and the constitutional limitations resulting from that history. As such, this government during the Cold War had a strong attachment to the US, but also was a strong proponent of multi-lateral action in foreign and defence policy. Thus, while the costs of defence co-operation are higher, the credibility of unilateral action in this field has been more limited than those Member State governments in the first category.

### 6.5.2 Supply through Bargaining

While many European states long supported forums for the promotion of collective efforts on defence, as was highlighted above, many of these failed. Indeed, as the 1970s came to a close and European states increasingly worried about the increasingly unilateral approach taken by the US government on defence (Wallace, 1984, 257), EC Member States had great difficulty finding an appropriate forum for their efforts. EPC was one potential forum, as it concerned the closely related field of foreign affairs and was suitably outside of the treaties for those Member States concerned about integration progressing too far (Cahen, 1990, 58). Yet the issue with EPC concerned the preferences of three particular Member States; Greece, Denmark, and Ireland. These three Member States had continually been reticent about cooperation in the field of defence for their own reasons during previous negotiations; Greece due to a concern with the undermining of NATO, Ireland due to a fear of its neutrality being undermined (Cahen, 1990, 58; Duke, 2000, 66). Due to their bargaining power, through holding an effective veto over

such a development taking place, this meant that EPC could not be chosen as the forum for defence co-ordination.

The choice of the WEU, a body which explicitly excluded these Member States, therefore bares similarities to the use of differentiated integration in JHA as part of the Amsterdam Treaty; those Member States who feel co-operation in this field to be necessary can move on alone due to the reluctance of other states, who held the veto over such an institutional change. Indeed, the recognition that co-operation could not be achieved in security matters within EC or EPC structures following the Genscher Colombo plan left the WEU as the alternative for co-operation between those seven Member States who felt such co-operation necessary (European Parliament, 1985, 3). The WEU was, therefore, sufficiently independent of the EC to allow for co-operation between states in the field of defence. It fitted closely enough to the preference of the British government to keep co-ordination in this field largely intergovernmental, allowed for the exclusion of neutral states, and allowed for greater integration in this field in a European capacity.

## **6.6 Efficiency and Communitarisation in Defence Policy**

In the field of defence, there are clear functional problems in relation to the organisation and management of multiple different armed forces with differing equipment, standards, and procedures. At the ministerial and inter-departmental level, military operations both require a fast and reactive response to a situation and a degree of decisiveness. In relation to research, development, and procurement, there is a significant overlap both between national arms sectors and their respective regulatory regimes. The EDC Treaty's length reflects this, requiring substantial provisions on funding, hierarchies, and decision-making procedures. Thus, while intergovernmental decision-making procedures present a low-cost solution in an area with vastly different practices and potential costs, it exists as a relatively inefficient means of making policy.

### **6.6.1 Defence Policy and Contracting Costs**

Unlike other cases, the re-activation of the WEU resulted in the inheritance of several previous practices. Yet, similarities remain insofar as the initial agreement laid the ground for further institutionalisation at a later stage. Indeed, this was recorded in the Rome Declaration through tasking the Secretary General with advising Ministers on 'what measures might be necessary to strengthen its activities' (WEU, 1984, 2). Thus, the 1984 Rome bore some similarities to EPC's Luxembourg Report; declaring and clarifying shared interests and the scope of co-

operation, outlining the frequency of meetings, and creating a presidency and preparatory body. Unlike EPC, clarification was required on the role of the inherited WEU Assembly and the pre-existing committees of the WEU. Thus, what existed in 1984 was a broadly in line with other intergovernmental bodies, with Ministers leaving their initial contract incomplete and open to reform when better information would exist as to what was required by this body.

The 1987 Platform of Defence Interests emerged out of the Secretary General's original tasks, functionally aiding the Member States in identifying their core areas of work. This document laid out both the common threats faced by the Members of the WEU, as well as the compromises on which the body was based. In addition, the platform also laid out a set of principles which new members Spain and Portugal would be expected to follow (Taylor, 1994, 9). Particularly, the preamble noted the 'construction of an integrated Europe will remain incomplete as long as it does not include security and defence' and that co-operation would 'translate more effectively into practice the obligations' outlined as part of the NATO treaty (WEU, 1987). What is notable about this document is the degree to which the end of the Cold War altered its underpinning mission. Specifically, 'East-West' relations remained central to the document, noting that 'the geostrategic situation of Western Europe makes it particularly vulnerable to the superior conventional, chemical, and nuclear forces of the Warsaw Pact' (WEU, 1987), showing the Cold War context to be at the heart of the WEU's activities and mission.

Alongside establishing common frameworks for approaching world affairs, the WEU made headway in harmonising national policies. In 1986, they committed to co-operation in research and armaments justifying this on 'achieving a more cost-effective defence' (WEU, 1985). While formal commitments and procedures were one way of facilitating this, informally the constant exchange of views and dialogue allowed for a harmonisation of opinions on the WEU's central questions; arms, defence in the Cold War, and the relationship between the US and Europe. Thus, not only was the aim to bring forward concrete plans in the development of a European defence, but also to facilitate the creation of informal norms in this field (Nopens, 1989, 119).

Yet, with the end of the Cold War the main security concern outlined in the WEU's 1987 platform had come to an end. To some extent, this required a re-institutionalisation of the WEU's central functions, with the 1987 platform effectively being replaced by the 1992 'Petersberg tasks' detailing the type of missions which its Member States might take part in

(Taylor, 1994, 8). The changing international threats similarly changed the WEU's role in relation to ensuring the American defence of Europe, opening up questions as to what function the WEU should serve. After Maastricht, the WEU effectively served as a 'bridge' between the EU and NATO as well as existing as the EU's 'defence component' (Duke, 2000, 88). By the Amsterdam Treaty, this wording had shifted to the ability of Member States to 'avail' themselves of the WEU when necessary.

Following the establishment of the ESDP in 1999 with the Helsinki Agreement, a substantial degree of institutionalisation was once more required. In the context of the failure to effectively intervene in the former Yugoslavia, one area for formalisation and promoting more effective decision-making was in mission planning. The Crisis Management Procedures (CMP) represents one means through which the Member States have organised and formalised their responses to international crises, establishing procedures for specific types of mission (Mattlaer, 2010). Functionally, one of the activities in this document includes advance planning, which 'serves the purpose of reducing the response time when a crisis should occur', or on a functional basis (Mattelaer, 2010, 4). Similarly, the Secretariat General has produced similar documents codifying the 'lessons learned' from previous missions for future reference, increasing the information available during future missions.

In recent years, PESCO represents an attempt to move beyond establishing new formal practices and further improving policy-making in the field of defence. PESCO's structures allows for the suspension of Member States not complying with obligations through QMV. Thus, while the ECJ has no role in enforcement, it does represent a step in increasing the costs of non-compliance in the field of defence. This need for enforcement mechanisms can be explained functionally through the continuing failures by the Member States to both meet the headline goals set for defence co-operation as well as mitigate the existing problem of non-compliance detracting from military missions (Saurruger and Terpan, 2015).

Structured Co-operation, as it was then referred to, was an initial attempt by the French and German governments to forge ahead in the field of defence through differentiated integration, or a 'defence eurozone' (Kiljunen, 2004, 84). The French government in particular sought to promote the message that 'those who wish to proceed [in integrating defence] should not be held back by those who do not' (Weiss, 2011, 155). However, such a suggestion being opposed by the British government due to fears over its consequences for NATO, and by other states including Finland due to the possibility that other states may be excluded, specifically as such



co-operation was predicated on a ‘high military capability’ (Guérot et al., 2003, 11; Duke, 2003, 23). The resulting compromise was that the structure was to be allowed, but with the guarantee that it would not undermine NATO and that the standards for membership would be diluted (Agence Europe, 2003/12/09). As such, structured co-operation was included into the treaties, including a clause allowing for the punishment of non-compliant members. This structure was, however, not implemented immediately due to the rejection of the Constitution in the 2005 national referendums (Mauro, 2015, 9).

PESCO similarly allows for both the EDA and HR to support the bargaining process and to propose legislation. Once more, this can be justified on the functional grounds of improving the effectiveness of policy-making in this field. The degree of communitarisation in this respect should not be overstated. Even the pro-integration German government supported their empowerment but with power remaining within the European Council (Weiss, 2011, 118). Notably, in the field of internal security, the shared right of initiative has historically reduced the ability of the Commission to promote consistent legislative output, as its proposals face the threat of pre-emption by the Member States. Thus, while this is indeed a functional step towards improving policy-making in the CSDP, power over the policy process remains in the hands of individual Member States or, in other words, remains intergovernmental.

#### 6.6.2 Defence and Administrative Costs

Due to the co-opting of the WEU’s structures in 1984, the field of defence co-operation in Europe started with a relatively high degree of administrative capacity. The Secretary General of the WEU, for example, had a role in chairing both the permanent council and working groups, and working with the Presidency of the WEU which would chair Ministerial meetings. As former Secretary General of the WEU stated, the WEU President was between the EU situation where all tasks were performed by the Presidency and NATO where the Secretary General does most tasks (CVCE, 2009, 1:00). Its ability to guide the agenda alongside the Presidency is evidenced by the various tasks handed to the Secretariat, particularly in recommending the most efficient areas for reform in the WEU in the initial years (WEU, 1984). Similarly, van Eekelen highlighted the advantage of the year-long, as opposed to biennial, Presidencies in providing consistency, another problem experienced particularly in EPC (Van Eekelen, 2006; CVCE, 2009).

During the European Convention, functional costs once more came into the fore surrounding the establishment of a European Defence Agency (EDA), originally under the title of a

European Armaments, Research and Capabilities Agency (EARMCA). Such an idea was not new at the time of the Convention, with the idea being ‘re-invented more times than the wheel’, with the idea for such an agency dating back to the Maastricht Treaty (Howorth, 2003, 30).

The attempt at the European Convention, however, represented an attempt to solve several functional problems. Firstly, defence had previously been spread over differing bodies, representing the institutionally differentiated nature of the field of defence prior to the ESDP. The creation of a *European* Defence Agency thus reflected a means of bringing such a body which could provide research and expertise within the structures of the EU. As Schmitt notes about pre-existing arrangements, ‘*ad hoc* structures for each [defence] project has implied considerable overhead costs... participation has often varied from project to project, and the division of labour has been defined in such a way that all participants have been included in work on all interesting components’ (2003, 11). A European agency thus reflected a desire to rationalise and organise existing intergovernmental arrangements and provide a more efficient means of researching, developing, and procuring defence projects.

The second issue reflected the ‘accelerating reality of the ESDP’ (Howorth, 2004, 14). While military budgets had become increasingly constrained in the period following the Cold War, the crises in the former Yugoslavia as well as the Invasion of Afghanistan highlighted ‘glaringly obvious gaps in Europe’s military capabilities’ (Schmitt, 2003, 11). In functional terms, there was a functional demand for new capabilities due to the increasing expectations and demands placed upon the EU’s defence component. The EDA thus served as a functional solution to these new higher demands by fulfilling several functions, including the identification of new projects, the promotion of harmonisation, the proposal of new projects, and supervision implementation on these projects (Draft Constitutional Treaty, Article III-207, 2003; Howorth, 2014, 91-92).

### 6.6.3 Non-Compliance and Defence Communitarisation

The credibility of commitments guaranteed both by formalisation, through codification, and legalisation, through the creation of supervision and enforcement procedures, have both appeared in the history of defence policy’s communitarisation. Saurugger and Terpan’s (2015) examples of non-compliance highlighted in the chapter on foreign policy notably apply to the field of defence. In relation to the Helsinki Headline goals of 1999, there was concern from both the French and British governments surrounding the commitment of some Member States to their project, particularly the German government (Wagner, 2005, 464, 466). In the end,

these goals were diluted as Member States both failed to meet the original headline goals and limited their expectations (Menon, 2009, 233).

The EDA's role discussed previously thus links in with a demand for greater supervision of Member States' commitments in this field. The introduction of a Code of Conduct by the EDA in this field, for example, aims to codify practices and increase the level of commitment in this area. Similarly, supervision tasks were outlined in the EDA's tasks both as part of the Constitutional Treaty and the Lisbon Treaty, with the EDA being granted the role in PESCO of contributing 'to the regular assessment of participating Member States' contributions' (Lisbon Treaty, Protocol on PESCO, Article 3, 2009). Yet, in fulfilling this role the EDA has been held back by its steering board being constituted by national ministers, limiting its autonomy from the Council and, in turn, its ability to 'get Member States to live up to their oft-repeated pledges' (Menon, 2009, 238). Similarly, Batora (2009, 1092) highlights the differing institutional logics underpinning the EDA's mandate and functioning as limiting its ability to fulfil its goals in directing Member State behaviour and effectively regulating it.

Similarly, the proposals for PESCO in the Constitutional Convention represented the attempt to improve the credibility of commitments in the field of defence, ushering in a new 'defence Eurozone' or 'Schengen of Defence' (Kiljurnen, 2004, 84; Guerot et al., 2003, 11). Its introduction reflected the desire of specific Member States to move beyond existing arrangements, creating a vanguard of committed states within a more institutionalised setting and with convergence criteria required for membership (Kiljurnen, 2004, 84-85). What was perhaps most promising about the structures in this body was the ability of Member States to suspend a Member State which is not enacting its commitments through QMV. Yet, as will be noted in the chapter on fiscal policy, this enforcement procedure has a mixed history in providing an effective enforcement procedure. Notably, in 2003-4 these procedures failed to prevent non-compliance when both France and Germany were in breach of common budgetary rules. Thus, while this represents a step forwards, it should not be imagined as a procedure reflecting full communitarisation.

## **6.7 Distribution and Defence Policy**

While there is clear evidence for functional pressures existing in the field of European defence, the scope, form, and timing of defence integration in this case presents a challenge for the functionalist narrative. Namely, defence policy remains a highly intergovernmental area of policy even to this day, with communitarising changes often being relatively diluted when

compared to the related fields of foreign policy and internal security. Similarly, the form of integration differs from other cases, with there being an initial high degree of differentiation from the re-activation of the WEU in 1984 to there now being unusual structures in relation to the new PESCO organisation. Lastly, defence has been a laggard in terms of timing, being the last case to have an EU predecessor created, the last to be pillarised, and retaining an unusual pillarised character in the form of PESCO's annex in the Lisbon Treaty. To explain these issues, the distributive approach will now be considered. As outlined in Chapter 3, the heterogeneous distribution of costs and abilities to manage interdependence or achieve state goals through other means is likely to limit the degree of communitarisation in this field. Yet, alterations to either the costs of adjustment domestically, the costs associated with inaction in this field, or the ability of Member States to manage issues through alternate forums are all likely to cause alterations to Member State preferences. These will be discussed after the conditions which have limited integration in the field of defence.

#### 6.7.1 Factors Limiting Communitarisation in Defence Policy

One common theme throughout this chapter has been the role of NATO in limiting the scope for defence communitarisation in the EU. The potential overlap and replication of tasks dates back to the days of the WUDO, where the body was eventually put on hold as NATO became the preferred forum for achieving its goals. What has been important about NATO is the role of the United States in these structures, as many Member States of the EC saw the involvement of the US as the most credible means of ensuring their defence. The effect of this on communitarisation has been twofold. Firstly, the presence of NATO has left open a credible alternative to EU integration in the field of defence for those Member State governments who view their interests as broadly in line with the US. This has strengthened their bargaining power in terms of defining the scope and form of defence co-operation in the EU. Secondly, due to their access to such an alternative, the bargaining power of such Member States has been strengthened as a failure for communitarisation results in a policy-process closer to their preferences than the alternative.

Divides over the relationship with NATO were evident throughout the period of the WEU. In the Platform on Security Interests of 1987, Member States recognised 'the Warsaw Pact's superior conventional forces and its capability for surprise attack and large-scale offensive action' (WEU, 1987). Yet, what is notable about this platform were the differences surrounding where the WEU should fit into existing arrangements, with the French government proposing

a 'European security charter' and the resulting Platform on Security Interests maintaining strong links to NATO (Howorth, 1997, 15). Specifically, the British and Dutch governments sought to limit the effect that the charter might have on the Atlantic Alliance, reflecting longer term differences over how defence in Europe should be organised (Aybet, 1997, 156).

The failure to incorporate the WEU as part of the Maastricht Treaty similarly reflects this divide over the role which defence co-ordination in the EU should have in relation to NATO. At Maastricht, the WEU's limited status as the 'co-operation channel' reflected the desire of Atlanticist states to have a mechanism for the undertaking of missions like 'Operation Cleansweep' without damaging the integrity of NATO (Duke, 2000, 88). Intergovernmental structures were similarly maintained at the demands of the French and British governments (Menon, 1996, 271), with the British government pushing for the EU as having the right to 'request' the EU to implement decisions, rather than the French language allowing the EU to 'instruct' the WEU (Menon et al, 1992, 113). Thus, as with the CFSP and JHA, the Maastricht Treaty represented a formalisation of what had been the *de facto* reality established by that point, with the treaty more closely resembling the demands of Atlanticist Member States (Duke, 2000, 108).

A second problem for defence integration has been the potential costs of capacity building and national adjustment associated with regulating defence budgets and targets. As the Cold War ended, a new statement on the objectives of defence was required. Functionally, this was required to bring a degree of consistency to the outlook and actions of the Member States, particularly as the WEU's Platform on Security Interests no longer reflected the realities of European defence. Yet, once more the form and scope of the agreement reflected the distributive demands of the Member States. Specifically, the context of the post-Cold War era did not just signal the dawn of a new type of security operation, but also a change in Member State approaches to defence spending. The fall of the Soviet Union represented the opportunity for a 'peace dividend', through a reduction in defence budgets. Rees (1998, 66) notes the limitation of the missions put forward in the Petersberg Tasks because of a desire to limit the potential budgetary consequences of such actions.

The EDA similarly reflected a desire to keep developments in this field under control of the Member States. While this agency was established with 'a high degree of autonomy from the Commission and a low degree of autonomy in relation to the Member States' (Bátora, 2009, 1084), the German government notably sought to have the EDA restrained in its mandate,

supporting the use of unanimity in its creation, seeking to avoid its competences going too far into the realm of armed forces (Weiss, 2011, 117). A similar restriction came later in its existence, too, as the British government committed only to a limited budget for the EDA after its creation (Biscop, 2012, 1301). This allowed the Member States to keep tight reign over the potential developments in this field, reducing the scope for runaway adjustment costs.

