The Commission-Council Secretariat ‘Complex’: Towards Coherent Governance in the EU?  
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Introduction**

10 years ago, in an article devoted to the separation of powers, Koen Lenaerts (1991) analysed the institutional arrangements of the European Communities along the lines of this concept – a constitutional principle which is of central importance in the assessment of domestic political systems. Ever since its espousal in the American constitution, the principle of the separation of powers has been one key aspect in the normative assessment of political systems. Lenaerts found that while it was possible to apply the principle to the EU1, it was impossible to assign specific powers to individual institutions. His conclusions contained the demand – and the expectation – that in the course of further treaty changes, a clearer alignment of powers to individual institutions would become discernible:

The European Community cannot remain indifferent to the imperatives flowing from the principle in relation to the structuring of its own institutional arrangements (p.35, emphasis added).

The principle of a separation of powers is of course just that – a constitutional principle which presents an ideal picture that is rarely, if ever, replicated in actual political practice. Nevertheless, at a time when the constitutional debate about the future of the European Union is in full swing2, the principle provides a useful starting point for the discussion of the EU’s inter-institutional politics over the past decade.

As it happens, the broad thrust of developments during the 1990s has not been towards a clearer distinction between powers. Instead, there has been a further growth of the way in which powers are shared across different institution in the European Union. Conceptually, one can talk here about horizontal and vertical joint governance: on the one hand, there is the feature of vertically shared powers, i.e. between domestic institutions and EU institutions. It is a sign of the way in which this sharing of powers between national authorities and EU institutions has grown that the – perhaps elusive – search for a delineation of competences (Kompetenzabgrenzung) is now part of the agenda for the IGC 2004, and as such forms a dominant part of the post-Nice debate about the future of Europe. But a second aspect of shared powers concerns the lack of delineation among the European institutions. It is on this aspect of joint governance that this paper will focus.

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** Research towards this paper was greatly assisted by the willingness of officials in the European Commission, in the General Secretariat of the Council of Ministers and in some permanent representations to offer their time and provide valuable information. While I am very grateful for their assistance, the responsibility for any errors or misrepresentation in the present paper remains my own. I would also like to thank the participants in the Grenoble workshop for helpful comments and suggestions.

1 I am aware of the need to distinguish across time and pillars between ‘European Union’ and ‘European Communities’. However, in order to simplify matters for ease of reading, the acronym ‘EU’ is used here to denote either European Union or European Communities, depending on the context. The necessary distinction will be made explicit if and when necessary.

2 As it happens, the contribution to the European constitutional debate by the German Social Democrats contains precisely the demand that the EU “create a European system of the separation of powers between EP, Council and Commission according to the principles of democratic legitimacy, efficiency and transparency (author’s translation). (Sozialdemokratische Partei Deutschlands, 2001: 13).
One key example of powers not separated but shared across institutions is that of executive powers, which are in the hands of both Commission and Council. Traditionally, this implies a discussion of comitology, or in a broader sense, of committee governance – the EU’s recourse to a variety of committees in order to permit Member States to oversee the management and implementation of EU policies by the Commission (Joerges and Neyer, 1997; Vos, 1997, Van Schendelen, 2000, Christiansen and Kirchner, 2000). The focus here is more specifically on the Council Secretariat rather than the Council as a whole. The reason for this is twofold: on the one hand, the Council Secretariat has, so far, attracted little explicit treatment in the academic literature, while, on the other hand, it is an institution which, since Amsterdam, has been rapidly evolving and as such warrants greater attention.

The specific question this paper seeks to address is as follows: How do the Commission and the Council Secretariat manage a relationship that is faced with fundamental structural tension? This tension is embodied by the treaty which, on the one hand, pitches the two institutions against one another – one as the promoter of the common European interest and the other, as part of the Council, as protector of member state interests. On the other hand, the treaty also requires the two institutions to work together in a range of areas and demands the achievement of coherence (or consistency) across policies managed jointly (Tietje, 1997) – a kind of European constitutional Catch-22.

By and large, the wider perception of the relationship between the two institutions, beyond the treaty provisions, has emphasised the conflictual potential rather than the co-operative nature of this relationship. While the Commission is seen as the embodiment of the Community spirit, and as such as a key supranational force in the Union, the latter is generally regarded as an expression of, and guardian of, intergovernmental modes of decision-making. At a time at which the Commission appears as distinctly weak in its institutional evolution, and at which the Council Secretariat is coming into its own as a distinct actor in EU politics, there is much focus on the potential or actual rivalry between the two institutions. This is particularly so in the area of the EU’s external relations since the coming into force of the Amsterdam Treaty and the appointment of Javier Solana as the Secretary-General of the Council Secretariat and the High Representative for the Union’s CFSP. These changes have provided the Council Secretariat (as well as the Union) with a greater degree of actorness in the foreign policy field (Bretherton and Vogler, 1998), but also encroached on the Commission’s role in the field of external relations and external representation of the Union (Smith, 1994).

In response to these structural tensions, and to the resultant perceptions of rivalry between the two institutions – and between External Relations Commissioner Patten and High Representative Solana in particular – there have been calls for a merger of the two posts into a single EU foreign policy portfolio. Commission President Romano Prodi has made it known that in his view, the merged job – even Solana himself – belonged in the Commission and not in the Council Secretariat. After Nice, the treaty arrangements in this respect have been confirmed, yet the future evolution of the EU’s CFSP and ESDP structures means that institutional adaptation will need to continue on either side.

A difficult relationship is therefore here to stay for the foreseeable future, which also means that an academic analysis is called for, and which tries to move beyond the simplistic dichotomy of either rivalry or fusion between the two institutions. Against this background, this paper takes a comprehensive look at the relations between Commission and Council Secretariat, and evaluates the problems and opportunities in this relationship in terms of the wider issues of reform of the European Union. The paper proceeds by placing the Commission-Council Secretariat relations in context, looking at the internal politics of each institution. The next section provides the empirical analysis of

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3 Legislative power is shared between Council and European Parliament – an arrangement that could, if the Council were purely a legislative organ, be conceptualised as the presence of a two chamber legislature. This is not appropriate precisely because the Council is not just a legislative institution, but also, and increasingly so, part of the EU’s executive. It is therefore reasonable to argue that the key problem in assigning powers to institutions is in the executive and not in the legislative field.

