

CONSIDERATIONS RELATING TO THE ROLE OF THE COUNCIL IN THE INSTITUTIONAL UNION OF THE EUROPEAN UNION

Dragoş Adrian BANTAŞ*

Abstract

As a part of what the specialized doctrine calls the “bicameral legislative of the European Union”, the Council, representing the Member States, is undoubtedly one of the most important decision-making institutions in the EU. Its modus operandi, however, can be analyzed on two levels. One of these, consisting of the rules according to which the acts are adopted (in particular, the necessary majority) is found in the treaties on which the European Union comes. The second level, however, which can be called “diplomatic”, is the work of the representatives of the Member States, meeting in the Committee of Permanent Representatives. Although it enjoys less visibility, compared to the Council formations, it is in fact responsible for most of the acts adopted in the Council. In the following paper we will analyze the functioning of this institution and its role in the institutional ensemble of the European Union.

Keywords: *European Union, Council, role, member states, Permanent Representatives, decision making*

1. Introductory considerations. The characteristics of the institutional set-up of the European Union.

Since the beginning of the implementation of the European Union project, through the building of the European Communities, they have been endowed with an institutional system designed to ensure the achievement of their objectives. This system had different traits than those of the classical, intergovernmental, international organizations that have until then and after that time. On one hand, for example, this unique institutional system and the way in which the institutions interact in the decision-making process have provided a part of the doctrine with the necessary arguments to characterize the European Communities and later the European Union as a closer construction by the notion of a federal entity, rather than by an international organization.

On the other hand, the institutional system of the European Union, which, as I said in the above lines, differs from that of the international classical organizations, cannot be considered the same as that of the states, whether unitary or federal.

In support of these statements, we invoke, for example, those emphasized in the specialized doctrine, in that „*the division of responsibilities between the four (as for that moment) institutions does not overlap with the Montesquieu inherited scheme, a scheme according to which the Parliament is the legislative, the government is the executive, the judges exercising the judicial power.*”¹

Also, the Treaty establishing the European Coal and Steel Community “enshrined 4 principles, taken from the Schuman Plan (...) which constitute the basis of the current European Union, namely the superiority of institutions, the independence of institutions, collaboration between institutions and equality between states.”²

One specific element of the institutional framework of the European Union is that it must ensure the sharing of sovereignty, which “*represents at a Union level the fact that the Member States delegate a part of their decision-making powers to the joint institutions they have decided to take in some areas of common interest, through a democratic process at European level.*”³

Due to space considerations, we do not intend in this study to detail the content of these principles. What we consider to be important, however, is that their existence and the differences between those principles and those governing the relations between the central institutions at the level of a state (in particular the principle of the separation of powers) lead to the existence and a different role of each institution of the Union within it.

In this context, we raise the central question of our study, namely: what is the place and role of the Council in the institutional ensemble of the European Union and whether it can be assimilated to different roles fulfilled by national institutions, for example, those in Romania that have the advantage of a understandings superior to those in other states, with which the author is not as familiar.

* PhD. Student, Faculty of Law, “Nicolae Titulescu” University of Bucharest (e-mail: adrian.bantas@gmail.com.)

¹ Augustin Fuerea, *Manualul Uniunii Europene, Ediția a VI-a revizuită și adăugită*, Editura Universul Juridic, București, 2016, p. 18.

² Ibidem, p. 33.

³ Augustina Dumitrașcu, Roxana-Mariana Popescu, *Dreptul Uniunii Europene: sinteze și aplicații, Ediția a 2-a, revizuită și adăugită*, Editura Universul Juridic, București, 2015, p. 24.

2. The Council - General Aspects.

As stated in the specialized doctrine, in a Union which, unlike the Member States, does not function to a considerable extent on the principle of separation of powers but after the representation of interests, *“the Council is and has always represented national interests. We cannot know for sure whether those who drafted the Treaty of Rome were surprised or not by the way the Commission and the Council interacted with the foundation of the Community. They hoped that the establishment of the EEC would announce an era of greater collaboration, in which class, national interests would diminish, in relation to the interests of the Community as a whole. The initial decision-making structure of the EEC was certainly proof of the central role assigned to the Commission, which was also reflected in its broad spectrum of tasks. Clearly, the Council had to approve the legislation, but the Commission was the one who held the reins. This was due to the Commission's competence to establish the legislative agenda, its institutional resources for the development of Community policies, and the fact that, although the adoption of the legislation required the approval of the Council to amend any Commission proposal, unanimity was required in the Council.”*⁴

Moreover, the Treaty on European Union enshrines, even if not exactly in these words, the representation of the interests of the Member States by the Council. According to him, *“the Council shall be composed of a representative at ministerial level of each Member State empowered to employ the government of the Member State which it represents and to exercise the right to vote”*⁵.

As far as its functions are concerned, we can see from the same Treaty on the European Union that the Council institution *“carries out legislative and budgetary functions together with the European Parliament”*⁶ as well as *“policy-making and coordination functions, in accordance with the conditions set out in the Treaties”*⁷.