Lastly, the PESCO of the Constitutional Convention was a significantly different beast than the one which has recently come into existence. The original intention of the French proposal of Michael Barnier was to create a 'defence Eurozone', a differentiated system of defence co-operation which other Member States could eventually accede to. The French government, in particular, sought to promote the message that 'those who wish to proceed [in integrating defence] should not be held back by those who do not' (Weiss, 2011, 155).

Yet this was initially watered down due to reservations of Member States which were likely to be left outside of PESCO and those within. While the Dutch government was supportive of the project, it was limited in its enthusiasm for PESCO to move from military capacity building to military operations, as this might undermine NATO (Howorth, 2004, 4). Similarly, prospective non-PESCO governments, including the Swedish and Finnish delegations, sought to water down the potential for PESCO to launch missions on behalf of the EU without their approval (Howorth, 2004, 5). One negotiator explained, 'we were willing to take quite a lot on the chin, but not an exclusive military club taking charge of the Union's defence policy' (Kiljunen, 2004, 85). The resulting compromise was that the structure was to be allowed, but with the guarantee that it would not undermine NATO and that the standards for membership would be diluted, reducing PESCO's exclusivity (Agence Europe, 2003/12/09).

These problems arose in 2010 surrounding the activation of PESCO, then also abbreviated to PSCD. While the Spanish Presidency of 2010 attempted to revive the idea of PESCO after the passing of the Lisbon Treaty around seven years after PESCO was first put forward, there was a lack of demand at this point for such intensified co-operation. One of the divides undermining PESCO was a fear that the differentiation it offered would undermine the status of the 'outs', losing these Member States influence over important projects and feared that it would not solve the functional problems of replication for the EU more widely (Biscop and Colemont, 2011, 153). Secondly, many Member States were sceptical of the value-added of such a body in the context of a 'bureaucratic' CSDP and falling defence budgets after the crisis (O'Donnell, 2012, 2; Biscop and Colemont, 2011, 154). The result of this was that there were no large Member

States showing willingness to see it enacted. As such, instead of PESCO developing the Member States moved forward with the Ghent Protocol as a basis for integration (Biscop and Colemont, 2011; Chappell and Petrov, 2012, 50).

#### 6.7.2 Preference Change and Communitarisation in Defence Policy

While there have been strong limitations to integration in this field, there have been notable movements forward over its history resulting from preference changes from the EU's Member States. These changes are particularly of note in relation to preference change at the time of the St Malo agreement, where the WEU was effectively replaced by the ESDP.

It must be remembered that, as one British negotiator on the Maastricht treaty recalled, 'we all knew at the time that using the WEU as a middleman... was at best a temporary expedient' (Ricketts, 2017, 31). The WEU as a choice for a defence forum reflected the politics of the Member States of the 1980s. Notably, by the 1990s a number of important changes had occurred.

The first factor aiding the creation of a defence element of the EU itself has been the change in attitudes from neutral states such as Ireland. While the Irish government rejected the notion that EPC should have a defence element, by the 1990s their government had joined the WEU as an observer state and allowed for the ESDP to come about by 1999. Through being granted observer status in the WEU, neutral states had been allowed to discuss and develop which sorts of mission would be appropriate to participate in and under what conditions, increasing information surrounding the potential costs of communitarisation in this field (Laffan and O'Mahoney, 2008, 189). This exposure and engagement in debates about European defence caused Irish parties such as Fine Gael to revisit existing approaches to neutrality as due to 'difficulties in having to remain silent at Council discussions of security and defence' (Devine, 2009, 477), moving towards position facilitating some degree of collaboration in this field. Thus, by the time of the St Malo agreement there had been a sufficient shift in elite opinion in Ireland to facilitate the replacement of the WEU.

Important to the achievement of the St Malo agreement was the change in position of the British government. British movement on this issue was aided by a number of issues. Firstly, the experience of the Kosovo crisis further highlighted that European states were unable to manage issues in their own back yard, with the British government growing to see the EU as a means to further their influence internationally (Whitman, 2004, 436; Howorth, 2005, 42). Secondly, in this respect the codification of the Petersberg tasks and the WEU's developing capabilities

in this field helped carve a specific identity for European defence (Whitman, 2004, 433). As such, the development of the ESDP could occur within a particular space which could complement, rather than undermine, existing NATO structures within a specific ‘division of labour’ (Whitman, 2004; Howorth, 2005, 42). This meant that while there was a clear space for EU defence policy to emerge, albeit with the development of this role continuing to be defined in a manner which would not undermine existing NATO structures. Thus, St Malo can be explained in terms of a reduction in the potential costs of integration in terms of the foundation of British defence and foreign policy in relation to NATO.

Lastly, the eventual instatement of PESCO in 2017 reflected many continuing feelings towards the project alongside some key changes. In terms of continuation, there remained a divide between the French government and their original plans for an exclusive, high entry-criteria, ‘defence Eurozone’ and a more ‘inclusive’ approach put forward by the German government (Billion-Galland and Quencez, 2017, 2; Besch, 2018). The eventual compromise was that of making PESCO a ‘pledging machine’, with Member States committing to ambitious projects on a group-to-group basis (2017, 2).

Notably, underpinning this newfound ability to find a compromise surrounding the body of PESCO were the new threats of the late 2010s. Specifically, the Russian invasion of Ukraine in 2014, the British vote to leave the EU in 2016, and a US administration no longer clearly committed to NATO increased demand for more effective collaboration in this field (Billion-Galland and Efstathiou, 2019, 2). This renewed conventional military threat from Russia was notable particularly as since the new millennium, Europe had seen a reduction in defence spending and capabilities. Notably this created both demand for increased spending on resources and reduced the credibility of existing alliances to guarantee the defence of Europe, providing the momentum that was once lost in the immediate post-Lisbon context.

## **6.8 Conclusions**

As highlighted by this chapter, the field of defence integration has had to deal with several issues which have held back the process in this field relative to foreign policy and internal security. Functionally, the context in which defence policy has had to operate has required substantial adjustment in light of the changing international demands placed on the EU. This was particularly acute in the context of the end of the Cold War, but also in the context of the changing US commitment to the EU and in relation to the changing expectations placed upon



the EU in regional conflicts. This has required the Member States to repeatedly re-invent this field, changing the institutional basis which can later be communitarised.

The field of defence has also featured a greater degree of controversy because of the relationship with military matters to existing national and international arrangements. The co-optation of the WEU, rather than the creation of a European defence body, in 1984 reflects the desires of some Member States to minimise the possibility for lengthy national constitutional debates. Similarly, the existence of NATO and its importance to the defence of some Member States has similarly undermined attempts to communitarise this field in European foreign policy. While this pressure has been present in the case of internal security, it has been particularly acute in the field of defence. Thus, defence represents an ideal case demonstrating the importance of alternate means of facilitating collective aims in a field as a factor affecting the scope, form, and timing of communitarisation.

Thirdly, the field of defence also demonstrates the importance of national adjustment and capacity building costs. Defence is a particularly costly field, and commitments to particular types of missions carry the consequences of increased costs at the supranational levels and high costs of adjustment at the national level. While communitarisation of national arms production sectors offers significant cost savings, communitarising military missions and national standards carries the risk of being tied to costly overseas missions and spending commitments.

As has been highlighted, PESCO sends a mixed message in the story of communitarisation in defence. On the one hand, it provides several functional solutions to previous problems; supranational agencies have more scope to aid the policy-making process through their new powers. Similarly, the inclusion of procedures to increase the credibility of commitments represents a further communitarisation of this field, helping to solve problems of Member States failing to commit enough funds to shared projects. Taken in the larger history of defence integration, however, PESCO falls well short of the initial expectations put forward in the Constitutional Convention for a 'defence Eurozone' with the possibility of undergoing military missions.



## CHAPTER SEVEN

### Fiscal Policy: The Eurogroup and SGP

#### 7.1 Introduction

The EU's Economic and Monetary Union (EMU) is a particularly complex case of communitarisation. Writing about its development is difficult due to its three faces. The first face, the 'monetary' union at the heart of the Euro, is highly supranational as the European Central Bank (ECB) holds exclusive competence over matters of monetary policy. What is more, the ECB has historically defended itself from potential 'interference' from the Member States.

Yet even in the 'economic' union alone, the Eurozone retains a deep complexity. The second face, the Eurozone's fiscal rules, enforce a highly communitarised system of economic co-operation on Member States in breach of its fiscal rules but relatively loose rules on those with unthreatening budgets. At its heart, this approach has sought to balance the competing demands of Member States who want to keep control of national budgets but, simultaneously, avoid the risk of other Member States undermining the economic stability of the Eurozone.

The third face of the Eurozone is that of the mode of policy-making underpinning these rules. The political body at the heart of the Eurozone, the Eurogroup, was formed at the December 1997 Council as a simple two-hour informal forum for Eurozone ministers to meet amongst themselves. Since then, it has evolved its own secretariat, it had gained a formal place in the Treaty of Lisbon, had codified its internal practices, and granted a larger role to the Commission in its budgetary procedures. Alongside the changes in fiscal rules, the development of the Eurogroup similarly exists as a signal of how the exercise of power has changed in the Eurozone.

This chapter will discuss these second and third elements of the Eurozone; its budgetary rules and the Eurogroup of Finance Ministers, asking how and why they've communitarised over time. In doing so, it will first highlight the development of the Eurogroup and the Eurozone's budgetary procedures from their inception to the structures which followed the debt crisis in 2015. After outlining the development of the body, the degree of communitarisation in this field will be gauged. Lastly, the chapter will discuss the explanatory power of the functional and distributive approaches in relation to the communitarisation of this field, highlighting the key factors that have facilitated integration in the field of fiscal policy.

## 7.2 The Development of EMU

Ideas for a single currency date in the EU date back to the 1970s. The roots of this idea relate to the EU's notion of a single market, with a single currency offering the potential for reduced transaction costs for individuals and businesses across borders (Eichengreen and Frieden, 1993, 85-86). In addition, it provides a means for closer political co-operation in Europe through providing a basis for closer integration (De Grauwe, 2012, 11). The Werner Plan of the 1970s put forward plans for such a system, with concerns surrounding the approach of the US in the Bretton Woods system (Gray, 2007). Yet, the collapse of Bretton Woods and the oil crises of the 70s led to the abandonment of the Werner plan and a stalling of the EMU project (Eichengreen and Frieden, 1993, 87; Dyson and Featherstone, 1999, 2).

In 1989 the single currency was relaunched with the Delors Report. New impetus for the development of a currency emerged at this time as European states sought mechanisms for tying the reunified Germany close to Europe, alongside the French government seeking to better influence international monetary markets (Dyson and Featherstone, 1999, 1-5, 53-55, 65). The negotiations over this system at Maastricht reflected two differing approaches to EMU. The first was the 'positive' approach led by the French government, advocating a strong role for the Member States on an intergovernmental basis (Maes, 2004; Howarth, 2007, 1065). This idea of a strong political force at the centre contrasted with the German 'Ordo-Liberal' position, which afforded importance to both the independence of central banks, the 'emphasis on preventing cartels and monopolies' and opposition to 'intervention into the normal course of the economy' (Dullien and Guérot, 2012). While budgetary co-ordination was accepted as necessary, its basis was to be relatively weak and focused on the avoidance of Member States accruing unsustainable debt.

The resulting Maastricht Treaty created a number of institutions for managing the Member States' economic policies. Firstly, it outlined the initial agreement on the Excessive Deficit Procedure (EDP), setting targets of a maximum of a 3% budget deficit and a 60% debt/GDP ratio. Similarly, it outlined a role for the Commission in monitoring deficits and drawing up potential sanctions, with the Council having power over the publication and implementation of these procedures. In addition, the Maastricht Treaty outlined the system of Broad Economic Policy Guidelines (BEPGs), allowing for the soft co-ordination of budgets through proposals from the Commission. Thirdly, the treaty banned 'overdraft facilities' in the form of credit from the ECB and the central banks of the Member States. Recognising the limitations of these

Figure 7.1: Economic Governance in the Early Years of EMU.

	Role	Formality	Delegation	Voting Procedure
Broad Economic Policy Guidelines (BEPGs) (1992)	Co-ordinates budgets and recommends corrections when threatening stability of EMU.	Formally codified. Enforced by non-binding vote in ECOFIN. (4)	Commission drafts these proposals, Council adopts proposals. (5)	Adopted by QMV. (3)
Excessive Deficit Procedure (EDP) (Entered into force 1999)	Procedure triggered by a deficit of over 3%, and/or debt is >60% GDP and not fallen by 5% per year over previous 3 years.	Outlined in Treaties of the EU. Enforced by Council. (4)	Commission oversees implementation and gives notice of breaches. (5)	Report approved by QMV. Decisions regarding sanctions occur through 2/3 majority. (2.5)
Stability and Growth Pact (SGP) (1998)	Expands on EDP making budget limit of 60% debt/GDP.	Constituted by two formal Council regulations. Enforced by Council. (4)	Commission drafts recommendation to ECOFIN when a Member State breaches rules. (5)	See above.
Eurogroup of Finance Ministers (1998)	Structure through which Eurozone Finance Ministers discuss their economic co-ordination.	Informal structure based on decision of December 1997 European Council. (1)	Commission and ECB informally attend meetings by convention but are only invited 'when appropriate' formally. (1)	Decisions are taken by consensus before being formally made in the Council. (2)

Note: Values correspond to those presented in Chapter 3.

agreements, the Maastricht Treaty noted that the Member States would further outline the 'rules and definitions for the application' of the EDP.

Importantly, the Maastricht Treaty did not conclude all issues relating to the implantation. This incomplete nature was conjoined with fears from the German government surrounding the possibility of fiscal indiscipline within the Euro area. These fears became pronounced as the date for the Euro's introduction approached, with German policy-makers worrying that 'national governments would become more 'relaxed' and return to old practices once EMU would be fully operational' and as domestic voters lacked enthusiasm for adopting a new currency (Heipertz and Verdun, 2004, 768-769; Crowley, 2005, 3). The resulting SGP consisted of three regulations which strengthened the systems of surveillance over budgets, clarified existing terms, strengthened the punitive dimension of the EDP, and further outlining existing procedures including the ability for 'early warnings' to be sent to Member States and the definitions of 'exceptional' and 'temporary' circumstances (Buti et al., 1997; Crowley, 2005, 3-5). The enforcement of these rules, however, was left to the Council of Ministers and not the ECJ or Commission.

A second issue with implementing the Euro related to the currency's management. Both Britain and Denmark had secured opt-outs from the single currency, with Denmark remaining part of the Exchange Rate Mechanism (ERM II). Belgium and Italy too had issues relating to levels of international debt (Dyson and Featherstone, 1999, 8), with Greece also looking unlikely to meet the criteria for joining. By 1998, it was agreed between head of states that eleven of the fifteen Euro members would accede to the Euro, with Greece, Britain, Denmark, and Sweden remaining outside.

To provide a basis for co-ordinating budgets, German Finance Minister Theo Waigel suggested that there be a 'Stability Council' during the SGP negotiations (Stark in Puetter, 2006, 56) as a twice-yearly means to monitor compliance with the SGP. The idea became more pronounced with the public proposal for an exclusive Euro-area forum was promoted by French Prime Minister Juppé in January 1997 (European Voice, 1997/01/22). It was in the context of the discussions of the SGP that a Eurogroup was first proposed and after the negotiations over the SGP that it took shape (Puetter, 2006). Reflecting previous debates, division remained as to whether such a body should be a political pole to the ECB or a body purely for co-ordination. Discussion moved forward at the October 1997 Council, agreeing an informal institutional formulation as a compromise so 'to evade institutional conflict' (Puetter, 2006, 59). Signifying

the intergovernmental status of the forum, its name was changed to the ‘Euro-X’ Council, with the X to be replaced by the number of eventual Eurozone members, reflecting the informal G7 organisation.

Strong opposition to a Euro-X forum would emerge from the ‘outs’ due to a fear of having no influence over matters which affected their national interest. The eventual British position was that informal co-ordination should occur but that decisions should still take place within ECOFIN. British Prime Minister Tony Blair wrote that ‘[t]he issue was this; should Euro X become, in effect, a new body of economic government for the EU, in which membership is restricted solely to those countries in the Euro area?... Our fear was that... we could not take part in those discussions when they affected our national interest’ (Blair, 1997/12/15). At the December 1997 European Council, the Eurogroup was allowed to exist, but on the condition that decisions were to be taken within ECOFIN and that the body would remain informal in nature (European Council, 1997). The Commission, and the European Central Bank when appropriate, will be invited to take part in the meetings’ (European Council, 1997/12).

### **7.3 The Eurozone in Action**

#### **7.3.1 The Early Evolution of the Eurogroup**

The Eurogroup launched without its structures being decided by its members, with no clear plan of what would fill its meetings (Puetter, 2004, 864). This first meeting made an attempt to include the Euro-outs, with the Austrian Finance Minister stating that ‘we must avoid the appearance of differentiated evolution between the 11 euro-zone countries and the four other members of the EU’ (European Voice, 1998/06/10). Once more, a commitment to informality was outlined, alongside agreement on who would attend the meetings; ministers accompanied by one civil servant, the Finance Commissioner, a representative of the ECB, and the chair of the Economic and Financial Committee.

Meetings were to take place in the two hours preceding the ECOFIN Council, after which both the other Ministers, alongside the large staff of ECOFIN, would enter the room and begin their meeting. Importantly for the Euro-11, any decision reached by consensus between these members could then be implemented within the ECOFIN Council due to the Eurozone members constituting a qualified majority. This gave the Euro-11 *de facto* power over the policies of Euro-only issues, with the decisions being made in ECOFIN keeping Euro-outs informed of recent developments (Puetter, 2004, 858). In addition, while the initial decision of the European Council in 1997 had only invited the ECB and Commission to attend ‘when

appropriate', both bodies gained their own informal roles in the Eurogroup's informal working method.

