



Corso di laurea in Politics: Philosophy and Economics

Cattedra European Union Law

# The Executive branch of the European Union: The European Council and Crisis management.

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*Alla mia famiglia, per l'affetto, gli sforzi,  
e soprattutto per aver creduto in me, da sempre...*

*A mamma Cinzia e papà Giovanni, a Fabio ed Erica,  
Nonni Gino, Benedina e Franco.*

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## Table of Contents

|   |           |
|---|-----------|
| <b>Abstract</b>   | <b>6</b>  |
| <b>Introduction</b>   | <b>7</b>  |
| <br>  |           |
| <b>1 Executive power: history and definition of the separation of powers.</b>   | <b>11</b> |
| introduction: The separation of powers and executive power                      |           |
| <b>1.1</b> What is defined as executive power                                   | 12        |
| <b>1.1.1</b> History of executive power   | 13        |
| <b>1.1.1.1</b> Ancient cases  | 13        |
| <b>1.1.1.2</b> The Middle age monarchies and the mercantile republics.          | 15        |
| <b>1.1.1.3</b> From absolute monarchies to parliamentary monarchies             | 17        |
| <b>1.1.2</b> Philosophical Evolution of government and<br>legitimation of power | 18        |
| <b>1.1.2.1</b> Thomas Hobbes: methodological inspiration, tools<br>and concepts | 18        |
| <b>1.1.2.2</b> The birth of the separation of powers: John Locke                | 19        |
| <b>1.1.2.3</b> Solution to judicial independence                                | 21        |
| <b>1.1.2.4</b> The finalization of the separation: Charles De Montesquieu       | 22        |
| <br>  |           |
| <b>1.2</b> Analysis of Executive power  | 24        |
| <b>1.2.1</b> What is executive power  | 24        |
| <b>1.2.1.1</b> The different functions of executive powers                      | 25        |
| <b>1.2.1.2</b> Different powers, a singular entity                              | 28        |
| <b>1.2.2</b> Interpretations and structures of contemporary<br>executive power. | 29        |
| <b>1.2.2.1</b> Unitary executive or dualist executive                           | 29        |
| <b>1.2.2.2</b> Monism and dualism's advantages and disadvantages                | 30        |
| <b>1.2.3</b> Executive power and sovereign power, sovereign<br>prerogatives.    | 31        |
| <b>1.2.4</b> Executive's internal structures                                    | 32        |

|       |   |    |
|-------|---|----|
| 1.2.5 | Executive leadership and authority  | 33 |
| 1.2.6 | Conclusions   | 34 |
| <br>  |   |    |
| 2     | <b>The executive power in the European Union:</b><br>Introduction: Separation of powers of the European Union | 36 |
| 2.1   | Comparison of the European Union in the separation to a national state.                                       | 37 |
| 2.2   | EU separation of powers.  | 40 |
| 2.2.1 | Executive branch: The Commission  | 41 |
| 2.2.2 | Executive branch: the European Council  | 41 |
| 2.3   | Specific differences of dualism, why the EU case is so exceptional.   | 42 |
| 2.4   | Power limitations of the European Union   | 44 |
| 2.4.1 | EU: governmental power but an international organization  | 44 |
| 2.4.2 | Seven institutions versus the common three  | 47 |
| 2.5   | Summing up: Compound Democracy  | 49 |
| 2.5.2 | Issue of political responsiveness   | 49 |
| 2.5.3 | Executive relation with legislative power.  | 51 |
| 2.5.4 | Legislative initiative EU Commission, political initiative of EU Council                                      | 51 |
| 2.6   | Effect of compound political system: EU Compound democracy  | 52 |
| 2.6.2 | EU Council Veto   | 53 |
| 2.6.3 | Executive implementation: centralized or decentralized  | 54 |
| 2.7   | Conclusions   | 56 |
| <br>  |   |    |
| 3     | <b>The EU Council, its role in crisis management.</b><br>The EU Leadership and institutional framework        | 57 |

|              |  |           |
|--------------|--|-----------|
|              | Introduction: Intergovernmentalism in the EU,<br>crisis and EU Council role.               |           |
| <b>3.2</b>   | The intergovernmental Union  | 58        |
| <b>3.3</b>   | Evolution of the political system  | 59        |
| <b>3.3.2</b> | The legacy of the Council to the EU Council  | 60        |
| <b>3.3.3</b> | The EU Council as political leadership   | 61        |
| <b>3.3.4</b> | Summing up the two factors   | 62        |
| <b>3.4</b>   | The European union during crisis, why is the EU<br>Council important in crisis management. | 62        |
| <b>3.5</b>   | The European Union leadership during the<br>EURO Zone Crisis (2009-2014)                   | 66        |
| <b>3.5.2</b> | Crisis Background  | 66        |
| <b>3.5.3</b> | Role of the EU Council, and EU leaders.  | 67        |
| <b>3.6</b>   | The Collateral effects of the crisis management<br>of the Euro-zone crisis                 | 69        |
| <b>3.6.2</b> | Fragmentation  | 70        |
| <b>3.6.3</b> | Institutional instability  | 72        |
| <b>3.7</b>   | Final considerations   | 73        |
|              | <b>Conclusion</b>  | <b>74</b> |
|              | <b>Acknowledgments</b>   | <b>77</b> |
|              | <b>References</b>  | <b>78</b> |

## **Abstract**

This thesis meant to study the executive branch of the European Union it is meant to broaden the understanding of the executive power, to apply it to the case of the European Union, especially to define the tasks of the institutions and the interaction between them. The European Union as a supranational and international organization it has an institutional system of governance, which was developed in the second half of the 20<sup>th</sup> century and the early 21<sup>st</sup>. The processes which lead to decision-making can be of different kind, and the scope of the study is to understand the impact of the European Council, and their executive relevance. The other aspect is that the outcome of intergovernmental decision-making, and supranational decision making can be different, especially during crisis. During crisis management the role of the EU Council (European Council) gets enhanced, and it takes a role in deciding the next steps to be taken having a potential and broad treaty making power. The answer to why the EU Council acquires this fundamental governance role, instead of the Commission are mainly of authority and leadership and power of the member state at various stages of the European Union.

The beginning is in the historical examples of democratic governments and states systems. At the origins of the separation of powers, understanding why it is important that powers are separate and why they did come to this end, and what can be made from it. Especially in times of crisis to avoid domination and disruption of the balance created. The history of the European Union it is quite short if compared to the legacy of some state systems, for this reason to understand the development of the executive branch, it is fundamental the concept of multi-governance and the involvement of different actors, with different interest. Most important is the role of the member states, which their primary interest it is the national interest, and especially in moments of crisis the national interest it is a primary source of survival of the economy. For this reason, the role of the member states it has been reduced in normal circumstances, and allowed for supranational cooperation, but in case of crisis, it become existential the question of the position that the European Union will take, and for this reason the design of the European Union it is to try and avoid intergovernmental decision making, but the member states did manage to acquire always more power through the establishment of the European Council.

## **Introduction**

This thesis is the culmination of a long path of studying the subject and approaching in a multi-disciplinary way to the matter of constitutional systems. The inspiration to focus on European Union Law comes from the passion of the subject that was drawn during the classes at LUISS University by professors Schütze and Cherubini. The interest in the subject, initially at a legal point of view allowed me to comprehend the processes and to draw passion to understand such. For this reason, then I developed interest towards understanding how the processes sum-up and what they create. During the classes I started to develop an idea of Thesis, based on the study of the executive of the European Union, first and foremost for its uniqueness and complexity, which makes it a unique case of study and extremely rare to compare, but which draws many questions on its nature, especially if applied to unconventional circumstances of emergency-management.

The journey to having a multi-disciplinary approach comes from far, especially in the perspective of studying institutions. As a bachelor student at my second year I took in my extra-curricular activities, the course of Lab of Constitutional Reforms, initially applied to the Italian constitutional system. Such lab which was conducted by doctor Marco Improta, and initiated in me a political science-oriented view of understanding political system, as what can be fixed and improved in them, such view requires first a deep understanding of the legal basis of the actual functioning, to be applied then to understand the cause of the issues, and most of all the most important factor is the necessary steps that can lead to a change.

The second inspiration came from the study of the Euro-Zone crisis from the lectures of Professor Massimo Ricottilli, which made me clear the issues that the EU was facing at the time of the crisis. So, joining the interest for institutional and constitutional improvement, the Euro-zone interest and the study of EU law, this thesis reflects the combined interest and passions coming to research.

The role of the European Council it has always been a debated point of continuous innovation and agreement. It always is protracted in the news by the contributions of the head of governments, and it is interesting to understand the effects that this then has on the European political arena.

On a domestic level many times the priority in the news and in the public opinion, especially for the ones of the more conservative views is that the EU Council it is always a good occasion to prove how strong is the head of government to defend national interest, and what the state leaders is able to being home from the fight.

In reality years after what remains are the innovations that the agreement of the head of states did propose to the Union, being the strategic planner, but most important from a more cynical perspective, it is important that all the states can be together in an Union that promotes European development and strengthens the Europeans among each other to better develop and represent themselves at the global level.

The fact that the states indeed stick together and share their future in the long term it is a signal of the strengths and having decided to share the future together. As new generation grow the feeling of coming from the European Union among the young generation.

The theme of the Euro-zone crisis is significant because has been the first financial crisis impacting the monetary union, which if considering the capacity from a state capacity to manage macroeconomic stability, it is an important capacity limitation that the member states gave up to, and compromised with the stability of the years before the crisis it did not come to mind which institutions or corrective actions would have been necessary on the supernational level, but at the same time, at national level, it was an unprecedented case, because the missing of the national central bank was, as is going to be seen in the third chapter, a hard step.

The intergovernmentalism that broke out from the crisis was unprecedented, and for this reason the theme of the Euro-Zone crisis fits into the debate of the European Leadership, because having analysed in the second chapter the executive governance of the EU, it still opens questions about the effective power of the member states, and their involvement on the European decision-making.

As the main cause of this financial, but most of all, institutional crisis it can be attributed to the design of the institutions of financial coordination, the limits imposed to the member states for the goal of macroeconomic stability and the missing of relief institutions.



De Grauwe supports the fact that the institutions created during the crisis necessitate to be implemented and incorporated, and that a fiscal union should be necessary for further development in financial stability<sup>1</sup>.

But also, Fabbrini identifies the cause that can bring to crisis not just at the financial level, but most importantly at the governance level, being the European Union governance complex and ineffective. And in this thesis in the second chapter, they are going to be broadly identified, and in the third one seen into action with its effects<sup>2</sup>.

As the biggest problem that this thesis is going to try to identify a cause is the excessive power the member state can exercise on some occasion, which can cause intergovernmental fractures, and so, creating fractures among the member states, which mean then to have fractures among the European people and market. Which is it totally opposite to the aims of the European Union, so the member states, acting for the sake of the European Union, in reality can create a large damage.

This is the most important cause that can lead to fractions and so, the first thing that it should be avoided when designing the European Union to lead the way in the decades to come, as if nationalism can prevail, they can break the Union or leave scars for decades to come.

The event of the Euro-Zone crisis it has been seen as one of the greatest failures of the European Union, but the blame of the governance it is not enough as the blame it is also at the original design.

For this reason, the first chapter tries to understand what pieces need to be in place to build a strong separation of powers and then apply it to a system. This isn't casual, since the European Union as a modern example of institutionalism has new innovative features, but at the same time, for the influence that the member states can exercise in the Union, it still does not have a fully developed governance system, which can be comparable to the one of a state. And this leads to issues of democratic responsiveness and accountability. And institutional instability.

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<sup>1</sup> De Grauwe, P. (2012). The governance of a fragile eurozone. *Australian Economic Review*, 45(3), 255–268. <https://doi.org/10.1111/j.1467-8462.2012.00691.x>, 2-4.

<sup>2</sup> Fabbrini, S. (2021). Executive Power and Political Accountability: Assessing the European Union's experience. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.3859225>

The first chapter focuses on the deep study of executive power at the core of its philosophical and historical features, and the goal is then to use the factors of the first chapter to study the European Union executive branch. The first question that comes into mind, and it is going to be covered at the beginning of the second chapter, is how can we compare the European Union, an intergovernmental and supranational institution to a sovereign state, and the answer it is that the European Union does indeed tasks that if the Union's institutions were not there, should be pursued by the member states, which now are a competence of the EU. So, if the European Union can do actions that a state can do, it needs a governance like a state to grant the rule of law<sup>3</sup> and the separation of powers,<sup>4</sup> and this is in the European Union treaties.

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<sup>3</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:rule\\_of\\_law](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:rule_of_law)

<sup>4</sup> Treaty of the European Union, Art. 2, 1992,  
[https://eur-lex.europa.eu/eli/treaty/teu\\_2012/art\\_2/oj/eng](https://eur-lex.europa.eu/eli/treaty/teu_2012/art_2/oj/eng)

## 1<sup>st</sup> chapter

### Executive power: history and definition of the separation of powers

#### 1. Introduction: The separation of powers and executive power

Executive power, or just executive (when referring to government bodies) it is considered one of the most important pieces of modern democratic constitutionalism, comes along with various definition and articulations which are going to be covered in this chapter. Executive power is one of the three main powers of the state, along with the legislative and judiciary power, according to the most applied in the constitutions of contemporary democracies, but when looking more in depth the notion of this powers lead to not just one function, especially in the case of executive power. Executive power is regarded as the power to execute the laws, or as Prakash defines the Chief of law execution control, so the executives implement and supervises the implementation of laws, being the chief of the executive the chief of the bureaucratic machine<sup>5</sup>.

Historically in constitutionalism or in the history of the political models, the separation has not happened the way is present today in most democratic countries, considering contemporary parliamentary democracies and the articulations that are present today, as articulations of the state system, as it is going to be covered in the chapter, had to come in different time frames in history and gradually implemented and separated between the political institutions that evolved in time. Such topic is going to be covered in detail later in the chapter.

As of state's powers that are divided in different structures, philosophically is defined by Rawls as "*ultimate power is held by the three branches in a duly specified relation with one another with each responsible to the people*"<sup>6</sup>.

So, in the current democratic state we can find a judicial branch, a legislative branch, and an executive branch. In such division of power, the balance of power or better the so

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<sup>5</sup> Prakash, S. (2003). The essential meaning of executive power. *University of Illinois Law Review*, p. 720.

<sup>6</sup> Rawls, J. (1993). *Political liberalism* (Expanded edition). Columbia University Press, 242.  
The notion from Rawls of responsibility to the people it is linked in the fact that as a model there is a democracy, being Rawls a philosopher of the second half of the 20<sup>th</sup> century and living in the United States, democracy and justice are of fundamental importance and the main core of his writings.

called “*checks and balances*” make sure the influence of power from one branch doesn’t break into another: indeed as a keystone principle is also going to be covered in the chapter, along with the precise limitations the executive need to act under, which are usually laid down in the constitution, and on a structural way don’t allow the executive to enjoy unlimited power as in past models happened<sup>7</sup>.

### 1.1 What is defined as executive power

In modern states systems, the executive power is that power that executes the laws, so this means that the people in office, holding executive power are the one in charge of the apparatus that executes the laws, in the different forms of implementation. It has a power which is embodied by the elected executives (directly nominated by the parliament or indirectly appointed by the executive’s leader), who have a responsibility for the functioning of the state’s bureaucratic machine, the government. Along with this definition there are other main fundamental powers as the one to hold the highest influence of political power, being in most of the case the representation of the political majority in the state, appointed to office, which at the same time has an important

Within the functions of the state’s government there is the function of foreign or external action or policy making, also referred as the foreign affairs ministry or department. This section of government of unique status deals with the conduction of foreign policies and maintains the diplomatic relations with external entities to the state. And they set the agenda to pursue the executive’s goals, which are mostly pursued by functionaries and the elected executives on control<sup>8</sup>.

This branch of government is very much fully executive, but with some exceptions will come with it, and different historical traditions bring their heritage in the processes and procedures of the conduction of foreign policy in the modern state.

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<sup>7</sup> Martinez, J. S. (2005). Inherent executive power: A comparative perspective. *Yale LJ*, 115, 2480.

<sup>8</sup> Wood, B. D., & Peake, J. S. (1998). The dynamics of foreign policy agenda setting. *American Political Science Review*, 92(1), 173-184.

### 1.1.1 History of executive power

#### 1.1.1.1 Ancient cases

To study the history of the executive power we need to study the history of how constitutionalism took place and how it changed how the forms to control state's power took over in new ways, starting from the early days of the European monarchies to the contemporary days of parliamentary constitutionalism. But also, much earlier on in the ancient Greece, where the democracy of Athens had already a complex system, and the Roman Republic. However, the way these powers were divided and obtained to the different bodies had in history come in different ways.

In the writings of many philosophers of the 1600s, 1700s and 1800s in many cases the figure of executive power was still held by the monarchy, while in other systems a monarchic system hadn't been in place before, so in the way the powers are separated and distributed, and then its functioning, are diverse from other systems.

Athen's democracy was considered the first big example of a democratic and structured state. Although other Greek city-states had democratic system the one from Athens it is considered the first one because of being for the first time for a big city, and with a big number of voters, serving a big state. Of course there was not the universal suffrage, and only male adults (not slaves) with citizenship which was not the easiest requisite to obtain<sup>9</sup>.

