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The Institutional Balance: a phantom concept of EU constitutional law.

Abstract
The concept of institutional balance is an original theory associated with the development of the EU institutional structure. This article offers a critical analysis of the different uses of the concept. While doing that, the article provides representative samples of the ways in which the concept has been used in the processes of the European integration, including its practical implementation by the European Court of Justice. Our argument is that, in its current state, the concept of institutional balance serves both reactive and transformative functions within the EU law. It emphasises the necessity to periodically check and adjust the power distribution architecture in response to new challenges of the EU evolution process. Moreover, it serves as a conceptual vehicle through which different power configurations within the EU context may be both criticized and legitimized.

Key words: institutional balance, representative theory, European Union institutions, ECJ case-law, check and balance principle.

I Introduction

The development of the post-Lisbon institutional architecture raises the issue of the core principles and design underlying the distribution of powers within the EU institutional framework. In particular, the concept of institutional balance seems to have a crucial role.However, both the content and functions of the concept of institutional balance have remained far from clear (Guillermin 1992; Prechal 1998).Academic literature offers a variety of definitions from the rather simplified "*who* (which institution) and *how* (according to what procedure)" (Verhoeven 2002: 205) to "a euphemism which 'masks an inherent institutional tension between the intergovernmentalism and surpanationalism'" (Craig, de Burca 1999: 21), to mention just a few. Such a broad scope of definitions certainly implies variability and complexity of the concept, which is used in several different meanings, with different conceptual and normative backgrounds.

The aim of this article is to offer a critical analysis of the multi-facial concept of "institutional balance", including its practical implementation by the European Court of Justice (henceforth ECJ). The article does not study separate EU institutions; instead it provides a critical analysis of major ways in which the concept of institutional balance has been used in the dynamic context of the EU evolution.

My argument is that in its current state, the concept of institutional balance serves both reactive and transformative functions within the EU law. As such, it does not only emphasise the necessity to periodically check and adjust the power distribution architecture in response to new challenges of the EU evolution process. More importantly, it serves as a conceptual vehicle through which different power configurations within the EU context may constantly be both criticized and legitimized.Due to its own openness to contradictory aims, the concept of institutional balance does not provide any single coherent ground for active development of the design of distribution of powers within the EU institutional framework.Instead it opens up different argumentative possibilities readily available to anyone willing to either lock in or change the current power structures of the EU.

The article is comprised of introduction, four sections and conclusions. Section II focuses on specific justificatory features of balancing in the unique context of the European Union. Section III offers an analysis of the institutional balance concept from the perspective of power distribution between the EU institutions. Section IV studies institutional balance as a legal principle as it emerges from the ECJ's case-law. Finally, section V examines representative theory commonly viewed as the basis underlying the concept of institutional balance.

II. Balancing between extremes – a pendulum that never stops.

In its traditional forms, constitutional balancing has been used with at least two different meanings and contexts. First, it has been widely used to connote a certain form of conflict solution between different material interests by weighing and balancing them (Aleinikoff 1987; Alexy 2010.). Second, the concept has played a significant role in the legal structures of constitutional states. In this context, the concept of balancing usually refers to ideas like "checks and balances" and other forms of solutions pertaining to the division of powers between government institutions or between states and the federal government (Shaphiro 1995).

However, balancing in terms of the EU institutional systemembodies a process, which is different from those applied at the national level. The European integration process can hardly be associated with either any pre-existing plan,or any clear final destination (Jacqué 2004: 387).Meanwhile, the formation and development of the European Union have constantly been associated with numerous dilemmas to be resolved.Moreover, the natural state of the Union's institutional framework is a permanent constitutional tension between:

- supranationality and intergovernmentalism;
- decision-making efficiency and national veto rights;
- the protection of smaller Member States and traditional power politics.