Although at first glance, the expression of Article 16 of the Treaty on European Union may, as far as we consider it, be sufficiently comprehensive with the doctrine of specialty that it does not cover all the functions assigned to the Council by the Treaties. Therefore, in the continuation of our study, we will try, following a structure inspired by the author Robert Schutze, to identify the different roles that the Council occupies in what the Court of Justice considered to be the system of the *“basic constitutional charter”*⁸ of the European Union.

3. The Council as guardian of respect for the values listed in Article 2 of the Treaty on European Union.

We start our analysis by stating the first role the Treaties devote to the Council, namely the guardian of respect for the values listed in Article 2 of the Treaty on European Union.

On this occasion, we make it clear that we prefer to treat the places and roles enshrined in the treaties of this institution in the order in which they appear in the TEU and the TFEU, as we do not want to achieve a hierarchy of them, which we believe can only be based on inherently subjective criteria. In this idea, a presentation that follows the order of the Treaties presents both the advantage of avoiding hierarchy and the pursuit of the logic of the Treaties.

The Treaty on European Union therefore sets out, in Article 2, a series of values that the Union is founded on. In its Article 7, it also establishes a mechanism for monitoring compliance by Member States and for sanctioning their violation.

The history of this mechanism, although not particularly long, is nevertheless rich. Thus, according to the specialized doctrine, *“the initial text established the competence and described the procedure which allowed the Council to determine the existence of a serious and persistent breach by a Member State of the principles mentioned above and to apply the sanction of suspending certain rights of that state deriving from membership status, such as the right to vote in the Council. Further, the Treaty of Nice added a first paragraph that permitted the Council to determine even just the existence of a clear risk of a serious breach of the principles and to address appropriate recommendations to that state. This leaves the necessary room for a diplomatic solution before the fait accompli (...). The last amending treaty that reformed EU constitutional law, the Treaty of Lisbon, inserted current Article 2 in TEU and modified Articles 7 and 49 TEU accordingly, replacing the reference to the principles set out in former Article 6 paragraph 1 TEU with the reference to the values EU is founded on. It also replaced the words <<The Council, meeting in the composition of the Heads of State or Government and acting by unanimity>> with <<The European Council, acting by unanimity>>, in order to differentiate between the Council and the European Council”*⁹.

In particular, the article referred to states that *“on a reasoned proposal from one third of the Member States, the European Parliament or the European Commission and with the consent of the European*

⁴ Paul Craig, Grainne de Burca, Dreptul Uniunii Europene: comentarii, jurisprudență și doctrină, Ediția a VI-a, Editura Hamangiu, București, 2017, p. 49.

⁵ Treaty on European Union, art. 16(2).

⁶ TEU, art. 16(1)

⁷ Ibidem.

⁸ In the wording of the ECJ, Case 294/83, Les Verts împotriva Parlamentului European, www.eul-lex.europa.eu.

⁹ Iuliana-Mădălina Larion, *Protecting EU values. A juridical look at article 7 TEU*, article presented during The International Conference Challenges of the Knowledge Society, Bucharest, 11th - 12th May 2018, 12th Edition, and published in the Conference volume, „Nicolae Titulescu” University Publishing House, p. 539.

*Parliament, the Council, acting by a majority of four fifths of its members, may find that there is a clear risk of a serious infringement of the values laid down in Article 2 by a Member State. Before proceeding with this finding, the Council shall hear the Member State concerned and may issue recommendations to it, acting in accordance with the same procedure.*¹⁰

In addition, “the Council shall regularly verify that the reasons which have led to this finding remain valid”.¹¹

In a more severe situation, finding a serious violation of the values in art. 2 TEU, this time taken by the European Council, “acting unanimously on a proposal from one third of the Member States or the European Commission and with the consent of the European Parliament,” [the Council] “acting by a qualified majority may decide to suspend certain rights to the Member State concerned following the application of the Treaties, including the right to vote in the Council of the representative of the government of that Member State. In so doing, the Council shall take into account the possible consequences of such suspension on the rights and obligations of natural and legal persons. [The] Council, acting by a qualified majority, may subsequently decide to amend or withdraw the measures taken pursuant to paragraph 3 in response to a change in the situation which has led it to impose such measures.”¹²

Therefore, we note that, without diminishing the importance of this issue, the Council is not the only guardian of the Member States' compliance with the values in Article 2 but, together with the institutions of the Commission, the European Parliament, and the European Council, in the tradition of the system of mutual equilibrium, from a “special unit” whose mission is to ensure that the values to which the candidate states have had to prove to be able to be among the Member States of the Union do not become a letter dead on reaching this goal. However, the extreme political difficulties associated with the activation of such a mechanism have made it play a role similar to Cold War nuclear weapons, a deterrent element whose use can draw consequences to blur the differences between the victors and the losers.