In ancient Athens according to John Thorley, in the fifth century BC in Athens lived between the 250000 and 300000, however the male adult citizens were only 30000 to 50000. The male citizens were allowed to the public function of the *Polis* and take part to the different democratic activities and political participation was mandatory in ancient Athens<sup>10</sup>.

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<sup>9</sup> Blok, J. (2017). Rethinking Athenian Citizenship. In *Citizenship in Classical Athens* (pp. 1–46). chapter, Cambridge: Cambridge University Press.

<https://www.cambridge.org/core/books/abs/citizenship-in-classical-athens/rethinking-athenian-citizenship/71B9A4A8194BF2AAD5DC6EDDC1BD0E62>

Citizenship in Ancient Athens in most of the cases could have been achieved if the subject was from Athenians parents which was the most popular source of citizenship.

<sup>10</sup> Thorley, J. (2012). *Athenian Democracy* (2nd ed.). Taylor and Francis. Retrieved from <https://www.perlego.com/book/1612335/athenian-democracy-pdf>

The reason why Athens is pertinent to the study might not seem straightforward because Athens was what is defined today a direct democracy<sup>11</sup>, while at the time it was just defined as a democracy, having the Ancient Greeks invented the notion of democracy. In ancient Athens the most important institution was the *Ekklesia*, the assembly, the core of the democratic decisions. The assembly could approve or reject pieces of legislation by majority by raising their hands, and this was composed by all the male adult citizens over 20 years of age, however in Ancient Athens not all the state functions were operated by this assembly, and it is the main reason why it is important for this study. Not all the exercises of public functions could have not been done by just the direct and fully democratic body of the *Ekklesia*, where the will of the people could have decided whether going to war or not, but for example the monitor of the military, or the finances and other public affairs the Athenians constitution included the participation of the *Boule*, which was a council composed by 400 members, then expanded to 500, if the *Ekklesia* was considered the assembly, source of democratic power, the Council, or Council of 500, was still really closely related, being composed of randomly selected members over 30 years of age, and while it had many tasks, also had many restrictions it was subject to. Along with the members of the *Boule* in Athens other functions that are now incarnated by the executive branch were done by elected magistrates who could held office for the maximum of one year and same election was for the highest rankings of the military, however the chiefs of the military could hold office for longer during wars for practical reasons<sup>12</sup>. The most relevant magistrates were nine, and three of them were the chiefs so the three main sections to which they were divided in: Civil, military and religious. However this magistrates could have been removed from office by voting in the *Ekklesia*, the most important detail is that being a Magistrate in ancient Athens or also generally involved in public offices or expressing political functions was a dangerous job, and not just they could have been scrutinised at the beginning of the term, but also at the end of the term, which could have led to charges, in and they could have been from the sides of

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<sup>11</sup> Direct democracy as a political system without mediation between the people and the decision making or law making, without a mediating institution. Also intended as the opposition of representative or parliamentary democratic systems.

<sup>12</sup> Bruce, I. A. F. (1963). Athenian Foreign Policy in 396-395 B.C. *The Classical Journal*, 58(7), 289–295. <http://www.jstor.org/stable/3294688>

inefficiency or abuse of authority<sup>13</sup>. So, the public offices were a risky business, because even if Athens had indeed a judicial system, made of jurors who needed to have taken an oath, who could have not been prosecuted differently than the politicians or other state officers, but still the power attributed to the people was strong and indeed in some functions we can observe a separation of powers, but as the term democracy suggests, as *Demos* (people) and *Kratos* (rule), the people were still the ultimate power, directly involved in the decision making. So being at full effect a democracy.

This ancient division of power it is still far away from modern constitutionalism, but being an exceptionally qualitative example of constitutionalism allowed new systems to develop and slowly bringing the traditions of democratic functioning to the levels of today. Great example is the one of the Roman Republic, which had a complex system of hierarchies, but still far away from having a defined separation of powers.

#### 1.1.1.2 The Middle age monarchies and the mercantile republics.

In the middle age in some areas of Europe monarchies started to consolidate increase their power and will evolve to the point of controlling the European continent, in the hands of monarchic families. In the system of states that was going developing, had functionaries that administered public functions, but the power wasn't a consequence of the support of the people, instead the source of political power and legitimation was supported as *given* by God. In Some cases, even comparing the monarch to a god himself. The first states indeed were the Spanish, French and British, and they consolidated their power and established a form of state, they were al monarchies. Some of the monarchies introduced parliaments. The early parliamentarism in the French, and British monarchies, it was mostly a chamber to discuss taxation issues, so the king wouldn't have such a power over the citizens in an absolute manner. In the case of the English Kingdom was mostly composed of Aristocrats, so not yet a parliament that represented the people, and that had weak powers, becoming the parliament a place to legitimate higher fiscal imposition. Functionaries that had powers were close to the monarchy, appointed by the crown and trusted to them, and the judicial system and parliaments were still far from independent,

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<sup>13</sup> Gomme, A. W. (1959). (A. H. M.) Jones Athenian Democracy. Oxford: Basil Blackwell, 1957. Pp. 198.

21s. *The Journal of Hellenic Studies*, 79, 182–184. doi:10.2307/627954

so the separation of powers it is still far, but the study of some of these systems is important to the point that in some cases the later separation of powers happened starting from these systems<sup>14</sup>.

However, in the middle age in Europe there have been some minor exceptions of political systems that were not monarchies. In Italy from the middle age to the 1800s survived the Mercantile Republics. The most notorious two were the Republic of Genoa and the Republic of Venice, also called "*La Serenissima*". Both republics survived for centuries, until the conquest by Napoleon. The republics had a system of government which was mostly based on a mercantile oligarchy<sup>15</sup>. The most influential families in trade from the cities were also the one influential in the government system of the time. These republics' birth is attributed to the weakness of power in these areas in Italy, because Italy was the most fragmented and without a unifying strong power as happened in France and England, while the people started self-governing the cities, it happened in Venice, Genoa and Florence. However, when the cities are self-governing, they are not directly governed by the people as in ancient Greece, but they were mostly under a mixed regime of oligarchy, especially driven by trade, by which these cities managed to become some of the most powerful cities at the time, by the power of their fleets. The elites governed these cities, and they had indeed legislative assemblies and also executive ones, with delegates and functionaries, as found also very similar characteristics between the political systems of the Italian republics at the time: having a head of judicial, one or two legislative bodies and a smaller executive body, the offices lasted for brief lengths of time and re-election not always was possible right away and the bodies that were in charge were elected by a small number of people, which could vary depending on the city, but usually the percentage of people allowed to political activity was from 2% to 12%, with Venice holding the smaller percentage<sup>16</sup>. The interesting matter for this study regarding executive

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<sup>14</sup> Van Zanden, J. L., Buringh, E., & Bosker, M. (2012). The rise and decline of European parliaments, 1188–1789. *The Economic History Review*, 65(3), 835–861.

<sup>15</sup> Gilbert, F., & Rubinstein, N. (1968). The Venetian constitution in Florentine political thought. *1968*, 463, 500.

<sup>16</sup> Finer, S. E., 'The Republican Alternative: Florence and Venice', *The History of Government from the Earliest Times: Volume II: The Intermediate Ages* (Oxford, 1999; online edn, Oxford Academic, 3 Oct. 2011), <https://doi.org/10.1093/acprof:oso/9780198207900.003.0009>, accessed 18 Feb. 2025.



power is that such a power was held by the highest in charge in the government, especially for matters of foreign policy, and such a structure was able to survive for centuries, even with the limit of not being democratic, but as an object of comparison allowed more pluralism and changes in political directions, even if they were always backed by the interest of the influential families in the cities, but were not under one ruler and its direct dynasty. This allowed the ambitious people to become relevant in the politics of the city, but not to constraint the city to only that direction, which can be seen as a way to fulfil the gap of power left empty by the absence of a monarchy or a way to preserve the interests of the city, being the rulers the elite of the city itself<sup>17</sup>.

#### 1.1.1.3 From absolute monarchies to parliamentary monarchies: the struggles to impose parliament power.

Even if the systems were not fully absolute monarchies, regarding the study of Mattham that even if are called absolute monarchies, in practice the notion of full absolute power happened only in few circumscribed moments<sup>18</sup>. However, the same political actor that was making the laws, execute them with its executive functionaries, or himself being chief of the state and the judicial system wasn't independent, from the power of the monarchy, and members of the judicial were involved in politics. This scheme of government though wasn't meant to last forever, because in the development of instable situations and unsatisfaction of the population brought the monarchies to face crisis<sup>19</sup>.

In England in the 17<sup>th</sup> century the monarchy had shifts of power, after the violent disruptions in Europe of the Thirty Years War and after disagreements between the parliament, people, the aristocracy with the monarchy, due to increases in taxation and protestants-catholic struggles that led to the development of long and cruel fights and to several civil wars. In Great Britain the political system changed a lot during the 17<sup>th</sup> century. In that era the history of the political power changed in England forever, along

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<sup>17</sup> Martines, L. (n.d.). *Power and imagination: city-states in Renaissance Italy*. Knopf, 132-138, 148-151 <https://archive.org/details/powerimagination00mart/mode/2up>.

<sup>18</sup> Mettam, R. (1988). *Power and faction in Louis XIV's France*. [Oxford, Oxfordshire]: B. Blackwell.

<sup>19</sup> Kettering, S. (1993). Brokerage at the Court of Louis XIV. *The Historical Journal*, 36(1), 69–87. <http://www.jstor.org/stable/2639516>

with the contribution of writers such as Thomas Hobbes and most important John Locke. These two authors very different in the outcomes are the considered as the product of the challenges of the times, with very different opinions indeed, cut with goals for the society and the political structure of the state<sup>20</sup>.

### 1.1.2 Philosophical Evolution on the government and legitimation of power

#### 1.1.2.1 Thomas Hobbes: methodological inspiration, tools and concepts

Thomas Hobbes, after having spent part of his career close to the royal family, and having to exile after the decapitation of Charles I, was on the monarchist side, or better willing to accept the power of an absolutist ruler, in this case the monarchy, with the promise, or better with the social contract, of the protection of the life itself of the people, or better of the individual, as being that Hobbes believes that the state of nature of people was “Short, Nasty and Brutish”, so the government had to protect the people from other people, in this the biggest fear is war, not only from external enemies but from civil war, indeed in the chapter 17<sup>th</sup> of the *Leviathan*, Hobbes describes as the people’s should give up their rights to the ruler rights, with the “contract” to protect the right to life<sup>21</sup>, because in the case of the breakout of a civil war the right of life cannot be protected by institutions or a government<sup>22</sup>.

Such view of course was far from what we can see today, but in part is important to the end that Hobbes happened to be of great inspiration for John Locke, who is going to be of crucial importance for the separation of Executive power. The “obsession” of Thomas Hobbes for Civil war is explained to be reasonable from the fact that Hobbes lived throughout the English Civil War and so this affects his perception and includes a political

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<sup>20</sup> In the course of the 17<sup>th</sup> century there have been two civil wars, one war with Scotland (led by the monarch) and England (led by the Cromwell, leader of the Commonwealth) and following the Glorious Revolution.

<sup>21</sup> Cudd, A., & Eftekhari, S. (2021). Contractarianism. In Ed. N. Zalta (Ed.), *Stanford Encyclopedia of Philosophy* (Winter 2021 Edition). Retrieved August 2, 2024, from <https://plato.stanford.edu/entries/contractarianism/> (Original work published 2000)

<sup>22</sup> Hobbes, T. (2024). *Leviathan: Chapter 17th, of the Causes, Generation, and Definition of a Commonwealth* (N. Malcolm, Ed.; Second edition). Oxford World’s Classics. (Original work published 1651)

perspective in the dynamics that define his orientation towards the political structure the Hobbes defines<sup>23</sup>.

In Hobbes model the division of power it is not possible as he believed all the three powers should be in the hands of the sovereign able to protect the people as the people gave up all rights except the one of life which would be a mission of the Leviathan<sup>24</sup>.

#### 1.1.2.2 The birth of the separation of powers: John Locke

The most important take outs for our study that are going to be of fundamental importance for the study of John Locke, understanding the inspiration that Thomas Hobbes had on him, is the concept of “State of Nature”, which is going to be changed in John Locke, but remains as an abstract philosophical tool, and the contractarian principle, to understand the relation between state and people. However, in the field Locke is considered an innovative author in the field of Executive power and of important relevance, being considered an inspiration for the Founding Fathers of the United States of America. He was from a family associated with the Cromwell army, and so he believed in the power of the parliament and of the rights of the people, which should matter in the purpose of legitimization of power.

The state of nature in John Locke is considered, in complete opposition with Thomas Hobbes, as a perfect place, where people enjoy freedom and are happy, and individuals are born with the natural rights of the laws of nature, which are the right to life, liberty and property. In this perspective the rights of the people could, in order to defend one another, invade the rights of other individuals, in this perspective the interests should be used in a form of mediation trough an institution, which in this case is the parliament

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<sup>23</sup> Steinberg, J. (2008). *The Obsession of Thomas Hobbes: The English Civil War in Hobbes' Political Philosophy: Vol. Volume 12*(American university studies: Political science). Peter Lang Incorporated, International Academic Publishers. [https://books.google.it/books?id=6RygAAAAMAAJ&printsec=front\\_cover&redir\\_e sc=y](https://books.google.it/books?id=6RygAAAAMAAJ&printsec=front_cover&redir_e sc=y) (Original work published 1988)

<sup>24</sup> Grcic, J. (2007). Hobbes and Rawls on Political Power. *Etica & Politica - Ethics & Politics, IX*, 2007, 2. <https://www.openstarts.units.it/server/api/core/bitstreams/ba8ba8bf-ce7e-40da-a0fc-da6cc44a24dc/content>

where the interests can be brought and in such a way to be able to make the laws that the citizens must respect<sup>25</sup>.

On the other stage in the Lockean system is the executive power, which hold the power to implement the “public good” and to execute the laws. This aspect of John Locke view is the innovative and different addition that separates the executive power and the legislative power. Additionally, there is also the federative power, which is the power to external action, which is in the hands of the executive<sup>26</sup>. In this case, if seen in a broader perspective it is contested to John Locke the attribution to the executive of such power, which it is a matter that in practice, in future constitutional frameworks it is going to require the approval of legislative bodies, because if seen in the perspective of a broader constitutional system it can overcome the balance, in the extent of Locke natural law<sup>27</sup>.

John Locke executive power holds an ordinary power, to execute the laws, an extraordinary or special power to be used in cases of emergencies, and as seen before, the external relations power. The executive power in the Locke system, which sees the parliament as the only organ of check, and in many cases, such as the federative one, the emergency one, or also the prerogative of execution, to the leader of executive (the monarch at the time of John Locke), an extreme power<sup>28</sup>.

If the execution it is in the hands of the executive largely without precise prescriptions, imposition and limits, the result could differ. Which however at the times of John Locke it was already very advanced, which can explain such problematics, being that already having independence between parliament and monarch, or only the recognised power of the statutory law of parliament it is very advanced for the time. The answer to this weakness in Locke prerogatives, it can come from the fact that in some cases a broader action can be necessary, however the action might not necessarily be against the will or

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<sup>25</sup> Corradetti, C. (2022). Locke’s Theory of Property and the limits of the state’s fiduciary powers: A critical appraisal of the Second Treatise on Government. *Etica & Politica / Ethics & Politics*, XXIV, 2022, 1, 287–306. [https://sites.units.it/etica/2022\\_1/CORRADETTI.pdf](https://sites.units.it/etica/2022_1/CORRADETTI.pdf)

<sup>26</sup> Locke, J. (1980). *Second Treatise of Government: Chapter 12: The legislative, executive, and federative powers of the commonwealth* (C. B. Macpherson, Ed.). Hackett Pub Co Inc. (Original work published 1689)

<sup>27</sup> Poole, T. (2017). Locke on the federative. *LSE Law, Society and Economy Working Papers*, 21/20172, 4. <http://eprints.lse.ac.uk/id/eprint/87576>

<sup>28</sup> Ward, L. (2005). Locke on executive power and liberal constitutionalism. *Canadian Journal of Political Science/Revue canadienne de science politique*, 38(3), 719-744.

protection of the natural laws of the people, but be in line with the protection of such laws, and in this case it is accepted a broader action, if not necessary, or better, understood, however the prerogative is present only until the institutional interest is pursued<sup>29</sup>.

John Locke, however, to explain this, in the case that the executive acts without prerogative, stated in the Second Treatise of Government, that in case that the monarch (or whoever hold executive powers) exceeds its power, doesn't respect the interests, overstepping the parliament who are in charge of making the laws, or by acting over the boundaries of institutionally admitted, in this case the people have the right to contest such action of absolutist derivation from the monarch, and should be able to take the power back in case of a tyrannical evolution of the monarch, and in this case the people is, in extreme cases, invited to resist the power of the monarch<sup>30</sup>.