Therefore, in shaping the EU institutional architecture balancing has been used to find some kind of equilibrium in a manner, which is closer to the checks and balances system,with its postulate of control of one department over another to avoid abuse of power (Hamilton, Madison, Jay 1961: 308-325). However, "only functional analogies can be really depicted", as the EU institutional system is based on a hybrid institutionalised concept (Georgopoulos 2003: 542).

In the national legal systems, checks and balances have become a part of the separation-of-powers concept. In contrast,the idea of balancing in terms of the EU has become anindependent dynamic method applied to respond tochallengesfaced *ad hoc*. Moreover, if the general idea of separation of powers may be understood to have a constitutive and in that sense also foundational role in the framework of modern constitutionalism, the idea of institutional balance tends to be used as a corrective tool instead of having a constitutive meaning. Institutional balance provides a convenient conceptual framework for counteracting something that is considered as legally or politically harmful or undesirable in the development of the European Union.Balancing between the extremes of"technocratic guidance – democracy" is a practical example of this observation, as will now be discussed.

Originally, the European Community project was largely set up as a technocratic project that would work under the guidance of an independent High Authority, staffed by highly qualified officials.For Monnet and kindred spirits the legitimacy of the Community was to be secured through outcomes, peace and prosperity. Democracy wasa secondary consideration, since it was felt that the best way to secure peace and prosperity was by technocratic elite-led guidance (Craig, de Burca 2011: 16).With democracy becoming an issue of primary importance, the pendulum was shifted in this direction bythe gradual amendment of the founding Treaties. These changes are well known with no need to be discussedhere (Biondi, Eeckhout, Ripley 2011).However, the reforms altered the Commission's status, whose political and legislative role deteriorate as the European Council becamea "true policy maker of the EU proving the general political impetus and setting the legislative directions and priorities" (Rossi 2011).Moreover,the rise of the European Parliament's authorityas a response to the "democracy deficit" problem facilitated the decline of the Commission's role.As J.-P.Jacqué remarks,"the institutional balance shifted to its (the Commission's) disadvantage" (Jacqué 2000: 390).Now, the new status of the Commission is viewed as a threat to the EU system with "risks of a poor leadership, a weak control on the common rules and a scare consideration of the EU general interest" with strong voices insisting upon the restoration of the power of the Commission (Menon, Weatherill 2007) aimed "to ensure its independence both with regards to the Council and the Parliament" (Jacqué 2004: 390).The advantages of an independent Commission are considered to outweigh any potential gains in democratic legitimacy by politicizing its composition and thereby its actions (Hoffmann 2011).

This example shows practical aspects of balancing being used to fine-tune the EU institutional machinery.The general contradictions built into the conceptual framework of the functioning of "institutional balance" are typically further specified at a smaller scale. However, the general rule inferred from the experience of the European integration is that every major shift in the rules of decision-making is counterbalanced in one way or another. This rule is reflected in a suggestion to counterbalance further development of the parliamentary model in the EU with the possibility of the European parliament dissolution (Jacqué 2004: 391), or counterbalancing the Council's decision-making powers with the Commission's exclusive right of legislative initiative (Pescatore 1981).

To sum up this section,three things should be emphasised. First, with the European integration being an open-ended process, balancing is widely used as a method to deal with*ad hoc* challenges met *en route.* Second, balancing in the EU is accompanied by a definite tendency to counterbalance each step in a manner similar to the "checks and balances" concept. Third, re-distribution of powers between the EU institutionsis a part of a wider process of constant fine-tuning the decision-making procedures,to balance the permanent contradictions of the European integration process.

To introducesections three and four, it should be noted that the concept of institutional balance is usually framed in terms of a legal and a political principle (Lenaerts, Verhoeven 2002: 44-47; Curtin 2009: 57). In terms of a legal principle, the emphasis of the concept is on the procedure. In contrast, the political aspect of the concept deals with the actual powers allocated between the EU institutions.