4. The role of ensuring the democratic representativeness of the institutional framework of the European Union.

Although, when we refer to the concept of democratic representativeness, the first institution to which we think is that of Parliament (be it European or

national), and the Council is not totally deprived of this feature.

Moreover, the Treaty on European Union states that “*the functioning of the Union is based on the principle of representative democracy*”¹³ and this is ensured by the European Parliament, representing the citizens of the Union, by the European Council, made up of Heads of State (directly elected by the to the citizens of their own countries or to the national Parliaments, composed of elected representatives of the citizens) or to the government (invested after the trust of the national Parliaments) and, albeit to a different extent, by the Council, made up of representatives at the ministerial level of the Member States, “*who in turn respond democratically either to national parliaments or to their citizens.*”¹⁴ Together, the European Parliament, the European Council and the Council give the Union double legitimacy (democratic) from citizens directly and from Member States, who also receive this legitimacy from citizens. In practice, the Union benefits from direct democratic legitimacy (through Parliament) and indirect (through the European Council and the Council), both from citizens.

5. The role of a component of the bicameral legislature of the European Union. Legislative and budgetary responsibilities.

The next role we find in the Council is that part of the bicameral legislature of the European Union. In this respect, Article 14 TEU states that “*the European Parliament shall, together with the Council, exercise legislative and budgetary functions*”¹⁵. Moreover, the same Treaty also stipulates that “*the Council shall exercise, together with the European Parliament, legislative and budgetary functions. It shall exercise policy-setting and coordination functions in accordance with the conditions laid down in the Treaties*”.¹⁶

Basically, in the above expression we find the main functions that national parliaments have and which they exercise according to the unicameral or bicameral system applied in each state. As regards the Council, however, it appears both as a component of the bicameral legislature and as a legislative one, so to speak, unicameral. In this section we only refer to the first of these.

Article 228 of the Treaty on the Functioning of the European Union states that “for the exercise of Union competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions”¹⁷. As regards the procedures under which

¹⁰ TEU, art. 7 (1).

¹¹ Ibidem.

¹² TEU, art. 7 (2) and (3)

¹³ TEU art. 10(1)

¹⁴ TEU art. 10 (2)

¹⁵ TEU art. 14 (1)

¹⁶ Ibidem..

¹⁷ Treaty on the Functioning of the European Union, art. 228.

these acts are adopted, the Treaty on the Functioning of the European Union has two categories: the ordinary legislative procedure, defined by the TFEU as “**the joint adoption by the European Parliament and the Council of a regulation, directive or a decision on a Commission proposal**”¹⁸ and what the doctrine calls¹⁹ “special legislative procedures, which may consist of” the adoption of a regulation, a directive or a decision by the European Parliament with the participation of the Council or the Council with the participation of the European Parliament”²⁰.

The totality of ‘acts adopted by [a] legislative procedure constitutes legislative acts’²¹, thereby exercising the competences of the Union in order to achieve its objectives.

Regarding the ordinary legislative procedure, it is used, according to the doctrine of specialty, in almost 95% of possible situations²². As far as their list is concerned, it would be too broad to circumscribe our approach, but in the specialized doctrine we find the following examples: “*services of general economic interest (Article 14 TFEU); citizens' initiatives (Article 24 TFEU); applying the rules on competition to the common agricultural policy (Article 42 TFEU); Common Agricultural Policy (Article 43 TFEU); the exclusion of a Member State from certain activities from the scope of the provisions on the right of establishment (Article 51 (2) TFEU); extending the benefit of provisions on the provision of services to third-country nationals established in the Union (Article 56 (2) TFEU); liberalization of services in certain defined sectors (art. 59 paragraph. (1) TFEU); immigration and the fight against trafficking in human beings (art. 79 par. (2) TFEU); judicial cooperation in criminal matters (art. 82 par. (1) and (2) TFEU); Eurojust [Art. 85 par. (1) paragraph. 2 TFEU]; Europol [Art. 88 par. (2) TFEU]; measures necessary to use the euro (Article 133 TFEU); public health (art. 168 par. (4) TFEU); Structural Funds (Article 177 (1) TFEU); energy [art. 194 par. (2) TFEU]; the Staff Regulations and the Conditions of Employment of other servants of the Union (Article 336 TFEU)*”²³ etc.

Under these circumstances, “it is no surprise to assert that we are witnessing the existence of a bicameral legislation at the level of the European Union, if we consider the primary headquarters of the matter, namely the Treaty on European Union (TEU)

and the Treaty on the Functioning of the European Union)”²⁴. Moreover, “the reference to the bicameralism of the European Union legislature is also present in the Protocol no. 2 on the principles of proportionality and subsidiarity, which, at art. 4, regulates the fact that the draft legislative acts and the Commission’s amended drafts are transmitted to national parliaments and to the <<European Union legislative body>>”²⁵. In addition, “it is worth mentioning that, for the first time, we find the use of this syntagm (in singular!), Which means that it is a single legislative entity made up of the two institutions (the European Parliament and the Council) are enshrined in art. 14 par. (1) TEU and Art. 16 par. (1) TUE”²⁶. It seems almost natural that, under these conditions, a parallel between the European Union and the federal states should be made, in which “<< Parliament is compulsorily composed of two legislative bodies. The first room comprises the representatives of the nation>>”²⁷ (in the case of the European Union, it is the European Parliament) and <<the second chamber consists of the representatives of the states that form the federation” >> (at the level of the European Union such a composition is known to the Council)”²⁸.