The eventual responsibilities could be seen in the developed working method of the Eurogroup, as laid out by Puetter (2004, 861-863; 2006). Each meeting began with the Commissioner of Economic and Financial Affairs laying out a discussion on the state of the Eurozone, followed by a longer discussion from the President of the ECB. Following this, ministers then exchanged their views around the table. On the issues of the day, ministers then agreed common positions which were then taken forward to ECOFIN. Alongside positions on international affairs, the Eurogroup then carried out its role in monitoring the budgetary developments of the member states. Such discussions would also include input from the Commission and the President of the ECB (Puetter, 2004, 862).

Over these early years, discussions surrounded the role this body should have. The French presidency began with a shared Franco-Belgian document on the reform of the Eurogroup, with the intention to both increase the political status of the group and provide a 'political pole' to the ECB (European Voice, 2000/06/07; Irish Times 2000/6/14), including proposals for press conferences and a potential secretariat. Opposition to such suggestions came from the German and British governments, with German Finance Minister Eichel insisting that the Euro-11 should not undermine ECB independence, and the British, as well as Dutch, Finance Ministers stating in response to the Franco-Belgian plans that the Euro-11 is 'strong enough' (Murray, 2000/06/08). As Dyson (2000, 74) argued at the time of these discussions, 'despite French pressures to give it formal powers to co-ordinate economic policies, German resistance confined the Eurogroup to a deliberative rather than decision-making role.'

### 7.3.2 The Eurogroup's Formalisation

With the passing of the Nice Treaty in anticipation of enlargement, the Eurozone suddenly saw its *de facto* authority eroded. While the Eurozone controlled 81% of votes in the EU-15, in the EU-25 this was reduced to 58% of the weighted votes. In 2003, these concerns formed part of the argument to formalise the Eurogroup's status into the new Constitutional Treaty (European Voice, 2003/05/27), namely allowing Eurozone-specific proposals to be voted on solely by Eurozone Members (European Convention, 2003b, Article III-194.2). Yet, this proposal met opposition primarily from the British government who, consistent with previous concerns, feared exclusion from important European economic decisions (King, 2003/05/25).



Amongst the means of solving this problem was the addition of both a permanent Eurogroup President and the entry of the Eurogroup into the Treaties of the EU as part of the European Constitution. Rather than wait until the Constitution's planned entry into force in 2007, the Presidency was to be introduced by the end of the year, justified on the informal nature of the organisation, with the governments of France, the Netherlands, Belgium, Luxembourg, and Greece all in support (Agence Europe, 2004/7/5). Due to the Austrian government being next in line to hold the rotating Presidency, the Austrian Finance Minister was appointed Vice-President as part of a compromise. In addition to these changes, the internal structures of the Eurogroup were codified in a document titled 'Eurogroup Working Methods' (see; Eurogroup, 2008, 5) to clarify the group's functions.

Juncker's early priorities largely concerned improving 'co-ordination' with the ECB and implementing the SGP. Regarding the ECB, Juncker and several Eurozone Member States had shown concern about monetary policy during certain times, such as during the pressures on the currency during September 2000 and 2005 (Thornhill and Parker, 28/6/2005; Parker, Atkins, and Daneshkuin, 30/11/2005; Grasser in Simonian, 11/05/2007; Hodson, 2010). Yet the solution of holding meetings between the Presidents of the Eurogroup and ECB proved controversial with the ECB's president over concerns for the effect on the bank's independence (see; Parker and Atkins, 2006/06/08; Financial Times, 2006/10/9). This 'Battle of the Jean-Claudes' (Parker, 2007/01/23) would be resolved after Juncker's re-election as Eurogroup President on the specific platform of holding meetings with the ECB.

The second major political divide arose over the suspension of the SGP in 2004, something which had been brewing over the previous couple of years. By 2002, plans to initiate an early warning procedure against Portugal and Germany looked contentious amongst perpetrators and other members of the EU, meeting opposition from Germany, Portugal, Luxembourg and the UK (Agence Europe, 2002/02/11). Within a few months, France and Italy joined in their infringement of the 3% deficit rule (Leblond, 2006), adding further pressure on the EDP, which since 1998 had carried its own system of fines. Notably, the German and French governments faced elections that year and so were disincentivised to reduce spending and raise taxation on their electors. Furthermore, moves by the Commission to re-interpret and strengthen SGP, the key mode of budgetary co-ordination, had met opposition from the Dutch, Greek, Austrian, and Spanish governments (Agence Europe, 2002/04/14).

Despite the recommendation of the Commission that France Germany take stronger measures to rectify their deficits in November 2003, ECOFIN instead eventually suspended the EDP for France and Germany (Heipertz and Verdun, 2004; Leblond 2006, 972). In June 2004, after a ‘cooling off’ period, initial steps to strengthen the Commission’s role in the EDP in the Draft European Constitution were opposed, particularly the change where a Commission recommendation on an EDP would have to be opposed unanimously rather than through QMV (Heipertz and Verdun, 2010, 159). Additionally, in 2004 the Council *de facto* continued the suspended nature of the SGP, eventually reforming it through introducing a new code of conduct, an amendment to the Medium Term Objectives to make them more country-specific, and a redefinition of ‘exceptional circumstances (see; Parker, 2005/02/16; Heipertz and Verdun, 2010, 160-168).

### 7.3.3 The Eurogroup and Financial Crisis

By the end of 2007, while financial markets in Europe showed increasing instability, European governments seemed confident that growth would remain unharmed (Barber, 2007/09/14). This expectation would be challenged as the 2008 Financial Crisis unfolded, with problems arising surrounding the vast budgetary costs the crisis had on Spain, Portugal, Greece, Italy, and Ireland. By October, the first European Council ‘Euro Summit’ was held at the initiative of Gordon Brown and Nicholas Sarkozy as Europe’s banking system neared collapse (Financial Times, 2008/10/12), despite such a body proving controversial surrounding worries that this would confuse existing procedures (Benoit, 2008/01/16; Smyth, 2008/02/13). Despite the salience of the crisis, the Eurogroup was accused of being ‘largely absent’ during the crisis (Muenchau, 2008/10/26) as the European Council ‘Euro Summits’ took centre stage.

In 2009, the Member States chose not to suspend the SGP, as had occurred previously (Hodson, 2010, 232), with the Eurogroup also choosing initially not to expand the financial aid granted to struggling economies, despite American pressure (Beattie, 2009/03/10). Despite this, the Council and Commission chose to incorporate the changes of the 2005 SGP revision regarding ‘exceptional circumstances’ into the EDPs of most suffering Eurozone Member States, thus allowing them more time to bring their budgets into line. Such an attitude not shown towards the Greek government which was given until 2010 to correct its budget (Hodson, 2010, 234). Despite such ambitious plans, the Greek government’s fiscal position continued to deteriorate as the country’s credit rating, with ECOFIN deciding in February 2010 to extend the deadline

to 2012 and imposed numerous specific proposals not seen in previous programmes (2010, 234-235).

Over the next year, the position of Greece's finances would continue to deteriorate. Particular concern emerged as a result of the \$119bn exposure in the Greek banking sector held by Franco-German banks (Gocaj and Meunier, 2013). Building on the Maastricht system of emergency funding Member States, which required unanimity, the Eurogroup agreed on the 2<sup>nd</sup> of May 2010 to guarantee €80 billion in emergency funding to Greece, alongside an IMF loan of €30bn (Gocaj and Meunier, 2013, 241). On May 10<sup>th</sup>, to convince markets that a Greek default would not occur, the ECOFIN Ministers agreed to create a new institution, the European Financial Stability Fund (EFSF), as a temporary fund replacing the previous bilateral loan system (2013, 243-244). The Commission's role in this body proved controversial, with the German government having concern surrounding the effects this would have on a key area of national sovereignty (Gocaj and Meunier, 2013, 245, 249). Similarly, what was notable about these structures was that there was a high threshold for bailouts to be approved, granting the German and French governments strong institutional power in its decision-making machinery (ESM Treaty, 2012).

Recognising that the SGP was insufficient for the prevention of economic crisis, the Member States initiated a further set of proposals to strengthen and further formalise the SGP. The first of these was the 'six-pack' set of proposals which aimed at strengthening the existing framework of the SGP through; making sanctions for breaking the pact enforceable unless a qualified majority of the Council opposes them and making the 60% debt/GDP a breach even if the deficit is below 3%. The 'Two-Pack' of 2013 both brought together the deadlines through which the Member States draft their budgets and fiscal plans, thus allowing for the budgets to be inspected by the Commission and Eurogroup through and allows the Commission to issue further targets if Member States are falling short of those previously issued (European Commission, 2013). Each represented a further strengthening of the 'preventative and corrective' arms of the SGP, particularly at a time where the transfer of emergency funds was highly politicised.

Third of these institutional changes was the 'Fiscal Compact' of 2012, an intergovernmental treaty which formalised the 'Euro Summits' at European Council level meeting twice yearly, as well obliging participating states to write the SGP into national law, with enforcement being carried out by the ECJ (Art 8.1, 2011) (European Council, 2012; Hodson, 2010). As noted by

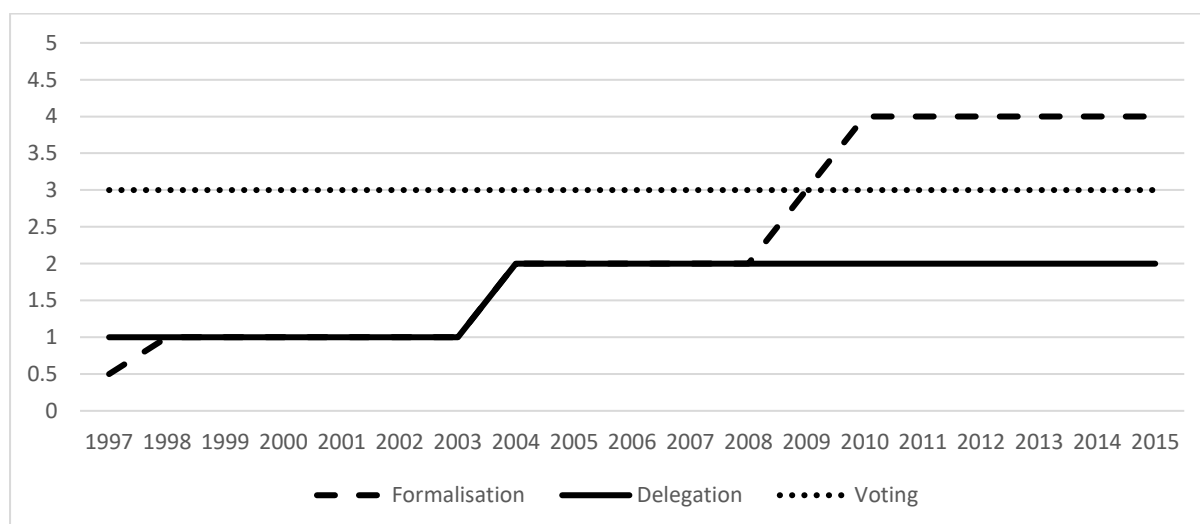
Hodson (2010, 189), while the formalisation of the Euro Summits was a strategic goal of the French Government, the substantive part of the Fiscal Compact was to further strengthen the legal basis of the SGP as a commitment device, particularly as the German government was under public pressure for bailing out struggling Member States.

Additionally, in 2010 the ‘European Semester’ also came into existence to alter budget co-ordination. According to Hallerberg, Marzinotto, and Wolff (2011, 6), this package obliges Member States to submit their Stability and Convergence Programmes (SCPs) to the EU before they are discussed in their parliaments, as well as submitting their National Reform Programmes (NRPs) alongside them. This was justified upon the purpose of improving the co-ordination of budgets as part of their commitment in the treaties, thus reducing the risk of debt crises stemming from budgetary malpractice and increasing the roles of the Council and Commission in the budgetary drafting process.

#### 7.4 Communitarisation and Fiscal Policy

The case of the Eurogroup and Eurozone’s fiscal rules shows a noteworthy degree of communitarisation. The Eurogroup itself has seen its role increasingly formalised and expanded alongside the inclusion of new supranational actors in it in the form of its own secretariat (figure 7.1). The modern Eurogroup is a far cry from the Euro-11 of the late 1990s, now being an important forum in its own right rather than an informal extension of the ECOFIN Council. Similarly, the fiscal rules which the Eurogroup oversee have seen a notable strengthening since the financial crisis. Yet, their manner of strengthening has similarly kept a notably intergovernmental character.

*Figure 7.1: Communitarisation of Eurogroup Structures 1997-2014*



When analysing the communitarisation of economic policy in the Eurozone, it must be remembered that many of its elements have evolved in their own way. The graph in Figure 7.1 specifically outlines the communitarisation of the Eurogroup's structures over time. In terms of formalisation, the key moments include its outlining in the initial December 1997 European Council, its codification in 2004 with the Eurogroup Working Methods Document, and its entry into the treaties in 2009 with the passing of the Lisbon Treaty. Despite this, the body maintains an extra-legal dimension, with its processes and structures still being contained in internal extra-legal documents rather than being detailed in the treaties.

The degree of formalisation is notably different in relation to the fiscal rules and procedures the Eurogroup contends with. Particularly in relation to the enforceability of sanctions in times where common rules are breached, there is now a role both for the ECJ in these structures, the writing of fiscal rules into national law, and the increasing degree of automaticity in their application as the Council has seen a reduction in its ability to suspend the SGP. As such, there has been a significant formalisation of the Euro's preventative and corrective arms.

The extent of delegation has increased in the Eurogroup too over time. While formally the Commission and ECB are still invited 'when appropriate', the Eurogroup Working Methods demonstrate a codified and clear role which has also informally become the practical norm. As such, they have a formalised role within the Eurogroup's procedures to this day. Yet in terms of wider EU policy-making, the Commission has a significant role in relation to the supervision of the Member State's adherence to the rules of the Stability and Growth Pact, which has grown as the Commission's recommendation for sanctions to be imposed has strengthened *vis-à-vis* the Council as a result of the Six-Pack and Two-Pack regulations.

Lastly, in relation to voting rules, the rule of thumb in the Eurogroup continues to be that of consensus. This is, however, context dependent. The suspension of the SGP is an example of this role of consensus being notably different from other cases with this mode of policy making. In relation to the imposition of sanctions against Germany in 2002, for example, the threat of a vote being lost by the Commission was enough to force a compromise in the Council (Heipertz and Verdun, 2010, 123). As such, this consensus procedure reflected the dynamic found normally in areas of QMV rather than unanimity. Notably too, the movement to reverse QMV in the EDP similarly represents a move from the ability of Member States to pursue individual fiscal policies towards that of the operation of common policies.

These mixed messages provide a complex message regarding the adoption of practices of co-operation over co-ordination. The Eurogroup has been increasingly communitarised yet retains key elements of the intergovernmental method in its practices, such as its soft-law Eurogroup Working Methods procedures. So long as they are not likely to breach common rules, Member States retain significant power over their own national budgets and very limited procedures for enforcing common goals, limiting the Eurozone to co-ordination. Yet, when these Member States are in breach of common rules, the EU's structures have a very strong influence over the budgetary practices of indebted Member States, emphasising co-operation. This model therefore reflects a moderately communitarised intergovernmental system of budgetary co-ordination, with a strong focus and communitarised structures surrounding the prevention of Member States breaching common debt rules.

### **7.5 The Selection of the Intergovernmental Method in Fiscal Policy**

The first question pertains to why intergovernmental structures were chosen in the field of fiscal policy. As the first hypothesis argued, what is expected to be most important in determining this choice is the potential distributive costs associated with co-operation in this field. These costs specifically relate to the potential costs of adjustment at the national level in this regard and the costs of capacity building. In the field of fiscal policy, these costs are notably easy to anticipate as Member States might have to alter national budgets, thus incurring monetary costs from close co-operation, or fund supranational projects in the form of collective bail outs or the creation of central budgets.

#### **7.5.1 Demand for Collective Action between the EC's Member States**

Enacting a single currency by its nature leads to the demand for managerial structures. As highlighted earlier, there were two key motivators for making the Euro a reality as the Maastricht Treaty came about. The first of these was the long-term functional case for a single currency. The logic of the single market is built on the notion of the free movement of goods, capital, labour, and services. In the achievement of this, having a single currency aids in reducing the transaction costs across borders through reducing the requirement for the exchange of currencies between borders (Eichengreen and Frieden, 1993, 85-86). Yet as Dyson and Featherstone highlight (1999, 4), the collapse of the Berlin wall in late 1989 gave a significant impetus for achieving the single currency as Europe was required to adjust to the new distribution of power on the continent.

With the establishment of such a currency, the question then turned to how it should be structured and managed. One set of Member States, led by the French government, preferred a 'positive' approach to integration, what is often referred to as '*gouvernement économique*'. Howarth (2007, 1065-1066) highlights a number of key elements in this approach; the desire for common economic policies at the supranational level, a strong role for state intervention in the economy, and a general scepticism towards the independence of central banks (see; Hosli, 2000, 751; Maes, 2004, 22-23). Such a system would be largely intergovernmental but would allow states to discuss economic matters alongside central bankers, so to 'shield its economy from the negative effects of irresponsible US and German monetary policies' (Dyson and Featherstone, 1999, 97). This reflected the strong role that the state historically had in the economy in France, with its strong Presidential style of government and the history of the post-war French economy being based on a strong dimension of state planning (Dyson and Featherstone, 1999, 67-68; Maes, 2004, 22-23). This was coupled with the desire from the French government for greater influence over global financial markets in the context of functioning in the ERM (Dyson and Featherstone, 1999, 65).

In relation to the Eurogroup, French Finance Minister Strauss-Khan laid out the necessity for a Ministerial forum on two arguments related to the power of the ECB and the differentiated nature of the Euro (European Voice, 27/11/1997). The first would be that 'in the absence of a visible and legitimate political body, the ECB might soon be regarded by the public as the only institution responsible for macroeconomic policy,' thus undermining the French government's ability to control the economy. Secondly, Strauss-Khan pointed to Article 103 of the Treaty which accepted that economic policy should be of 'common concern' (Strauss-Khan in Financial Times, 27/11/1997). Since the Treaty of Maastricht had given this responsibility to ECOFIN, one more informal statement gave some insight to this particular argument; 'the Euro is a monetary marriage... the countries in the marriage do not want anyone else in the same bedroom' (Observer, 07/12/1997). In other words, the French government wanted increased co-operation between Eurozone Members, but not through ECOFIN.