4 Incidentally, this is where Lenaerts takes the discussion of executive powers (pp. 30-32). He regards the Council’s hold on executive power directly or via comitology committees as the instance where the “separation of power principle is at its lowest ebb.” (p.31).

5 Legally speaking, the Council Secretariat does not deserve the label ‘institution’. According to the treaty it is merely an organ of the Council of Ministers, which is the actual institution. However, analytically it may be more accurate to regard the Council Secretariat as an #institution in its own right – an argument which will be given substance below.
Commission-Council Secretariat relations across a number of areas which are regarded as key arenas of institutional interaction. The concluding section provides tentative ideas about the way in which we can move the analysis beyond the images of ‘rivalry’ and ‘fusion’.

The politics of the European Commission: Confronting the debts of the past

The Commission’s key functions in the European Union are well-known. They extend from policy-initiation via mediation of different member state positions to the (control over) implementation and enforcement of legislative decisions. The Commission also has a historical role in terms of the representation of EU policies and decisions, both towards the EU’s public and vis-à-vis the outside of the Union. From these functions are derived images of the Commission as the motor of the integration process, the guardian of the treaty or the public face of the Union. The Commission is generally recognised as an important actor in the integration process, and, beyond that, as the supranational actor upholding the common interest against the devise thrust of national interests.

The traditional perception of the Commission as a supranational actor has, to some extent, contributed to the image of a unitary actor, if only implicitly as the internal politics of the Commission have remained hidden within the metaphorical ‘black box’. More recent scholarship has redressed the balance by emphasising the internal tension and bureaucratic politics occurring within the Commission, thus contributing to a more sophisticated understanding of the institution. The insights from these studies suggest that there are significant divisions within the Commission, whether along the lines of national identity, administrative culture or bureaucratic logic (Macdonald, 2000; Cini, 2000; Cram, 1994, Christiansen, 1997).

What has been less well studied is the management of the Commission’s inter-institutional relations. The Commission is, of course, in regular contact with a host of institutions as well as with national administrations and organised interests. At the European level, the Commission is per force a regular participant in many institutional arenas: EP committees, comitology committees (which as chaired by Commission officials), Council working groups, Council and European Council meetings, but also as a regular litigant in the Court of Justice. The Commission is therefore involved with the other European institutions on a continuous basis.

This involvement has been a latent presence in the EU, but has further intensified in the past few years. With regard to the EP, the fall of the Santer Commission has emphasised the need for the Commission to maintain a good working relationship with the Parliament, which means, in particular, to be attentive to its concerns and demands. With regard to relations with the various parts of the Council, the relationship has intensified due, on the one hand, to the establishment and growth of Council structures in the CFSP/ESDP area and, on the other, to the greater frequency of treaty reform and the resultant need for the institutions to contribute, and co-operate in, the work of IGCs.

The coincidence of greater internal fragmentation and the intensification of external relations constitutes a dilemma for the Commission: internal tension makes it more difficult to present a coherent and unified position towards the outside, and to do so effectively; put differently, the intensification of external relations puts a premium on the presence of internal divisions and disagreements. In this sense, the Commission continues to be caught in its own web of over-exposure: having grown in size and relevance to the degree that its presence in a variety of institutional fora is sought and its potential to make a difference recognised, while on the other hand it is having difficulty to marshal the required resources and implement the necessary mechanism for internal co-ordination. The Commission does have substantial resources (staff, funding, expertise) at its disposal, but their timely application to specific demands proves to be ever more difficult.

It is against this background of a perception of malaise in the Commission that a number of major reforms are under way which will affect the way in which the Commission operates in the future.

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7 As a matter of course, the Commission intervenes in every case coming before the ECJ in order to use the opportunity to provide the Court (and others) with its own interpretation of EU law.
Three different levels of reform processes can be distinguished: first, the Nice Treaty changes which, if and when ratified, will limit the number of Commissioners to one per member state after 2005 and expand the powers of the President (Galloway, 2001; Gray and Stubb, 2001); second, the White Paper on European Governance which the Commission will present to the Stockholm European Council in June 2001 envisaging a re-orientation of the Commission to core tasks and developing a more structured and open relationship with civil society – a set of reforms of European governance which are not expected to require treaty changes, but which may feed into the post-Nice process and contribute to the agenda-setting process for the IGC 2004 (European Commission, 2001); third, the Commission itself is engaged in a major exercise of internal administrative reforms (European Commission 1999, 2000). The Kinnock/Prodi reforms launched in 2000 have aimed at achieving greater administrative efficiency, reliability and transparency (Metcalfe, 2001). These reforms may, in the long run, strengthen the institution and provide it with better resources to address latent problems of mismanagement and inefficiency. In the short run, however, these reforms have so proved to be a major upheaval for the Commission, with over fundamental changes to personnel policy and to internal accounting causing general uncertainty in the institution and a drop in staff morale. These internal developments add to a general weakening of the Commission, not only due to the loss of credibility in the aftermath of the Santer Commission crisis, but also as a result of successive treaty changes in which the Commission has not been the winner and the Member States’ recourse to new modes of decision-making (in particular, the so-called Open Method of Co-ordination) which appear to privilege other actors over the Commission.

The recent past has been a turbulent time for the European Commission. The departure of Santer and the arrival of Prodi signalled the beginning of a transition period for the Commission – a transition which is continuing towards an uncertain destination (Spence 2000). The upheaval resulting from the 1999 crisis and these ongoing changes has been a weakening of the Commission. Internal cohesion has suffered, both horizontally – there has been an acknowledged decline in collegiality among Commissioners and their cabinets - as well as vertically – with relations between services and the college now clouded by a degree of distrust. And such internal tensions have meant that the Commission has been lacking in self-confidence and focus, and has been less effective in a projecting its institutional interests – a state of affairs which has been more apparent in debates about major political issues (e.g. foreign policy or treaty reform) than in routine policy-making.

In approaching the Commission’s participation in inter-institutional relations, and its relations with the Council Secretariat in particular, it is therefore fair to say that the Commission is in a relatively weak position, compared to earlier phases of European integration. Such an observation implies that inter-institutional relations change over time. Inter-institutional politics reflect changing patterns of agency within individual institutions as well as the broader structural changes affecting the EU’s institutional architecture. Consequently, the following section will chart at the politics of the Council Secretariat.