As far as the actual implementation of the ordinary legislative procedure is concerned, it is detailed in Article 294 of the Treaty on the Functioning of the European Union. The same Treaty regulates the budgetary procedure, which has many similarities to the one regulated in art. 294 TFEU.

Apart from this, where the European Parliament and the Council behave like a bicameral legislature, adopting together the legislative acts that the Treaties state that they must be adopted under the ordinary legislative procedure, there are also many cases in which the Council behaves as if it is allowed to speak, one-chamber legislative, by adopting acts on the initiative of the Commission (or, in some cases, the Member States²⁹), without the participation of Parliament. We will refer to these in the following.

6. Council as single-chamber legislation. Special legislative procedures.

Unlike the ordinary legislative procedure, which has a unitary enshrinement in the Treaty on the

¹⁸ TFEU, art. 289 (1).

¹⁹ See Augustin Fuerea, *Legislativul Uniunii Europene între unicameralism și bicameralism*, Dreptul Magazine, no. 7/2017.

²⁰ TFEU, art. 289 (2).

²¹ TFEU art. 289 (3)

²² Sean van Raepenbusch, *Drept instituțional al Uniunii Europene*, Editura Rosetti, București, 2014, p. 233.

²³ Augustin Fuerea, *Legislativul Uniunii Europene între unicameralism și bicameralism*, Dreptul Magazine, no. 7/2017.

²⁴ Ibidem.

²⁵ Ibidem.

²⁶ Ibidem.

²⁷ C. Ionescu, *Tratat de drept constituțional comparat*, ediția a 2-a, Editura C.H. Beck, București, 2008, p. 255 apud Augustin Fuerea, *Legislativul Uniunii Europene între unicameralism și bicameralism*, în *Revista Dreptul*, nr. 7/2017.

²⁸ Augustin Fuerea, *Legislativul Uniunii Europene între unicameralism și bicameralism*, în *Revista Dreptul*, nr. 7/2017.

²⁹ See art. 76 TFEU, which stipulates that „The acts referred to in Chapters 4 and 5, together with the measures referred to in Article 74 which ensure administrative cooperation in the areas covered by these Chapters, shall be adopted: (a) on a proposal from the Commission, or (b) on the initiative of a quarter of the Member States”.

Functioning of the European Union, the special legislative procedures are not regulated in the same way, and their inclusion in a single article of the Treaties is likely to present neither so many advantages practical. Instead, the Treaties opt for the description of each legislative procedure used in each provision referring to a special legislative procedure. Thus, when the Treaties have excluded the application of the special legislative procedure and are in the process of making use of a special legislative procedure in the decision-making process, it is described in the following, which in a way facilitates their application.

However, classifications of special legislative procedures not only can be carried out, they have even been done in doctrine. For example, starting from the content of art. 289 TFEU, which states that “*in specific cases provided for in the Treaties, the adoption of a regulation, directive or decision by the European Parliament with the participation of the Council or the Council with the participation of the European Parliament constitutes a special legislative procedure*”³⁰, Professor Augustin Fuerea asserts that “*from the contents of the headquarters of the matter referred to above, we appreciate that the wording*” special legislative procedures “*is appropriate given the existence of the two ways of adopting legal acts, as follows (...) Analyzed by comparison, we find that in <<the ordinary legislative procedures>>, compared to the ordinary legislative procedure, the Commission lacks the legislative initiative belonging either to the Council or to the European Parliament. Depending on the areas subject to legislation, a procedural or other procedure is followed, in accordance with the Treaties, in full agreement with the established competencies and the principles governing the matter*”³¹.

We also appreciate that the special legislative procedures in which acts are adopted by the Council can also be classified according to the role of the European Parliament, which can be adopted after consultation of the European Parliament, in which case its position does not oblige the Council, either with the approval of Parliament, where his position is ignored by the Council, which cannot adopt the acts in question without Parliament's approval, but in which, as pointed out by the specialized doctrine, the non-dominant institution (in our case the Parliament) cannot influence the content of the adopted act, may or may not agree with it in its entirety³².

Here are some examples of special legislative procedures that illustrate the situations outlined above.

Thus, art. Article 21 of the Treaty on the Functioning of the European Union provides that “for the same purposes as those referred to in paragraph 1, and where the Treaties have not provided powers for action, the Council, acting in accordance with a special

legislative procedure, may adopt measures in the field of social security or social protection. The Council shall act unanimously after consulting the European Parliament”³³.