The German 'Ordo-Liberal' position, meanwhile, contrasted in placing a strong emphasis on the independence of central banks and the desire to avoid the potential for 'slacking' by Member States after the introduction of the Euro (Heipertz and Verdun, 2010, 25; Dullien and Guérot, 2012). Unlike the French government, the post-war German government's approach to the economy was constructed with an awareness of the potential danger of a centralised state (Maes, 2004, 25) and the potential effects of hyperinflation on politics (Dullien and Guérot,

2012, 2). Importantly too, the German government importantly sought to limit the scope for there to be fiscal transfers between states, what eventually became the basis of the ‘no bail-out rule’, rooted in concern surrounding other states which lacked a ‘stability culture’ in economic policy (Heipertz and Verdun, 2004, 768). The German government did not, however, oppose the creation of what it called a ‘Stability Council’ in the form of the Eurogroup, with the initial proposal during the SGP negotiations being traceable to German Financial Waigel in 1995 (Stark in Puetter, 2006, 56) gaining the support of the French government in 1997 (European Voice, 1997/01/22). As was reported at the time; ‘the notion of a stability council has been accepted by the [German] government, but we have made it very clear to the French that this will only be an informal grouping along the lines of the G7 and nothing more’ (European Voice, 09/07/1997).

In the case of the Eurozone, there was a third set of Member States; the Euro-outs. Although they did not prevent the creation of the Euro itself, there was concern from these states that they might be ‘shut out’ of negotiations which affect their interests (Blair, 1997/12/15). These Member States held significant sway, as unanimity was required for the creation of this new Euro-area forum. In addition, the lack of costs to voting own such a body compared to the costs of being frozen out of important discussions placed these Member States in a strong position, as a failure in negotiations would not harm their national interests strongly. Thus, at least over the design of the Eurogroup itself, the Euro-outs cannot be overlooked in terms of affecting the choice of an informal Eurozone council.

### 7.5.2 Supply through Bargaining

What is important about the negotiations over EMU itself is the difference in bargaining power between the French and German governments. The French government had a strong interest in seeing EMU form due to its desire to see itself empowered on international monetary issues. Similarly, the German government had significant issues domestically due to scepticism from the Bundesbank and the already established power the German government had in this field (Maes, 2004, 35). The plausibility of the Deutschmark as a fall-back option, although limited due to the demand for a single currency, was at least evident in negotiations through to the SGP (Heipertz and Verdun, 2010, 26), reflecting the strength of the German government’s bargaining power in this area. Yet these negotiations were aided by several factors. One aiding factor between these preferences, as highlighted by Dyson and Featherstone (1999, 751), was that negotiations were structured on a clear set of proposals in the form of the Delors Report.



Secondly, the linkage between German unification and EMU helped increase the demand for monetary union and thus aided the successful negotiation of the Maastricht Treaty. The result of these negotiations was thus closer to the German government's preferences than other actors; the ECB would be independent and there would be clear fiscal rules underpinning membership (Hosli, 2000, 761).

Negotiations over the structure of the Eurogroup this time reflected the significant bargaining power held by the Euro-outs. Suggestions throughout 1997 included the provision of 'observer status' to Euro outs, opposed by Germany and other 'ins', as it might act to formalise the body in a manner supported by the French government (Jones, 1997/11/26). Similarly, reflecting the worries of the British, Danish, and Swedish governments, Ministers at the ECOFIN Council on the 1st December 1997 failed to reach agreement on a Eurogroup (Watson, 1997/12/10). In early December 1997, the Times reported that Blair's position was that 'Britain must have a seat' on the Euro-X Council (The Times, 1997/12/10). Knowing that they would not have a seat on the forum, the strategy of Blair changed to trying to ensure that the 'mandate of the Eurogroup would be narrow' (Puetter, 2006, 60).

At the eventual European Council, the German government once more vetoed the idea of granting the UK observer status over fears of formalisation (Jones, 1997/12/17) and the eventual agreement was reached having 'taken most of the first days' discussion to reach agreement... The [Eurogroup] issue was only resolved after the problem had been stripped down to its basics and the UK and France had finally buried the hatchet after many tetchy exchanges' (Jones, 1997/12/17).

The result was therefore a compromise reflecting the lowest common denominator which reflected both the demands for the Eurogroup to remain informal and which codified certain limitations on the Eurogroup's status in line with Euro-out concerns. Firstly, the group was allowed to meet 'informally' and discuss issues 'connected with their shared specific responsibilities for the single currency' (European Council, 1997/12). 'Matters of common interest' and decisions 'in all cases' were specifically mentioned to take place in the ECOFIN Council. The effect of this was that the formal codified rules specifically reflected those wishes of Member States with the highest costs of such co-ordination, with informality also reflecting the desire for such a body not to subsume the responsibilities of ECOFIN.

What is notable about these structures is how they are reflected in the bargaining positions of the Member States. State interests held a strong relationship with the eventual design of the

Maastricht Treaty, SGP, and Eurogroup, with the resulting structures being traceable to these positions. The strength of both the German government at Maastricht and the Euro-outs at the December 1997 Council give clear reasons for the selection of the scope and form of the structures in this body that are not so simply demonstrated by functional approaches. Notably, functional arguments surrounding the Euro have frequently been used to demonstrate the weaknesses of the current system versus the required degree of integration (see; De Grauwe, 2012). Thus, as expected, the clear costs which the Eurozone could potentially have on the economic stability of EU Member States, their budgets, and their influence were key in choosing the intergovernmental structures at their heart.

## **7.6 Functionalism and Communitarisation in Fiscal Policy**

The second hypothesis of the thesis is based on the functional argument whereby the growing volume and complexity of transactions in an intergovernmental body is likely to result in an increasing degree of communitarisation. In this regard, the Eurogroup and fiscal rules of the Eurozone both reflect this growing demand, as the Eurogroup has seen itself increasingly formalised and the Eurozone's rules increasingly 'automatic'. Yet, notably, as will be argued after, this argument is limited in explaining failures to communitarise, particularly with the suspension of the SGP.

### **7.6.1 Fiscal Policy and Contracting Costs**

At the first meeting of the Eurogroup, Ministers attempted to promote several practices which both would improve the standard of discussion within the body and the information available to discussants when conducting business. In relation to the former, the Eurogroup limited the attendance of the Eurogroup to only one Minister and national official per Member State (Puetter, 2006, 57; European Voice, 1998/06/10). The desire of the Member States was to thus foster a more frank and open nature of discussions, moving away from the constraining formal discussions associated with ECOFIN and reflecting a similar desire mentioned in relation to EPC (Dahrendorf, 1972).

This informal nature has persisted throughout the Eurogroup's history, with it continuing to be seen as a key advantage of its structure. Indeed, as recently as 2017 officials within the Eurogroup have highlighted that 'it's the informal nature of the Eurogroup that makes it possible to have an open exchange that you will not find in more formal bodies' (Politico, 2017/05/24). Yet, in recent years this has come under pressure from advocates of increased transparency. In particular, these issues have come under increased scrutiny following the

negotiations over the Greek Debt Crisis, with former Greek Finance Minister Varoufakis describing the lack of transparency as ‘a clear and present danger for Europe’s future’ (Varoufakis, 2016). Such claims reflect concerns particularly in relation to Trevi during the negotiations over the Dublin Agreement in the early 1990s surrounding the body’s power and secrecy. Thus, while confidentiality was an initial functionally-motivated design feature, this has come under pressure as the body’s business has become more salient over time. A more in-depth discussion will be made on this in the thesis’ conclusions.

An additional means of improving the quality of policy-making within the Eurogroup has been the empowerment of expert committees within its processes. In the initial meeting, the Commission was given the responsibility of circulating a briefing before each meeting, a role which has survived ever since (Puetter, 2006, 69; *European Voice*, 1998/06/10). This role subsequently increased, with the Commission being invited in 2000 to produce monthly indicators on the Eurozone’s economic situation (*European Voice*, 2000/07/19). Discussions were also to be begun by a representative from the ECB, who would highlight the main stresses and problems facing the Eurogroup at that particular time. The addition of a Eurogroup Working Group within the EFC was similarly justified upon the need to ‘improve the quality of debate’ by inviting the EWG to ‘prepare short discussion papers for ministers focussing on key policy issues (European Commission, 2007).

Each of these institutional changes over time represents the desire for specialised and shared information on which common discussions and policies could be made. This is due to the high degree of uncertainty in field as to what the most pertinent threats to the Eurozone are and how best to co-ordinate against them (Pollack, 1997, 126). This demand is reflected in the bodies tasked with providing information to the Eurogroup, with the group having access to several sources of information within the working groups of the EFC and to the Commission and ECB.

Lastly, the Eurogroup has increasingly been codified both into the Treaty of Lisbon and internally with the Eurogroup Working Methods document. This document acts as a useful point of reference both for new participants unacquainted with its practices and as a point of reference when conducting further negotiations. As noted in other cases, such codified documents reduce the scope for debate over the interpretation of existing rules and increases the level of information available to actors when undertaking policy discussion, reducing contracting costs. The practices of the Eurogroup in relation to monitoring budgets has been further formalised and expanded upon with the European Semester, which aligned the

publishing of national budgets and their supervision over a clearer timescale and through clearer procedures, once more aiming to improve the efficiency of surveillance in this field (Dehousse, 2016, 619).

#### 7.6.2 Fiscal Policy and Administrative Costs

An additional inefficiency found in the Eurogroup's functioning related to the high costs of managing such an informal forum. Several specific institutional changes have occurred in relation to this demand. The first of these relates to the previously mentioned formalisation of structures. The formalisation of the Eurogroup's internal practices aids both new Presidents and supranational agencies as their responsibilities have been clearly delineated, reducing the scope for turf wars.

One of the main administrative reforms relates to the creation of an elected Eurogroup President. This notable change occurred in 2004, where previously the Presidency had been held on a rotating basis. The central problem of the rotating Presidency system was the consistency of the Eurogroup's agenda over time. This can be witnessed in the discussions on the creation of a two-year elected Eurogroup Presidency which gathered pace in mid-2004, particularly after the newly appointed Finance Minister Sarkozy made reform of the Eurogroup an early priority (Financial Times, 2005/06/28), and with the notion being discussed in the January Eurogroup based upon the idea of a 'more stable presidency' (European Voice, 2001/06/01). This was confirmed at the July 2004 Eurogroup, with reference to 'ways to improve Eurogroup working methods and visibility,' and decided in September with the election of Jean-Claude Juncker as President (Parker, 2004/07/05; Staunton, 2004/09/11). Additionally, in the 2002 Franco-German submission to the European Convention which influenced the resulting agreement, the presidency was justified on the need to 'strengthen the Eurogroup's presidency and... improve its visibility' (European Convention, 2002).

While an elected presidency system carries an increased degree of consistency over time when compared to a rotating presidency, the holder of this post simultaneously functions as a national minister, thus limiting the time available for discharging these tasks. Suggestions for a 'permanent' Presidency have been around for some time (Schlosser, 2015, 3), with the notion of a 'Minister of Economy and Finance being part of both President Macron's proposals for Eurozone reform and those of the Commission (see; Commission, 2017). In absence of this, the addition of a secretariat in the form of the Eurogroup Working Group and arrangements with the Council Secretariat on procedural issues (Eurogroup Working Methods, 2008, 5) has

aided in the carrying out of these functions, increasing the administrative capacity of the Eurozone at the European level.

### 7.6.3 Non-Compliance and Fiscal Policy

The issue of compliance has featured highly in the reform of the Eurozone. The initial discussions on the SGP, from which the Eurogroup developed from, highlighted the importance for several Member States of the maintenance of balanced budgets. Heipertz and Verdun (2004) give four main reasons for the high functional demand for strict budgetary rules in this area. Firstly, they highlight that states were required to consolidate their budgets due to the high spending associated with the Keynesian welfare state and high deficits. Secondly, they noted that there was a high degree of interdependence in this field, with the possibility that profligacy in one state might force other states to adjust spending policies in light of increased interest rates. Thirdly, loose spending commitments threatened to undermine the independence of the ECB and the ‘no bail out clause’, as the ECB would be forced into buying government bonds. Lastly, a lack of co-ordination in the Eurozone increased the potential for ‘asymmetric shocks’, or crises which might affect one or a few states and not others. Increased co-ordination acted to mitigate the possibilities for this, although it does not create a binding system of co-ordination for states in surplus.

The reforms of the SGP in light of the financial crisis and the ensuing debt crises highlight the strong functional demand for more credible co-ordination in this field. The debt crisis relating to the Greek government in particular threatened to undermine the credibility of the Euro area. The response of the Member States was to thus increase the credibility of their commitments through several procedures (see; Dehousse, 2016). As Buti and Carnot (2012, 902) noted, ‘the problems created by only half-hearted ownership have been compounded by limitations in enforcement mechanisms’.

The first was to increase the degree of legalisation inherent in the SGP. The Fiscal Compact obliged signatory states to write the ‘golden rule’ of a balanced budget into their national constitutions, increasing the national level of legalisation in applying the SGP (Fabbrini, 2013b, 6). The Six-Pack, meanwhile, increased the capacity for earlier sanctions, increased their strength, and increased means for better surveillance, with the Two-Pack increasing the degree of monitoring available in its implementation (Buti and Carnow, 2012, 906). Each of these served to increase the automaticity of these sanctions, reducing the ability of individual

Member States to avoid compliance, as is common in intergovernmental systems of co-ordination.

The power of the Commission relative to the Member States was strengthened in this regard through an amendment to the voting procedures utilised in this area. During the negotiations at the Constitutional convention, a proposal was made to give the Commission the right of 'proposal' rather than 'recommendation' of the imposition of sanctions, meaning that overturning such a proposal would have required unanimity (TFEU, Article 293; Heipertz and Verdun, 2010, 159). Yet this was opposed at the time in favour of retaining a recommendation. With the Financial Crisis, the power of the Member States was eventually weakened with the Fiscal Compact (Buti and Carnot, 2012, 906; Palmstorfer, 2013, 192-193). In this case, for an EDP to be prevented from occurring, a Reverse Qualified Majority Vote (rQMV) was required by the Council. This act further weakened the institutional bargaining power of the Member States and further centralised power over the EDP with the Commission, as the threshold for overturning the vote had become higher.

As well as growing in power over the EDP relative to the Member States, the Commission found itself further empowered with new tasks in the system of budgetary co-ordination. Through the European Semester, the Commission's role has grown through the granting of the power to both conduct an Annual Growth Survey (AGS) and grant (CSRs) (Hallberg et al., 2011). Both are presently, however, passed by the Council with the CSRs being amendable if these amendments are supported by a QMV (Zeitlin and Vanhercke, 2014, 47). While this shows that the Council retains a strong ability to alter Commission proposals in this field, the ability for the Commission to initiate such proposals is a feature which is substantially more communitarised than has been witnessed in other cases.

While the functional demand for increased costs of non-compliance can be linked to information surrounding the ineffectiveness of existing sanctions relative to the costs of non-compliance, this approach has its limits. Specifically, in relation to the SGP, the functionalist narrative offers little help in explaining the failure to strengthen the SGP's rules between 2003 and 2004 at a time where non-compliance was a significant problem. Indeed, rather than strengthening the rules, the Member States chose to weaken them. Similarly, the functionalist approach fails at explaining the form of these reforms. Notably, the response to the financial crisis largely related to the non-compliance element of communitarisation, with systems of fiscal transfers being bound to strong demands for reform at the domestic level. Thus, while

the functionalist approach offers many insights as to the growing pressures upon the Eurozone's governance mechanisms, it is the distributive perspective which grants better insight into the scope, form, and timing of institutional change.

## **7.7 Distribution and Communitarisation in the Eurozone**

As has been a common theme throughout all cases, while the functionalist account has given a clear rationale for communitarisation, it has been lacking in explaining the timing, scope, and form of institutional change. Notably, there is a difficulty in the functionalist account explaining both the suspension of the SGP and its reform in 2003-4 and the specificities of the reform package which followed the Eurozone crisis. In this section, the bargaining power and preferences of the Member States in relation to Eurozone reform is considered, highlighting the importance of the potential distributive costs primarily for creditor countries in the Eurozone.

### **7.7.1 Factors Limiting Communitarisation in Fiscal Policy**

As highlighted during the creation of EMU, the French and German governments have been key actors in the Eurozone due to their economic size and influence within the EU. The German government during the immediate post-Maastricht period benefitted from the fact that it held a significant amount of influence in this field due to the strength of the Deutschmark. As Heipertz and Verdun (2010, 26) found in their work on the negotiation of the SGP, the German government had some credibility in the threat to block EMU due to the strength of their fall-back options. Due to their influence in these negotiations, they 'could have at least have insisted on certain countries not participating in Stage III right from the outset' (2010, 26). Yet, the credibility of such a threat was and continues to be undermined by the German government's commitment to the Euro. While a strong economic position allows significant leverage over negotiations, this occurs within the realms of wanting to see such a project succeed.

The French government has similarly had an important role due to its economic size. Due to the historic importance of the Franco-German relationship within the EU as a basis for further integration, for such a project to succeed it required the French government to be part of it. While the Italian economy has historically been similarly large, persistent problems with public debts have undermined its negotiation position in relation to the Euro (Heipertz and Verdun, 2010, 27). Similarly, while the Euro-outs had some strong bargaining power surrounding the creation of the Eurogroup, once this was launched their ability to affect its structure waned. Thus, the politics of the Eurozone is most commonly portrayed as being a compromise between

the French-led countries favouring a stronger more interventionist Eurozone and the German-led position of maintaining strong budgetary rules and an independent central bank.

The suspension of the SGP demonstrates how distributive costs have been important in affecting Eurozone structures. In 2002, there were both plans to initiate early warning procedures against Portugal and Germany, with these states being joined in opposition to such a procedure by the British and Luxembourgish governments (Agence Europe, 2002/02/11). Within a few months, Italy and France had breached the SGP's 3% deficit rule (Leblond, 2006). Notably, both the French and German governments were facing elections that year, disincentivising them from either reducing spending or raising taxation. Furthermore, moves by the Commission to re-interpret and strengthen SGP, the key mode of budgetary coordination, had met opposition from the Dutch, Greek, Austrian, and Spanish governments (Agence Europe, 2002/04/14).