#### 1.1.2.3 Solution to judicial independence

In the end of the 17<sup>th</sup> century in England the legislative initiated to be independent, doing so by approving Bill of Rights of 1689<sup>31</sup>, and with it the sovereignty of the parliament, which still today is defined as Parliament Privilege, made the parliament independent and separate from the executive, by the fact that the monarch could not impose tributes or laws without the approval of the parliament, also in the Bill of Rights the rights of the people were to be granted and several other rights of extreme importance protected, such as the freedom of speech in parliament, and free and regular elections which were to be forming parliaments that had to be summoned on a regular basis. Along with this piece of constitutional history, the other piece that was to be added to the development of the separation of powers is the independence of the judiciary. The judicial power until this point was still under the monarchy influence and was indeed an instrument that the Stuart

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<sup>29</sup> Mattie, S. (2005). Prerogative and the Rule of Law in John Locke and the Lincoln Presidency. *The Review of Politics*, 67(1), 77–112. <https://doi.org/10.1017/S0034670500043333>

<sup>30</sup> Jenkins, D. (2024). The Lockean Constitution: Separation of Powers and the Limits of Prerogative. *McGill Law Journal / Revue De Droit De McGill*, Volume 56(Number 3), 543–589. <https://doi.org/10.7202/1005132ar>

<sup>31</sup> Bill of rights 1689: <https://www.parliament.uk/about/living-heritage/evolutionofparliament/parliamentaryauthority/revolution/collections1/collections-glorious-revolution/billofrights/#:~:text=It%20is%20an%20original%20Act,known%20today%20as%20Parliamentary%20Privilege>.

dynasty, while ruled England was responsible for civil wars and used in the previous decades to interfere with parliament: indeed in England in previous centuries some courts started to independently work and take independent jurisprudence from the government, however the monarch still hold the power of appointment of courts, and in such case, to impose his own power selecting and removing in the high court's judges who favoured to him, or the cause that was to be supported, which in could have been a challenge between parliament, a trial or over religious matter for example, or even worse used to prosecute political opponents, which could be prosecuted and sentenced on behalf of the king<sup>32</sup>.

Following that path the judicial branch could carry the monarch's interest<sup>33</sup> and not the people's interests, which are served by the parliament. So, in a condition where the parliament is freely elected, but the judiciary isn't independent, the parliament loses its power. In the UK the judiciary achieved independence with the act of Settlement of 1701, establishing that the judges were to be in office for "*good conduct, and not royal pleasure*"<sup>34</sup>, the result of such bill, was to make in fact the UK judiciary independent.

#### 1.1.2.4 The finalization of the separation: Charles De Montesquieu

As John Locke is considered a pioneer in the division of legislative and executive power, the fundamental author of the division of executive, legislative and judiciary power is Charles Louis de Secondat, Baron de Montesquieu (1689-1755). Academic of the French Enlightenment, considered the father of the concept of the tripartite state. Took great inspiration from the work of John Locke and the attempt to secure the lawmaking power and so the laws that are going to be binding on the people. This inspiration was taken when Montesquieu travelled from France to England. In the case of the political system created by Montesquieu the goal is to create a political society that can be administered

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<sup>32</sup> Marshall, J. (2013). Whig Thought and the Revolution of 1688–91. In T. Harris & S. Taylor (Eds.), *The Final Crisis of the Stuart Monarchy: The Revolutions of 1688-91 in their British, Atlantic and European Contexts* (pp. 57–86). chapter, Boydell & Brewer.

<sup>33</sup> Courts and Tribunals Judiciary. (n.d.). *Independence - Courts and Tribunals Judiciary*. Courts and Tribunals Judiciary, United Kingdom. Retrieved September 2, 2024, from <https://www.judiciary.uk/about-the-judiciary/our-justice-system/jud-acc-ind/independence/>

<sup>34</sup> The royal house. (n.d.). *The Act of Settlement*. Royal.uk. Retrieved September 2, 2024, from <https://www.royal.uk/act-settlement-0>

in a fair way, and the biggest fear is corruption, because corruption can shift the interests of a state from wisdom to the personal ones<sup>35</sup>. And in this Enlightened way the way to do so would be through the separation of power, which at the time started to be present only in England. In this case the separation of power can be achieved if there are three branches of government to be separated and independent, and most important that there is a system of checks and balance that every power can have over the other power. So, the full separation of power and checks and balances it is a solution of the corruption of power<sup>36</sup>. And to achieve it the powers must be separate while they hold one another in scrutiny. So in the system of separation of powers and checks and balances the three powers are balanced, but at the same time don't just go along together, but they control that the power exercised by one isn't overstepping the other, because another key notion in Montesquieu's work is the concept of despotism, which is a threaten to a free society, because despotism and absolute power can only lead to the interest of the singular individual, so not of the society. The reason why there must be the checks and not just the separation of powers is because if one power would be free to act, without a scrutiny, by overstepping its constitutional limits without a control, it might in fact lead to despotism by one power, and this is to be avoided, so the separation of powers must be there and with it the checks and balances, with the idea of equality of power, between the three powers, being that they need each other to be imposed. This system was fundamental during the formation of the US constitution, being the separation of powers central in the constitution and still today a fundamental piece, not just in the United States, but in almost every democratic constitutional system<sup>37</sup>.

The way to schematize the separation of powers precisely in Montesquieu can also be called a distribution of powers, this because supposing that originally all the powers are in a despotic monarch, they get distributed in partial powers to different branches, so it can be balanced. In the notion of distribution there is also the one of interaction, so in

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<sup>35</sup> Rendtorff, J. D. (2009). The concept of corruption: Moral and political perspectives. *Organizational immunity to corruption: Building theoretical and research foundations*, 111-119.

<sup>36</sup> Abba, A. S., Abdriss, A. I., Hamisu, A. A., & Basheer, S. M. (2021). Montesquieuan Theory of Separation of Powers: Redefinition & Reconceptualization towards a Synthesis of Democracy & Dictatorship. *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, 26(6), 2279–0837.

<sup>37</sup> Claus, L. (2005). Montesquieu's Mistakes and the True Meaning of Separation. *Oxford Journal of Legal Studies*, 25(3), 419-451.

many cases defining that the powers are completely separated it might result wrong, because the powers still interact with one another, in many cases, for example of legislative proposals, by the executive to the legislative. Finally, there can be political freedom if there is the possibility of mediation and debate, which can happen in the case of a moderate government, which instead in the case of an absolutist government there cannot be political freedom<sup>38</sup>.

## 1.2 Analysis of Executive power

### 1.2.1 What is executive power

As mentioned in the previous paragraphs the notion of executive power is the power of executing the laws and separated from the legislative power. But remains the political struggle for power in legislative, and what is soon going to be covered in the chapter, also for executive power as thing today are different from the early days, as in democracies the way to achieve it, is in the words of Weber<sup>39</sup> through of a struggle for power<sup>40</sup>.

Power as a key to understand politics, indeed “Who gets what, when, how”<sup>41</sup>. In this perspective executive power, it can be considered by many political actors the most important power to be achieved in a political arena: indeed, access to executive power gives direct power on government bodies, so in power perspectives, gives the ability to act directly on the executive basis, so to control the government machine with the political preferences<sup>42</sup>.

As seen in the previous section executive power can also be understood as the chief of supervision of the government, having the trust of the people and imposing interests, that

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<sup>38</sup> Krause, S. (2000). The Spirit of Separate Powers in Montesquieu. *The Review of Politics*, 62(2), 231–265. doi:10.1017/S0034670500029454

<sup>39</sup> Weber, M. (1922). *Economy and Society: Chapter 5*. University of California Press, Berkeley.

<sup>40</sup> Guzzini, S. (2017). Max Weber’s Power. In R. N. Lebow (Ed.), *Max Weber and International Relations* (pp. 97–118). chapter, Cambridge: Cambridge University Press.

<sup>41</sup> Lasswell, H. D. (2018). *Politics: Who Gets What, When, How*. Pickle Partners Publishing. (Original work published 1920)

<sup>42</sup> Carpenter, W. S. (1936). Politics: Who Gets What, When, How. By Harold D. Lasswell. (New York: Whittlesey House. 1936. Pp. ix, 264.). *American Political Science Review*, 30(6), 1174–1176. doi:10.2307/1948299-



the voters wanted to be imposed, in a way which is going to be covered in the chapter. At the same time, today in contemporary constitutionalism executive power doesn't correspond to unlimited power, but instead to a scrutiny from other government bodies, from other branches, and executive power as dispatched in different bodies, the department of government or also called ministries. The immediately apparent factor regarding the ministries, which is going to be covered in this chapter is the quality of having field expertise of the matters covered, thus having a privileged position, being that the government itself finances the ministries to be head of that department in the state, in this way having deep expertise in a certain matter or subject and being in direct control in the country and head of that segment of administration, which is then attributed to a political figure, who supervises and chairs it, part of the executive cabinet, indeed the minister or secretary. This system to be achieved in this way, to have political figure at the top of the administrative pyramid, while having a neutral administration should be a guarantee of reliability to the people and allowing to the people at elections to blame a miss execution of the laws to the top, so to the political figure. This how it happened and how it works is going to be covered in the chapter.

Also, different kinds of executive structures exist, or interpretations of how the executive should be intended, if in different figures or condensate in one, which is going to be covered in the chapter.

#### 1.2.1.1 The different functions of executive powers

One challenge in understanding what executive power means and do, and what power they retain can be challenging and has been widely debated, as the prerogatives of executive power changed over time. One instrument that can be used to compare and understand executive power is separating the powers that are held by such office and study them singularly<sup>43</sup>.

The political power over the executive it is with no doubt a key in the imaginative contract that they have with the voters as political actors, and in part as a clear sign of functioning of democratic institutions. Once executive power is held by political actors, having gained

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<sup>43</sup> Ten, C. L. (2017). Constitutionalism and the Rule of Law. *A companion to contemporary Political Philosophy*, 493-502..

power after electoral struggles, the political affirmation is of no doubt, and such political *impetus* is to be the cause of the political influence that the government has. The decision-making process of the political actors elected to executive<sup>44</sup> is in part to deal with the expectations of the nations, and from the fact that they bring their political influence over the parliament asking to approve legislation and talking a political side over the reasons why the approval should be positive for the nation. This activity of legislation proposal it is also important in the quality of not just being political actors, but also as chief of the state's executive institutions, and with it the needs of such institutions, from a legislative standpoint. Ministries have, as seen before, a high degree of specialization and operate on a sectorial level, so the law proposal might not be of just political will, but also of a technical nature, or in other cases a mix of the two. In this case a legislation proposal that has technical features, that comes from needs of the state system or the people, but also a political influence. So, the political power and the authority of the executive, in the political representation of the power, becomes a function of the government of political power and acquired political authority<sup>45</sup>.

The first version of the separation of powers, the more traditional argued by John Locke, suggests the executive power consist in executing the laws. Indeed, this form of power is considered fundamental to the functioning of the state. The power of executing the laws is what historically was left to the monarch, to so impose the laws, put them in practice through the action of public functionaries, and supervise the implementation. If is supposed that a law approved by the parliament which for example introduces a new program, or a subsidy, or a new institution, or a new code, once approved it becomes a matter of implementation the path to bring it to the public and functional, and the executive power indeed hold this function. The power of implementation requires an articulated bureaucratic machine which are the ministries and eventually agencies linked and under their control, or offices on the territory, which on the supervision and guidelines of the minister impose the law on the territory, *de facto* implementing it. This process

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<sup>44</sup> Elected to the extent that in contemporary democratic system the executive offices are covered by elected politicians. Or if not directly elected, with a political support from the voters.

<sup>45</sup> Müller-Rommel, F., & Vercesi, M. (2020). Executive Power. *The SAGE Handbook of Political Science*, 760-775.

requires also functionaries of high technical expertise and so, making the ministries or the delegated entities the only capable of executing such tasks, at the same time it is to say that the existence itself of such governmental bodies it is attributed to the supervision and proceeding of public functions, so it is itself part of their prerogative<sup>46</sup>.

The state apparatus in the course of the twentieth century increased, with the introduction of the welfare state, and with it the tasks that the government was in charge of doing, so in the expansion of the tasks increased also the amount of legislative work required. For this purpose, the use of delegated legislative procedure, in charge to executive power increased during the last century and making the executive power, especially in highly technical fields a relevant legislative body, while the legislative power always runs an important supervisory and legislative task over it, but it faces an increased involvement of executive power in legislative processes. Another factor other than the technical level is in, the actual constraint related to the resulting amounts of time required to legislative processes and their importance, where if some procedures of technical nature or less politically importance can be delegated, and attribute to the department of government the task of creating the law, it ensures less legislative work and at the same time technical coherence, in a shorter time and with the guarantee that legislative bodies can always put hand on it in case it isn't fulfilling the ends that were meant by the delegation<sup>47</sup>.

Finally, another important power in the hands of the executive power is the one dedicated to external powers, even if through the centuries new doctrines regarding foreign policy renovated the provisions of John Locke, regarding federative power, the power regarding external relations, the parliaments gained always more power in this regards, being for example that to declare war is needed parliament approval was already implemented in England with the Act of Settlement of 1701<sup>48</sup>, the doctrines now combine both aspects, and it is because of the nature of foreign affairs. Diplomacy by nature requires secrecy, negotiation by small delegations, and in some cases quick resolutions, so international

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<sup>46</sup> Lawson, G., & Moore, C. D. (1995). The Executive Power of Constitutional Interpretation. *Iowa L. Rev.* 81, 1267.

<sup>47</sup> Griffith, J. A. G. (1949). Delegated Legislation: Some Recent Developments. *The Modern Law Review*, 12(3), 297–318. <http://www.jstor.org/stable/1090502>

<sup>48</sup> <https://www.royal.uk/act-settlement-0#:~:text=The%20Act%20of%20Settlement%20of,succession%20for%20Mary%20II's%20heirs.>

negotiations between parliaments might result quite inefficient and difficult, for this purpose in the example of the U.S. Constitution, scholars and judiciary came out with the medium of prerogative to foreign policy to be conducted by the executive powers in charge, but the parliament keeps the right, in an equivalent important way, to “react to presidential initiatives favourable or not”<sup>49</sup>. So, in this scheme the executive power retains a great deal of power in making foreign policy, and the actual task of conducting it<sup>50</sup>.

The case of the European Union is going to be analysed in the following chapters, and regarding the power of legitimated negotiation by the legislative parliament is a matter of great discussion which is going to be covered.

#### 1.2.1.2 Different powers, a singular entity

It now comes to question the fact that these four listed powers are indeed covered, in most of the cases, by one entity, which after having separated them for the purpose of study is to be regarded as a singular power, indeed the executive power. The reasons why such power is held together by one branch it is first of historical nature, being that what hasn't been taken by the other branches remains in the hands of the executive, so a residual character. Another level it is represented by institutional authority as considered by Huq, the disputes between branches and needs for complementary action can be constraints or counterintuitive in the purpose of fulfilment of the task itself in the hands of the executive, by the meanings required to exploit the task<sup>51</sup>. Indeed if considering the need of action of the cabinet, it is required in many cases, approval by legislative power under the separation of powers, it becomes clear that the technical expertise and work done can work only if powers are working synchronized, so the different powers in the executive are yes hold together in the matters of field of action and need of institutional unity, since the fulfilment of the public function is in administrating the government and operating

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<sup>49</sup> Farber, D. A. (2002). Playing Without a Referee: Congress, the President, and Foreign Affairs. Book Review Of: The President's Authority Over Foreign Affairs: An Essay in Constitutional Interpretation. by H. Jefferson Powell" (2002). *Constitutional Commentary*. 213.

<sup>50</sup> Reiter, D., & Tillman, E. R. (2002). Public, Legislative, and Executive Constraints on the Democratic Initiation of Conflict. *The Journal of Politics*, 64(3), 810–826.  
<http://www.jstor.org/stable/1520114>

<sup>51</sup> Huq, A. Z. (2012). Binding the Executive (by Law or by Politics). *University of Chicago Law Review*., 79, 777.

manoeuvres requires, yes the department of the government to do it, but it can function with the approval of the other bodies, so the institutional authority that supervises and is the administration itself is constrained, in the purpose of the *checks and balances* and reliability to the people, so it requires the other branches of government.

### 1.2.2 Interpretations and structures of executive power in contemporary constitutionalism.

#### 1.2.2.1 Unitary executive or dualist executive

Around the world executive power has developed in different manners, and now the two models are the unitary executive or the dualist executive. The deference of this of structures is regarding whether the executive institutions are *all in one* institutional authority or spread in two separate offices. The dualist executive, most popular among the European states<sup>52</sup>, comprises of one authority of leader of the cabinet, head of the government, is a political figure, with political powers, and is usually supported by the parliament. The second figure in dual executive is the head of state, so a figure which inherits the figure of the monarch, which keeps mostly ceremonial powers, so it functions as a safeguard or referee, which depending on the system they might have more extended forms of power<sup>53</sup>. This kind of state system coincide with the parliamentary republics<sup>54</sup>. This form derives from a model of constitutional monarchies, where the monarch used to appoint his ministers, a change was in 1720 when was designed the prime minister, or a *primus inter pares*, in this case the prime minister, deriving from the First Lord of the Treasury, is considered a minister, but with more powers. In the case of the United Kingdom today some of the powers are by conventions and some by law, and the prime minister is the leader of the cabinet. Historically then the Prime Ministers were appointed by the monarch on his personal choice, until this changed, and the prime ministers started

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<sup>52</sup> In Europe there still are various constitutional monarchies, and many parliamentary democracies, and no presidential systems.

<sup>53</sup> Shugart, M. S. (2005). Semi-presidential systems: Dual executive and mixed authority patterns. *French politics*, 3, 323-351.