Or, in an example corresponding to the second hypothesis, art. Article 19 of the same Treaty states that “Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred on it by the Union, the Council, acting unanimously in accordance with a special legislative procedure and with the consent of the European Parliament, may take the necessary measures to combat any discrimination based on sex, race or ethnic origin, religion or belief, disability, age or sexual orientation”³⁴.

In any case, examples of special procedures can be identified throughout the duration of the Treaty, but their number and scope do not allow us to list them within the space boundaries of this approach. We consider, however, that the examples set out above are appropriate for illustrating the exposed principle.

It should be noted that, by virtue of organizing the institutional framework of the European Union on the basis of checks and balances, even if the Council or another institution adopts seemingly unilateral acts, a role may be identified, albeit secondary, of at least one of the other institutions, as is the case of the Parliament in the examples above. For its part, the Council can also play such a role, for example in the three situations in which the European Parliament adopts acts with the participation of the Council, but, for space-related reasons, we will not devote a special section of our study to this situations.

7. The Council as part of the Union Executive.

We make an exception to the above-mentioned rule that we look at the roles of the Council in order of their consecration in the Treaties to present a hypostasis closely related to the constituent part of the legislature. Thus, at the state level, after the adoption of legislation, it has to be put into practice, executed, adapted to concrete situations. In general, this prerogative lies with the executive power. One of the ways in which, at least in Romania, the described process is carried out is the issue of law enforcement acts, such as government decisions, ministerial orders, etc.

At European Union level, this is generally the case for the Commission. For example, art. Article 291 (2) TFEU provides that “where uniform conditions for the implementation of legally binding Union acts are required, those acts confer on the Commission implementing powers or, in special and duly justified cases, as well as in cases referred to in Articles 24 and

³⁰ Tratatul privind Funcționarea Uniunii Europene, art. 289 (2).

³¹ Augustin Fuerea, Legislativul Uniunii Europene între unicameralism și bicameralism, în Revista Dreptul, nr. 7/2017.

³² Robert Schutze, European Constitutional Law, Editura Cambridge University Press, New York, 2012.

³³ TFEU, art. 21 (3).

³⁴ TFEU, art. 19 (1).

26 of the Treaty on European Union [both concerning the Common Foreign and Security Policy], the Council”³⁵.

Nowadays, “*the Regulation (EU) no 182/2011 of the European Parliament and the Council lays down the rules and general principles concerning mechanisms for control by EU countries of the Commission’s exercise of implementing powers*”³⁶. “*This control is performed by means of what is known in EU jargon as ‘comitology’ procedures*”³⁷, i.e. *the Commission is assisted by committees consisting of EU countries’ representatives and chaired by a representative of the Commission*”³⁸

In the literature, reservations were expressed regarding the provisions of art. 291. More specifically, the author Robert Schutze considers that constitutionally, the exercise of the executive function by the Council appears problematic, because it assumes that one of the components of the Union legislature puts into effect its adopted acts.³⁹ However, the fact that, through the Lisbon Treaty reforms, this situation is definitely the exception (as demonstrated by the wording of Article 291, which we have just mentioned above), makes the frequency of such an occurrence overlaps between powers remain low.

8. Delegator of the legislative duties.

Just like a national legislature, art. 290 TFEU provides that “a legislative act may delegate to the Commission the power to adopt non-legislative and non-legislative acts which supplement or amend certain non-essential elements of the legislative act”⁴⁰. As a legislative act, we conclude that the delegation will be the institution or the institutions that adopt the legislative act in question, i.e. the Parliament and the Council, the Council or the Parliament. The same institutions shall be empowered to exercise control over the manner in which delegated powers are exercised and may decide, including revocation, under the conditions set forth in art. 290 of the Treaty on the Functioning of the European Union.⁴¹

9. Platform for coordinating Member States' policies

The Treaty on the Functioning of the European Union has, for the first time in the history of European construction, enshrined the existence of categories of competence. Among these, we also find the category enshrined in Article 6 TFEU, the powers ...

Examples of Member State policy co-ordination appear in different areas, and the Council behaves in almost all of these situations as a platform for the interaction of the states concerned.

For example, art. 71 TFEU provides that “*a Standing Committee is set up within the Council to provide for the promotion and strengthening of operational cooperation in the field of internal security within the Union*”⁴². The task of the Committee is to promote coordination of the action of the competent authorities of the Member States.