**The politics of the Council Secretariat: Paying the price of fame**

If it is true that, until quite recently, the Commission had not received much academic interest, the Council Secretariat is a thoroughly neglected part of the EU’s architecture. Generally, it tends to be subsumed by the Council of Ministers of which it forms a part. But – just like the Commission – the Council is a complex institution which requires analytical disaggregation. To the extent to which scholars have begun that task, attention has focused on the spread of work across different sectoral Councils, the nature and role of Council working groups and the operation of COREPER (Smith et al., 2001; Lewis, 1998). In particular, scholars have enquired into the participation of national officials in

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8 Uncertainties remain in all three spheres: Kinnock’s internal reforms have been hampered by disputes with the staff unions and key aspects are currently being renegotiated with union representatives. An interim draft of the Governance White paper was rejected by the College of Commissioners in March 2001 and has had to be substantially revised. And the changes introduced in the Nice Treaty imply further changes when the Union reaches a membership of 27 states. At that point, the number of Commissioners will be smaller than the number of member states, and a procedure will have to be found to arrange the necessary rotation among the representation of member states in the college of Commissioners.

the various Council bodies (Beyers and Dierckx, 1998) and the possible effects in terms of socialisation into an emerging European bureaucratic culture or identity may have (Egeberg, 1999; Lewis, 2000).

Such scholarship has raised the potential of supranational dynamics in an institution which is traditionally regarded as the core of intergovernmentalism in the EU (Christiansen, 2001). But the focus here has still been on the transient element of national ministers or officials participating in meetings at the European level. A further part of the Council’s organisational matrix – one that, it can be argued, deserves more attention than it has hitherto received – is the General Secretariat of the Council. Perhaps the neglect is due to the apparently mundane tasks which the Secretariat is seen to carry out. Providing advice, logistical back-up and other support services to the meetings of ministers, permanent representatives and officials from the member states has generally been regarded as a technical task not warranting sustained interests by political scientists. In terms of size, the Secretariat is dwarfed by the European Commission (as well as, incidentally, the Secretariat of the European Parliament), and to the extent to which it does have a role in the policy-making process, it is seen as a support of the Presidency rather than an independent political force in the EU.

There are, however, a number of arguments that can be advanced which would suggest that this perception is in need to re-assessment, and that the Council Secretariat needs to be regarded as a political actor in its own right. First, the ‘technical’ support the Secretariat provides to the Council in the policy-process includes a number of highly sensitive, political tasks. Perhaps two main avenues of investigating the politics of the Council Secretariat can be distinguished here. On the one hand, the role of Council Secretariat officials in preparing and managing meetings in the Council structure depends to a large extent on the willingness and capacity of the Presidency to perform these tasks. In this respect, there are fundamental differences in the nature of the way in which different member states have approached this relationship. Officially the Council Secretariat is there to support the Presidency, but for many of the member states, especially the smaller ones, the Council Secretariat largely takes over the running of routine decision-making processes in the Council. Such an informal transfer of Presidency responsibilities provides it with quite extensive powers to guide the affairs of the Council in one or the other direction, albeit within the constraints of a wider frame which is preset.

A second source of political power for the Council Secretariat is derived from the influence of its legal service. The Council Secretariat provides legal advice to the Council – and thereby to member state representatives on all levels – with a high degree of authority. Functioning as an – perhaps the – institutional memory of the Union, its interventions during Council meetings as to what is legally possible or not possible have a high degree of authority. Whether intentional or not, the provision of such legal advice can have an important, even decisive, effect on the progress of negotiations in the Council.

The role of the legal service extends to all areas of EU decision-making, but is especially pronounced in the area of treaty reform. It is in the management of Intergovernmental Conferences (IGC) that the Presidency has a particularly demanding task, and where it is bound to rely especially on both the political sensitivity, awareness of historical precedent and legal expertise present in the Council Secretariat. Again, as with day-to-day policy-making, the influence of the Council Secretariat and its legal service is dependent on the willingness of the Presidency to include them in the preparation of meetings, the setting of the agenda and the drafting of position papers. In extreme terms, one can talk about an IGC being ‘done’ either in the national capital or in Brussels – the euphemism for the Council Secretariat.

The main variable of Council Secretariat influence over treaty reform appears to be the size of the member state, though this is a generalisation based on a very limited sample of cases: apart from the French Presidency leading up to the Nice Treaty, IGC’s have always been in the hands of small member states (Luxembourg, Netherlands, Ireland, Portugal) which relied to a greater degree on the

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10 The Commission is sometimes seen as the institutional memory of the Union, a claim which is, to some extent correct. Yet the Commission, due in part to its much greater size and a much greater internal turnover of staff, does not, compared to the Council Secretariat, maintain the same sort of continuity in providing the Union with an institutional memory and with authoritative legal advice based in the recollection of past practice and decisions.
input from the Council Secretariat. France, on the other hand, was determined to keep tight control over all aspects of the running of the IGC – with the apparent consequence that agenda-setting and the search for agreement were too a larger extent determined by French positions on the issues under discussions. Critics would argue that the difficulties the French Presidency encountered in reaching a compromise at Nice were, in part, due to the limited use made by the French of the services of the Council Secretariat.

Above reference was made to the way in which the Commission’s role has been weakened in the course of subsequent rounds of treaty reform. The Council Secretariat, on the other hand, has risen in importance as a result of the treaty changes introduced at Maastricht and Amsterdam. The creation of the pillar structure at Maastricht, removing the Commission’s monopoly of initiative in important new areas of EU competence empowered the Council Secretariat as the search for agreement among member states would rely on the Presidency – and therefore more on the Council Secretariat than on the Commission. One may hypothesise that this gradual shift of power from Commission to Council Secretariat is also related to the role played by the Council Secretariat and its legal service in the course of IGCs. However, the Council Secretariat’s actual source of influence is greater in the more detailed ‘small-print’ of treaty change rather than with respect to the big issues which receive full attention from the highest political level and are bound to become politicised.