Thus, despite the recommendation from of the Commission that France Germany take stronger measures to rectify their deficits in November 2003, ECOFIN instead eventually suspended the EDP for France and Germany (Heipertz and Verdun, 2004; Leblond 2006, 972). Importantly, to pass such a procedure against these Member States required a Qualified Majority, something which was undermined by the combined voting weight of these Member States. Following the episode, the Draft Constitutional Treaty's proposal that the Commission's recommendation being increased to a proposal, reducing the ability of the Member States to oppose such an idea, was opposed (Heipertz and Verdun, 2010, 159). Yet, while the combined voting weight of both the French and German government was enough to prevent these changes, their proposals for reforming the SGP were limited by the requirement for unanimity combined with opposition to such a dilution by the Dutch government (Financial Times, 2005/01/16; Financial Times, 2005/01/17; Heipertz and Verdun, 2010, 172-173).

Importantly, such reforms ran against the functional logic of having such rules, as uncontrolled budgets were recognised by all parties during the negotiation of the SGP as something undesirable. Yet, as Heipertz and Verdun summarised, 'peer pressure is insufficient to counter strong, domestically motivated preferences of national governments in case of conflict' (2010, 126). This continuing commitment to the idea of balanced budgets continued through the reform episode of the SGP, yet with the Member States gaining a greater degree of discretion within them. The ability of the larger Member States, however, to alter the SGP's rules was limited by the high institutional bargaining power of the smaller Member States, such as the



Dutch government. Thus, larger Member States with stronger voting power were able to suspend the SGP but lacked the power to substantially revise these rules due to the higher threshold required during the renegotiation.

This case is interesting due to it being one of the few cases of a measure granting individual Member States greater control over a policy area. The timing of this change clearly links to distributive concerns on the parts of the Member States experiencing budgetary problems. Yet, the scope and form of the eventual changes were limited both by a continuing commitment to the notion for such rules, and the presence of Member States supportive of the *status quo ante* with substantial institutional bargaining power. Such changes were, however, able to be pushed through due to the Dutch government lacking partners who sought to avoid ‘being in opposition to the Franco-German position’ (Heipertz and Verdun, 2010, 165).

Similarly, to this day there continues design problems which were recognised at the outset of its implementation (Friedman, 1997). As De Grauwe (2010) has highlighted, serious divergences have occurred due to a lack of close political co-operation in the Eurozone, relating to wage competitiveness and a lack of centralised system of taxation and redistribution during times of economic crisis. As will be highlighted, the Eurozone’s debt problems following the financial crisis have only been addressed in part by changes to Eurozone governance. What the main effects of the debt crises for the Eurozone have reflected is a strengthening of the Eurozone’s preventative and corrective arms, reflecting the strong bargaining power of creditor states in the Euro-crisis. Notably, these Member States held the strongest fall-back options, suggesting that the response to the financial crisis was likely to reflect their preferences most strongly (Genschel and Jachtenfuchs, 2018).

#### 7.7.2 Preference Change and Communitarisation

Of course, as this chapter has highlighted, both the Eurogroup and the Euro’s fiscal rules have shown degrees of communitarisation. The Eurogroup has developed beyond the initial expectations of both the Euro-ins and outs. Similarly, the financial crisis similarly caused changes in policy which went far beyond the intentions of the Maastricht Treaty. What lays behind these changes in preference?

In the case of the Eurogroup’s formalisation into the treaties and strengthening, the conflict between Member States was somewhat different. In this case, conflict had emerged between the Euro-ins and Euro-outs. On the line for the Euro-ins was their ability to continue to influence Eurozone-specific policies. In the early years, the Eurozone represented 11, later 12,

of the 15 Member States of the EU, giving them a *de facto* qualified majority in ECOFIN. Under the pre-Nice voting weights, the Eurozone represented 65 of the 87 weighted votes pre-Greek adoption of the Euro and 70 post adoption, with 63 needed for a vote to pass. However, with the anticipated accession of 10 new Member States, this decision-making authority was under threat and thus their control over the single currency potentially limited (European Voice, 2003/05/27). While the Eurozone controlled 81% of the qualified votes in the EU-15, in the EU-25 this was reduced to 58% of the weighted votes.

In 2003, these concerns formed part of the argument to formalise the Eurogroup's status into the treaties (European Voice, 2003/05/27), namely allowing Eurozone-specific proposals to be voted on solely by Eurozone Members (European Convention, 2003b, Section 4, Article III-194.2). Yet, this proposal met opposition primarily from the British government who, consistent with previous concerns, feared exclusion from important European economic decisions (King, 2003/05/25). In addition, several Eurozone Member States sought to limit the effect that such a formalisation might have on the confidential nature of the group (European Convention, 2003, CONV 850/03).

The result of these negotiations was that the Eurogroup was formalised into the treaties, giving it legal status, but without its internal procedures and structures being formalised. Primarily due to opposition from the UK, the draft constitution 'stopped short of being a formal Eurozone Council' (European Voice, 2003/05/27). The scope and form of these changes thus reflected the changing demands being placed on the Eurogroup's status as a result of the changing balance of power in the Eurozone. While there was a continuing demand for confidential and informal internal structures, these required protection against the threat of being outvoted, thus there was an increased demand for formalisation. Yet, within the convention these guarantees were limited by Member States who had historically feared being side-lined within ECOFIN, thus the scope of this formalisation reflected a legalisation of the *status quo* rather than any expanded mandate or procedures. Thus, the Convention reflected the continuing ability of Euro-outs to limit the degree of communitarisation associated with the Eurogroup. This has not, however, prevented informal institutional change within the Eurogroup and its establishment within new networks of policy-making, such as within the European Semester.

One important factor is that all Member State preferences in structuring the Euro are mediated by the necessity of making the Euro work (Schimmelfennig, 2014, 328). Once the Member States of the Euro area have established the currency and utilise it, the costs of failure in

managing the common currency increase dramatically compared to before its establishment. Thus, the embeddedness of the preference for sustaining the Eurozone and the costs of breaking up the Eurozone affects the equilibrium response to crises which put the existence of the currency in doubt (for example, see Marsh, 2013, 64-65). As a result, the fall-back options of creditor Member States after the establishment of the Euro in 1999 are dramatically reduced when compared to negotiations over the SGP. As a result, serious preference change is expected in times where a lack of reform puts the continued existence of the Eurozone in doubt.

This is reflected in the response to the debt crises in the early 2010s. The debt crisis itself created large potential costs of communitarisation, as fiscal transfers would create scope for transfers of money between states and even a possible reduction of potential costs of failure in future (De Grauwe, 2012, 15). Creditor states were therefore reluctant to create new structures which would incur large costs (Featherstone, 2011; Armingeon and Cranmer, 2018). Yet, the creation of the EFSF reflects the fact that markets had seen the Euro before its implementation as unsustainable, with the level of support gradually increasing as the stability of the Eurozone demanded (Gocaj and Meunier, 2013, 243-244; Schimmelfennig, 2014, 330). As Gocaj and Meunier (2013, 244) noted in relation to the German government's bargaining position; 'Germany's bargaining power was limited by the exposure of its banks and the understanding that both Chancellor Merkel and the German economy would be damaged by a Greek default'.

Yet, as highlighted by hypothesis three, the scope and form of communitarisation is affected by the preference constellation of the Member States. While the financial crisis and debt crisis affected these preferences, those preferences for short-term and long-term cost reduction continued. The preferences of debtor Member States during the debt crisis was for either greater systems of transfers of funds or a pooling of debt through new supranational mechanisms (Genschel and Jachtenfuchs, 2018, 187). Yet, a central Eurozone budget and Eurobonds were both dismissed during negotiations. For creditor governments, Eurobonds would have signalled increase borrowing costs and thus higher expenditures (Pisani-Ferry, 2012, 13). Similarly, as the amendment of such structures required unanimity, those preferences closer to the *status quo ante* were in an advantage, reducing the likelihood that such forms of communitarisation would occur (Tseblis, 2015, 12-14). Thus, necessity has been the mother of integration in the Euro's fiscal rulebook.

## **7.8 Conclusions**

Despite being the case with the most recent history of those considered, the Eurozone has seen a notable degree of communitarisation over its short history. The Eurogroup has evolved far beyond its role as a two-hour informal meeting before ECOFIN, into a body with its own bureaucracy, place in the Treaties, and formal role within processes of European governance. Similarly, the fiscal rules associated with the Euro area have seen a notable degree of communitarisation in relation to indebted Member States, particularly since the 2008 Financial Crisis.

This chapter's analysis has highlighted that several factors have been behind this communitarisation. The functional account has highlighted that the Eurogroup's initial intergovernmental structures were insufficient to effectively manage what would become the group's agenda. Accounts outlining these reforms from the time notably made references to improving the Eurogroup's effectiveness, thus showing that there were functional concerns at play during its communitarisation. Similarly, the increased pressure upon the Eurozone and Eurogroup during the financial crisis both highlighted areas of ineffectiveness in the systems' governance structures, granting clear ground and rationale for communitarisation. This has been most notable in relation to the strengthening and increasing automaticity of fiscal rules, acting to increase the costs of non-compliance, a key functional benefit of increasing the degree of communitarisation in a forum.

This chapter has, however, highlighted that the distributive approach goes much further in explaining the scope, timing, and form of communitarisation. What has been notable about the SGP is that it has both been heavily attached to key Member State preferences and that its change over time has reflected these preferences over wider calls for political union underpinning the common currency. The suspension of the SGP in 2003-4 is not adequately explained by functional approaches, just as the form of communitarisation during the debt crisis is not adequately explained by simply the demand for efficiency. Instead, Member State preferences and bargaining power, mediated by the sheer cost of the failure of the Eurozone, have been key in determining the scope, form, and timing of communitarisation in this case. Similarly, the Eurogroup's formalisation has been in no small part dependent on the changing politics of the EU during the time of enlargement. The timing of these changes and concerns raised by Member States during this period of reform highlight the worries that a Eurozone constituting just under half of the EU's Member States had in pushing forward the body's formalisation.

## CHAPTER EIGHT

### **Conclusions: The Past, Present, and Future of Intergovernmental Governance in Europe**

#### **8.1 Introduction**

This thesis has contended with the trend across time for the Member States of the EU to move the mode of governance from one reflecting the properties of the intergovernmental method to more communitarised systems emphasising collective decision-making, compromise, and the ‘upgrading of common interests’ (Haas, 1964). In doing so, the objective has been to develop a framework for future academic debate surrounding the patterns and processes of integration found in areas of core state powers. This has been carried out by firstly providing a conceptual basis for this change in governance, by identifying the key properties signalling this change over time and situating these changes within an open-ended process labelled communitarisation. In doing so, it provided ground to compare different cases of intergovernmental policy-making in the EU, demonstrate the extent and patterns of communitarisation over time, and explain generalised reasons behind this process. In addition, it offered a means of overcoming debates over what specific practices constitute intergovernmental co-operation, instead focusing upon the factors which have encouraged the EU to move beyond the intergovernmental policy-making of the 1970s and 80s, but to also not strictly adopt the Ordinary Legislative Procedure.

To provide an analysis of this concept, the thesis has traced the development of four typical but varying cases of communitarisation in the EU; foreign policy, internal security, defence policy, and fiscal policy. The thesis has argued that underpinning the communitarisation of these cases has been a mixture of functional concerns surrounding the efficiency of intergovernmental policy-making and an intensification of the degree of interdependence in Europe in each case. It has further argued that the timing, scope, and form of communitarisation over time has reflected the changing distribution of bargaining power and preferences of the EU’s Member States over time.

This concluding chapter will outline the main findings and theoretical contributions of the thesis and their significance for our understanding of EU policy-making. It will begin by highlighting the findings in relation to the extent of communitarisation in the EU. Following this, the chapter will highlight the the factors which have driven forward communitarisation in

each of the four areas considered by the thesis. Lastly, the chapter will discuss the limitations of this thesis' perspective, the areas available for future research, and some considerations surrounding communitarisation and current developments in the European Union.

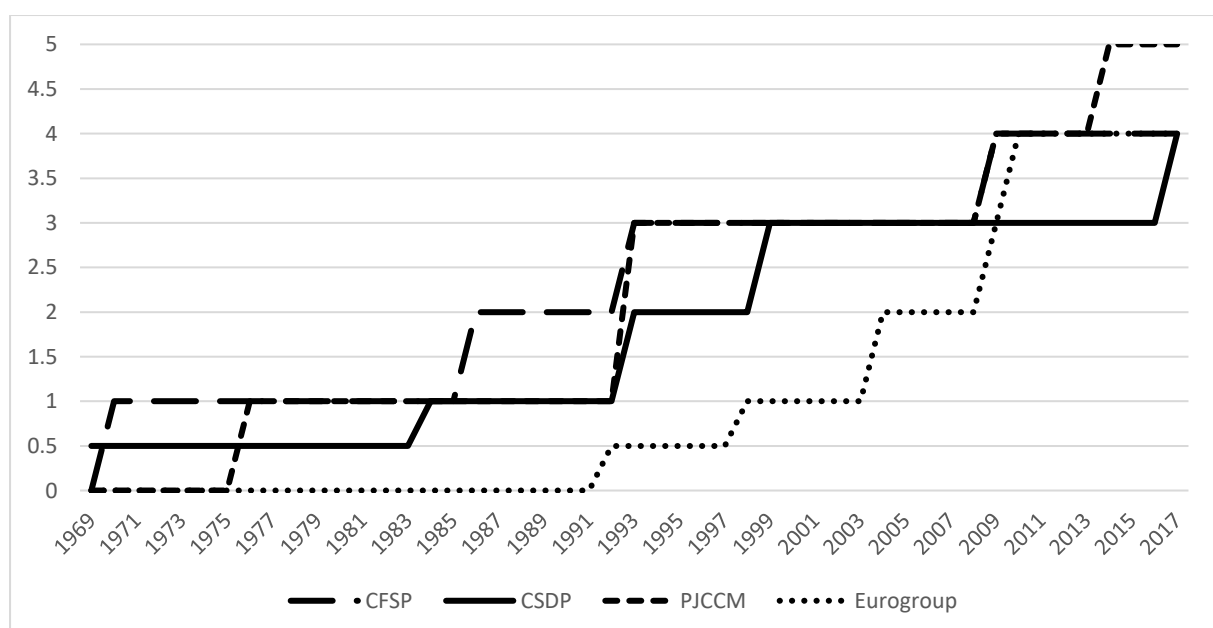
## 8.2 Communitarisation in the EU Over Time

Across each of the cases considered in this thesis, *there has been an observable increase in the degrees of formalisation, delegation, and the use of majority voting in core state powers.* Although the extent of communitarisation varies across each, the thesis has demonstrated a trend away from pure intergovernmental co-ordination and towards processes which increasingly emphasise co-operation between states. This change is observable across all three aspects of the dependent variable. This demonstrates that there is indeed a general movement found across cases, with there being some key trends between them.

### 8.2.1 The Formalisation and Legalisation of Intergovernmental Policy-Making

The first element of the dependent variable has been the process of formalisation and legalisation. Formalisation has referred to the gradual agreement upon common meaning of institutions and their codification over time. Legalisation has referred to the increasing degree to which these have been subject to increasing procedures for overseeing adherence to common agreements and enforcing sanctions in cases of non-compliance.

Figure 8.1: Formalisation of Core State Powers in the EU, 1969-2017.



All four cases considered in this thesis have shown strong degrees of formalisation, with some cases showing mechanisms for enforcement (fig 8.1). During the 1970s and 80s, all cases existed outside of the EU's treaties with their internal practices being subject to varying degrees of codification during this time, with EPC becoming formally associated as part of the SEA in 1986. While this period is limited in the scope of legalisation, several important developments have occurred in all cases during this formative period.

One element of this is the delineation of common strategies and approaches in each area. In all cases, the Member States have created a corpus of documents which act as a reference point when conducting co-ordination between departments. In the cases of defence and fiscal policy, key documents include the Platform of Security Interests in the WEU, the Petersberg Declaration after the Cold war, and the SGP and BEPGs in the Eurozone. More widely, however, the collected agreements of these areas can be considered cumulative, as Member States gradually build common understandings on which co-ordination between national departments can function. This is visible in Trevi's *acquis* and EPC's *recueil*.

A second is the creation of formalised codes of practice of co-ordinating between national departments. Clearest amongst these have been the Eurogroup Working Methods document in fiscal policy and *coutumier* in EPC, each clearly stating the functions, roles, and procedures which have developed in each of these bodies. These documents have been important, in part, due to the limitations of the initial intergovernmental agreements establishing these bodies. Furthermore, many have laid the basis of the systems eventually laid out in the treaties of the EU. They, therefore, reflect the development of new informal norms in each of these bodies which are later codified, clarifying these key processes and expectations to all constituent actors.

The Maastricht Treaty was a key event for most cases as it represented the incorporation of these structures into the Treaties of the EU. This represented a further codification and clarification of modes of governance in both foreign policy and internal security through the creation of the second and third pillars of the EU, alongside the creation of new roles and procedures in each of these cases. Both the Eurogroup and defence policy were incorporated into the EU's treaties at later stages, but similarly reflected this strong degree of formalisation found at these times.