Also, Art. 121 states that “*Member States shall regard their economic policies as a matter of common concern and coordinate them within the Council in accordance with Article 120. [To that end] ‘The Council, on a recommendation from the Commission, shall draw up a draft general guidelines economic policies of the Member States and of the Union and shall report to the European Council on this. The European Council, on the basis of the Council’s report, discusses the conclusions on the broad guidelines of the economic policies of the Member States and of the Union. On the basis of these conclusions, the Council adopts a recommendation setting out these general guidelines. The Council shall inform the European Parliament of its recommendation.’*”⁴³

In the same vein, “*for the purpose of ensuring closer coordination of economic policies and sustainable convergence of Member States’ economic performance, the Council, on the basis of the reports submitted by the Commission, oversees economic developments in each of the Member States and in the Union, and aims to ensure closer coordination of economic policies and sustainable convergence of the economic performance of the Member States. the consistency of economic policies with the general*

³⁵ TFEU, art. 291 (2).

³⁶ Oana-Mihaela Salomia, Delegated Acts and Implementing Acts – new legal acts of the European Union, article presented during The International Conference Challenges of the Knowledge Society, Bucharest, 12th - 13th May 2017, 11th Edition, and published in the Conference volume, „Nicolae Titulescu” University Publishing House, p. 553

³⁷ Andrew Duff, The logic of the Lisbon Treaty, London: Shoehorn, , 2009, 57, apud Oana-Mihaela Salomia, op.cit.

³⁸ Oana-Mihaela Salomia, op.cit.

³⁹ Robert Schutze, op.cit, p.115

⁴⁰ Tratatul privind Funcționarea Uniunii Europene, art. 291 (2).

⁴¹ Article 290 TFEU: (1) A legislative act may delegate to the Commission the power to adopt non-legislative and non-legislative acts which supplement or amend certain non-essential elements of the legislative act. Legislative acts shall explicitly define the objectives, content, scope and duration of the delegation. The essential elements of a given area are reserved to the legislative act and can not therefore be subject to the delegation of powers. (2) The legislative acts expressly lay down the conditions for the application of the delegation; these conditions may be the following: (a) the European Parliament or the Council may decide to revoke the delegation; (b) the delegated act may enter into force only if no objection has been expressed by the European Parliament or the Council within the period laid down in the legislative act. For the purposes of points (a) and (b), the European Parliament shall act by a majority of its component members and the Council shall act by a qualified majority. 3. The title of the delegated acts shall enter the adjective “delegated” or “delegated”.

⁴² TFEU, art. 71.

⁴³ TFEU, art. 120.

*guidelines referred to in paragraph 2 and shall regularly carry out an overall assessment*⁴⁴.

Similarly similar provisions can also be found in Article 146 TFEU (with reference to the coordination of national employment policies, to achieve the objectives referred to in Article 145 TFEU) and beyond. Although the role of the Council may appear to be different in these articles, their commonality is its relatively low involvement, which appears either as a platform for the reunification of Member States or as the issuer of recommendations or other non-binding acts, The Treaties leaving Member States the task of adopting concrete measures.

10. External action

As regards the Union's external action, we can see that the role of the Council can be classified according to the general or specific nature of the procedures followed for the Union's external action, understood as the totality of the situations in which the Union acts as a subject of public international law, in relation to third parties.

Thus, with regard to the Common Foreign and Security Policy, its principal place of business can be identified in the Treaty on European Union. Accordingly, *“the Council shall develop the common foreign and security policy and adopt the necessary decisions for its definition and implementation, on the basis of the broad guidelines and strategic lines defined by the European Council”*⁴⁵. Moreover, *“the Council and the High Representative of the Union for Foreign Affairs and Security Policy shall ensure the unity, consistency and effectiveness of Union action”*⁴⁶.

Article 28 TEU also states that “where an international situation requires an operative action by the Union, the Council shall take the necessary decisions. They shall set out the objectives, the importance, the means to be made available to the Union, the conditions for their implementation and, where appropriate, their duration. [In addition] “where there is a change in circumstances which has a clear incidence on a situation which is the subject of such a decision, the Council shall review the principles and objectives of that decision and take the necessary decisions’ [and in the event of] the implementation of a decision referred to in this Article, any Member State shall refer the matter to the Council, which deliberates and seeks the appropriate solutions.⁴⁷

Also within the CFSP, “the Council adopts decisions defining the position of the Union on a certain issue of a geographic or thematic nature”⁴⁸ and

exercises its authority over the Political and Security Committee, which it may authorize “for a crisis management operation and during its term, in accordance with those established by the Council, take appropriate decisions on political control and strategic direction of the operation.”⁴⁹ By the same token, the Council “may entrust the task of a group of Member States with a view to defending the Union's values and serving its interests”⁵⁰.

Of course, these are just the main coordinates of the Council's role in the CFSP. For space considerations, we summarize these, making it clear that this section can be developed by exposing the concrete mechanisms for transposing the mechanisms presented.

Turning to the issues covered by the TFEU, we can identify the procedure with general applicability for the negotiation and conclusion of international agreements, the procedure applicable to exceptional situations, such as the Common Commercial Policy, but also other distinct regulated procedures.