<sup>54</sup> Linz, J. J. (1994). Democracy, presidential or parliamentary: Does it make a difference?. *The Failure of Presidential Democracy: The Case of Latin America*, 3-87.

to be “chosen” based on the electoral outcomes of the House of Commons<sup>55</sup> (in the specific case of the UK). In this case the monarch loses the power of choice of the Prime Minister but keeps today the ceremonial duty of appointing the prime minister. So, in most of the cases the head of government needs to be appointed by the head of state. However, in some systems to become official, the cabinet also needs expressed approval by the legislative power.

In case of unitary executive, the head of state and head of government are in the same person and are called presidential republics. In this case they are the outcome of an election, and the same person represents the head of state and of government, in this case the head of state has political power, and being elected by the people it doesn't require the approval by the legislative power, so in the regime of presidential republics the political orientations of the head of government and the majority of parliament does not need to be aligned, usually coming from different elections.

Another system that is less popular is the form of semi-presidential republics, such category is derivate from both, being by nature a dualist executive, having though an elected president, which has the duty to appoint the head of cabinet, the prime minister. This system was made famous by the French model, and it is present in other systems, and is the one that we can accept as closer to the one of the European Union. The figure of the head of government is generally to be approved by the legislative, or in line with the legislative majority.

#### 1.2.2.2. Monism and dualism's advantages and disadvantages

In cases where the president is elected, so in case of presidential or semi-presidential systems it can bring to a condition called of co-habitation<sup>56</sup>, where different political affiliations are held one by the head of state and the other by the majority of parliament, and both are involved in the choice of the head of government in case of semi-presidential. Such problematic situation usually evolved in negotiations that bring to finding a medium of cooperation. The probability that this might happen does not mean that one system is

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<sup>55</sup> <https://commonslibrary.parliament.uk/how-is-a-prime-minister-appointed-2/>

better than the other, or that some systems produce a better government than others or even that some systems produce better legislations than the others<sup>57</sup>.

On the other hand where in most of parliamentary regimes the duration of office can depend on parliament<sup>58</sup>, in the case of presidential systems, with a unitary executive, the elected president isn't easy to replace just by majority voting, or majority loss in parliament.

At the same time there is another exceptional difference between unitary executives and dual executives, which is in the case of the appointed head of government, is has to be interpreted as a unique moment, because an authority, with a political agenda is appointed by a parliament with one majority and in a certain moment, while all the ceremonial and conventions regarding the head of state remain untouched and the head of state is responsible for his duties, which are constitutionally prescribed, or by convention constructed. While in the case of the unitary executives the authority of the head of state is covered by the same political figure that also represents political authority for the executive, so we mix two authorities in one, which result in one presidency "already written" with the usual actions that a president is supposed to act like, and others that instead are shaped by the political preferences, in that time, which are exceptional and only apply to that presidency<sup>59</sup>.

### 1.2.3 Executive power and sovereign power, sovereign prerogatives.

I find this paragraph important done the analysis of the story of executive power, being that the concept of sovereignty is complex and in most of the cases it is in the hands of the people, and thus the parliament. So, the executive studied in a negative way, as the residual competences coming from the empowerment of other institutions, lead to have

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<sup>57</sup> Linz, J.J. (1990). Presidents vs. Parliaments: The Virtues of Parliamentarism. *Journal of Democracy* 1(4), 84-91. <https://dx.doi.org/10.1353/jod.1990.0059>.

<sup>58</sup> Being able to not support the executive and having an executive depending on the confidence of the parliament, because not directly elected.

<sup>59</sup> Renan, D. (2020). The President's Two Bodies. *Columbia Law Review*, 120(5), 1119-1214.

still part of the prerogatives that the monarchies used to have, in this case this is to appoint some peculiarities coming from historical privileges that the executive still enjoys<sup>60</sup>.

In the case that an executive body conducts foreign policy, even if is the political representation of a trust provided by the parliament, or by the people, such office deals with other authorities in behalf of the state, and this negotiation power, as analysed earlier in the part regarding the power of foreign policy, is a great amount of unique power, nevertheless in some cases constitutional provisions in some exceptional cases can interpret this power in different ways, as is going to be studied in the case of the European Union the negotiating power it is to be considered as exceptionally *conferred* and once entrusted the negotiator it can always be taken away, but however there is also a quite opposite case which is the case of Executive Privilege to which in the case of the U.S. the executive enjoys, also in the light of the issues enlisted earlier in the disadvantages of unitary executives, a privilege of non-disclosure of secrets of national interest, to protect the state and the institution, in case judicial officers or parliament asks, in this case it is relevant especially in case of state secrets on matters of national security or national interest, so cannot be disclosed. This arose to the point that became questionable the nature of such privilege itself, which neither the constitution directly grants, but at the same time neither the parliament nor judges have the power to obtain such information's<sup>61</sup>.

#### 1.2.4 Executive's internal structures

This section is dedicated to the study of executive's structures, so the structures inside the executive power, to understand the differences that can occur, and some that indeed are present and are going to be studied in the case of the European Union.

Constitutions of democratic regimes happen to be quite different between them in regard of what it is supposed to be the dynamic between the chief of the executive power and the other members of the cabinet. Because historically the notion of prime minister which entitles the chief of executive to be a *primus inter pares*, and to be indeed a minister, to

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<sup>60</sup> Persson, T., Roland, G., & Tabellini, G. (1997). Separation of Powers and Political Accountability. *The Quarterly Journal of Economics*, 112(4), 1163–1202. <http://www.jstor.org/stable/2951269>

<sup>61</sup> Cox, A. (1974). Executive Privilege. *University of Pennsylvania Law Review*, 122(6), 1383–1438. <https://doi.org/10.2307/3311504>



hold instead more power to what is held by other ministers, his peers. For the sake of the study, we are going to take two examples, one of the United Kingdom and one of the Italian Republic, where the dynamics are quite different. In the case of the United Kingdom the Prime Minister, who is appointed by the Monarch of the United Kingdom to form a government in his name, to choose the formation of the cabinet and to be its leader, which doesn't necessarily need the approval of the parliament, and the confidence to the cabinet is not voted, and it is by convention<sup>62</sup> appointed the leader of the party with the highest numbers of votes. Once in office the Prime Minister has to his choice the power to appoint ministers and in case to remove them from office to this reason the notion of "elective dictatorship" was born<sup>63</sup>, and in some examples of cabinets that saw complete changes of the years of its course, and such power is in the hands of the Prime Minister only<sup>64</sup>.

Instead in the case of the Italian republic the President of the Council of Ministers, leader of the executive cannot, based on the constitutional provisions, remove a minister from office, but the action needs to be taken by the parliament<sup>65</sup>, and it has been ruled by the case law of the Constitutional court<sup>66</sup> that it can be addressed to only one minister. So, in this case the dynamics between the leader of the executive and the other members of the cabinet it is completely different from the one of the United Kingdom, this aspect it is important because in the study of such dynamic in the European Union, its legal limits are going to be considered.

### 1.2.5 Executive leadership and authority

With no doubt the role the executive play in terms of leadership is relevant, not just politically, but also as a public figure. Especially in times of crisis the presence of the

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<sup>62</sup> <https://commonslibrary.parliament.uk/how-is-a-prime-minister-appointed-2/>

<sup>63</sup> Aldons, M. (2002). The "elective dictatorship" - fact or fiction? *Australasian Parliamentary Review*, 17(2), 69–78. <https://search.informit.org/doi/10.3316/ielapa.200309917>

<sup>64</sup> <https://www.instituteforgovernment.org.uk/appointments-resignations-reshuffles>

<sup>65</sup> Italian constitution, art. 94 - 95.

<sup>66</sup> Sentence 7, 1997, italian constitutional court.  
[https://www.cortecostituzionale.it/actionSchedaPronuncia.do?param\\_ecli=ECLI:IT:COST:1996:7](https://www.cortecostituzionale.it/actionSchedaPronuncia.do?param_ecli=ECLI:IT:COST:1996:7)

leadership is important, and the executive is the power that has the powers and duty to act in case of crisis, so for emergency situations the executives hold instruments to manage crisis and have the authority to speak up to the public, which is a figure which in the political environment seems needed. If we take as example the COVID-19 pandemic the role played by the executive was crucial in terms of communication and support to the people, so their authority to act and leadership it is still of central importance for the country, even if as seen the executive power now results quite limited, but resides in the above mentioned powers, it still plays a central role as the leadership of the nation. And the ministers also when needed can play an important role, especially in case there is an emergency regarding their sector, having the executive tools to analyse situations, and instruments to intervene. One example it can be the role that ministers of treasury or finances can acquire during financial crisis, when with their powers and authority are in control of one of the most important pieces of a state economy, and even if they might not do much, but the support and interest in the matter can be helpful for the cause they speak about. So, the leadership that ministers or prime ministers have doesn't only depend on their authority and instruments they dispose of, but also on communication and charisma, and can be fundamental and needed in moments of crisis.

#### 1.2.6 Conclusions

Concluding this chapter on a short study of the history of separation powers and definition of executive power, and how it resulted in the powers that the executive branches enjoy today in part are of a negative process of removal of powers from the monarch, as the ability to conduct foreign policy, while others are of a the role of the executive power itself, as in the case of the power of execution, which was what on purpose was attributed, and other powers are instead developed upon the executive institutions, in the more recent decades. The historical evolution is important to understand the needs for procedures and separations which are fundamental to understand the contemporary constitutional limits to power and procedures which define executive action today, in its limits and powers. Also, for what concerns the European Union, to understand the procedures, in the next chapter it is going to be introduced a second factor which is unique to the case of the

separation of powers in the EU, which is the one of the powers of the states, and not just of a legitimization of power in relation of the people. Executive powers are a fundamental piece of the functioning of a state and its evolutions and changes are to be attributed to the political and social systems changing and evolving with new traditions and social needs. For sure some roles might be quite hard to substitute as the leadership and authority they represent and this is the key to understand its importance in the last section, the one regarding foreign relations.

## 2<sup>nd</sup> chapter:

### The executive power in the European Union:

#### Separation of powers, political complexity of the European Union.

## 2. Introduction

The study of the separation of powers and the executive function in the European Union is possible by studying such governmental power comparing the European Union to a state. Since states existed before international organizations, and international organizations were created by states as legal entities to allow to build cooperation with other states or with interactors from other states<sup>67</sup>. So, international organizations are usually created to achieve goals which states cannot achieve on their own, so they need to go outside of their sovereign borders to be able to achieve results that can be obtained with international cooperation<sup>68</sup>.

In this regard states when deciding to join, fund or enter an international organization they do it for a purpose of cooperation in a specific field and for a specific motive, according to the aims of the international organization, the only “generic” organization is the United Nations, but it has then more specific organisations, divided by fields and goals. Usually, international organizations are specific to a subject, and this was the case of the beginning of the European Union, with the European Coal and Steel Community, but since its own beginning the scope grew to the point that we are today.

If looking at the values and aims on which the European Union, it can be understood, from a legal perspective, being in the articles of the Treaty of the European Union, what are the basis to create the cooperation through this institution. Indeed, in Article 2 of the Treaty of the European Union<sup>69</sup> in the values there is *human dignity, freedom, democracy, equality, the rule of law and respect for human rights* and additionally the respect of minorities. At the same time in chapter 3<sup>rd</sup> there are the aims, so once specified the values

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<sup>67</sup> Nas. (2013, January 13). *Why do states create international organizations?* International Law Organizations. <https://byuipolsc375.wordpress.com/2013/01/12/why-do-states-create-international-organizations/>

<sup>68</sup> Diehl, P. F., & Ku, C. (2010). *The dynamics of international law*. Cambridge University Press.

<sup>69</sup> Treaty of the European Union, Art2.

on which the cooperation is based, the third article establishes the aims of the cooperation, which are for example the promotion of peace, establishment of the internal market and many more<sup>70</sup>, one of the is the cooperation of the member states. So, the European Union is an international organization, born by creation of the member states, to create an internal market initially, but ending up decades later being an international organization with the aim of social cohesion of the European People<sup>71</sup>. So, the scopes of the European Union are large, this mean that the political bargain to get to final decisions is complex. At the same time, as the European Union has competences which are exclusive<sup>72</sup>, so legislative fields on which the member states cannot legislate, so it means that legally the European Union legislates on such matters and the Member States cannot do anything about it, the exclusive competences are the *Customs Union*, Competition rules of the *Internal Market*, *Monetary Policy*, *conservation of the marine biological resources under the common fisheries policy* and finally the *common commercial policy*. This means that the European Union needs a lawmaking capability like the one of a national state, and having so governmental powers, as a state, since it must indeed act as a state in this fields, where the states do not legislate.

## 2.1 Comparing the European Union in the separation to a national state.

The needed governmental powers are established by international law, so by the “*constitutional*”<sup>73</sup> Treaties of the European Union<sup>74</sup>. The EU institutions of the European Parliament, the European Council, the European Commission, the Council of the European Union, and the Court of Justice of the European Union they all play a role in making laws, executing them and making judicial work, and the iteration of this

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<sup>70</sup> All the aims of the European Union can be found in chapter 3<sup>rd</sup>

<sup>71</sup> Treaty of the European Union, Article 3(3)

<sup>72</sup> <https://eur-lex.europa.eu/EN/legal-content/summary/division-of-competences-within-the-european-union.html>

<sup>73</sup> Constitutional because they lay down the treaties that establish the functioning in legal terms of the Union. This means it is a sort of constitution, even if the European Union does not have a constitution. The Union and the Member States did attempt in Rome in 2004 to sign a European Constitution which failed.

<sup>74</sup> <https://eur-lex.europa.eu/EN/legal-content/summary/division-of-competences-within-the-european-union.html>

institutions, along with the member states create programs, laws, ideas to achieve the aims of the EU in the EU treaties.

To do so, the European Union needs governmental powers, and so, since in some matters it substitutes the states in the creation of laws and in some even in the execution, they need a governmental infrastructure comparable to the one of a national state<sup>75</sup>.

Member states to allow this, by constitutional or legislative means, having signed the European Union treaties, they accept the action of the EU, giving up to their sovereignty in the fields in which the EU must act<sup>76</sup>. The question of sovereignty has been in the debate for long time, being that in the Union there have historically been countries with a different propension to give powers to the EU, for example the UK as a former member and Denmark, have been states always reluctant, in the instance of giving up sovereignty to the Union, while instead some other states, such as Germany, Sweden (case of country close to Denmark both geographically and socially), the answer to this dilemma was found by Ingebritsen, as Sweden and Germany are states relying on exports<sup>77</sup>, by the production of goods in their states, while the contemporary UK and Denmark being less export driven economies than Germany for instance they have a different propension for adapting to the market, and be willing to cooperate to increase their potential return. Also, the importance of the market it is not just important for export, but also for capital flows<sup>78</sup> needed to support expansion of the private sector and so of the economy.

Even if the kind of sovereignty isn't as the ones of states, the governmental powers can still be studied and the separation applied as in democratic states. As democratic constitutional states, the European Union is based on the rule of law<sup>79</sup> and to a certain

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<sup>75</sup> Curtin, D. (2008). Accumulated Executive Power in Europe-The 'Most Dangerous' Branch of Government and the European Union. *Koninklijke Nederlandse Akademie van Wetenschappen-Medelingen van de Afdeling Letterkunde, Nieuwe Reeks, Deel, 71*.

<sup>76</sup> Donath, J. (1999). Why Do States Give Up Sovereignty? [Review of *The Nordic States and European Unity; The Currency of Ideas: Monetary Politics in the European Union*, by C. Ingebritsen & K. R. McNamara]. *International Studies Review*, 1(3), 168–170.  
<http://www.jstor.org/stable/3186345>

<sup>77</sup> Ingebritsen, C. (1998). *The Nordic states and European unity*. Cornell University Press.

<sup>78</sup> Gould, A. C. (1998). *The Currency of Ideas: Monetary Politics in the European Union*.

<sup>79</sup> [https://commission.europa.eu/law/law-making-process/types-eu-law\\_en#:~:text=Primary%20versus%20secondary%20law,-Every%20action%20taken&text=Treaties%20are%20the%20starting%20point,%2C%20decisions%2C%20recommendations%20and%20opinions.](https://commission.europa.eu/law/law-making-process/types-eu-law_en#:~:text=Primary%20versus%20secondary%20law,-Every%20action%20taken&text=Treaties%20are%20the%20starting%20point,%2C%20decisions%2C%20recommendations%20and%20opinions.)

degree can even be considered federal system, in a degree of *competence* and *procedure*<sup>80</sup>. The most important reason why the European Union is so different to other international organisations is because of a legal reason linked to the functioning of the judicial system of states members of the European Union, which can apply in court European Union Law, and along with the law-making activity of the Court of Justice of the European Union, with *law-making powers* established precedents which wrote the constitutional history of the European Union<sup>81</sup>. The one fundamental step came in the 60s and is the unprecedented sentence of the case *Van Gen den Loss (1963)*<sup>82</sup>, which established that the European Economic Community<sup>84</sup> legal regime all different than before, allowing national judges to apply European Union primary, secondary law in court<sup>85</sup>. Now established the legal step, which historically differentiates an International organization, which requires the member states to introduce by pieces of legislation inside the state themselves, the European Union pieces of legislation differently apply directly inside, so having a government structure, with exclusive competences coming from sovereignty given by the states, accepting its effect, and having a legal system that ensure the application in court makes the European Union a case that can be perfectly used to be compared to a federative system, as it is used in the case of the study of the government system of the United States of America, and it can be used to study the European Union in a comparative way, directly on the people in the legislative, executive and judicial powers. For this reason, it can be studied the separation of powers in the European Union can be studied as the ones of a state<sup>86</sup>. The institutions and processes of decision making of the European Union's

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<sup>80</sup> Schütze, R. (2010). From Rome to Lisbon: "executive federalism" in the (new) European Union. *Common market law review*, 47(5).