Since Maastricht, each area of policy has found its own way to deal with issues of legalisation and maintaining credible commitments. Both PESCO and the Eurozone have developed means

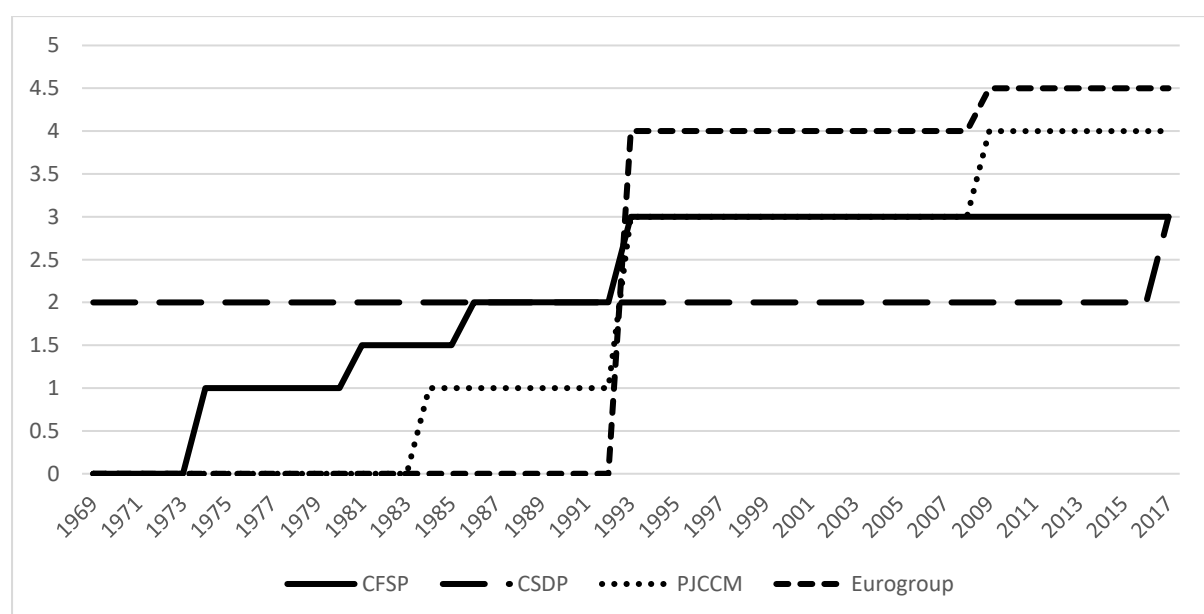
of utilising supranational agencies as supervisors of adherence to common rules, with the Council having power over the imposition of sanctions in cases of non-compliance. Notably, since the Eurozone's debt crises, individual Member States have become less able to prevent the imposition of sanctions. In JHA, communitarisation has progressed much further, with the ECJ now having a clear role in the former third pillar of the EU since 2014. The case of foreign policy has been the least fitting in this regard, with the Lisbon Treaty only further formalising the commitment to the pursuit and following of common EU policies and the ECJ gaining only limited powers over questions relating to natural or legal persons.

### 8.2.2 Delegation and Intergovernmental Policy-Making

Similar to formalisation, this thesis has found a notable degree of delegation occurring in all cases (fig. 8.2). What has been notable is that all cases demonstrate some initial reluctance to include supranational agencies in their policy processes with this norm eventually being overturned. This trend was weakest in fiscal policy, as the Commission has historically had a large role in the rules of EMU, yet notably occurred as the initial rule to only invite the Commission and ECB 'when necessary' has since informally been over-turned as both bodies have gained formal roles in the proceedings of Eurogroup meetings. Notably, these roles have developed in addition to responsibilities surrounding the monitoring of compliance.

Supranational agencies have developed themselves a number of particular roles within each body. One central early role they have developed has been administrative, in terms of aiding in

*Figure 8.2: Delegation in Core State Powers in the EU, 1969-2017.*





the co-ordination of working groups and the carrying out of the presidency, often initially informally before taking on this responsibility in a formal manner. These tasks have frequently been aided through the Commission, which has provided help to the processes of EPC and Trevi. More importantly, despite common reluctances to see such bodies established, all bodies with the exception of Trevi established or inherited some form of secretarial system to similarly aid in the carrying out of duties associated with the rotating Presidency.

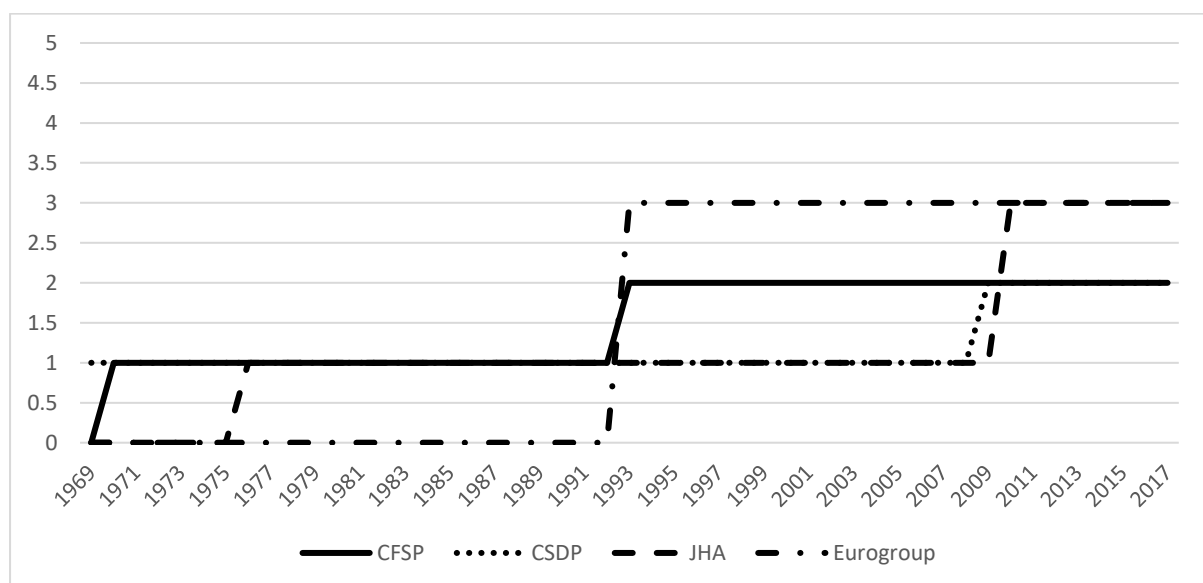
A second role supranational agencies have developed relates to the provision of expertise to Member State representatives. In the Eurogroup, for example, the Commission has found itself a codified role in providing forecasts and assessments of Eurogroup discussions. Similarly, the Commission has found itself having an informal role in relation to the carrying out of military missions in relation to the CFSP (Riddervold, 2016), with *de novo* agencies such as the EDA and EEAS being established to aid in the provision of information in these fields.

What has, however, been most controversial has been the extension of the right of initiative to supranational agencies in core state powers. Although the joint right of initiative was granted to the Commission in internal security and foreign affairs, the evidence considered in this thesis showed that this left the Commission unable to alter policy-making in favour of co-operation over Member State led co-ordination, as it left Commission proposals open to pre-emption. In the field of foreign policy and in PESCO, the High Representative remains quite weak in relation to being able to submit policy in these, being able in PESCO to only submit recommendations. In the Eurozone, the Commission's right to propose sanctions has grown after the financial crisis as Member States have become less able to oppose its recommendations. Lastly, in PJCCM, the Commission's joint initiative has grown in relation to the Member States, with a quorum of four Member States now being required to propose legislation. This has had a marked effect on the distribution of power in this area, with the Commission now proposing the vast majority of legislation in this field.

### 8.2.3 Voting Rules and Intergovernmental Policy-Making

The last important form of communitarisation observed by this thesis has been the movement away from strict unanimity in cases of core state powers (fig. 8.3). Formally, many new procedures have come into effect in various cases, such as the Constructive Abstention procedure in the CFSP. Yet, in the areas of defence and foreign policy, unanimity remains the rule rather than the exception, with the Constructive Abstention procedure rarely being used in practice. PESCO itself, notably, retains the unanimity principle for the initiation of projects,

Figure 8.3: Voting Rules in Core State Powers in the European Union, 1969-2017.



reserving QMV for the admission of new Member States and the imposition of sanctions on non-compliant Member States.

The highest degree of communitarisation with respect to voting rules has come from the field of PJCCM, where QMV now is the constitutional norm rather than the exception. Furthermore, Chapter 5 found evidence of Member States choosing to vote against common proposals rather than all decisions being reached only when consensus has been reached, signifying a movement beyond the culture of unanimity in this policy area.

Similarly, in the field of Eurozone governance, the picture has been mixed in part due to the complexity of policy-making in this field. As a codified rule, consensus remains the mode of decision-making in the Eurogroup. This does, however, carry the obvious exception of the Eurozone crisis when the Greek government was excluded from decisions relating to its bailout in 2015. Similarly, in relation to certain procedures such as the SGP, the episode from 2003 relating to the suspension of the SGP signifies that there are instances where the provided QMV procedures have been utilised. The effect of this, however, was to undermine common rules in pursuit of Member State interests rather than the promotion of common procedures.

This picture is similarly muddled by the fact that in the wider EU, consensus remains a preferred way of making policy. As Lewis (2003, 1006-1009), consensus is the informal rule in decision-making in the Council in areas of supranational governance, with Lewis arguing that ‘this consensus ‘reflex’ exists independent of the formal decision rule..., although the reintroduction of QMV in the late 1980s has created a palpable ‘shadow of the vote’ in

compromise negotiations where the formal provision of QMV applies' (2003, 1007). It would therefore be wrong to overstate the intergovernmental dimension of consensus in both JHA and EMU when comparing the degree of communitarisation to the level of integration in areas of market integration. Formal procedures coming into existence in the CFSP and the use of QMV in both JHA and EMU signal a notable movement away from, or at least an intention to move away from, strict unanimity.

#### 8.2.4 The Effect of Communitarisation on EU Policy-Making

As highlighted in chapters 2 and 3, what is important about communitarisation is not the institutional practices which have emerged over time but what these practices represent in terms of emphasising community policies and the co-operation of common structures (Weiler, 1982, 270-272). To revisit this principle change, communitarised systems should emphasise collective decision-making, compromise, and the 'upgrading of common interests' (Haas, 1964) over the simple co-ordination of individual Member State policies.

When judging the effect of communitarisation, it must be remembered that the Member States continue to play a strong role in the realm of supranational governance. Both the European Council and Council of Ministers have an influential formal role over in the policy-process, with the European Council particularly exercising influence over the direction of integration in the EU. Similarly, the Council retains powers over appointing the Commission, with the appointment of Commission President von der Leyen highlighting the continuing discretion of the Council in carrying out this task. In addition, work such as that of Kleine (2014) has highlighted the strong role of informal conventions that underpin the power of the Member States in the EU, showing that it would be wrong to characterise the supranational method as one in which the Member States lack the ability to call the shots, but rather one in which they make decisions reflecting the community interest rather than those of the individual state (Weiler, 1982, 272).

What is important about Communitarisation is the way in which power is exercised by the Member States. The three elements of communitarisation reflect the way in which these practices have altered over time, thus it is worthwhile considering what this means for communitarisation in Europe today.

As highlighted, intergovernmental policy-making in the present era is underpinned by a strong degree of formalisation and a limited degree of legalisation. In terms of formalisation, it represents that the Member States have developed complex machinery which guide their day-

to-day practices and move beyond a system of Member State summits. Some of the earliest common developments in these fields has been to institutionalise systems of coordination through the appointment of liaison officers or systems for consulting at the beginning of crises, thus developing means for creating shared understandings in the policy process. Notably too, what has been formalised has gone beyond simply the coordination of national policies. In the CFSP, for example, the creation of the 'joint action' and its development into EU missions represents a growth in the expectations and scope of collective policies in these fields. PESCO similarly represents a commitment towards joint projects, with the Member States creating systems to increase the costs of non-compliance. This has been strongest in the field of internal security, where there is less scope for Member States to informally opt-out of policies and where there are new shared resources, such as the Schengen Information System and the European Arrest Warrant.

The delegation of power to supranational agencies similarly reflects an erosion of strict intergovernmental co-ordination. In areas where such agencies have gained the right of initiation, this has given them an ability to aid in the formulation of policies which go beyond individual Member State interests. As observed in the area of internal security, however, the joint right of initiative alone is insufficient to represent a shift towards communitarisation on its own as supranational agencies are constrained under such a system. Similarly, the inclusion of supranational agencies has aided the co-ordination of community structures in foreign policy and internal security, helping to create a much more coherent sense of EU policy.

Lastly, voting procedures in core state powers has been one means of Member States retaining control over the policy process. Unanimity remains present in the fields of foreign policy and defence policy. The inclusion of the constructive abstention, although a potential step forward, has failed to allow a move away from unanimity in practice as it has rarely been deployed. Conversely, although the move to QMV in internal security came with an 'emergency brake', this has not been utilised and has not represented a retaining of the principle of unanimity. Thus, the issue of voting procedures is one way of highlighting that Member States still retain a strong control over fields of core state powers, particularly in the fields of defence and foreign affairs.

As was argued in chapters 2 and 3, one advantage of the concept of communitarisation is the ability to avoid being bogged down in debates over what current intergovernmental practices are constituted by. In general, the findings of the descriptive element of the thesis reflect these

debates, showing that the current system of intergovernmental policy-making is adequately represented by the intergovernmentalism of the 1970s or supranational policy-making (Schout and Wolff, 2012; Bickerton et al., 2014). Practices such as the self-limitation of the Commission, the inclusion of *de novo* intergovernmental bodies, and an emphasis on consultation have all been observed in the case studies presented. However, rather than trying to label this new method and identifying the key reasons for these practices, this thesis has concerned itself with the conditions under which changes towards more communitarised structures start and stop. It has, therefore, implied that communitarisation is likely to continue. Similarly, it has argued that the principle of intergovernmental policy-making over time has been unstable and prone to change both before and after the post-Maastricht era, sitting out of line with the new intergovernmentalist conception of contemporary intergovernmental policy making.

What can be summarised from the above discussion is that there has been a long-term development of systems facilitating the generation of shared approaches, goals, policies, and consensus building. This reflects wider studies into the development of new practices in the Council and intergovernmental method over time (Occhipinti, 2003; Smith, 2004a; Puetter, 2015; Hodson, 2010; Oberloskamp, 2017). It would be wrong to state that there has been a replacement of intergovernmental structures in their entirety, as institutions such as the veto remain in several key areas. There has been, however, a notable degree of communitarisation in all cases, with there being an observable sense of ‘European policy’ in these areas as opposed to simply a co-ordinated set of Member State policies, as was evident in the pre-Maastricht era. Furthermore, what can be gleaned from the process of communitarisation is that the conditions for further communitarisation are likely to exist in the future, meaning that the EU’s intergovernmental method is likely to evolve further in the future.

### **8.3 Why Does Communitarisation Occur?**

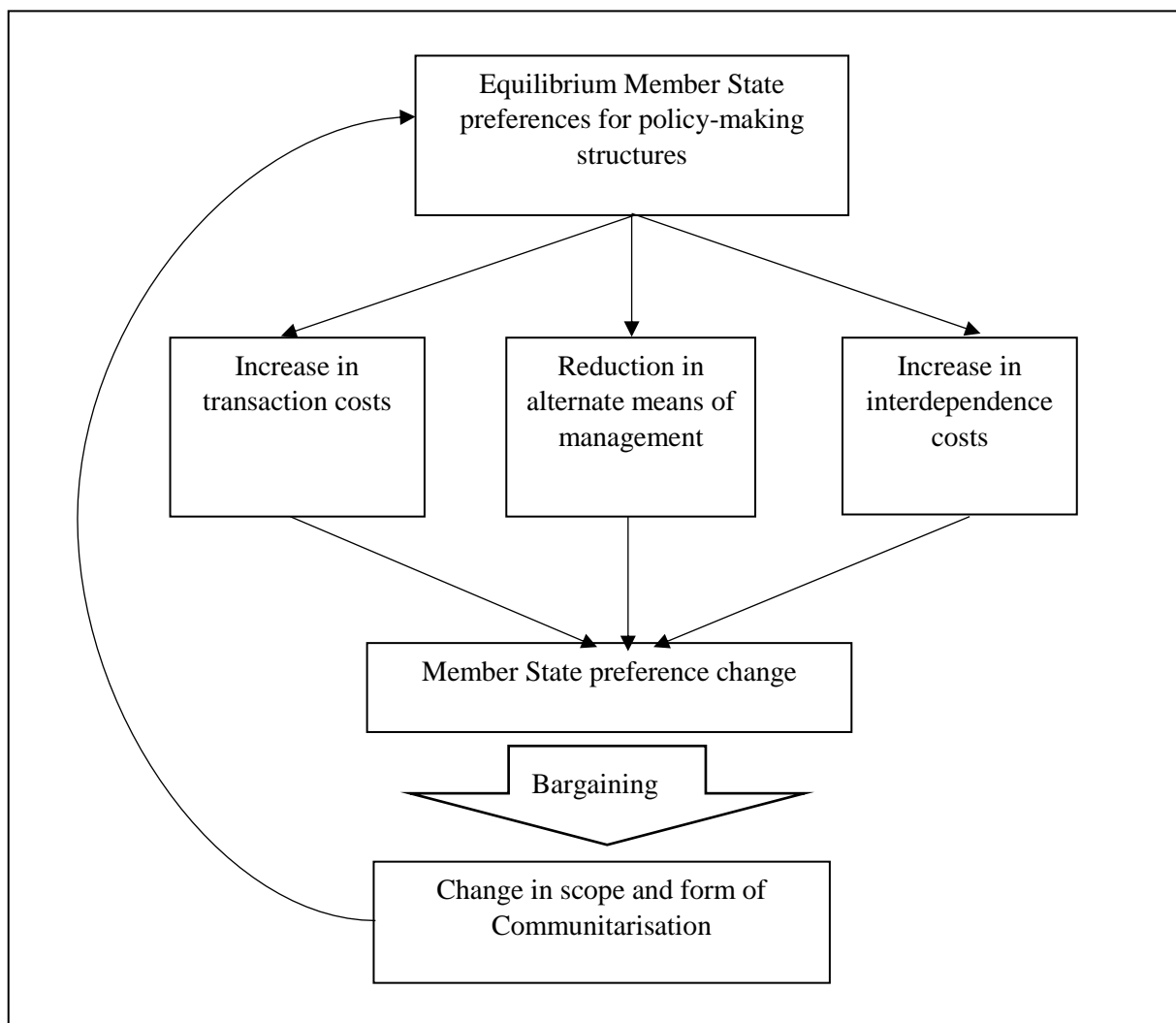
As this thesis has demonstrated that there is a general trend towards more communitarised systems of policy-making in the EU, the following question pertains to why. In presenting the analytical framework, the thesis considered two differing approaches to analysing the EU; the functional and the distributive. The actors the thesis has focused on has been primarily the Member States because these actors are particularly powerful in the intergovernmental method and due to their importance to core state powers (Genschel and Jachtenfuchs, 2014). The functional and distributive perspectives offered two key rationales for why the Member States

would first establish an intergovernmental body then see it communitarised over time; either because of the efficiency costs associated with the intergovernmental method or due to the changing equilibrium between Member State demand for communitarisation and Member State bargaining power.