Thus, Article 218 TFEU is the seat of the matter for the procedure applicable, as a rule, to the negotiation and conclusion of international agreements. According to him, the Council authorizes the opening of negotiations, adopts negotiating directives, authorizes signing and concludes agreements. The same Council may address directives to the negotiator and may designate a special committee, the negotiations having to be conducted in consultation with this committee. The Council, on a proposal from the negotiator, shall adopt a decision authorizing the signing of the agreement and, where appropriate, its provisional application before entry into force and at the proposal of the negotiator, adopt a decision on the conclusion of the agreement.⁵¹

Similar, but not identical, procedures are also regulated in Art. 207 TFEU, art. 213 (granting financial assistance to third countries), art. 215 (interruption or restriction, in whole or in part, of economic and financial relations with one or more third countries and restrictive measures against natural or legal persons, groups or non-State entities, etc.

Also, as regards the procedures for the accession of third countries to the Union or the withdrawal of a State within it, the Council also plays a leading role. Thus, under the first hypothesis, art. 49 TEU provides that *“the requesting State shall address its request to the Council, acting unanimously after consulting the Commission and after obtaining the consent of the European Parliament, which shall act by a majority of its constituent members. The eligibility criteria approved by the European Council are taken into*

⁴⁴ Ibidem.

⁴⁵ TEU, art. 26 (2).

⁴⁶ Ibidem.

⁴⁷ TEU, art. 28

⁴⁸ TEU, art. 29.

⁴⁹ TEU, art. 38.

⁵⁰ TEU, art. 42 (5).

⁵¹ TFEU, art. 218.

account.”⁵² As to the contrary hypothesis, art. 50 stipulates that “any Member State may decide, in accordance with its constitutional rules, to withdraw from the Union. The Member State which decides to withdraw shall notify its intention to the European Council. On the basis of the European Council guidelines, the Union negotiates and concludes an agreement with that State setting out the conditions for withdrawal, taking into account its future relations with the Union. **This agreement is negotiated in accordance with Article 218 (3) of the Treaty on the Functioning of the European Union** [therefore, on the basis of the above procedure, the dominant role of the Council being maintained]. It shall be concluded **on behalf of the Union by the Council**, acting by a qualified majority, after obtaining the consent of the European Parliament⁵³.

11. The role of the Council in economic and monetary policy

A special situation arises in the aspects related to Economic and Monetary Union, as well as other aspects related to the economic aspects. In particular, the Council is entrusted with decision-making powers and occasionally complements the action of the European Central Bank. In this sense, we might consider that the institution under consideration behaves like a unicameral parliament, but with the same ease we can give up trying to assimilate this Council role with a similar domestic function, accepting the sui generis character of its prerogatives.

According to the Treaty on the Functioning of the European Union, in particular, “in the event of exceptional circumstances where the movement of capital from or to third countries causes or threatens to cause serious difficulties for the functioning of the economic and monetary union, the Council may, adopt, on a proposal from the Commission and after consulting the European Central Bank, with regard to third countries, safeguard measures for a period of up to six months where such measures are strictly necessary”.

Also, if it is established, in the procedure provided for in paragraph 3, art. that “the economic policies of a Member State (...) risk compromising the proper functioning of the economic and monetary union, the Commission may address a warning to that Member State and the Council, on a recommendation from the Commission, may address the necessary recommendations to the Member State concerned. The Council, acting on a proposal from the Commission, may decide to make its recommendations public and to decide, in a spirit of solidarity between Member States,

to take appropriate measures in the economic situation, particularly where serious difficulties arise in the supply of certain products, energy”.

Where a Member State is in difficulties or is seriously threatened with serious difficulties due to natural disasters or exceptional occurrences outside its control, the Council, acting on a proposal from the Commission, may grant financial assistance to the Member State concerned from the Union, under certain conditions.⁵⁴

Where the Commission considers that there is an excessive deficit in a Member State or is likely to occur, it shall address an opinion to the Member State concerned and shall inform the Council accordingly. It shall, on a proposal from the Commission, taking into account any observations by the Member State concerned and after a global assessment, decide whether or not there is an excessive deficit. When making this finding, the Council, acting unanimously without delay, shall adopt, on a recommendation from the Commission, the recommendations addressed to the Member State concerned with a view to bringing the situation to an end within a given time limit. If the Council finds that no effective action has been taken within that timeframe in response to its recommendations, it may make its recommendations public. If the State concerned continues to disregard the Council's recommendations, it may decide that the Member State concerned shall within a given time adopt the deficit reduction measures which the Council considers necessary to remedy the situation. In such a case, the Council may require the Member State concerned to submit reports according to a precise timetable in order to examine the adjustment efforts accepted by that Member State. As long as a Member State does not comply with a decision adopted in the context above, the Council may request the Member State concerned; to publish additional information to be specified by the Council before issuing bonds and securities; to invite the European Investment Bank to revise its lending policy towards the Member State concerned; to require the Member State concerned to establish, besides the Union, until the date on which the Council considers that the excessive deficit has been corrected, an interest-free deposit in an appropriate amount or, finally, to impose fines in an appropriate amount.⁵⁵

The Council shall wholly or partly abrogate its decisions or recommendations in so far as it considers, from its point of view, that the excessive deficit in the Member State concerned has been corrected. Where the Council has previously made its recommendations public, it shall publicly declare, as soon as the said decision has been repealed, that there is no excessive deficit in the Member State concerned.⁵⁶

⁵² Tratatul privind Uniunea Europeană, art. 49.