One issue which featured in the IGCs leading up to the SEA, Maastricht and Amsterdam Treaties has been the development of CFSP. Here a determined campaign by some member states as well as the Council Secretariat has been to keep the institutionalisation of the policy out of the hands of the Commission. It has been a campaign that has had demonstrable success in that initially the EPC Secretariat was created outside the existing institutional structure rather than being added to the portfolio to the Commission. At Maastricht, this Secretariat was then merged with the Council Secretariat and at Amsterdam the new post of High Representative was created as an adjunct to the responsibilities of the Council Secretariat Secretary-General. Beyond the appointment of Javier Solana to this new post, an expansion of staff at the Council Secretariat was the result of these changes. A number of EU Special Envoys to certain crisis-regions across the globe are also based at the Council Secretariat. In a nutshell, the Council Secretariat has become the core of the evolving EU foreign policy machinery.

While it is possible at each instance of institutional reform to point to a certain alignment of member state positions on the institutionalisation of CFSP, it is nevertheless striking how this process has enhanced the institutional standing of the Council Secretariat. Assuming that Council Secretariat officials are involved in matters of treaty reform with *inter alia* the interests of their own institution at heart – an assumption not too radical to make in the light of what we know from the study of bureaucratic politics and institutional analysis – then it is difficult not to conclude that their objective has been achieved.

As a result of these changes, in particular the reforms of the institutional aspects of the second pillar, the Council Secretariat has received much greater political clout and enhanced significantly its standing among in the institutions. Subsequent reforms have not only resulted in the evolution of a substantial CFSP administration which – including the High Representative – forms an integral part of the Council Secretariat, but also the creation of new military and security structures resulting from the decisions taken at Helsinki (Presidency, 1999). The argument here is of course *not* that the Council Secretariat single-handedly negotiated these outcomes for itself, but rather that is was present to take up new roles and, when appropriate, able to suggest such ‘solutions’ to the Presidency – also through inclusion in the drafts for treaty reform negotiations – or simply to ‘be there’, physically and politically, when new institutional arrangements were negotiated.

In addition to the changes resultant from the Amsterdam Treaty, there have been further developments since the decisions at the 1999 Cologne and Helsinki summits to provide the Union with a military dimension in order to acquire a capability for humanitarian intervention – the so-called Petersberg tasks. The organisational changes required to build up this capability include the creation of new working groups in the Council – the Political and Security Committee and the EU Military Committee – and the building up a military staff component in the Council Secretariat. This process has been aided by the appointment of Solana as Secretary-General of the Western European Union and the
partial transfer of tasks and resources from that organisation to the Council Secretariat (Presidency, 2000). This whole process is continuing and somewhat open-ended since the precise nature of arrangements with NATO – the sharing of assets and the degree of autonomy of EU structures from NATO – remain subject to debate.

The Council Secretariat’s acquisition of an operational role in the management of CFSP and ESDP is a story too long to be told here. It certainly is a major departure from its traditional role in the EU’s institutional architecture. What needs to be emphasised at this point is the impact these new responsibilities have had on the institution. In this respect, it needs to be emphasised that what at one level appears to have been a jewel in the crown of policy-making which has been snatched away from the Commission, has also proved to be a somewhat poisoned chalice. Gaining a role in CFSP has created certain tensions for the Council Secretariat which are not too unfamiliar for students of the European Commission. Indeed, the occurrence of certain institutional pathologies are strikingly similar to problems which we have seen in the Commission for some time, and on a larger scale.

The problems arising from these changes can be summarised as follows: greater internal fragmentation, greater scarcity of resources, the co-existence of conflicting institutional cultures and logics within the same institution, greater demands on internal co-ordination, debate about the physical location of sub-units within the institution. The remainder of this section will briefly address these new challenges for the Council Secretariat.

As is implicit from what has been said so far, the ‘old’ Council Secretariat has drawn its political influence from working behind the scenes, away from the public limelight. Much of its influence is being executed indirectly, via the Presidency. Its organisational culture has been based on legalism – a comprehensive knowledge of EU law at all levels, its application and interpretation. The arrival of a substantial number of officials working on foreign policy matters has added a contrasting dimension to this. Activity, if not activism, in foreign policy has heightened the profile of the Council Secretariat and turned the public spotlight on some of its activities – an unfamiliar and perhaps unwelcome development for the established bureaucracy. The increasing presence of military officers seconded from national forces to make up the new EU military staff has added further unease, given that it brings with it very different working methods.

The internal tensions resultant from these changes affect a number of areas in the institutional life of the Council Secretariat:

- **Transparency**: desire to demonstrate greater openness (old) v. demands for improved secrecy (new)
- **Hierarchy**: prominent role of informal networks (old) v. need for formal command structures (new)
- **Bureaucracy**: work in rule-centred environment (old) v. open-ended, unregulated diplomacy (new)
- **Administrative function**: legislative/policy-advice (old) v. operational/policy-management (new)

Given the Council Secretariat has, in the past, been a comparatively small and cohesive institution, the presence of such different organisational logics within the institution are bound to create tensions. To name just one example: what may have been regarded, at first sight, as a minor disagreement about the degree of administrative transparency has already erupted as a major issue about the EU’s military effort to maintain secure communications which will ultimately require the move of military units to a designated security HQ of the EU (The Guardian, 2000). This development constitutes a first physical split for the institution and further demonstrates the division – or incomplete integration – of the institution, echoing the experience of the Commission where the location of DGs in separate buildings has reinforced intra-institutional boundaries. At the same time, the issue has raised the opposite concerns elsewhere, i.e. that the Council Secretariat is moving backwards on the issue of transparency, despite assurances to the contrary (General Secretariat, 2000).

Indeed, what we seem to be witnessing in the case of the Council Secretariat is the construction of two separate administrative structures which are only very loosely integrated at the top. One, the ‘new’ Council Secretariat, headed by the SG/HR for CFSP and consisting of the policy unit and the military staff. This part of the Council Secretariat is in rapid expansion and, given the uncertainties about the
future direction of EU foreign, security and defence policy, in search of a clear role and identity. The ‘old’ Council Secretariat, on the other hand, headed by the Deputy Secretary-General and consists of the legal services and the sectoral DGs assisting the Presidency, the various Councils and working groups in first pillar matters. There is a fairly clear dividing line between the two, even though they are formally part of the same administration.