<sup>81</sup> Conway, G. (2011). Recovering a separation of powers in the European Union. *European Law Journal*, 17(3), 304-322.

<sup>82</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61962CJ0026>

<sup>85</sup> In European Union Law primary law is referred to the European Union treaties, and their legal texts, which are the Treaty of the European Union and the Treaty on The Functioning of The European Union, as secondary law are legal acts which are based on the *principles and objectives* of the treaties, and can be of five types, Regulations, Directives, Decisions (Binding), Recommendations and Opinions, to see more explore: [https://commission.europa.eu/law/law-making-process/types-eu-law\\_en#:~:text=Primary%20versus%20secondary%20law,-Every%20action%20taken&text=Treaties%20are%20the%20starting%20point,%2C%20decisions%2C%20recommendations%20and%20opinions.](https://commission.europa.eu/law/law-making-process/types-eu-law_en#:~:text=Primary%20versus%20secondary%20law,-Every%20action%20taken&text=Treaties%20are%20the%20starting%20point,%2C%20decisions%2C%20recommendations%20and%20opinions.)

<sup>86</sup> Bifulco, R., & Nato, A. (2020). The concept of sovereignty in the EU—past, present and the

executive are going to be covered in this chapter along with the privileges and limits it enjoys, and most important the political compound of the executive branch<sup>87</sup>.

## 2.2. EU separation of powers.

The powers of the European Union are based on the *Principle of Conferral*<sup>889</sup> so powers are conferred to the Union by the Member States. In the separation of powers as before seen the European Union in can also be considered a virtuous modern example, having seven component institutions: indeed the governmental functions are held for the executive power by the European Council and the European Commission, for the legislative power the European Parliament and the Council of the European Union (also referred as “the Council”), for judicial the Court of Justice of the European Union, then two independent bodies which are the European Central Bank and the European Court of Auditors<sup>90</sup>.

The legislative power it is represented by the Council, which represents the member states, with delegates to complete the work and ministers or delegates for them to complete the voting sessions. On the other hand of the legislative, the Parliament that represents directly the interest of the people of the Union, it is directly voted by the people, and the MEP<sup>91</sup> are voted without a member state mediation, but directly by the people and are organised inside the parliament by political affiliation, rather than state’s provenience. For this reason, the relation between the Commission and the parliament is tight, being the Commission voted by the Parliament, because the Commission: “*Acts in the EU general interest with complete independence from EU Member States’ national governments and is accountable to the European Parliament*”<sup>92</sup>.

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future. *RECONNECT WORKING PAPER*.

<sup>87</sup> Tarlea, S., Bailer, S., Kudrna, Z., & Wasserfallen, F. (2024). Executive power in European Union politics. *Governance*, 37(1), 161-178.

<sup>88</sup> Treaty of the European Union, Article 5

<sup>89</sup> <https://eur-lex.europa.eu/EN/legal-content/glossary/principle-of-conferral.html>

<sup>90</sup> Fabbrini, F. (2014). *Fundamental rights in Europe*. Oxford University Press (UK).

<sup>91</sup> Members of the European Parliament

<sup>92</sup> <https://eur-lex.europa.eu/EN/legal-content/glossary/european-commission.html#:~:text=It%20acts%20in%20the%20EU's,wide%20range%20of%20policy%20areas.>



### 2.2.1 Executive branch: The Commission

The European Council and the European Commission, as mentioned before, they have executive power. The Commission, whose president nominated by the EU Council and then approved by the European Parliament, usually tends to reflect the European political framework which is represented by the European Elections which reflect in parliament, because it needs a good majority to be approved and then to be able to pass legislation. The executive power of the European Commission has the more governmental executive power, having the power of legislative initiative, also being in the Union the only body with legislative initiative<sup>93</sup>. So, the Council and the Parliament have a marginal amount of power regarding the legislative initiative, having the chance to ask or invite the Commission to propose to. At the same time the Commission also has an administrative body, being made of the different Commissions, directorate generals and so on. So, they have a bureaucratic institution capable to implementing legislation<sup>94</sup>.

### 2.2.2 Executive branch: the European Council

The European Council, which used to be an informal meeting of the head of government (and of State in the case of France), became a formal body of the European Union with the function of providing political guidance, then with the Lisbon Treaty becoming an official institution of the European Union, one of the seven of the Union<sup>95</sup>.

The European council meets usually quarterly, but can also meet more than that, especially in case of severe crisis<sup>96</sup>, also the way the European Council started to exist, as a mean to have the European states to cooperate. But on the other side, as is going to be covered later in the chapter, the European Council, having close-doors meetings it can

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<sup>93</sup> [https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_BRI\(2025\)767211](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2025)767211)

<sup>94</sup> Law, D. S., & Versteeg, M. (2011). The evolution and ideology of global constitutionalism. *Calif. L. Rev.*, 99, 1163.

<sup>95</sup> <https://www.consilium.europa.eu/en/european-council/>

<sup>96</sup> [https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/search-all-eu-institutions-and-bodies/european-council\\_en](https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/search-all-eu-institutions-and-bodies/european-council_en)

transform the ground in an intergovernmental deal making debate, so concessions and negotiations are made, going to lower the means of positive integration of the Union<sup>97</sup>.

### 2.3 Specific differences of dualism, why the EU case is so exceptional.

As seen in the previous chapter, in recent constitutionalism there are systems of dualist executive, where the executive power is held by two institutions. In the case of the European Union, the executive institutions are closer to the examples that were taken when studying executive power, at the same time with some differences.

The European Union executive has two bodies, same applies to other orders of executive institutions, being formed by two different bodies, separate and with different functions. Usually, they are formed by a head of government and a head of state, one a political figure, the other not. Because the EU executive instead of a president has a council, which reaches political decision, and not merely ceremonial or of exceptional executive constitutional safeguard<sup>98</sup>. At the same time the members of the EU Council they are directly invested with executive power themselves<sup>99</sup>.

The older case of the United Kingdom presents itself with a dualist system of Executive power, but where the monarch is discharged of political power, in the case of France instead the elected president, and head of state, has a political affiliation among the one current political arena, and based on the political majorities (elected in parliament in

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<sup>97</sup> Duff, A. (2022). The Twin Executive. In *Constitutional Change in the European Union: Towards a Federal Europe* (pp. 9-22). Cham: Springer International Publishing.

<sup>98</sup> For example in case of executive acts, in the case of national parliamentary democracies with a dualist executives, as in the case of Germany, UK, Italy, the President of the Nation as for example of the Italian constitutional case, a role of a safeguard of the constitution, being head of executive having to nominate the council of ministers, legislative having the power to dissolve parliament, and head of the judicial government body. At the same time in some instances the Italian President of the Republic did take political decisions, but that are based on constitutionally given powers, as the example in the Englaro Case, when an urgent executive act the head of government of Italy was rejected, being the executive act unconstitutional, for this reason, being urgent a high court could have been able to stop the act, being that the action of the court takes time. So the immediate effects of the act could have already have taken place, instead, having the president a proven evidence of unconstitutionality, due to sentences of the constitutional court, or because of clear incompatibility, can on an urgent way, stop the act to be approved, but this can happen in a dualist system where the political figure and the head of state can be different figures, both with different powers.

<sup>99</sup> Fabbrini, F. (2015). States' equality v states' power: the euro-crisis, inter-state relations and the paradox of domination. *Cambridge Yearbook of European Legal Studies*, 17, 3-35.

different elections) nominates a prime minister that is able to reassemble the majority. In this case in the European Union, the position of the head of state is covered by the EU Council, and such institution, it can be identified as closer to the French case, because it has a political affiliation, differently though in the European Council the decisions that the EU Council decides to support, are done by a negotiation as mentioned earlier, so the different views of the elected head of government (and head of state in the case of France<sup>100</sup>) decide which decision to take, which need to come to a *consensus*<sup>101</sup> which means unanimous agreement<sup>102</sup>, so is it a negotiated unanimity. To great difference to other form of head of state, where the monarch in the case of the United Kingdom or the president of the state in other democratic regimes, the head of state does not have political power, in the case of the European Union it does, and it is a relevant impetus, which is going to be covered also because such political impetus has a specific weight in the complexity of the Union's political compound<sup>103</sup>.

To fulfil these political goals, which can be identified as highest form of political goals of the Union, the EU, or specifically the EU Council which by the treaties should lay down the strategic goals of the EU, they need the action of the other institution, the European Commission, which relying on the sole interest of the Union, and totally independent from the Member States<sup>104</sup>, brings ahead the political aims and at the same time is supervises the “Union's Government”, or what can be seen as the “Union's Bureaucratic Machine”, composed of its the directorate generals, directorate units, and takes part in the implementation, whereas is not in the hands of the Member States, and supervises it. Once a law is approved it duty of the European Commission to do the implementation directly or giving it in charge to a Member State, which however has the supervision of the Commission. So, the Commission is the executive institution in the meaning of the word, overseeing execution of the laws. As is going to be covered in the

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<sup>100</sup> Only one with a semi-presidential system

<sup>101</sup> Treaty of the European Union, Article 15

<sup>102</sup> <https://www.consilium.europa.eu/en/european-council-and-council-of-the-eu/>

<sup>103</sup> Fabbrini, S. (2015). Executive power in the European Union: The implications of the euro crisis.

<sup>104</sup> Treaty of the European Union, Article 17(3)

following sections the many limits on the European executive powers, but at the same time the many privileges make it an exceptional case of study.

The fact that the EU Council, choosing as mentioned earlier on a negotiated unanimity, chooses the goals of the union through a negotiation of the different sides, being that it can be merely impossible that the 27 states have a similar political view of the political goals of the Union, and this is going to be covered later, also keeping in mind that the European Commission is not the sole execution machine of the political views of the European Council, but it has its own political goals and also the ones of the European Parliament political arena.

## 2.4 Power limitations of the EU

### 2.4.1 EU: governmental power but an international organization

When it comes to power the European Commission has a limited power if compared to a states' executive power in the classical separation of powers, being that of the European Executive it is the one that is more comparable to a national cabinet, this because the Union, based on the principle of Conferral has limited powers in some areas, because it is conferred from the states. In this regard the specific field where the Commission lacks power is in the foreign policy field, which is in the hands of the Council in the Foreign Affairs Council configuration, which is chaired by the High Representative of the Union for Foreign Affairs and Security Policy<sup>105</sup>. Also, the commission has extensive power in pursuing policies in their field of action, especially in fields where the Member States gave up their powers, which are the exclusive competences.

The main problem or issue of the EU Executive can be found in the as seen before, fragmented structure, indeed the derivation the European Unions' executive comes from isn't fully close to the classic separation of power, where there can be an executive holding the executive power, along with the extensive political powers covered in the previous chapter. Such issue leads to the dual executive in different directions and in a struggle for political guidance.

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<sup>105</sup> The High Representative is also member of the European Commission but its main source of power comes from on the Council, being the action of the Union in merit of foreign policy, mostly intergovernmental.

The fragmentation of power, being that it comes from an historical evolution of the competences, being earlier the European Union, with a smaller scope, for less states, then becoming more universal and for more states, a bit of compromise was to be done. Especially as mentioned before, the European Commission is an institution that exists much earlier on compared to the European Council, because the Commission is born to fulfil the goals of the Union, while the EU Council started coming along to support and make the member states cooperate especially in moments of crisis, and with it the outcomes can be that the states just use it to talk and cooperate, or to decide for the EU, but this views of the two institutions have two very different scopes, one is a universal institution which administers the Union, and fulfils a political agenda, for the best of the cooperation of the states and for the good of the Union itself, while the other institution (EU Council) finds the political goals decided based on what makes happy who, and what needs to be negotiated to get there<sup>106</sup>.

The EU Council seeks political impetus, being formed by the highest political figures in the European landscape, who seek to impose their political ideas, which come out as seen before, negotiated. The members of the European Council main job is to be the leader of their own state, so the European Union is seen in a foreign policy prospective, so to get a good outcome out of it, also because they need to deal with other leaders invested of the same mission. Which however doesn't fully allow the EU Council itself to conclude its political aims. The European Council isn't equipped of a collegial body, since the *civil service* is controlled by the Commission, and if we compare the European legislative power to the classic examples of legislative powers, in the ordinary legislative procedure the Council (held by the member states, so they should be able to reassemble a qualified majority<sup>107</sup> to approve the bill, but this cannot be entirely possible, since the collegial body in charge of proposing the law<sup>108109</sup>, which holds its political views and is reliant on

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<sup>106</sup> Fabbrini, S. (2016). From consensus to domination: the intergovernmental union in a crisis situation. *Journal of European Integration*, 38(5), 587-599.  
<https://doi.org/10.1080/07036337.2016.1178256>

<sup>107</sup> Voting system of the Council, based on the approval from the delegates of Member States that represent 55% of the member states and 65% of the EU Population, with a veto power allowed only when 4 countries are against: <https://www.consilium.europa.eu/en/council-eu/voting-system/qualified-majority/>

<sup>108</sup> The European Commission is the only allowed to legislation proposal in the European Union.

<sup>109</sup> Treaty of the European Union, article 17(2)

the confidence expressed by the European Parliament, and approved by a majority on political and national nominations, is to be held responsible to propose and implement the law, so the executive power can result quite complex in the decision-making procedure, and in the fulfilment of political goals<sup>110</sup>.

But this isn't just a legal problem of the EU, being that the EU Council is there by EU Law, but it is a broader issue because the EU is an international organization, and states can decide to join and withdraw, and states participate to it at a benefit-cost relationship, because the states do benefit from the EU in many different ways, directly by financing programs of the EU, or indirectly by being member of the Market, the Euro currency or other EU schemes which can benefit the state in a more hard to quantify way, and long term. Also, this led to the issue that it isn't just hard to quantify on a financial and economical level, but also political, since most of the European States have cooperated for more than half a decade, so their evolution happened together, and the benefits are harder to quantify.

This is meant to determine the fact that determining on the intergovernmental debate the costs and benefits of the EU it is rather hard, while though in the EU Council meetings the leaders do have needs and goals, so they instead of looking to the sole EU benefit, they want to look at the national benefit, and having the right to do so because they are the ones that authorised the EU of its power, so this loophole of concession but retention of power it comes from the Evolution of the European as an unique international organization, for this reason as started as an international organization, but then going through an evolution of its scopes and number of members it ended up being hard to keep the narrow focus of the purity of kind of cooperation. This systematically problem is going to be analysed from an institutional point of view and then from a political point of view in the next paragraphs of the chapter. But the most important aspect of collision and of political and institutional inefficiency is due to limitation posed by the fact itself of being an international organization and suffering the struggles of power and clashes of

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<sup>110</sup> Fabbrini, S. (2016, April 8). *Can Europe Make it: the executive deficit in the European Union*. Opendemocracy.net. Retrieved November 4, 2024, from <https://www.opendemocracy.net/en/can-europe-make-it/executive-deficit-of-european-union/>

political goals of member states, EU parliament and Commission, bringing to a compound institution<sup>111</sup>.

Up to this point the institution of the European Council has been analysed as the agenda setter of the union, and as it is presented in the treaties which constitute it. But as this institution it was originally external of the treaties, and it always proved its importance up to be inserted in the treaties and lead to changes in the EU, later in this chapter it is going to be analysed that the powerful presence of the European Council it is not just of agenda setting, but of a much wider influence, even if it is going to be contested the legitimacy of having such institution as agenda setting for the sake of the Union<sup>112</sup>.

#### 2.4.2 Seven institutions versus the common three

The way that the European Union works it is complicated and articulated, but one evident factor is for sure the fact that the European Union, as its executive is made by two separate political institutions, instead of the separation of power in three independent powers, in the EU the institutions are seven. The seven institutions are the European Parliament (Co-legislative), Council of the European Union (Co-legislative), the European Council, the European Commission, the Court of Justice of the European Union, the European Central Bank and the European Court of Auditors.

As mentioned before, the fact that the executive it is split in two leads to diverse lines of derivate reasoning, which are going to introduce an important point in the study of the complex functioning of the European Union.

The independent institutions, which are the important to the function of the Union, they have an articulated structure, and they are meant to impose safeguards to the functioning of the Union<sup>113</sup>. But this complexity from a governmental standpoint makes it hard to lead and difficult to maintain in a compact governmental scheme. So, the main reason which

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<sup>111</sup> European Parliament [Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies], Akbik, A., & Dawson, M. (2024). *The Role of the European Council in the EU Constitutional Structure*.

<sup>112</sup> Curtin, D. (2009). *Executive power of the European Union: law, practices, and the living constitution* (Vol. 12). Oxford University Press, USA.