The thesis has found that both distributive and functional pressures carry an important role in altering the equilibrium of Member State preferences in the EU. However, *distributive concerns were found to better explain the scope and timing of communitarising changes in the EU* (fig. 8.4).

What the thesis has argued is that three particular factors have affected Member State preferences for communitarisation; the costs of policy-making associated with the intergovernmental method, the availability of alternate means of managing costs of interdependence, and the increase of the costs of interdependence versus the Member States'

Figure 8.4: Model of Communitarisation in Core State Powers.



abilities to manage these costs. Due to the requirement for unanimity for institutional change to occur, these changes have primarily been dictated by the Member State with the lowest preferences for communitarisation, either due to lack of demand or the costs of supply of communitarisation. Where the failure to communitarise structures result in higher costs for this Member State versus the predicted costs of the post-communitarisation circumstances, the lowest common denominator is expected to shift and thus a communitarising change to policy-making is likely to occur.

To analyse this in greater detail, four factors will now be considered. Firstly, the underlying rationales for establishing intergovernmental bodies will be considered, as this is important in gauging how preferences change from this initial equilibrium. Following this, each of the three key factors will be considered; increasing transaction costs, availability of alternate means of managing interdependence, and the changing costs of interdependence in these areas.

### 8.3.1 Why Intergovernmental Policy-Making Occurs in Core State Powers

Hypothesis 1 posited that ‘the intergovernmental method is chosen in areas where Member States are likely to face high costs of domestic adjustment and potential supranational capacity building costs’. The empirical chapters demonstrated *that there is a strong degree of explanatory power in this hypothesis compared to strictly functional explanations*. What this hypothesis sought to put forward was the argument that areas of core state powers are more likely than areas of market integration to place costs of capacity building and domestic

*Table 8.5: Key Member State Preferences during the Structuring of Intergovernmental Bodies.*

	Intergovernmental ordination	Co-	Communitarised Structures
EPC (1970)	France, West Germany.		Belgium, Netherlands, Italy.
Trevi (1976)	France, United Kingdom.		West Germany.
WEU (1984)	United Kingdom, Netherlands, Germany.	Kingdom, France,	Belgium.
Eurogroup (1997)	Germany, Netherlands, Euro- outs.		France, Italy.

adjustment on the Member States (Genschel and Jachtenfuchs, 2014).

Each case has demonstrated that for an intergovernmental body to come into existence, all Member States must have some degree of interdependence in this field. The exception to this was the WEU, where Member States unwilling to integrate defence further were granted an opt-out. Of the group that chooses to proceed with co-ordination, some Member States are likely to tend towards intergovernmentalism as a reference due to the high potential costs in terms of capacity building associated with core state powers and the potential effect on domestic legislation, priorities, and budgets. As a result, if there are Member States that anticipate a high degree of cost versus the benefits of co-operation, then the structures of policy-making are likely to be intergovernmental. This is important as the establishment of any intergovernmental body must be achieved through unanimity between the Member States.

Looking at the negotiations over the establishment of intergovernmental bodies in the EU, there is a clear disparity between Member States which supported intergovernmental structures versus those which supported more communitarised forms of co-ordination. Table 8.5 represents a stylised account of how Member States relate to three different perspectives on co-operation in core state powers, dividing Member States into groups preferring co-ordination or structures reflecting higher degrees of communitarisation. Although this represents a simplification of the varying preferences between Member States at each negotiation, what it does show is a number of common features between Member States in each category.

In each case, there was a sufficient increase or maintenance of demand across Member States for co-operation. The reasons for this reflect the model in figure 8.4. Firstly, each case saw an increase in the degree of transnational interdependence on these issues, as terrorism became increasingly cross border in the 1970s, as the single currency created a necessity for co-ordination due to the shared potential effects of national fiscal policies, as the Soviet Union continued to represent a potential military threat to Western Europe, and as European states sought greater influence during the Cold War. It cannot be forgotten that the creation of an intergovernmental forum requires an initial degree of demand, otherwise the potential costs of co-operation would not be risked at all.

On the demand side, accounts of the preferences of Member States opting for more intergovernmental structures normally showed a *concern about the effect of communitarisation on existing national policies and institutions*. In the case of France in Trevi, the UK and Germany relating to the Eurogroup, or the Netherlands in the WEU, communitarised structures



represented a threat to existing national policies in these fields which would require costly adjustments. In the WEU, for the Netherlands and the UK, a revitalised and communitarised WEU symbolised a potential threat to NATO and thus a large part of their national defence policies (Duke, 1996, 170). For France in Trevi, the new forum represented a costly undermining of the Paris-based Interpol. Similarly, for the German government, a political Eurogroup represented a threat to the independence of the ECB and, therefore, decades of relative currency stability and fiscal culture. The Eurogroup similarly reflected the possibility of Euro-outs being frozen out of important policies, thus limiting British preferences for the Eurogroup existing at all. These factors represented *high potential adjustment costs for these Member States*, therefore a preference for limiting co-ordination, at least in the short term.

Similarly, these high potential costs were partnered with *a lower relative demand for co-ordination* in these areas. Those Member States relying on NATO, for example, had that defence organisation as a credible fall-back position during the negotiations over European defence in the early 1980s. The French government, which had a lower exposure to international terrorism in the 1970s, similarly had a lower degree of demand for co-operation in police and justice relative to the potential costs in this field. Similarly, the credibility of the Deutschmark during the SGP negotiations maintained granted the German government the veiled threat of withdrawal (Heipertz and Verdun, 2010, 26).

These intergovernmentalist Member States feature most highly in accounts of negotiations over these intergovernmental forums because they held the most bargaining power. It was thus these Member States that had the greatest ability to dictate the scope and form of co-ordination in these forums. This was aided by their institutional bargaining power; the power of the veto in a situation requiring unanimity for co-operation to begin. More maximalist Member States which had a greater exposure to international issues relative to their capacity to manage them independently, such as the West German government in the Trevi negotiations, could therefore accept intergovernmental structures as a means of getting the ball rolling in the hope that future integration could occur.

Although this bargaining approach gives a strong explanation of the scope and form of the initial agreement, it must be noted that the functional perspective gave some insight in the short-term advantages of intergovernmental structures. In the negotiations over both EPC and the Eurogroup, there was clear evidence to show that a system of limited informal co-ordination required less immediate conflict over what the policy-making process should look like. For

EPC, this followed almost two decades of failure to create a forum in which to co-ordinate foreign and defence policies, with EPC avoiding many of the ‘theological’ differences between the Member States (Allen and Wallace, 1981, 30). Similarly, the Eurogroup negotiations between the Euro-ins was recorded as occurring in a way that sought to avoid re-opening the debates of the SGP (Puetter, 2006, 59). Thus, while hypothesis one explains the broad trend of why intergovernmental co-ordination is so common in core state powers, the functionalist perspective highlights its efficiency in providing an efficient short-term solution which avoids the institutional conflict associated with highly formal treaties (see; Abbot and Snidal, 2000). As such, the functional approach is complimentary insofar as it represents a lowest common denominator and uncostly outcome in the contest of heterogeneous demands for governance structures in this field.

### 8.3.2 Preference Change and Communitarisation

The underlying argument of the bargaining model of communitarisation is that changes in the preferences of the lowest common denominator Member States are what facilitates communitarising institutional change. Communitarisation reflects a form of equilibrium between bargaining power, the demand, and the potential costs of supplying institutional changes in core state powers. As the model presented in figure 8.4 reflects, there are three key variables that have been most important in the four cases considered; the ability of existing structures to cope with the volume and complexity of work handled by intergovernmental forums, alterations in the ability of Member States to handle issues unilaterally or through alternate means (reducing supply of fallback options), and increases in the costs or potential costs of interdependence in these areas (increasing demand for political integration).

#### 8.3.2.1 Efficiency Concerns and Transaction Costs

Hypothesis two of the thesis postulated that as the volume and complexity of transactions increase, so too does the demand for communitarisation. Evidence from each case did show that *functional considerations were important for increasing the demand for communitarisation in core state powers, although this alone was not enough to result in institutional change*. As each case highlighted, the functional concerns underpinning each case varied according to specific problems.

One of these was the contracting costs experienced in each area of core state powers. The initial informal structures were sufficient in managing each group’s workload in the initial years of each body, but as these bodies increased in terms of the volume of agreements being reached

and the scope of their policy remit, so too did the demand for new policy-making practices. It is worth highlighting that it was common for these bodies not just to increase in the volume of work being considered, but that these bodies frequently took on new areas of work as new areas would arise. Trevi is the clearest example of this, taking on issues of drug smuggling and migration into its remit thus broadening the scope of its responsibilities.

In EPC and the Eurogroup, formalising the policy process aided the Presidency in managing and comprehending the increasingly complex policy-processes of their bodies. Similarly, in both of these cases as well as the Eurogroup, expanding the degree of supranational support to the Presidency was a means of providing coherence between the various working groups of each body. In Trevi, this was achieved during the pre-Maastricht era through the use of a 'piatnika' system of presidencies, with the post-Maastricht third pillar making use of the Commission in aiding coherence. In addition, particularly in the former third pillar, unanimity was seen as a key problem in the policy process during the negotiations over the Amsterdam Treaty. The experience of legislative deadlock due to unanimity, similarly, has been a source of criticism in various areas of core state powers.

As the quantity of agreements and complexity of the policy-process increased, so too did the strain on the Presidencies of these bodies. EPC showed clear accounts of 'bureaucratic overload', with records from Trevi and the Eurogroup showing a similar demand for support of the rotating presidency. Similarly, due to connections between the Single Market, trade policy and elements of security and foreign policy, the maintenance of a strict divide between intergovernmental structures and the EC became increasingly costly to maintain and manage during the 1980s. For the Eurogroup and EPC, the inclusion of a secretariat and use of the Commission, although initially ruled out, was an important means of increasing the ability of administrative structures to manage the policy-process. The WEU differs in this regard due to the inheritance of a previous bureaucratic system, with the body having its own secretariat and Secretary General in advance of its use as an EU defence forum. As well as through delegation, association and incorporation of these bodies allowed for greater consistency between community and intergovernmental policies.

One advantage of intergovernmental method was the ability to reduce potential costs in areas where there is a high degree of uncertainty about the direction of travel in this field (Abbott and Snidal, 2004). A fall in this demand was evident in the Irish government's approach to the WEU, as it developed its Petersberg Tasks, formalised its role, and facilitated the Irish

government's involvement through associate membership during the 1990s. Thus, with the formalisation of tasks and the increasing provision of information to minimalist members, a greater degree of communitarisation in the future through the WEU's incorporation was opened up.

Lastly, the intergovernmental method has proven poor at providing for credible commitments due to the low costs on non-compliance in these areas. While advantageous at the outset in terms of avoiding potential future costs, this has been a difficulty where Member States have sought to build common capacities and manage them collectively, such as with military missions or budgetary rules. These costs have been recorded in both the CSDP and CFSP, with the concern about the uniform compliance of internal security measures being cited at the Amsterdam Treaty and in relation to the Hague Programme's implementation in the field of internal security.

One important finding has been that functional pressures alone have not been enough to result in communitarisation. This has been a common thread throughout the thesis, as it has acted to confirm the importance of Member State bargaining as a determinant of the scope, form, and timing of communitarisation. From the delays to the introduction of a secretariat in EPC to the failure of the Eurogroup to enforce its budgetary rules in the early 2000s, inefficiencies have often been recognised without communitarising fixes being enacted by the Member States. Similarly, crises alone are insufficient for explaining the specific timing and scope of institutional change. Many of the formal changes to EPC's structures came after crises and represented more a formalisation of existing procedures rather than a dramatic increase in the scope of communitarisation. For this reason, efficiency concerns can be seen as a factor affecting the demand for communitarisation but not one solely explaining supply. As will be argued, crisis has been important where it has altered the preferences of minimalist Member States, particularly where the costs of failing to communitarise relate to the state's immediate interests in these fields.

#### 8.3.2.2 Communitarisation and Alternatives to European Integration

Hypothesis three put forward the case that 'the timing, scope, and form of communitarisation is determined with the Member State with the highest capacity to manage interdependencies unilaterally or through other means'. This hypothesis was a clear reference to bargaining models of Knight (1993), Moravscik (1998), and Héritier (2010). What is important about this distributive hypothesis is that it has both a supply and demand side in terms of shaping Member

State preferences in relation to communitarisation. The supply side relates to the changing ability of Member States to manage these interdependencies unilaterally or through alternate forums. The demand side relates to the changing nature of interdependence and exposure to particular problems which go beyond the borders of the state. The thesis has found that *there is a strong relationship between the availability of credible alternate means of issue management and the demand for communitarisation.*

For those Member States least likely to support communitarisation, there has been a clear issue throughout all cases surrounding the management problems of interdependence unilaterally. In the context of the post-Suez era, while both the French and British governments retained a strong degree of influence on many matters, both were confronted by the fact that their influence over global events had declined in relation to the new bi-polar Cold War. The British response to this was initially to seek closer relationships with the US, while the French approach was to construct Europe as a 'third power' in relation to both (Howorth, 2005, 40). This has been visible in the cases of preferences during EPC, the construction of the EDC, and also visible in the motivations behind the Eurozone. The French government's attachment to Europe as a means of improving its influence has also been historically related to its relationship with the German government, seeking initially to avoid military conflict and in later years find a means of institutionalising multilateralism as the balance of power in Europe has shifted (Moeckli, 2009, 355; Dyson and Featherstone, 1999). Thus, while both the British and French governments retain a strong identity and ability to manage their affairs unilaterally, this has been notably weaker in the context of the Cold War-era and the post-Cold War era.

The experience of the German government's bargaining power both in relation to the SGP and reform of the Eurozone during the debt crisis similarly reflects the importance of unilateralism. During the SGP, the threat of withdrawal was most credible from the German government, with the German government similarly being strengthened during the Greek Debt Crisis due to its strong financial position following the 2008 Financial Crisis. Yet, the German government has had a strong interest in maintaining the Eurozone, both because of the importance of the Euro in providing for greater political union post-unification and due to the sheer costs of the failure of the Eurozone itself. As such, after the creation of the Euro, there has been a notable cost to wielding the threat of abandoning the Euro. As such, the German government frequently gave ground where the survival of the Euro has required it (Gocaj and Meunier, 2013; Schimmelfennig, 2014).

One important factor affecting the bargaining power of Member States has been in the existence of alternate forums which could provide solutions to issues of interdependence. Nowhere stronger has this been than in the field of defence with NATO. Not only has NATO been an important alternative to many Member States, but it has been so central to some state defence policies that the threat of it being undermined has limited preferences for communitarisation in defence policy. Yet the increasing unreliability and divergence in preferences surrounding the United States and Europe laid the ground for European co-operation through the WEU. The changed defence climate in both the immediate post-Cold War era and during the current era has similarly cause Member States to reassess both the role and reliability of NATO in their defence policies. Similarly, the inability of Interpol to effectively meet the challenges of 1970s terrorism increased the demand for police co-operation between European Member States in the form of Trevi, with the French government being a notable laggard in this regard. As the crises of the 1980s exposed the French government to similar pressures as its partners, so too did the demand for resuscitating Trevi and facilitating greater communitarisation.

What is therefore notable is that the credibility of unilateral action or alternate forums in supplying means of managing interdependence has been important in explaining the timing and scope of communitarisation in each case. It has been critical particularly in the field of defence due to the importance of NATO in this field. Yet it has similarly been important in explaining preferences in relation to Trevi, the Eurozone, and in demonstrating the bargaining power of the French and British governments in the context of EPC and the CFSP.

### 8.3.2.3 Communitarisation and the Growth of Interdependence

The changing ability of Member States to manage affairs unilaterally or through alternate forums has not just occurred due to the changing credibility of these forums or the changing relationships to other powers, but also due to the nature of the issues Member States have increasingly had to deal with. The thesis has found that this has come from a number of sources, particularly *the changing degree of exposure of Member States to interdependence through the internationalisation of issues and the development of the single market.*

What has been notable across all policy areas is that the nature of the problems faced by Member States has changed over time. Some issues have intensified insofar as they have developed an increasingly cross-border nature over time. Trevi is the clearest example of this, as its remit initially stemmed from the growing international dimension of terrorism in the

1970s, crystallised by the attacks at the Munich Olympics in 1972 (Wittendorp, 2016). The growth of drug smuggling and the increased issues with migration in the early 1990s from the former Soviet Bloc similarly altered Member State preferences through these issues being difficult to manage through traditional means. Even in the case of EMU, the inability to influence global financial markets was an important factor for the French government in seeking monetary union on the continent. Lastly, while the US's commitment to NATO has become less credible under Trump, the added issue of the threat from Russia following its 2014 invasion of Ukraine has been important in pushing forward PESCO.

Similarly, some issues have changed in relation to how they can be managed by the Member States. In relation to defence and foreign affairs, the end of the Cold War and outbreak of civil war in former Yugoslavia led Member States to further how to manage extra-territorial issues of defence. The EU has presented itself as a means of strengthening a Member State's desired response to a particular crisis and also as a means for sharing burdens on particular missions, such as with Operation ATALANTA.

Internally, in the cases of the Eurogroup and JHA, enlargement has existed as a motivating factor for communitarisation because of its potential effects on co-operation. For the Eurogroup, the anticipation that the institutional bargaining power of Eurozone Member States would be reduced was a motivating factor for formalising the Eurogroup into the Treaties. Similarly, the inclusion of QMV into the field of JHA in 2004, what was a particularly salient area at that time, was also justified in relation to the possibility that enlargement may reduce the capacity of Member States to manage this problem. Thus, the potential effects of enlargement in allowing Member States to meet their goals is a notable distributive factor.