⁵³ Tratatul privind Uniunea Europeană, art. 50.

⁵⁴ Tratatul privind Funcționarea Uniunii Europene, art. 122.

⁵⁵ TFEU, art. 126.

⁵⁶ Ibidem.

The Council, acting either on a proposal from the Commission and after consulting the European Parliament and the European Central Bank or on a recommendation from the European Central Bank and after consulting the European Parliament and the Commission, shall adopt the provisions referred to in Articles 4, 5.4, 19.2, 20, 28.1, 29.2, 30.4 and 34.3 of the Statute of the ESCB and of the ECB.

In order to ensure the place of the euro in the international monetary system, the Council, on a proposal from the Commission, shall adopt a decision establishing common positions on issues of particular interest to the economic and monetary union within the competent international financial institutions and conferences. The Council shall act after consulting the European Central Bank.

After consulting the European Parliament and after discussion within the European Council, the Council, acting on a proposal from the Commission, shall decide which Member States qualify for a derogation fulfil the necessary conditions on the basis of the criteria set out in paragraph 1 and terminate the derogations concerning those Member States. Irrevocably the rate at which the euro replaces the currency of that State and decides the other measures necessary for the introduction of the euro as the single currency in that Member State.

The Council also intervenes in the competition policy. In particular, “at the request of a Member State, the Council, acting unanimously, may decide that aid granted or to be granted by that State shall be considered compatible with the internal market by way of derogation from Article 107 or from the regulations provided for in Article 109, where such a decision is justified by exceptional circumstances “.

12. The Council as a component of the Union Constituent

If we accept the theory of the existence of a Constitution of the European Union, stated, among others, by the author Robert Schütze, then we should also accept the existence of a constitutive power. Of course, in this capacity, we are mainly meeting the Member States, gathered at an Intergovernmental Conference that can review the existing Treaties, but outside of it, the review procedures set out in the TEU and the TFEU also play a role for the Council.

Thus, in the ordinary revision procedure, its place is not a dominant one, and the Council is mainly endowed with the prerogative of receiving Parliament's and Commission's draft revisions initiated by any of the Member States, to submit them to the European Council and be notified to national parliaments.

But a much more important role is left to the Council by Article 352 TFEU. It states that “where Union action proves necessary in the policies defined in the Treaties, in order to attain one of the objectives set out in the Treaties, without their having provided the necessary powers, the Council, acting unanimously at

the Commission proposal and after approval by the European Parliament, shall adopt the appropriate measures. Where those provisions are adopted by the Council in accordance with a special legislative procedure, it shall act unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament. “ In other words, in the case of application of Article 352 TFEU, the Council presents itself as a constituent of the Union, although, as I said above, that role is exercised in cooperation with the other Union institutions referred to by the legislation in question.

13. Conclusion.

As a conclusion of our study, instead of resuming the issues we have already presented to the distinguished reader, we would like to ask a question about which we would be happy to represent a starting point for an interesting debate: to what extent does the role of the Council in the institutional architecture of the European Union resemble the role of a single-chamber legislative or of a chamber of the bicameral legislative in the Member States? To draw an answer, let us resume the functions we have assigned to the Council. Thus, we considered that it behaves as one of the “guardians” of respecting the values of art. 2 TEU. But if we give these values a constitutional nature, do we not find the same role in the national parliaments in procedures such as the referral of the Constitutional Courts or the suspension of the Presidents? We have further stated that the Council acts as a component of a bicameral legislative or as a one-chamber legislative. In this case, a comparison with the National Parliaments appears almost redundant. As far as the component of implementation of legislative acts is concerned, national parliaments are generally not competent here, but the general framework and the means by which the executive exercises this power, internally, are determined by laws as acts of parliaments. Legislative delegation, especially during parliamentary holidays, or the approval of emergency ordinances are also mechanisms known by the constitutional systems of the Member States. The role of platform to coordinate the actions of the Member States is, by its nature, not to be exercised internally. On the other hand, national parliaments play a less powerful role in foreign policy than the Council at EU level, almost by merely ratifying the agreements concluded by the executive branch, but some means of controlling the exercise of these prerogatives exist, and I have addressed them in a previous study. Also, in budgetary matters, national parliaments have an important and obvious role, mainly in adopting laws on the state budget or those relating to its sources, such as taxes and duties. These issues are closely related to monetary policy, although this is in the Member States and the Union, mostly exercised by the central banks. Last but not least, the National Parliaments find themselves in the position to act as constitutive powers, the last of the positions we have found in our study.

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