The way in which new structures have been added in a gradual manner, and the speed with which the institution has expanded, have raised demands for a reform which would deal with current or anticipated problems and inefficiencies of the Council’s structure and working practices. As a matter of fact these problems result not only from the addition of new responsibilities to the Council Secretariat but also from the fact that up till now – much like the Commission – the Council Secretariat had never undergone any fundamental reform since its inception. And enlargement is bound to add further pressures and tensions to the Council’s and the Council Secretariat’s procedures and working practices. Arguably, enlargement will be a greater challenge to the Council than to any other of the EU institutions.

A first attempt to encourage the reform of the Council was made with the drafting of the so-called Trumpf-Piris report in 1999 which acknowledges some of the problems of the Council’s working methods, and the need for reform (Secretary-General, 1999). It did follow in the footsteps of demands for reform made outside the institution, but most of its recommendations were not followed up by positive responses from member states. A second report on Council reform will be presented by Solana to the Stockholm European Council in June 2001. Beyond that, even more far-reaching reforms are set to be proposed at the Laeken European Council in December 2001 and implemented during the Spanish Presidency in 2002.

To sum up, the Council Secretariat is in a period of fundamental change, facing a series of serious challenges and far-reaching reforms. Having made effective use of its resources in the past, the Council Secretariat has seen a period of rapid expansion and increasing political weight as a result. Yet, expansion has come at a price as internal fragmentation has increased: The Council Secretariat needs to find ways of reconciling differing organisational cultures and adapting to the spotlight of wider public attention that comes with the involvement in the politically highly sensitive areas of CFSP and ESDP. The Council Secretariat may not have gone through the kind of crisis the Commission has been facing since 1999, but it is nevertheless in the grips of a need to reform and adapt to the changing circumstances of the time which is quite as serious as that of the Commission.

Arenas of interaction between Commission and Council Secretariat

Having charted the institutional evolution of both Commission and Council Secretariat, we can now engage in an analysis of their relationship from a sound foundation. What has emerged so far is that both institutions are complex organisations which are not free of problems. What should also have become evident is that the traditional image of a supranational Commission and an intergovernmental Council is too simplistic. Instead, we can see that, even though the Commission has gone through a period of decline and the Council Secretariat has witnessed a rapid rise to institutional prominence during the late 1990s, both institutions have similar problems with internal fragmentation and are undergoing far-reaching administrative reforms. What is quite striking, therefore, is the similarity between the two institutions, given the general perception of structural difference between them to which we referred at the outset.

The analysis of the Commission-Council Secretariat relationship will proceed in two steps: first, this section will identify a number of contexts in which the two institutions ‘meet’ and which therefore provide arenas for interaction and thereby opportunities for the generation of either conflict or cooperation. Second, the following section will seek to conceptualise this relationship in a way that moves our understanding beyond traditional images of institutional rivalry, on the one hand, and the need for fusion in order to achieve coherence, on the other.
Co-operation in the EU policy-process

Commission and Council Secretariat co-operate on a regular basis in routine first pillar policy-making in the preparation and in the running of the multitude of meetings within the Council structure. Both institutions share an interest in the smooth running of the policy-process. An effective management of EU affairs can be expected to heighten the problem-solving capacity of the European level and will therefore assist the legitimacy of EU institutions. Both Commission and Council Secretariat have therefore to gain from the successful passage of a directive, and to lose from a failure. Clearly not any agreement in the Council is a guarantee of effective policy-making, but on the whole a perception of purposeful action is seen to be more desirable than one of inactivity.

In terms of the substance of policy-proposals Commission and Council Secretariat may, on occasion, have different interests, but beyond such differences both will be united by a common desire to influence dynamics in the meetings of Council working groups to achieve the required consensus or majority, as the case may be. The search for compromise in the Council requires efforts at mediation which involve both the Commission and the Council Secretariat in different ways. Both institutions have representatives in any meeting held under Council’s rules of procedure, i.e. from working groups and COREPER to the actual meetings of ministers. This, in itself, establishes a continuous presence by Commission officials in the proceedings of the Council and thereby ensures regular interaction with Council Secretariat staff.

The significance of Commission intervention at the decision-making stage in the policy-process, when proposals have formally left the Commission and are under deliberation in Council and EP, depends both on the policy-area and the decision-making mechanism applicable in any given case. If decisions are to be taken by the co-decision procedure, for example, the Commission’s leverage is enhanced by its opportunity to change the proposal in the course of proceedings, in order to adapt it to the emergence of a relevant majority in the Council. Further co-operation between Commission and Council Secretariat (as well as Presidency and EP) is called for in the context of the trialogue – the getting together of the three institutions in order to search for compromise once legislation has reached the conciliation phase of the co-decision procedure. In different circumstances, however, the role of the Commission may well be less prominent.

In any case, the influence the Commission can have in this process in mediating among different member state positions can be amplified by the Council Secretariat. The Council Secretariat, as explained above, has a role to play here too, but this will depend to a large extent on the readiness of the Presidency to rely on the services and the advice of the Council Secretariat. Different Presidencies handle this relationship in different ways. It is common practice, however, for a working relationship between all three parties – Presidency, Commission and Council Secretariat – to develop. This working relationship can extend to the detailed preparation of meetings, including the exchange of information regarding different national positions in the items on the agenda and the agreement on strategies to overcome opposition from one or the other member state delegation.

As far as the Commission and Council Secretariat are concerned, the co-operation in such situations can amount to a division of labour. The Commission’s contribution is of a more high profile nature, in a more formal search for common ground among member states, with the result of the exercise finding its way into the formal proposal. Once proposals have reached the Council, the Commission’s room for manoeuvre is limited, in part because it will feel bound by the fact that it has adopted its own institutional position on the issue in the College of Commissioners. At this stage, Council Secretariat staff (as well as the Presidency) can take over mediation efforts in a more subtle way, via the running of the meetings, the drafting of minutes and position papers and the provision of legal advice. To the extent to which such strategies have been agreed in advance of any meeting, such a ‘division of labour’ between Commission and Council Secretariat can be highly effective, playing to the strengths of either institution.