Lastly, the Single Market has been an important factor in communitarisation in the EU due to the important issue linkages between the former 'Community Pillar' and the intergovernmental realms of the EU. For internal security, freedom of movement and the Schengen Area has been an important factor in increasing demand for laws concerning cross-border 'hot pursuit', information sharing between Member States, and the European Arrest Warrant. In Foreign Policy, there were clear linkages between the foreign policy element of the application of sanctions and the effects that this has on community responsibilities and legal regimes. This was visible in the Falklands War (Martin, 1992) and has continued with the sanctions placed on Rosneft in 2017 (Johansen, 2017). Thus, the integration of the Single Market has had a

degree of ‘spill-over’ into areas of core state powers, affecting the demand for communitarisation, most notably during the era of the Single European Act.

What has been notable about these pressures is that they have often occurred in response to crises. Crises have historically acted to demonstrate the inability of Member States to coordinate their policies in relation to a particular problem and thus affected Member State preferences due to the potential costs of failure. Throughout all cases, crises have spurred Member States to reconsider their preferences, from the relationship between the London Report in EPC and the Soviet Invasion of Afghanistan to the 9/11 attacks and the highlighting of the threat of terrorism in the context of PJCCM. Its effect has been strongest in the Euro crises as the cost of failure in responding to these issues has been the potential undermining of the Euro itself. There were therefore important communitarising changes which occurred directly in relation to this crisis as it developed. Thus, crises have demonstrated the potential costs of failure in co-operating in a policy area. Where the costs of failure have been sufficiently high, there has been sufficient preference change to explain some of the scope and timing of communitarisation in certain cases.

#### 8.3.2.4 Institutional Change in Contemporary Intergovernmental Policy-Making

The analytical element of the thesis has sought to describe and explain the process through which the coordinative principles underpinning the intergovernmental method are eroded and replaced with principles emphasising co-operation and a more communitarian mode of policy-making. As such, its objective has been to identify the conditions which shape the scope, form, and timing of communitarisation when it does proceed. As such, its conception of contemporary intergovernmental policy-making sits out of line with current debates surrounding the development of a new intergovernmentalism, instead arguing that there has been a notable movement away from both the intergovernmentalism of the 1970s and that of the Maastricht Treaty. Similarly, it implies that this process is likely to continue in the future. Indeed, it is an intentional design feature for this framework to provide analytical support to studies of future communitarising institutional changes.

This thesis has not focused strongly on variation between cases because it would have extended the scope of analysis for a thesis which already has a broad nature. It does, however, in its independent variables highlight important differences between cases which may be followed up in future research. One obvious element has been the accessibility of alternative forums and the relationship between European states and the Atlantic Alliance as well as the strong impact



of neutrality. This has been a stronger factor in the fields of foreign policy and defence, although has played a part in the field of internal security in relation to the sharing of intelligence. A second element has been the differing exposures of these areas to the single market. The fields of internal security and fiscal policy have strong connections in this respect, with foreign policy showing a similar but more limited effect in relation to sanctions. Lastly, the field of fiscal policy has been affected strongly by the fact that it exists as a single currency, thus the potential negative externalities are higher in this field compared to others. Negative externalities have, similarly, had an important role with regards to police co-operation in the field of terrorism, where differing national approaches to terrorism in the 1980s could have effects limiting the state's ability to prevent terror and bring terrorists to justice.

What it has, however, demonstrated is the changing context in which intergovernmental coordination in core state powers has occurred. The Member States of the EU have grown increasingly interdependent as a result of the development of the Single Market and as a result of the broader changes of globalisation and regionalisation. Some of these pressures have been more pronounced at specific times, such as during the 1980s with the re-activation of the WEU, during the financial crisis with the Eurozone's fiscal rules, and following 9/11 with respect to internal security. What the thesis has highlighted, however, is that the distribution of the effects of these pressures has been important in determining the scope, form, and timing of communitarisation. Crisis has played a role in pushing forward communitarisation but has been more important as a causal factor where the costs of failing to facilitate common actions have been incurred by Member States with strong bargaining power.

#### **8.4 Limitations of the Theoretical Framework**

In approaching the puzzle which underpins this thesis, the most difficult aspect of the analysis was the broad scope of the study. Indeed, much of the analysis of communitarisation is a balancing act between being able to demonstrate the broad trends in policy-making in areas of core state powers and being able to demonstrate the logics behind specific communitarising acts. This has been made more difficult by the fact that literatures vary in their organising theoretical approaches, that the three elements of communitarisation each have their own theoretical literatures, and that cases vary in the scope and timing of communitarisation over time.

Despite these weaknesses, it is worthwhile highlighting the general nature of these processes because of the conceptual aims of this thesis. What was noticeable when carrying out this study

is the limited degree to which the individual policy areas considered communicate with one another. There is a significant degree of spill-over between discussions on the CFSP and CSDP, yet the literature on internal security had a comparably legalistic tone and that of the Eurozone a focus generally upon common standards rather than policy-making processes. One important gap in the literature was therefore to identify what these policy areas had in common both in respect to the features of integration in these areas and the mechanisms which drive them.

Furthermore, the long time-horizon of this thesis was necessary in demonstrating the degree to which communitarisation has occurred in each case. Once more, while this has led to a broadening of the scope of the study, it was important to demonstrate both the initial conditions and logics of policy-making in areas of core state powers and to track these developments over time. What ultimately defines communitarisation is the extent to which these initial ideas and processes had been eroded. Thus, the priorities in demonstrating and analysing this was to show the initial logic of policy-making, modern processes of co-operation, and the key moments in which that initial logic was undermined.

As the project progressed, what became increasingly clear is that this project is not built upon the provision of an altogether new concept to the literature. What it does provide is an organisation of existing research on this matter and several observations highlighting that there is a general process of integration to be found in areas of core state powers. The term 'communitarisation' was ultimately a concept that was already in use by practitioners and which appeared to be in use for this very phenomenon, but which was similarly rarely defined in any thorough manner. Similarly, it is this concept which allows for the further organisation of discussions within different case studies in reference to different elements of this process. The organisation and definition of the concept of communitarisation put forward in this thesis is perhaps its most important contribution to the literature.

A second obvious objection to the thesis' premise relates to whether there is in fact a different process of integration to be found in areas of core state powers. Lindberg and Scheingold's (1971, 69-80) scale of integration was an important point of reference in being able to determine the scope of communitarisation which had occurred in this thesis' four cases. Yet, importantly, their scale was created to measure the deepening of policy-making processes in areas of market integration. Is there a clear difference between processes of integration in areas of core state powers and areas of market integration? Does the concept of communitarisation overstate these differences?

In answering these problems, it is important to highlight what Lindberg and Scheingold said in relation to what they defined as areas ‘most fundamental to the character of the sovereign state’ (1971, 80). In these areas, the types of elite forming the basis of the institutional compromise on which co-operation could be based had both ‘vested interests’ in these areas and ‘policy preoccupations’, limiting the possibilities for integration in these areas (1971, 81). Genschel and Jachtenfuchs (2014; 2015; 2018) have further developed these observations, highlighting the important differences in terms of the actor constellations underpinning integration in core state powers, as well as the increased scope for distributive conflict in these areas. What differentiates these areas is, therefore, not simply the trend towards deeper and wider integration but the actors, processes, and types of resource which underpin them.

A similar remark can be made about one actor which is largely missing from the account of communitarisation; the European Parliament. This actor was largely left out of the analysis as its influence in some areas of core state powers did not grow until relatively recently, suggesting that such a process could occur without its influence. There is scope, however, to study the growing influence of the European Parliament in these fields, particularly as its absence is notable across differing examples of the intergovernmental method. Thus, while it was not deemed critical in affecting the broad direction of communitarisation, there is scope for further research into the extent to which the European Parliament has gained a role in areas of core state powers, why, and the degree to which it influences the process of communitarisation once active.

Lastly, the theoretical approach put forward by this thesis has not engaged with issues of politicisation and opt-outs in the integration process (Hooghe and Marks, 2010; Leuffen et al., 2012). This has been notable primarily in relation to the Danish government’s opt-out of EMU and the CSDP, dating back to the referendums surrounding the Maastricht Treaty. This was not included largely because it did not substantially explain the limitations towards communitarisation, as the costs of overturning an opt-out can be considered a domestic adjustment cost for Member States, similar to the costs of altering neutrality in Ireland with the WEU. Similarly, while differentiation has been common in cases of communitarisation, issues of differentiated integration can be understood as one means of solving issues of strong heterogeneity, where most Member States face substantially high costs of interdependence in this field. It therefore can be understood as one strategy of facilitating communitarisation in cases where unanimity is not achievable.

## 8.5 Avenues for Future Research

The objective of this research has been to highlight that there is a specific mode of integration in the field of core state powers and provide an initial explanation for why it occurs. Developing this aim has been the main anticipated contribution to the literature of the thesis. As Genschel and Jachtenfuchs (2014) have argued, the actors and pressures in these areas differ from areas of market integration. This thesis has developed the concept of communitarisation to offer a means of labelling and identifying how integration occurs in core state powers and identifying the pressures which facilitate integration in these fields. As such, it provides a basis on which further comparative research can be carried out, both between different fields of core state powers and between integration in market policies and core state powers.

The design of this thesis is deliberately broad, drawing attention to the fact that there are broad and generalisable trends in the development of policy-making processes in core state powers. The first two conceptual aims, the aim for a general concept of communitarisation and one which is based on comparativism, may be applied in the context of looking at each of these processes in greater detail across areas of core state powers. The thesis has only scratched the surface when contending with issues such as the differences in the forms of delegation between core state powers and market integration. Similarly, the similarities across the areas of policy open up questions surrounding the transferability of concepts from one field, such as ‘the capability-expectations gap’ (Hill, 1993) or concepts of ‘coherence’ (Gebhard, 2011), across areas such as internal security and the new insights which differing policy areas give us into these issues more widely. This thesis has been intentionally broad, attempting to guide academic debate towards the discussions of the general processes underpinning integration in core state powers compared to traditional areas of market integration. Its contribution has been the highlighting and conceptualisation of this underpinning process of institutional change, on which it is hoped future work can be based.

In addition to this intentional gap, a number of further observations have been noted while writing this thesis. Firstly, one notable issue for communitarisation has been continuing questions of legitimacy found across cases. What was noticeable about two particular cases, that of the Eurogroup and Trevi, was that as their remit and notoriety grew so too did the criticism grow surrounding the confidentiality of their meetings. For Trevi, this was particularly important during the Dublin Agreement, where many of the newspaper articles surrounding the body related to the degree of secrecy in which policies surrounding

immigration were being conducted. As it grew in the post-Maastricht period, the case for both increasing the powers of scrutiny of the European Parliament and the European Court of Justice increased. Similarly, many of the opinion pieces surrounding the Eurogroup during the Greek Debt Crisis related to the fact that what happened inside those negotiations was not open to the public.

What is worthwhile noting in relation to these points is that each of the case studies initially began with a relatively limited scope in which confidentiality was desirable or excusable. The co-ordination of counter-terror policies, for example, is something which commonly occurs in closed environments for reasons of security. Yet, as the purview of Trevi and JHA expanded into areas such as migration, the norm of confidentiality remained in relation to the organisation even when these policy areas did not demand such secrecy. Similarly, the Eurogroup's initial limited format could justify confidentiality as decisions were intended to be formally taken within the wider ECOFIN Council. Yet, as the Eurogroup has gained itself an increasingly formal and autonomous role within the EU's policy-making procedures, alongside growing in its authority over Member State budgets, this secrecy has become harder to justify.

There is therefore room for questions to be asked surrounding the relationship between different forms of policy-making in the EU and legitimacy, the effects legitimacy concerns have on governance in the EU, the ways legitimacy is utilised in shaping intergovernmental structures, as well as the specific causes and relationships which lie at the heart of legitimacy concerns in the policy-process.

Although this thesis has opted for a primarily rationalist approach, it is expected that differing analytical perspectives, such as that of constructivism, could highlight important factors facilitating communitarisation. What will be important to such studies is not only the identification of factors which facilitate communitarisation but also the identification of conditions in which communitarisation is unlikely to occur. This has been an important point throughout the conducting of research in this thesis in an attempt to avoid the assumption that all events and changes are likely to result in communitarisation.

In addition, particularly in the case of JHA, a potential explanation to one of the hypotheses of the New Intergovernmentalism emerged. Specifically, this relates to the observation within their work that the Commission has become supportive of its limited role within intergovernmental policy processes. What appeared to be the case was that the Commission intentionally limited its proposals for communitarisation so to retain its seat at the table (see;

Monar, 1994). The concept of trust in analysing this dynamic is useful, as it is apparent that in earlier stages of the communitarisation process several Member States worry about the potential effect of the Commission in pushing for further integration in this field. Thus, with the Commission having a limited or even informal role in the policy process, undermining this trust by pushing too hard for communitarisation might in fact reduce the scope for communitarisation in this field. The Commission must logically, therefore, demonstrate its value added to the policy process before highlighting how this role could grow.

Of interest in this regard is how strategies of competence maximising alter in areas of core state powers and in areas where supranational agencies either lack trust or find themselves largely excluded from policy processes. How do these independent variables affect patterns of delegation? How common are strategies of trust-building and preference limitation? What does this mean more generally for delegation in the EU and more widely?

Lastly, communitarisation is a concept developed in the context of the EU. Yet, while this study was being conducted attention was paid to developments of other intergovernmental forums more widely. Consideration was paid, for example, around whether these independent variables might explain patterns of policy-making in NATO or in the G7. Comparison between the EU and other organisations, therefore, opens up new questions surrounding the applicability of this thesis' framework for international governance more widely.

## **8.6 Prospects for Communitarisation in the Age of Populism and Brexit**

One difference between market integration and communitarisation relates to the historical development of major developments. While integration through the Treaty of Rome had stalled during the 1960s and 70s, it was during this period where integration began in the areas of foreign policy and internal security. More recently, the contemporary period characterised by a politicisation of integration (Hooghe and Marks, 2009) has witnessed several developments for integration in core state powers, including reforms to the Eurozone's budgetary system, the initiation of PESCO, the agreement to extend the powers of the JHA on PJCCM, and ongoing positive discussions about the potential for a Eurozone budget and 'Finance Minister'. Thus, even during times of stagnation, processes of communitarisation have continued to grind on.

### **8.6.1 Communitarisation and Brexit**

One important present question is the relationship between Brexit and communitarisation. Brexit is an important event for the EU as it is the first example of a Member State opting to

leave the EU's structures. The vote to leave the EU has, however, been much more complex than many supporters of Brexit perhaps anticipated. The Brexit process itself has thrown up some interesting observations surrounding Britain and its collaboration in areas of core state powers.

Perhaps the most confusing aspect of Brexit is the choice of areas the British government has chosen to leave and remain part of. The Single Market itself was aided in no small part by the British government, lauded by then Prime Minister Margaret Thatcher and aided by a report written by Lord Cockfield, a Briton. In areas of core state powers, meanwhile, Britain has historically been on the more minimalist end of negotiations, often emphasising the importance of sovereignty during treaty negotiations. However, in its negotiations with the EU, Britain has sought to extricate itself most from aspects of the Single Market and has frequently stressed the importance of continued co-operation on foreign affairs and internal security (UK Government, 2017).

At the time of writing, much of what has underpinned Brexit has been the 'Withdrawal Agreement' and the attached 'Political Declaration', which both cover only the transition period before this future relationship is settled upon. In the political declaration surrounding these areas, it is notable the extent to which the British government seeks to protect these areas. The British government has, for example, stated that it is 'unconditionally committed to maintaining' its 'security partnership' with the EU, relating to the 'security partnership' covering JHA, the CSDP, and CFSP (HM Government, 2018a, 7). On internal security, the agreement notes that future co-operation should understand the balance between 'rights and obligations', 'the closer and deeper the partnership the stronger the accompanying obligations' (HM Government, 2018b, 15), including a recognition that the ECJ and ECHR plays an important role in these areas. In parliamentary evidence, it has stated its expectation to issues of EU law to be determined by the ECJ, but for the ECJ's authority not to cover the UK in this field (House of Commons, 2018). It has similarly sought to create procedures for continuing formal consultation procedures and keep the option open of the UK participating in CSDP missions (2018b, 17-18).

What is important for Brexit is that the pressures underpinning communitarisation have continued throughout the Brexit process. This has been notable in 2019 with the seizing of a British tanker by the Iranian government, in which one of the first port of calls for the British government was the EU. Despite the rhetoric of the new Johnson government, there will remain

strong alignments in preferences between the UK and EU on particular issues and a continuing need to co-operate on issues such as crime, defence, and foreign policy. Thus, if and when the UK leaves the EU there will still continue pressures for cross-border co-operation on issues of core state powers. While there presently are no clear plans as to how this will be achieved, a ‘no deal’ Brexit simply delays the necessity for a deal with the EU to the point when Britain has already left, reducing the bargaining power of the British government when seeking its preferred outcomes.

### 8.6.2 Communitarisation and Populism

As the British government has been a historical hurdle for the creation of new communitarised structures, it might be expected that this would increase the prospects of deepening integration in these fields. However, in many areas the British government has been joined by different Member States in stating reluctances for further communitarisation. The French government, for example, has shown a historical reluctance to see stronger communitarisation of the field of the CFSP. Similarly, neutral Member States are likely to continue to limit the extent to which the EU can see a functional CSDP in years to come.

The continuing preferences of Member States is matched with the importance of domestic attitudes towards integration in core state powers. The new populist government of Italy has, for example, sought to test the Eurozone’s SGP. Similarly, members of its government have shown a historical negative attitude towards the Euro itself, having advocated a return to the use of the Lira. The politicisation of such projects is, as put forward by Genschel and Jachtenfuchs (2014), likely to promote integration by stealth or slow cumulative reforms like those seen in previous decades in these fields. The scope for large treaty-based communitarising changes is, therefore, weak in the current climate.

Historically speaking, this is something closer to the norm rather than marking the current period as particularly exceptional. The expansion of many of the cases considered occurred without treaty reforms and can be anticipated in numerous new areas. Cyber security in the context of Russian propaganda and interference in the US election, for example, marks an area where Member States are likely to continue widening co-operation. As these new policy areas develop, there is scope for formalisation and increasing the involvement of supranational agencies. Thus, in line with the malaise of the 1970s, communitarisation continues to trundle on despite the lack of public appetite for a deepening of political union.



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