<sup>113</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:europa\\_court\\_auditors](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:europa_court_auditors)

is going to be important for later evolution of this scheme is the nature of reasoning of the founding fathers, not the actual functioning today. For example in the European Central Bank it is important the fact that the head of national central banks of the member states part to the Euro they have a seat in the board, and in fact they have a control on it<sup>114</sup>, and this means that the independent institution it is indeed independent from the control mechanisms of the Union, but at the same time it adds political complexity to the overall functioning of the Union. The important factor so it is the reason why it is structured like this. And the option can be two, or a mix of the two. The first possibility is that the Union it is so articulated<sup>115</sup> in a way of influence of the member states, so the member states, both have a control on it, having a level of multi-governance to which apply their influence. This is the example of the board of the European Central Bank, or the appointments of the European Court of Auditors which depend upon the Council of the European Union, or also the fact that the name of the President of the European Commission is chosen by the leaders of the member states, by the European Council. This means that in a consequential way that the European Union will have a harder time to gain independence in its institutions, because the states still play a role in them, so this conclusion, as quite conservative it is for considering the member states as scared by the gain of power of the European Institutions<sup>116</sup>.

The other reason, it is of a more wise and evolutionary kind, and it is linked to the wisdom of the founding fathers of the European Union, and it is linked to the theory of the evolution of governmental system. The founding fathers when developing the European Union, they had the opportunity to create something new, using the knowledge and experiences of decades of evolution. Also, this evolutionary mission it is paired to the idea of making of the European cooperation something new and acting in a moment of revolution of the European political world. For this reason, making the European Union more articulated and inclusive makes it a new inspiration, having the chance to apply

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<sup>114</sup> [https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/search-all-eu-institutions-and-bodies/european-central-bank-ecb\\_it](https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/search-all-eu-institutions-and-bodies/european-central-bank-ecb_it)

<sup>115</sup> Cro Crouch, C. (1993). *Industrial relations and European state traditions*. Clarendon Press.

<sup>116</sup> Petti, A. (2017). Federico Fabbrini, Ernst Hirsch Ballin and Han Somsen (eds,) What form of government for the European Union and for the Eurozone?(Hart Publishing 2015). *European journal of legal studies*, 9, 259-268.



theories and new views, being the European Union, an exceptional experiment going well.

Probably the reason for the European articulation and complexity it is a mix of the two, the Union expanding its scope needed to make concessions to the European States, but at the same time the same people who designed it wanted to implement a new constitutional scheme, new to the democratic landscape, being that many states they had to deal with heritage of institutions, coming from slow evolution of institutions in historical states in Europe, or historical derivation or other present institutions. Instead in the case of the European Union, the institutions were new, and in the designing of them they could apply new theories, applying the best of the past experiences, also making concessions to the member states.

This does not apply only to the presence of an independent central bank or the court of auditors, but also to the structure of the double legislative, very different in nature between them, and the complex dual executive.

## 2.5 Summing up: Compound Democracy

To sum up the European Union political layers, sociologist Sergio Fabbrini with the term “*Compound Democracy*”<sup>117</sup> states the compound of the multi-level governance and mix of inputs that come to join and create the decision-making process. For this reason, the system of the European Union is diverse from a national state in the analysis of the decision-making process. But the evolutionary difference of the Union makes difficult to implement changes, and so the member states hold on the Union can still influence a lot and make complex the achievement of a unitary decision.

For these reasons it is crucial this study to analyse the European Executive power of the European Union, being *de facto* compound of layers political sources. The study of Fabbrini is not going to be the sole source, but it is a good starting point to identify weakness of Union’s executive branch.

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<sup>117</sup> Fabbrini, S. (2010). *Compound democracies: Why the United States and Europe are becoming similar*. OUP Oxford.

## 2.6 Issue of political responsiveness

The European people express their vote through the European Elections which take place every five years determine the formation of the European Parliament. The European Parliament elects the European Commission, after the president's name is chosen by the EU Council. So, the Commission's political reliability is based on the formation of the EU Parliament. Which means that the political goals to determine the "cabinet" formation, are coherent with the majority formation of the EU Parliament.

In political science the notion of Political Responsiveness<sup>118</sup> determines that political actors identify social problems, and after elections, once in office, they implement their measures, it is a sort of social contract with the elector, it is a responsibility with the voter, which votes the elected official, and it is the job of the elected to respond to the issue previously determined in order that in the time in office it realizes the previously stated position. Political responsiveness is present in every democratic regime, and it is a determinant factor of keeping democracy alive. Indeed, responsiveness is also seen as "*reflecting and giving expression to the will of the people*"<sup>119</sup>. So, the government institution has a responsibility to act in a coherent way to issues. This is crucial to understand democratic functioning.

The reason why the issue of responsiveness is brought up in this section is because in this study about the European Union executive branch, which usually is the one in charge of responding to issues, and propose legislation, it is going to be highlighted that in the EU this is an issue which is going to be covered.

The fact that in the European Union, the vote is expressed to the EU Parliament, appointing the Commission, entails the responsiveness of the Commission should be close to the one of the majorities of the European Parliament. Anyway, earlier on in the chapter it has been mentioned that the influence of the European Council is relevant,

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<sup>118</sup> Krichewsky, D. (2021). 4. Political Responsiveness: The Identification and Processing of Problems in Modern Polities. *Global Studies & Theory of Society/ Volume 5*, 121. *Responsiveness*, Bielefeld: transcript Verlag, 2020, pp. 121-148. <https://doi.org/10.1515/9783839451267-006>

<sup>119</sup> Pennock, J. R. (1952). Responsiveness, responsibility, and majority rule. *American Political Science Review*, 46(3), 790-807. <https://doi.org/10.2307/1952285> Accessed 27 Jan. 2025.

especially regarding crisis resolution, so this opens the debate of “who is responsible for what”. There have been numerous cases where the European Union seems to throw itself on some sort of idea of pursuing a policy, but it is worth asking where the impetus comes from, if as a response based on the political goals of the Commission, or if as a decision of the leaders in the EU Council, and their view of “what they want out of the EU”. In this it can also be seen as becoming a responsiveness to national elections

#### 2.6.1 Executive relation with legislative power.

The issue of the legislative power in the EU is part of the lack of compactness of the decision-making process. Being that the EU Parliament is not equal to the Council. The Council has in some instances more power, even if with the amendments in the Lisbon Treaty, the Parliament gained more control on some procedures, the Member States still maintain a stronger hand with the Special Legislative Procedure<sup>120</sup>, where the involvement of the Council is of legislator, instead that co-legislator. In this case the Commission, needs to present itself in front of the Council, which being composed by the national cabinets isn't consistent with the political orientations of the Commission, but it is with the visions of the EU Council, proponent of the political views as has been seen. So, the Commission finds in front of them an unbalanced legislative. Also, in regard of what the Commission must do and wants to do.

#### 2.6.2 Legislative initiative EU Commission, political initiative of EU Council

As mentioned in the previous paragraph the formal legislative initiative must come from the Commission<sup>121</sup>, but also the treaties provide that the EU Council can lay down “general political direction”<sup>122</sup>, so here there is a clash of competence, and as has been seen in previous paragraph it can end up that the EU Council competence exceeds what was lay down in the treaties.

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<sup>120</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legisum:special\\_legislative\\_procedure](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legisum:special_legislative_procedure)

<sup>121</sup> <https://eur-lex.europa.eu/EN/legal-content/glossary/legislative-proposals.html>

<sup>122</sup> <https://www.consilium.europa.eu/en/european-council/>

The EU Commission has the power of initiative, considering the institution as the mean to pursue the sole interest of the Union, so having an independent institution from the member states that does not have an attachment, but most of all that do not pursue the interest of the Member States, but of the Union itself, with its aims laid down in the treaties. But this loses effect when the political impetus, even if it is determined by the treaties, is determined by the member states, because the member states are going to have an interest which is national, rather than a pure European Union interest. For this reason, being that the Member States still hold a lot of power with the Institutions of EU Council and Council, they cannot allow the Commission to fulfil its goals.

In the work of Fabbrini<sup>123</sup> the comparison of the European Union, with the United States of America, the UN Senate it is a body that is composed by senators, two from each American State, but the difference with the EU Council is that as the chamber of the states rather than of the people (represented in the House of Representatives), the difference is that they represent the political interest in function of the United States, rather of the interest of the singular state itself, but the function of the chamber isn't to protect the singular interest of the states, but of representing them in function of the common policy-making. This changes a lot the things on the table, because as seen, the case of an executive that is far away from the legislative, forgetting for one second the in the case of the EU is a parliamentary type of government/cabinet, so the fact that the EU Commission has a confidence relationship with a parliament that needs to elect it and can dismiss it is not relevant for a second. But it can be possible that an executive it is politically distant from a legislative, as in the case of the presidential systems, so it can be possible that the political ideas are different, and the effects of this are going to be covered in the next section of the chapter.

## 2.7 Effect of compound political system: EU Compound democracy

In this section of the chapter is going to be covered a part of effects of the compound democratic system of the EU and consequential issues, but most of all unresolved effects.

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The EU Council as seen is an organ that as reported by the European Parliament<sup>124</sup> exceeds in practice the number of tasks which originally was, by treaty, designed to have attributed. The EU Council has always been an unusual institution, because it can switch from debating EU issues to just be an intergovernmental debate. And, if take part to it the President of the European Commission, and the president of the European Council, the only voting seats are the ones of the leaders. Historically the treaties of the Union tried to catch-up to the evolving of the EU Council so it can be understood the fact that the EU Council it is an institution with such a history<sup>125</sup>.

But the EU Council at this moment it has another important function, which was partially already mentioned, which is due to the closeness with the Council, which is the “elevated” function of the EU Council. So in case of blocks in the Council, the negotiations of EU leaders it can lead to agreements to keep going on with legislations, or also it can in emergency cases have an elevated importance of making the states agree, because the sessions of the EU Council are close doors, and so the negotiations can have, with all present, an intergovernmental impact, and also the importance of this step, even if really influential on the EU political outcome, it is necessary in order to pursue some kinds of legislations, which might be fought in the Council, or making sure all the member states agree beforehand, to avoid loopholes. This gives the necessary means of legitimacy to their decisions.

But the outcome it is a smoothening of the decision-making process, but at the same time the power of the unitary decision, the Commission, loses power, having the duty to implement, and maybe going against the Commission’s priorities. Another option is the fact that when the states decide, and they decide out of negotiations, what is approved (by consensus), it has already been negotiated, so the effect of mediation of the member states is against the sole purpose of proposing legislation for the sake of the Union, but it is for decision of what the member states leaders like. This passage is crucial to understand that

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<sup>124</sup> European Parliament [Policy Department for Citizens’ Rights and Constitutional Affairs Directorate-General for Internal Policies], Akbik, A., & Dawson, M. (2024). *The Role of the European Council in the EU Constitutional Structure*.

<sup>125</sup> Fabbrini, S. (2008). *The Constitutionalisation of a Compound Democracy: Comparing the European Union with the American Experience* (No. p0033). University of Hamburg, Faculty for Economics and Social Sciences, Department of Social Sciences, Institute of Political Science.

if the control over the Union from the member states it is too strong, the space for evolution and growth of the communitarian method, this is not good for it.

### 2.7.1 EU Council Veto

The issue of the veto is something still present, and numerous academics and journalists write on it, as one of the procedures that it restraining the European Union to progress, others see in the veto the, which can be applied in EU Council voting sessions, which on important matters are to be approved by consensus, so everyone must agree, and this is by some a measure that guarantees that the decisions that are taken by the EU are in line with the views of the state, this might seem legit, since the EU in this way can act in areas where the member states do not have possibility to legislate, or legislate in a way that produces an effect that the member states cannot do, but at the same time includes a big step back: indeed the fact that all twenty-seven member states must agree on a matter, along with the increasing influence of the EU Council, means that that the EU decisions have to be taken if the states agree always. This isn't just counterintuitive on a democratic level, where consensus needs to be found, but it can be immediately noticed that thigs can get really hard, really fast. If for a second the EU system is compared to the US it might be fast to understand that if all the states had to agree on a matter it could be hard to approve legislation, or even more, to make it even possible for the treaties revisions, which require the approval of all the member states, and following that the ratification which means that all 27 parliament or in some cases also the referendums that some states require need to be with a positive outcome<sup>126</sup>. This ends up making it really hard for the European Union to lead on changes and evolutions, and in this the role of the member states it is of great importance<sup>127</sup>.

### 2.7.2 Executive implementation: centralized or decentralized

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<sup>126</sup> Tsebelis, G., & Yatahanas, X. (2002). Veto players and decision-making in the EU after nice. *JCMS: Journal of Common Market Studies*, 40(2), 283-307.

<sup>127</sup> Peers, S. (2012). The future of EU treaty amendments. *Yearbook of European law*, 31(1), 17-111.

In this topic the contribution of Schütze<sup>128</sup> is important to better understand the differences and consequences of executive implementation, being, other than the political side of the executive function, the other giant function of executive agencies and institutions<sup>129</sup>.

The comparison it is between the two more explicit cases of federalism, the American one and the one of the German Federal Republic. The issue of the legislative being greater of the executive it is important, because the Union, with its many tasks cannot indeed pursue them all, but tends to delegate the implementation of legislation to the member states, for different reasons. The European Union relies on the member states, and this crucial point it is problematic on one side, and difficult to change on the other. But for the sake of this study, it is important to highlight.

Executive power, executive agencies and their work are at the core of the executive function, so as seen in the first chapter, the role of implementing the laws it is in the hands of the executive offices, but if this cannot happen directly by the offices that are supposed to do it, how does it work. We know the example of the American case well, the American case it relies on offices, ministers or department as they are called in the United States, and the laws are implemented by them. This works as a unitary state, with the difference that it is applied to a federal context. So, the independence of the singular state it is greater. In the case of decentralized executive implementation or also called as executive federalism the member states are themselves responsible for implementation, but it is not a question whether to do it or not, but the fact that it is in their own hands to do it. This leads to issues which are determined by the member state to which they are applied to. Because the member states inside the Union are different, and they have different approaches to the EU. In this case the core power of the main executive is lower, but more of supervision, and in some regards the EU Commission, doesn't have the power and the extent to be able to implement legislation in all the EU. But for some matters instead they take it all in their own hands, and so they do implement directly themselves.

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<sup>128</sup> Schütze, R. (2010). From Rome to Lisbon: "Executive Federalism" in the (New) European Union. *Common Market Law Review*, 47(5), 1385-1427

<sup>129</sup> Christiansen, T. (2002). Relations between the European commission and the council secretariat: the administrative complex of European governance introduction 1. *Politique Européenne*, (01), 11-24.

The EU Commission employs 32000 people, which might seem a large number of people, but compared to other institutions the number can seem pretty low, just the Italian Ministry of Economy and Finance (one out of the many of the Italian government) employs more than 9500 people, counting on a one of the largest, but not the largest populations in Europe, so it isn't a large institution the EU Commission if put in prospect of the EU population, so it is natural to deduce that the EU Commission can't implement EU legislation both because of treaty decisions, since it was never decided in the EU treaties that all the EU laws must had been executed by an EU office, and also because even so, they might need a big restructuring and enlargement of the European Union institutions.

## 2.8 Conclusions

So, the European Union executive power is on multi-layers of governance and not only on the political side, having to deal with the compound democratic effect of the Union, but also on the administrative level where the implementation it is in many cases decentralized. In this chapter has been analysed the compound system but beyond the purely institutional one. The European Executive it is a core part of the political and institutional system of the EU, but most important it is a fundamental of any institutional system, without which it it cannot function. The European Union's executive has the European Council and the European Commission as important executive institution, and the dualism in the union it is of a unique kind, and the issues that arise with this institutional setting are unique for the EU only, other systems have different problems but are not necessarily better or worse systems.



### **Chapter 3:**

#### **The EU Council, its role in crisis management: the Leadership and institutional framework**

#### **3 Introduction: Intergovernmentalism in the EU, crisis and EU Council role.**

In this chapter it is going to be covered the functioning of the European Union during crisis affecting the European Union, European member states or the world in general and can have an effect on the EU or its states on ways it can or should be a concern of the EU. For this reason in this chapter is going to be covered what happens at institutional level, covering specific crisis that affected the European Union, the reason why it is important to look at specific events it is for different reasons, first and foremost because every crisis that affects institutions or governments and their challenges are always different and cannot be previously foreseen, otherwise they wouldn't be challenges, and at the same time crisis are not always the same, but as is going to be covered in this chapter, after a crisis new policies are implemented, new institutions and procedures are introduced to avoid the same from happening again.

In this chapter one focus of the research is going to be in specific the executive institutions of the EU, which in general are the institutional that, as seen in the first chapter are meant to act in emergency occasions. Specifically in the case of the EU is going to be analysed and studies the institutional framework, how the institutions interact usually, but especially what happens during the crisis, and who does what and why.

So, it's going to be seen that in the Union during Crisis the intergovernmental Union takes much of the decisions, and it's going to be understood why, and what the institutions do. Initially it's going to start taking a look at the Intergovernmental Union in general.

In this chapter even more focus is going to be drawn on the institution of the European Council, which has been extensively covered in the 2<sup>nd</sup> chapter, but analysed in its practices of influences as part of the European executive branch in general, in this case is going to be studied the sole purpose and action in moments of crisis, which as is going to be seen are the reasons why the European Council exist at first sight. The European Council is going to be studied in the relation of impetus, but mostly of political leadership and impetus.