As is evident, such a modus operandi relies only to a very minimal degree on formal rules of procedure or on treaty provisions. It really depends on personal contacts between the relevant DGs in Commission and Council Secretariat, and the extent to which the personalities on either side are willing and able to work together. As has been argued, institutional dynamics point towards co-
operation between officials from Commission and Council Secretariat, and only in rare cases will there be formal impediments to such co-operation. Yet whether it actually takes place depends on the specific actors concerned, and it is here that individual officials can make a difference for the better as well as for the worse. In any case, the emphasis in co-operation between Commission and Council Secretariat in routine policy-process is on informal contacts and, in a wider sense, the presence of networks which across the institutional divide.

The Process of Treaty Reform

The EU’s treaty reform process is, of course, distinct from routine, day-to-day policy-making. Yet there are also a number of parallels, and these extent to the co-operation between the Commission, Council Secretariat and Presidency in the search for consensus among member state positions in the course of an IGC. In fact, to mention these three institutions in the context of Intergovernmental Conference may strike some as odd, but the participation of supranational institutions in the process of treaty reform is becoming increasingly recognised, thanks also to contributions from the actual participants of the proceedings (Dinan, 2000; Petite, 2000; Gray and Stubb, forthcoming; Christiansen and Joergensen, 1999).

Obviously, the Commission is in a fundamentally altered position here, given that it does not possess the monopoly of initiative familiar from routine policy-making. Indeed, its participation in meetings is less of a right and more of an established practice. The Council Secretariat, on the other hand, is more empowered here than it may be in normal decision-making given that its staff, the legal service in particular, will be closely familiar with the subject-matter under discussion. Subject to the arrangement found with the Presidency, the Council Secretariat – acting as the Conference Secretariat – may have an influential role in the drafting of the treaty (Gray and Stubb, forthcoming; Stubb, 1997).

There is a greater propensity for issues under discussion in an IGC have a divisive effect on Commission-Council Secretariat relations, since treaty changes are more likely to affect the institutional balance than is secondary legislation. This may constitute a barrier to co-operation, but there are still areas which constitute positive-sum games for the two institutions, and where both can benefit from the exchange of information about the likelihood of agreement being reached among member states, and the way of securing such agreement.

Interestingly, the Council Secretariat’s role is not necessarily weakened when treaty reform, or indeed constitutional reform, is conducted through an IGC but through the so-called convention method. The convening of a convention, as was done for the drafting of the European Charter at Human Rights which was signed as Nice together with the revised treaty, provides the first example of the EU resorting to this alternative from of instituting change. While the European Charter has not formally elevated to the status of primary EU law, there is much debate now concerning the adoption of this method in the run-up to the 2004 IGC. What is rather ironic here is that a method that explicitly seeks to involve civil society and non-state actors to a greater degree than IGCs have done in the past, has ended up given ample scope for officials from the Council Secretariat – acting as the Convention Secretariat – to influence the proceedings through the usual mechanisms (participation in the drafting process, provision of legal advice, etc.). (de Burca, 2000).

In terms of the dynamics of IGCs, two aspects deserve specific emphasis here. First, the legal nature of the subject matter places legal advice in an even more privileged position than it is in routine policy-making. Given the rotation among countries holding the Presidency, the permanency of Council Secretariat’s and, to a lesser extent, the Commission’s legal service occupy a rather central position in the proceedings of an IGC. Second, the Commission, while not possessing a vote – and therefore no veto over any final outcome of the IGC – is nevertheless more than just a by-stander. The Commission’s opinion may have an integrative effect on the course of negotiations. In particular, the Presidency, in searching for a compromise solution, will be keen to have the Commission on side. A Presidency proposal which has support from the Commission has much greater legitimacy, and therefore chances of success, than one opposed by the Commission.

Despite the very different legal and political circumstances, the dynamic here may therefore be quite similar to the need for extensive, informal co-operation between Presidency, Commission and Council
Secretariat in routine policy-making. The main proviso here is that there may be more numerous exceptions to this in areas where the institutional interests of Commission and Council Secretariat come into conflict. One such example – the institutionalisation of CFSP – has already been touched upon above and will be discussed in a little more detail below.

The Management of EU External Relations

Whereas in the legislative process and in the treaty reform process Commission and Council Secretariat have distinct responsibilities which lend themselves to informal co-operation and division of labour arrangements, the situation is rather different in the area of external relations. Here there is much greater propensity for the two institutions to develop a competitive approach given the overlap in responsibilities. Given the institutional dynamics involved in this area, the achievement of the treaty demand for coherence or consistency has been a growing concern (Tietje, 1997; Duke, 1999). Within each institution coherence has grown in the past few years: in the case of the Commission, through the merger of a number of DG’s into a single external relations DG, the appointment of a single External Relations Commissioner and the creation of a EuropeAid Office as the ‘one stop shop’ to the disbursement of EU financial assistance abroad; in the case of the Council, though the merger of the former EPC Secretariat with the Council Secretariat, the incorporation of the CFSP working groups and policy unit into the Council structure and, when completed, the absorption of the WEU institutions into the Council. However, just as within each institution there is now greater scope for the achievement of coherence, the potential for competition, rivalry or conflict between the institutions has grown.

The treaty provides no clear division of competences, and there has been much debate about the potential for rivalry and conflict between the two institutions – and the two individuals Patten and Solana. Certainly, sensitivities and suspicions are detectable on either side. In the Council Secretariat, there is a perception that the Commission is defensive about the potential loss of influence in external relations as the Council Secretariat builds up its institutional strength in this respect. On the Commission’s side, concerns are being voiced about the dangers of duplication of tasks and expertise. As has been elaborated above, Solana’s appointment and the changes in the Council Secretariat that went with it have ruffled feathers in the Council Secretariat as well as in the Commission. However, with Nice having come and gone without any change in these arrangements, there is a greater sense of acceptance of the new structures and a willingness to make them work. A co-operative attitude has prevailed, both at the political level where Patten and Solana have struck up a collegial working relationship and at the official level where consultation and co-operation across institutional boundaries have become common place.

Commission-Council Secretariat co-operation here has some formal aspects, but is on the whole a question of informal contacts and ad hoc meetings to address specific issues. Given the nature of the policy-area, co-operation is to a large extent problem-driven rather than process-driven, and has been most intensive in cases of crisis, in particular with respect to EU policy on the Balkans. Either side professes a recognition of mutual dependence between the institutions. The Commission acknowledges the formal competence of the Council Secretariat and the value of its direct links to member states’ foreign ministries – a link that is strengthened by a significant proportion of Council Secretariat officials in the CFSP area being seconded national diplomats. The Commission also appears to have given in to demands from the Council Secretariat that Solana be accorded a senior status in the diplomatic protocol to Commissioner Patten, even though this breaks with past inter-service convention.

The Council Secretariat, on the other hand, clearly accepts the expertise and the resources the Commission possesses in the area of external relations. The Commission controls the key instruments in gathering information and projecting EU influence abroad. The network of delegations across the globe, providing the Commission with direct information about the conditions ‘on the ground’ (Bruter,
1999), are recognised as valuable by the Council Secretariat. Most importantly, there is a recognition in the Council Secretariat of its own lack of resources and the Commission’s relative wealth of them. Effective external action of the Union requires the use of instruments such as financial or technical assistance, humanitarian aid or economic sanctions. The Commission’s role in the control of access to them leading to a recognition in the Council Secretariat of the desirability of involving the Commission in the planning and deliberation of integrated crisis management responses in the future.

Among the formal mechanisms of Commission-Council Secretariat co-operation is the membership of representatives from both institutions in the new Troika created by the Amsterdam Treaty (and consisting also of a Presidency representative). The Troika is an instrument of external representation – it constitutes a joint EU delegation abroad and is, as such, not intended to provide a forum for internal EU co-operation. However, the Troika provides a regular meeting place for Commission and Council Secretariat and the preparation of any foreign mission of the Troika will therefore offer opportunities for policy-co-ordination between the two institutions.

The second and arguably more regular and comprehensive contact between Commission and Council Secretariat is the Commission’s membership in Council working groups, much like in the first pillar. This includes the Political Committee and the new Political and Security Committee. The Commission’s role here will be different from that in the first pillar working groups as it lacks the monopoly of initiative in this context. But the Commission’s participation still allows for a two-way exchange of information and as such assists the co-operation between the two institutions.

A sensitive point here seems to have been the extension of such co-operation into the military field, in particular given the opposition of some member states to the inclusion of the Commission in meetings of the new EU military committee. Due to these tensions the Commission has not, as yet, participated in any meeting of EUMC, but reserves the right to do so if its participation is called for in view of the specific agenda for individual meeting. But this seems more of a transitional problem as new military structures are being created. The is no doubt on either side that, in the medium to long-term, the Commission’s participation in EU crisis response planning and execution is not only desirable but essential.

Finally, among the formal mechanisms of co-operation is the mutual secondment of officials between the Commission’s DG EX and the Council’s Policy Unit. This affects only a limited number of officials and is regarded with some scepticism on either side, given the detrimental impact that secondment has on the prospects for promotion and compliance with staff regulation. Nevertheless, to the extent to which it is practised, secondment adds a valuable channel of communication between the two institutions.

This observation leads to the recognition of informal networks stretching across the institutional divide. Just as in other policy-areas, these are prominent in this area, and officials working in a specific area of CFSP will be in daily telephone and email contact with their counterparts in the Commission. Again, such contacts may be suffering from personality clashes, or may benefit from the chemistry among the officials involved. In general, though, they tend to be an effective means in order to overcome the formal distance between the institutions, and the difficult hierarchies involved on either side.

By way of conclusion of this section we can say that the Commission-Council Secretariat relationship has not been without its problems, something that was to be expected given the radical nature of the changes introduced by Amsterdam. On the whole, though, institutions and officials have coped comparatively well with the tensions built into the formal arrangements. A number of channels of communication have been opened up on different levels, and they provide scope for the regular exchange of information and the preparation of joint action in case of crisis. But personal contacts rather than formal structures constitute the backbone of inter-institutional co-operation, particularly when Commission and Council Secretariat are required to react collectively and quickly to a crisis situation in the area of foreign policy field.

11 An agreement among member states, Council Secretariat and Commission to provide the policy unit with regular despatches from national embassies or, in the case of the Commission, delegations has been fully implemented only by the Commission – a state of affairs which may skew the Council Secretariat’s appreciation of the significance of delegations.
Given the joint responsibility for external relations, it is remarkable how limited the formal structures of policy-co-ordination between Commission and Council Secretariat are, placing high demands on officials to network informally. At the highest level, this state of affairs has turned the spotlight on the personal relationship between Patten and Solana, highlighting the fact that the two are very different personalities who have, despite differences in political beliefs and in style, developed a professional and collegial relationship that has not witnessed any major crisis that would have been spelt ‘incoherent EU foreign policy’ to the outside world. In any case, on the basis of the information discussed here, the relationship between Patten and Solana, as the one between the Commission and the Council Secretariat in general, does not seem so problematic as to warrant the call from Commission President Prodi to merge the two jobs by creating a Commission Vice-President for foreign affairs – a demand that not only seems utopian in the context of current institutional developments, but may also have been counter-productive in provoking a hostile reaction from the Council Secretariat (as well as from the member states).

**Beyond Rivalry: The ‘Eurocratic Complex’ of Commission and Council Secretariat**

So far, the story has been one of a structurally determined tension between two institutions which appears to be managed rather well, even be overcome, by the policy-makers involved. Officials have been developing collegial approaches to their work in areas of shared responsibility, and have overcome the lack of formal structures of co-operation and co-ordination by resorting to informal networking. At this stage in the analysis the Commission-Council Secretariat relationship appears as if rational action by individual agents pursuing their common interests has succeeded to overcome severe structural constraints. The remainder of this section will seek to argue that this is not the full story of Commission-Council Secretariat relations.

Individual action has the potential to overcome structural differences between the two institutions. One only need to imagine the kind of politics which would have been generated if the posts of either Patten or Solana, or both, had been filled with less agreeable and accommodating individuals. In the ambivalent context of Commission-Council Secretariat relations, in which institutional and constitutional rules point in the direction of both co-operation and conflict, individuals have much scope to emphasise one of the other in their approach to mutual interaction. At the micro-level of institutional analysis – at the level of individual actors and their response to the institutional environment – it is therefore quite appropriate to argue in terms of individual action.