The last part of the chapter is going to be on the Euro-crisis of 2011-2013 with the entrance in the arena of the Eurogroup and the Euro Summit, which are a clear example of the intergovernmental functioning of crisis management of the Union executive.

### 3.2 The intergovernmental Union

Whether the EU is a federal, supranational or intergovernmental regime it is debated, but the most accurate way to define is that it is based on cooperation and depending on the functions it works and assumes different functioning schemes. For sure it is a complex system, and the debate enter into question when the EU is a supranational organization, to achieve the mutual good of the Union, or the Union is an intergovernmental regime, to coordinate domestic action, but in general each one decided for its own interest<sup>130</sup>.

Represented also internally, the institutions of the Union such the Parliament and the Commission both represent the interest of the European people, and the common and unitary end. They see the Union as a whole, and especially the Commission, works for the interest of the Union, not of the Member states as seen in the previous chapter.

But in the previous chapter has been mentioned the fact that the Council instead it is a different kind of institution, which it is formed differently, representing the interest of the member states.

With the Maastricht Treaty<sup>131</sup>, the introduction of the second and third pillar<sup>132</sup>, the introduction of the Common Foreign and Security Policy, then the introduction of the High Representative with the Lisbon Treaty, opened a new chapter of European cooperation, being that now the states were using an European Union institution, for sole intergovernmental interest and purpose, since the member states retained the competences at national level, but strengthened the introduction of intergovernmental processes inside the Union.

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<sup>130</sup> Puetter, U., & Fabbrini, S. (2016). Catalysts of integration – the role of core intergovernmental forums in EU politics. *Journal of European Integration*, 38(5), 633–642. <https://doi.org/10.1080/07036337.2016.1179294>

<sup>131</sup> Goebel, R. J. (2013). Supranational? Federal? Intergovernmental? The governmental structure of the European Union after the treaty of Lisbon. *Columbia Journal of European Law*, vol. 20, no. 1, Fall 2013, pp. 77-142. HeinOnline

<sup>132</sup> European Union. (2025). Fact sheets on the European Union - 2025. In *Fact Sheets on the European Union*. [https://www.europarl.europa.eu/ftu/pdf/en/FTU\\_1.1.3.pdf](https://www.europarl.europa.eu/ftu/pdf/en/FTU_1.1.3.pdf)

This is to highlight that even if the Union has a supranational regime, the intergovernmental one is still powerful and decisive many times, and as is going to be covered it is going to be crucial in the times of crisis. So, this is understandable that increasing the competences of the Union as happened during Maastricht, which the states some decide to keep intergovernmental, during a crisis the Intergovernmental side of the Union is going to be present because of the direct implication and responsibility they have.

### 3.3 Evolution of the political system

Political Systems evolve (Chapter 1), like in France they talk of “presidentialization”, in the EU the EU Council and in general the “*intergovernmentalization*” of some processes found its way, this has 2 reasons:

In chapter one is seen as political systems evolve in time, changing and finding ways to respond to institutional changes, or political changes. The executive branch, the one that historically was the latest to be changed since the implementation of parliament and courts first, then the so-called *residual power* was a matter of finding its best implementation in different systems. Still, it is a concern of political scientists which is the best executive, executive election and in case is a parliamentary system which is the relation cabinet-parliament.

In the case of the European Union, the change has been of the increasing influence of the European Council, which is going to be answered and covered in this section, but also the other question is whether the system is working in the right way, producing the outcome which was desired by the founding treaties<sup>133</sup>.

A recent case in Europe has been the long struggle to find executive stability in France, which with turmoil due to political implications in the 50s coming from the wars, and the reform made in 1958 signified a drastic change in the constitutional setting of the French

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<sup>133</sup> Fabbrini, F. (2015). Austerity, the European Council, and the Institutional Future of the European Union: A Proposal to Strengthen the Presidency of the European Council. *Indiana Journal of Global Legal Studies*, 22(2), 269–334. <https://doi.org/10.2979/indjglolegstu.22.2.269>

Republic<sup>134</sup>. But to this the parties and the politics changed with it, so fulfilling a process of change and adaptation. For this reason, has been called the “presidentialization” of the French Republic, a change in regime and then a change in the internal political functioning and debate, this to prove the fact that systems change and other factors with it.

### 3.3.1 The legacy of the Council to the EU Council

In the European Communities the presence of the Council has always been important, as a formal institution, regulated and part of legal procedures. But this brought as its natural cause to struggles in the day-to-day activities. However, this also meant that the constant presence of international presence of state interest in the European Communities meant the direct involvement of the member states in the processes. And the question that comes naturally is what brought from the Council to get to the EU Council. Which are two different institutions, which have different purposes, but they still represent an international table with cabinet ministers from the member states.

The first historical answer comes from the first meetings of the EU Council<sup>135</sup> happened in the first half of the 70s, with the head of government of the member states deciding to meet but in a different setting. In this case the meetings needed to be informal, so the goal wasn't institutionally linked to a specific function of the European Community, but rather an international debate between the head of government and of state to conclude decisions, regarding actions to be taken. And this, especially in the shadow of the events taking place in those years such as the financial crisis brought down by the energy crisis of the 70s, influencing the European Economy, was a concern of the European Community, but the purpose of the EU Council at the time was to find together a solution, without following directly the legal process of the EEC at the time. Rather to beforehand agree on the step to be taken or to find a common agreement on matters.

The President of the European Commission, as today, has always been part of it, and in the general picture of the function of the Institution, especially during crisis, it is a

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<sup>134</sup> Clift, B. (2005). 10 Dyarchic presidentialization in a presidentialized polity: the French Fifth Republic. In *Oxford University Press eBooks* (pp. 221–245). <https://doi.org/10.1093/0199252017.003.0010>

<sup>135</sup> De Schoutheete, P., & Wallace, H. S. (2002). *The European Council*. Paris: Notre Europe.

crucially important actor, because represent the institutionalized capabilities, and the administrative power of the institution, able to support. Originally the informal setting, and the closed doors meetings allowed to find agreements, and this stuck with the European Union, and kept meeting regularly, with more extraordinary meetings for extraordinary occasions such as crisis solution meetings.

The format has been consistent during the years, but still in the process of formation of the EU Council has been important the presence of the Council, allowing then as seen in the previous chapter, of having also a say at the later legislative step.

### 3.3.2 The EU Council as political leadership

The other reason which it can be used to explain the increase in influence and power of the European Council, is the one regarding the accumulation of power, primarily coming from political leadership. Political leadership in a time of crisis it is nonetheless necessary and needed, especially because political leaders cannot abstain from taking decisions when crisis are eroding the institutions or especially in the case of the EU, crisis can fragment the Union. For this reason, as this chapter is going to prove, this is one of the most determinant factors of the increasing power of the EU Council, and especially the decision maker during crisis.<sup>136</sup>

The political space needed in this case is taken by the EU Council, political authority, but this didn't come from treaties, but as is going to be seen in the next paragraphs it happens because of political and institutional need. And this is going to be covered later on in the chapter. So the increasing power can be attributed to an institutional instability or matter of institutional development, related to the fact that in the EU, supranational institutions do not have yet developed such power.<sup>137</sup> But as seen in the previous section, it can also be a political choice. So, the member states might not be willing to let that happen, driving treaty amendment, having been in the past one of the institutions fostering a large impetus in institutional change and also the main masters of the enlargements<sup>138</sup>.

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<sup>136</sup> Wessels, W. (2015). *The European Council*. Bloomsbury Publishing, 194-198

<sup>137</sup> Tyshkovskiy, A. (2016). [Review of *Which European Union? Europe after the Euro Crisis*, by S. Fabbrini]. *Society and Economy*, 38(3), 422–426. <http://www.jstor.org/stable/44652257>

<sup>138</sup> Wessels, W. (2015). *The European Council*. Bloomsbury Publishing. 178-186

### 3.3.3 Summing up the two factors

During a crisis, in any institution the government needs to take decisions, for which is going to be accountable, in the future. In this case the EU Member States head of governments filled a space. This effect is not unilateral, in the meaning that they didn't just fill this space for institutional purpose, but also the states did it for national interest of using the EU Institutions to fix the crisis and at the same time, keeping the “*foot in the door*” to have a degree of control and influence in the decisions of the EU<sup>139</sup>, which comes from the earlier days of the 1970s when the EU, even if did not have Common Foreign and Security policy, so to justify intergovernmental processes in it, started to gather their leaders to decide what to do, negotiating.

So, the political leadership of the EU head of government, it is instrumental for them, to provide influence, and at the same time, filling a political leadership needed in the Union. And under this scheme the European Council was able to accumulate a large amount of decision-making power, being that its decision was of great political importance for the union for the mechanism earlier seen but also filling a leadership and responsibility place<sup>140</sup>.

### 3.4 The European union during crisis, why is the EU Council important in crisis management.

After historical and institutional background, before looking at the institutional crisis of 2011-2013, in this section is going to be covered the institutional functioning and the interaction among institutions during crisis.

The European Council as in introduced in the previous paragraph is the crisis manager, or better, it isn't part of any treaty prevision that it happens so, but in fact, when crisis

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<sup>139</sup> Puetter, U. (2015). The European Council. *The new intergovernmentalism*, 165-184.

<sup>140</sup> Zaharia, V., & Pozneacova, V. (2020). Supranationalism vs. Intergovernmentalism in the Actual Organization of EU. *Logos Universality Mentality Education Novelty Political Sciences and European Studies*, 6(2), 47–61. <https://doi.org/10.18662/lumenpses/6.2/23>

faced the EU, the European Council was gathered in extraordinary meetings and with its resolutions announcing political decisions, which then are pursued by the institutions in the Union<sup>141</sup>.

The main research question is why such crisis aren't managed by the Commission, which overall it is the administrative government of the EU, they are head of many agencies, and they have a political majority in the EU Parliament.

One thing it is clear, so that once a crisis starts, as the example of the Euro zone crisis or the 2008 Great Recession, the Union needed to provide instruments and programs, governments usually in financial crisis try to create relief programs to stimulate the economy on the fiscal policy side. Not only just with funds, but also with programs to bring changes to the economy's structure.

As in the EU legislation needs to be proposed by the Commission, if we make an hypothetical case of financial crisis, and suppose in a period of time the EU passes a legislation to tackle the issue supposedly with funds, or a piece of legislation which is not relevant in the matter now, the question is, in such crisis moment, who takes accountability for the bill? Is the Commission going to take full responsibility and accountability. As seen in the previous chapter, the European Commission, which is accountable to the European Parliament, usually takes a step, and the European Council decides a political initiative during crisis<sup>142</sup>. As crisis manager the European Council intervenes and stipulated new policies, but most important takes political decision.

In the framework then the EU Council then needs the European Commission, whose President it is part of the European Council, and through its administrative body and offices presents reports to the EU Council, and in case enacts policies or proposes legislation. So briefly the process is that the EU member states leaders decide a path, which becomes enacted by the Commission. This process is not part of the EU Treaties. But the question is, why the EU Commission does not have more power in Crisis management and why the member states want to be part of it.

The possible answer can rely in the factors that add-on after the approval of the EU Council. As Kassim and Tholoniati cover in *The European Commission* (2021), the EU

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<sup>141</sup> Schmidt, V. A. (2018). Reinterpreting the rules 'by stealth' in times of crisis: a discursive institutionalist analysis of the European Central Bank and the European Commission. In *Europe's Union in Crisis* (pp. 118-138). Routledge.

<sup>142</sup> Lewis, J. (2021). The Council. *The Palgrave Handbook of EU Crises*, 239-257.

Council itself is designed as the crisis manager, and they can basically decide themselves the path, but why the Commission take such a step back, from the relevant power that usually retain<sup>143</sup>.

Usually, the way that the EU responds to crisis is by a number of Evolutions, new programs and new systems. As covered earlier in the chapter, any crisis is the same, otherwise it wouldn't be a crisis. But the European head of government can basically take this decision by themselves, because the amount of power that they indirectly have it is notable<sup>144</sup> and most of all they can induce institutional changes in the Union and push for the creation of new agencies or even change the treaties. Another point is that the EU Council can commit resources from the member states, since the EU doesn't directly tax and doesn't have fiscal capabilities, they need member states resources, which it is purely an intergovernmental kind of decision.

The notable results are then that the consensus of the member states in the EU Council, it is not a weak authority, but it is the most influential authority, because the member states can influence in a deep and broad way the processes, resources and the institutions. Supposing a case where the EU Commission decides all by itself, then on the legislative side it still has to encounter the Council in the Legislative process. So their authority is sustained by the parliament, but the Commission doesn't have the same for the Council. So, it can be also understood in a way that the EU Commission is not strong enough to act, which means that the EU Commission is not politically and institutionally capable to pursue more extreme and destabilizing decision, resources<sup>145</sup>, but it is able once asserted on the intergovernmental table what is the road to take, to enter the game and act by enacting the decision practically. The EU Commission as a supranational independent body, in a crisis pursues the interest of the Union, while the member states, as mentioned in the previous chapter are part of a larger scheme in European multi-level governance being that they also have the two institutions of the Council and the EU Council to stress their national interest and concern, so that they are brought then in the game of a matter

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<sup>143</sup> Kassim, H., & Tholoniati, L. (2020). The European Commission: Crisis and Crisis Management in the European Union: The European Council and European Commission Revisited. In *The Palgrave handbook of EU crises* (pp. 297-313). Cham: Springer International Publishing.

<sup>144</sup> Van Middelaar, L. (2019). *Alarums and excursions*. Newcastle upon Tyne: Agenda Publishing.

<sup>145</sup> Peterson, J. (2017). Juncker's political European Commission and an EU in crisis. *JCMS: Journal of Common Market Studies*, 55(2), 349-367.



of interest<sup>146</sup>. The point is also that it is not defined in the treaties which the process to follow in crisis must be the above covered, but the EU treaties, decided by the member states, limit the powers of the EU Commission, on financial and legislative matters, and considering the fact that the EU works in a balanced regime, where the member states, the EU Institution and the parliament are all part of the scheme, the member states in crisis tend to have larger concerns of national interest and be more willing to influence politically and on a larger scale to commit resources and approve legislation.

This as anticipated this can be attributed to the legacy of the Council of the European Union as a influential institution in the EU, but also as the possible will of the member states to keep a “*foot in the door*” for European decision-making, imposing the limits of the EU<sup>147</sup>.

The crucial role of the Council is important because as covered in the previous chapter, the Council usually corresponds to similar political views of the EU Council<sup>148</sup>, I usually because it could happen that in some dispositions of the Council the political affiliation of the minister present it is different than the one at the head of cabinet, being possible that cabinet coalitions exists, but normally for a minister not obeying to the own cabinet could result to a cabinet crisis, so it can be taken for granted that usually the political views of the member states can be aligned in the EU Council and in the Council, which can dispose of Special legislative procedures, so broaden action of the EU<sup>149</sup>.

To better imagine that we can schematize it by the Commission that anyway is going to act, and it needs legislative approval, the question then is: is the grounds on which the EU Commission acts solid enough? Probably not enough because the member states can still oppose in the Council, and at the same time their influence on the financial level it is substantially relevant to the finalization of any kind of extraordinary potential relief program. So the Commission institution misses authority and resources, cannot do what member states can.

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<sup>146</sup> Backman, S., & Rhinard, M. (2018). The European Union's capacities for managing crises. *Journal of contingencies and crisis management*, 26(2), 261-271. <https://doi.org/10.1111/1468-5973.12190>

<sup>147</sup> Schmidt, V. A. (2016). The new EU governance: new intergovernmentalism, new supranationalism, and new parliamentarism. *Istituto Affari Internazionali IAI Working Papers*.

<sup>148</sup> Lewis, J. (2021). The Council. *The Palgrave Handbook of EU Crises*, 239-257.

<sup>149</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legissum:special\\_legislative\\_procedure](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legissum:special_legislative_procedure)

Concluding this section, the EU Council it is strong, because the influence it is, still, important in the decision making of the Union. It can be argued that before Maastricht with less areas of cooperation the crisis could impact less the Union and more the single member states, so the need of a unitary crisis manager was less important, but still it happened that the EU Council took its own way right in the 70s, and this is linked to the fact that the main goal of the European Union it is to bring the people together, so a differentiated response to a dramatic period of time could induce a big difference in outcome, for this reason it is important that states evolve next to each other, which is very important in looking at what happened in the years between 2009 and 2014.

The fact that the states need consensus in the EU Council it is not a case, but because the states need to agree all on what to pursue. It is not at the same level of EU treaty ratification, when all the parliaments need to be aligned (and in some cases referendums), but the fact that all the leaders are okay with a path to take together means that they are compact together and the action it is backed by a large agreement of the head of government.

### 3.5 The European Union leadership during the EURO Zone Crisis (2009-2014)

#### 3.5.1 Crisis Background

In the years after the global recession of 2008 the European Union countries went into a deep recession. The in the member states a big financial crisis was stressing the financial capabilities of the governments. As the European Union created the monetary union with the Maastricht treaty, entered into force in the years 1999-2002 the states lost the monetary capability from their central banks, but indeed they kept the fiscal power, in face being able to run in deficit in different ways and each state offering a different interest rate for their government bills. Still in 2025 the fiscal union hasn't materialized yet, but the member states now sought a degree of coordination and limits to running in deficit, in order to keep the monetary union stable<sup>150</sup>.