It is a different question, though, whether such co-operative action by individuals is to be regarded as rational action. In the empirical analysis we have seen that across rather different institutional logics co-operative behaviour wins out over conflictual behaviour. In specific cases the argument can be, and has been, made that the co-operation is due to interest maximisation on the part of individuals. Nevertheless, the degree of co-operation between two different institutions across a range of different tasks and policies seems to suggest that the explanation needs to be found in the social context in which individual action takes place rather than simply rely on the efforts and goodwill of individuals. In other words, we may, after all, want to return to structural explanations rather than individual action in order to explain the co-operative nature of Commission-Council Secretariat relations.

The explanation advanced here in order to address the puzzle of structural tension overcome by individual action is one based on the presence of a deeper structure of beliefs and ideas which serves to bridge the institutional divide between Commission and Council Secretariat. Three concepts are advanced here in support of this argument that an ideational structure facilitates the co-operation between Commission and Council Secretariat: first, a shared allegiance as civil servants of the EU, second, a experience in working within a common bureaucratic culture and, third, the presence of an epistemic community of experts in the highly technical matter of EU policy-making.

The point about a shared allegiance to the European project needs to be prefaced with an observation about the nature of identity-construction. This concerns the recognition that individuals carry multiple identities, with different identities mobilised in different social contexts. In the EU context, the presence of multiple identities can help explain the occurrence of internal fragmentation in an institution like the European Commission where many officials may identify more with their unit or
DG than with the Commission as a whole. At the same time, it has also been shown that the presence of national identities remains significant for Commission officials and other EU policy-makers.

However, the allegiance can also be applied to a community of policy-makers which goes beyond the institutional boundaries of the European Commission. This is what is suggested here: that officials working in Brussels may identify as EU officials as well as Commission or Council Secretariat officials, and that a common allegiance to the EU may override the more narrow institutional identity that separates them. They are, to put it simply, EU officials rather than only Commission or Council Secretariat officials, and as such share a perception (as well as a formal obligation) of working towards the common European interest.

Among the reasons for the development of a shared allegiance among Commission and Council Secretariat staff are their participation in very similar daily routines in Brussels and the presence of technical and legal expertise on important matters of EU politics in both institutions. The former, which could be termed the ‘Brusselsisation’ of EU officials, refers to the common experience of working in a multi-lingual, multi-national working environment of an international institutions. Staff in both institutions are aware of the turbulences of politics in the member states and spend much of their time assessing the potential for agreement among diverse national positions. Yet, despite the considerable politicisation of European public administration, EU officials are also somewhat insulated from its consequences, working in the relative autonomy of formally independent institutions. At a more practical level, EU officials have to pass similar entry requirements and concours and are governed by the same staff regulations. The same of course also applies to the employees of other EU institutions and agencies, but the presence of a wider membership to the community of EU officials does not deny its effects in overcoming institutional divisions between Commission and Council Secretariat.

Another argument, which is specific to these two institutions, concerns their shared expertise in certain EU matters. This may not apply to all areas of their work, but to some which – it can be argued – are important to their institutional self-perception (and therefore to the generation of a sense of shared allegiance). This concerns, in particular, the knowledge of the rules and procedures of EU decision-making, ranging from policy-making in the first pillar to the modalities of treaty reform in IGCs. In contrast to the substantive issues involved – on which the expertise of other actors in the policy-process is probably greater – both Commission and Council Secretariat, as managers of the process, will have unrivalled knowledge not only of the technicalities of the process of decision-making, but also of the origins of the rules governing this process.

Much of this is due to the presence of legal expertise in both Commission and Council Secretariat. The legal and procedural know-how present in the legal services of Commission and Council Secretariat is matched only by that of the European Court of Justice. But, unlike the ECJ, the two legal services are involved in a daily basis in policy-deliberations and in the provision of policy-advice to their respective institutions, and to national governments. Despite what may be expected given their different institutional embeddedness, the legal advice issued by the two services tends to be identical. Indeed, they are perceived to be so similar in their outlook and approach that among the staff of the two institutions they are known as ‘the cousins’. It is on this basis that the legal services of the Commission and the Council Secretariat can be argued to constitute an epistemic community stretching across the institutional divide. They not only share a technical expertise in the area of the rules and regulations relating to the procedural aspects of European integration – both with respect to primary and secondary law-making – but also share the values of promoting the common interest, strengthening the institutional framework of the European Union and, above all, maintain the rule of law as a guiding principle of the integration process. That is why the legal services of the Commission and the Council Secretariat can be regarded as part of an epistemic community of the ‘guardians of the treaty’. There is no doubt that, within this community, there will be differences, in particular when respective institutional interests are at stake. But acknowledging such differences does not diminish the existence – and the analytical significance – of an epistemic community with shared values based on commonly-held knowledge and expertise.

The effects of ‘Brusselsisation’ – the exposure to similar work (and life) routines – and membership in such an epistemic community contribute to the generation of an allegiance to the EU and to the
integration project. This shared allegiance, and the resultant promotion of a common identity as EU officials – in opposition to the partisan identities of Commission and Council Secretariat – provide the environment in which co-operative action by individual actors can take place. The structural tension of different EU institutions sharing tasks is therefore managed not purely on the basis of individual action but also on the basis of common ideational structures linking the two institutions.

This paper started off with statements of principle about the separation of powers and the way in which this principle should be reflected in the EU’s institutional architecture. In the light of the analysis above we have to conclude, first, that recent institutional developments in the EU demand more rather than less co-operation between Commission and Council Secretariat, and, second, that latent competition or conflict between the two institutions is being counterbalanced by the presence of ideational structures bridging the institutional divide and facilitating co-operation among EU officials. While other aspects of the EU’s institutional development may be moving down a recognisable path of constitutionalisation – and thereby introducing established principles of constitutional theory – the principle of a separation of powers is of little assistance in enhancing our understanding of the relationship between the European Commission and the Secretariat of the Council of Ministers. Instead, the two institutions, despite their obvious differences in size, purpose and powers, jointly constitute a ‘Eurocratic complex’ managing the EU’s legislative process and its external relations.

References


General Secretariat of the Council of the EU (2000) Basic Texts on Transparency concerning the activities of the Council of the EU (Brussels).
Secretary-General of the Council of the EU (1999) Operation of the Council with an Enlarged Union in Prospect (Brussels).