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<sup>150</sup> McNamara, K. R. (2008). A rivalry in the making? The Euro and international monetary power. *Review of International Political Economy*, 15(3), 439-459.

According to De Grauwe (2013)<sup>151</sup>, lack of unitary fiscal policy allows macroeconomic difference to persist over time and sum-up, for this reason when the financial crisis happened and private debt from banks collapsing to be bailed-out and lower tax returns from the financial crisis lowering production, increasing unemployment rate, and different inflation rates that have been running for years, the EU member states found themselves in a bad place in a bad time. And the EU needed to take action to fix this, with the consequence that a crisis regarding the EURO and any destabilization would not just influence the in-debt member states, but it would tackle also the healthier countries. Which reason lays in the fact that with the advent of the monetary union the states as anticipated lost part of their infrastructure to keep their economy stable<sup>152</sup>.

### 3.5.2 Role of the EU Council, and EU leaders.

The first thing to consider is that during this crisis, being that the crisis affected the economies of the singular states, because such states have different economies, it can be understood the frustration of some leaders in handling the crisis, concerned that some other European economies might affect their own. For this reason, the European Council which after the treaty of Lisbon became one of the official institutions of the Union now had also a semi-permanent president. Who does not have a right to vote, but it is a present figure in the negotiations, and it works as agenda setter, calls the meetings and it is a spokesperson for the EU Council's conclusions<sup>153</sup>.

During the financial crisis, having a stable president of the EU Council was stabilizing, since the same person could oversee the different meetings and get more in line with the way to pursue it.

During the Euro-zone crisis the question of the proportion of intergovernmentalism in the EU it came strong back into the discussion, being that the cause was purely of member states responsibility, and the effect was impacting all the Euro states.

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<sup>151</sup> De Grauwe, P. (2013). Design Failures in the Eurozone: Can they be fixed?. *LEQS paper*, (57).  
<http://dx.doi.org/10.2139/ssrn.2215762>

<sup>152</sup> da Conceição-Heldt, E. (2015). Why the European Commission is not the “unexpected winner” of the Euro Crisis: A Comment on Bauer and Becker. *Journal of European Integration*, 38(1), 95–100.  
<https://doi.org/10.1080/07036337.2015.1101957>

<sup>153</sup> <https://www.consilium.europa.eu/en/european-council/president/role/>

In this case we saw the European debate turning wholly on the intergovernmental debate, since the European Union does not have a fiscal capacity of raising funds from the capital market, and for this reason the Union needed to find this from the member states, but at the same time, the help would have impacted the member states government, so even if the European Institutions, such as the Commission would have worked in monitoring the progresses, the member states as a procedure that would have impacted a member state the member states wanted to be in first person part of this.

Looking at the meetings and how the European institutions worked, the member states in this period worked a lot towards the creation of institutions and mechanisms which would prevent other crisis of this kind.

The member states created the ESM, signed the “fiscal compact”, and proposed the “growth compact” and the banking union. All of this was made in an intergovernmental way, so the member states leaders decided it, and they approved it, they bared the responsibility for it, but also the consequences. This led to a crisis management all in the intergovernmental procedure, which used the European Commission for drafting reports, handling the monitoring, and the unitary tasks.<sup>154</sup>

In the crisis was coined the name “TROIKA” so the three interactors with the debtors governments, the EU Commission, the European Central Bank and the International Monetary Fund, the European Commission played a role, also because even if the member states in that moment were to deliver decisions, they did not have the infrastructure to pursue with programs, legislation or even drafting specific reports, instead in this the EU Commission found itself capable to handling the task and also raising capitals for the bail-outs on the capital market, with the institutions of the EFSM<sup>155</sup>. However still, at the creation of the EFSM, even if was pursued by Commission, the decision was to be approved first by the member states and the member states were needed in first to be a collateral to the loans. Then the member states agreed to establish a permanent institution, the ESM (European Stability Mechanism)<sup>156</sup>for granting the financial stability of the

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<sup>154</sup> Copelovitch, M., Frieden, J., & Walter, S. (2016). The political economy of the euro crisis. *Comparative political studies*, 49(7), 811-840.

<sup>155</sup> [https://economy-finance.ec.europa.eu/eu-financial-assistance/euro-area-countries/european-financial-stabilisation-mechanism-efsm\\_en](https://economy-finance.ec.europa.eu/eu-financial-assistance/euro-area-countries/european-financial-stabilisation-mechanism-efsm_en)

<sup>156</sup> <https://www.esm.europa.eu/about-us>

Union, which was then to be created by creating, by an agreement, a company in Luxembourg, which it is indeed external to the European Union, but it is at need a state-aid institution, comparable to the IMF<sup>157</sup>. But this was created all intergovernmental impetus, and it is seen as a disruptive since it is up to the member states, instead of creating a supernational regime, as the Commission or the Parliament, and the end goal it is to help the member states, rather than creating a unified institution or bring them closer, but to create a cooperation in case of emerging difficulties, but maintaining the current regime.

The Eurozone crisis did prove that the EU institutions can work together and pursue a common goal, but during the crisis the importance of intergovernmental agreement proved to be a big challenge to the pursuit of any action that needed to be taken, and the fragmentation in different institutions taking decision (EU Council) and doing (Commission), led to the increase of competences and procedures, as seen in the second chapter, at the end what came out was the result of the compound political system. During these years the Euro member strengthen together, and they established the Eurogroup<sup>158</sup>, the Council of the finance ministers of the Euro-zone, and the Euro Summit, the gathering of the EU leaders of the Euro-zone. This developed to pursue and coordinate the decision and try and achieve negotiations, with only the member states that were involved in the decision making and, in the consequences, but this led to a strengthening of the intergovernmental procedure and decision making.

### 3.6 The Collateral effects of the crisis management of the Euro-zone crisis

The most important part of the study it is not of the process that led to the solving of the Euro-zone crisis, which persisted for almost a decade in its effects, but the most important part are the collateral effects that the actions taken in this crisis, how they shaped the EU and the opinion of the people. But also, how they affected the processes and the institutions of the Union.

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<sup>157</sup>Ohler, C. (2011). The European stability mechanism: the long road to financial stability in the euro area. *German YB Int'l L.*, 54, 47.

<sup>158</sup> <https://www.consilium.europa.eu/en/eurogroup/how-the-eurogroup-works/>

The European Union, it is indeed a union of states, and they can enter the EU as they can withdraw, it is not an empire and there is no domination, but the European Union it is also something different, it is not purely an intergovernmental organization as the Council of Europe or the United Nations, so having a larger level of cooperation of the handling of state tasks at the European level, the creation of a multi-level governance system some cause-effects are not possible to be handled as in a state.

The two issues that have been found in this study are led to the formation of decision-making processes which were mainly intergovernmental, and they deteriorated the outcomes of unitarian action. The two issues that are being found are the one of a fragmentation between the member states, and the formations of groups of nations, and the states become one against the others, the other is the separation for an outcome that results from intergovernmental decision-making or supranational decision making and the bearing of the consequences of it, if they indeed take responsibility the leaders or it falls on the Commission<sup>159</sup>.

### 3.6.1 Fragmentation

The first case, the one of the fragmentations is very serious in the terms of European Integration, indeed this has been seen one of the biggest drivers of separation, because having the European states playing against each other it goes against the principle of cooperation that made the Union itself, it is an enemy of supranational cooperation.

During the Euro-zone crisis in debt one of the most challenging moment has been when the member states, challenged by the financial stress and the risks of getting involved too deeply into some states being irresponsible in their economic policies thought it would have been better to fragment the Union<sup>160</sup>, this was a scary moment, because a fragmentation of this kind would have had recovered by the European Union, and for this purpose during the 2020 COVID-19 pandemic European Leaders tried this time to

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<sup>159</sup> Fabbrini, S. (2016). From consensus to domination: the intergovernmental union in a crisis situation. *Journal of European Integration*, 38(5), 587–599.  
<https://doi.org/10.1080/07036337.2016.1178256>

<sup>160</sup> Pisani-Ferry, J. (2011). *The euro crisis and its aftermath*. Oxford University Press, 116-128.

achieve a unitarian approach with the NextGen EU<sup>161</sup>, putting the EU Commission at the centre rather than the intergovernmental debate, because the main issue of the intergovernmental debate the interlocutors are states and they can decide if they want to support or not, but their main obligation is not for the sake of European Cooperation, but the main goal of a member states it is first and foremost to grant stability to its own state, this in exceptional and risky occasion can lead to extreme fragmentation<sup>162</sup>. At the time of the events of the Euro-Zone crisis the southern (plus Ireland) states of the European Union had more debts than the northern ones, which had strong economies and lower debts. But in the first years of the millennium having a large debt was not a threat yet, and it didn't yet bear in mind that this could have been used against them. During the crisis though the northern and more financially stable member states, suffering less of the burden of the debt, having more fiscal ability they were not prone to lend to more irresponsible states while they shared the risk of the same currency losing power. But the approach of the "good" states threatening the "bad" states as in that moment they were the only ones who could lend meant that they became leaders and they were in fact controlling the game, this established a power dynamic, which was having the risk to ruin the Union, and it developed in the EU the sentiment of northern more creditor states that are against south debtor states.<sup>163</sup>

This principle of states fragmentation and opposition dynamics it is nonetheless dangerous for the project of integration. The aim of the Union it is not to make the states compete or threaten others, but rather to unify the people under a same umbrella to share their future rather than developing distant. Indeed, the aims for development under the union try to be as unified as possible, to make the European Economy competitive and the well-being of the people the best.

This result of fragmentation then remained in the minds of the people as dominated, especially in the debtor states and in the opposite as dominator in the minds of the people

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<sup>161</sup> [https://next-generation-eu.europa.eu/index\\_it](https://next-generation-eu.europa.eu/index_it)

<sup>162</sup> Schramm, L., & Wessels, W. (2023). The European Council as a crisis manager and fusion driver: assessing the EU's fiscal response to the COVID-19 pandemic. *Journal of European Integration*, 45(2), 257-273.

<sup>163</sup> Frieden, Jeffry, and Stefanie Walter. "Understanding the political economy of the Eurozone crisis." *Annual review of political science* 20.1 (2017): 371-390.

of the creditor states, establishing a power dynamic. This is exactly what politicians and scholars noticed as a threat to the goal of European integration.

The established dynamic in reality was not all wrong because the member states were involved directly at the financial level, and they aimed to resolve it with a state-intergovernmental approach, but this proved to be detrimental. What was wrong was the missing of institution to prevented that this happened and lack of financial coordination of the member states<sup>164</sup>.

So, the question is what in the European Framework what needs to be implemented and also from the member states, what are the conditions for preventing this to happen. The European Union fiscal union should be one of the most important pillars. But at the same time it is clear that for now it is still far from happening, the other it is a more strong executive leading the European Union and limitation to intergovernmental involvement, but the latter it is quite hard to prevent, but a strengthening of the Institutions and more trust in the unitary action would be welcomed.

### 3.6.2 Institutional instability

The second consideration is the one regarding the institutional instability that the intergovernmental method can procure. As seen in the previous sections of this chapter the European Commission during the crisis was left with less tasks if not to implement and make reports, rather than having a leadership role<sup>165</sup>.

This led to a huge catastrophic prospect, which is the one of accountability. The political multi-governance and the institutional complexity make it quite rare to understand, but in the case of Greece, when the first bail-out failed it was hard to decide to who point the finger to, because when a decision it is decided by the leaders, then enacted by the Commission, for the sake of the Union, its effects can fall only under the Union's responsibility, because the reason why the leaders do act in the first place it is because it is for an aspect of policy that regards the Union<sup>166</sup>.

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<sup>164</sup> Fabbrini, S. (2013). Intergovernmentalism and its limits. *Comparative Political Studies*, 46(9), 1003–1029. <https://doi.org/10.1177/0010414013489502>

<sup>165</sup> Fabbrini, S. (2015). *Which European Union?*. Cambridge University Press.

<sup>166</sup> De Grauwe, P. (2013). Design Failures in the Eurozone: Can they be fixed?. *LEQS paper*, (57).



This problem of accountability it is important not only from a public opinion level, but also on an operational level. The fact that the Commission does not have the legitimacy and political power to pursue decisions in cases of emergencies, and it is required or maybe the member states they decide to intervene, then it becomes a problem of responsibility, if the action that then it is taken, it requires the Commission to do it<sup>167</sup>.

Becomes a huge matter of responsibility and political responsiveness of the Commission to its EU Parliament electors. The crisis can stop the Commission from the pursuit of its agenda and this is true in any state system, but in the European Union the Commission when acts on crisis follows the decisions of the European Council and then acts according to it, because they put in the authority, which by institutional setting they lack in case of extraordinary situations.<sup>168</sup>

### 3.6.3 Final considerations

Concluding this chapter it came out that the issues of institutional relevance found in the second chapter have real effect in crisis management and accountability. The purpose it is not to criticize the Union, but rather to find which processes did go wrong and what to see as an alternative, especially to avoid fragmentation and institutional instability for the European Institution, which suffered during the Euro-zone crisis and risked to collapse, but the cause was not to be found in their fault, and neither in the member states high borrowing, but rather to a design fault. As anticipated the reasons are multiple why the processes of the European Union are at this stage, which are for uncompletion of a project, and at the same time for the willingness of the member states to be part of it.

The financial power of the states, which still are important in this regard in European perspective, they can be important in determining what the EU will and will not do, and the fiscal union, has been for many years debated, and seen as a solution to the many problems of the union.

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<sup>168</sup> Thomas, D. C. (2021). The return of intergovernmentalism? De-europeanisation and EU foreign policy decision-making. *Journal of European Integration*, 43(5), 619-635.

## Conclusions

Concluding this thesis the most important factor is the aim to find a design or procedure of the European Union institutions where are to be avoided the leads of intergovernmentalism that can bring to fractures of the European supranational establishment and unitarian supranational cooperation. Still the possibility of member states to withdraw from the European Union can be the most important and most harmful episode that can happen, and the possibility to aim for so in the European political debate it is highly disruptive to the aims for cooperation. After the COVID-19 pandemic the political tendency for the separation of member states seemed to have mild, but it remains a possibility at the legal point of view.

The issues at the European governance level, of the intergovernmental decision making did not change much, and as seen in the recent reports of the European Parliament the European Council it seems to be stronger than ever, but however there is the feeling that member states can be scared of the fractures that can occur at European level, since the fatality of intergovernmental and international relations does not function in a extraordinary exception, it affects the institutions and public opinion at European and national level.

The idea of having a compact executive in the EU, democratically accountable it has been a goal for long, and the cracks created in the past decade and the effect of Brexit warned the member states that the potential catastrophic effects of not cooperating at European level can have profound effects.

The separation of powers as analysed in the first chapter is aimed to provide a tool to interpret the European separation of powers of today, and what can be further development of the European Institutions.

The most important take-away is the danger of running at intergovernmental level, and until a certain degree it is also necessary, especially when confronting with financial and fiscal issues.

The European Union of today does not have a fiscal union and the member states are scared of the effects that long term development of some member states, and slow growth of other member state can do to the European Economy, gathered in a single market. The

evolution of the European Union it is at this point almost a necessity to grant a more stable future for the European people and the European market.

The political trends ranging in Europe at the moment are not promising in this perspective, after the populist wave the Europeans are scared that the problems affecting their neighbours are more important, and the European Union can only be a constraint to domestic flourishing. This can be interpreted as nationalistic and far from reality if compared to the global trend, as big nations from the third countries are on the rise, and the European states are always less influential, for this reason the Union can help the states to join forces and develop in a unique way. But as long as European intergovernmentalism can impose itself in the decision making, the day European achieves further integration seems more far away than before.

The process of treaty amendment it is complex in the European Union, and it is hard not just because many European leaders are politically averse to a broadening of European integration, but it is hard because it has always been proven a hard process to conduct, and in an era of frequent crisis and of international uncertainty it can be a far step.

As seen the aim of the European Union is to promote cooperation and as long as the state leaders need to pave the way the intrinsic risk is that they are willing to approve if the pave is to be done in their state.

The fiscal cooperation for some member states it can be a big improvement at national level, and as long as crisis are far away it can also be in the debate, but after the episodes of the Euro-zone crisis a general scepticism broke out in Europe, as lender states people were mad that domestic tax-payer money went to other states, and in reverse for borrowed states, which were depicted as not reliable, threatened and controlled by other states about their finances. This feeling of power of some member states over others spired to become a fear of the people, which had the opposite effect of its purpose on the public morale. Initially the idea of saving the currency and the European economies in difficulty was to save the European cooperation project, while on the other side it was a necessary move to keep in health the European economies that were able to maintain stronger, but they would have been able to pursue a different road, so the idea to preserve European supernational cooperation prevailed.

This would have probably not happened in the first place, in the fiscal realm, if the European institutions, especially at supernational level were able to a broader action, and

at the same time, even in case the crisis broke out anyway, weighting on the sovereign debt, a higher degree of unitary power could have been able to avoid intra-governmental fractions. As the initial impetus for acting would have come from a supernational executive institution, and approved by supernational legislative powers, and it would have been a good fit for the saving of the European Market and the European cooperation.

With this good purposed the thesis it is meant to hope these events would not occur again and wishes a bright future season for European integration.

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