III. Political aspects of Institutional balance concept - principle of dynamic development of power distribution.

With the EU based on the founding treaties as the "constitutional charter",these are the decisions made by the Member States in the negotiation process, which set the institutional framework and determine the distribution of the powers between the EU institutions. In fact, it is duringthe negotiation process that they try to balance the most suitable configuration of the power distribution (Craig, de Burca 1999: 60).During the decades of the European integration process, the distribution of power between the institutions has had various configurations. These shifts of power distribution reflect shifts of emphasis, as well as tendencies. In an open-ended process of the EU evolution these changes reflect new understanding of the institutions' roles. The unique nature of the European Union accompanied by unique challenges it has to overcome lead to some kind of ping-pong game – challenge-response.Therefore, all the Member States can do is to respond to the new challenges met *en route*. The responses include re-distribution of powers between the institutions. Thus, institutional balance as a political principle should be

viewed more, or even primarily, as a principle of dynamic development rather than a static principle of power distribution as described by A. Fritzsche (Fritsche 2010: 381).

In terms of changes in power distribution within the EU institutional framework P. Craig defines three temporal periods (Craig, de Burca 2011: 42), thus emphasizing dynamic nature of the process. However, there is a remark to be made. Institutional balance is often described in terms of balancing between intergovernmentalism and surpanationalism (Craig, de Burca 1999). But, the creation of a steady institutional system on such a general conceptual scale is hardly possible. Many scholars emphasise numerous *ad hoc* compromises that were incorporated into the Treaties during the 1990s, thus creating an institutional regime "that hangs somewhere between the strong foundations of the Community's original integration method and the intergovernmental influences of the past decade" (Magnette 2000: 7-13; Wallace 2000: 3-33). These compromises resulted in the emergence of "a composite legal patchwork" (Curtin 1993), described by Romano Prodi as a series of "constructive ambiguities" and "increasingly complex formulae" (Prodi 2001: 169-170).

The uniqueness of the European Union as well as the challenges it encounters lead to a permanent need for unique measure to respond challenges, which often resemble "hit or miss" method. Against this background, balancing should be viewed as an important tool for ensuring further sustainable development of the European integration,by stressing the need of instruments for mutual control within the EU institutional framework. However, this dynamic equilibrium periodically needs tuning because it is too fragile, and even slight changes in the system may lead to increasing disproportions.

Another illustration of balancing comes from theinitial architecture of the Community, which was designed,*inter alia,* "to guarantee that ... reconciliation between the larger [states] will not be at the expense of the smaller" (Tugendhat 1986: 36).Such protection measures included weighting votes in the Council of Ministers and astrong position of the European Commission, including its exclusive right of legislative initiative (Lang, Gallagher 2006: 1029). However, the Lisbon treaty altered both of these mechanisms. The Commission lost some of its initial political powers and the double-majority system for Council voting was agreed. Moreover, the use of population criterion for both the distribution of seats in the European Parliament and votes in the Council impactedupon the pre-existing balance of the system (Corbett, de Vigo 2008: 29). The new qualified majority method "shifts the equilibrium between smaller and larger countries to the advantage of the latter", thus putting "the smaller and medium-sized Member States on the defensive in comparison to what they were used to under the original Community method" (Devuyst 2008: 302). This new situation is certainly a challenge to the European Union,creating a further need for counter-balancingwith adequate measures, which must be agreedupon, by *Herren der Verträge*(Member States).

From this perspective, the Lisbon treaty certainly is not the final configuration of the European Union's political architecture, but only one of the checkpoints. Therefore, it is no wonder that there are already voices demanding its revision (Leinen 2007; Devuyst 2008: 317; Craig, de Burca 2011: 84).although it was signed only a few years ago.

IV. Institutional balance as a legal principle.

The concept of institutional balance as a legal principle was mostly developed by the European Court of Justice.Its case-law reveals another aspect of the concept use, which is quite remote from its mainstream political application, as the ECJ itself views the concept of institutional balance in a much more narrow and pragmatic way – as a set of rules to be followed by the institutions in the legislative process.

In early *Meroni* (Case 9/56) and *Köster* (Case 25/70) cases the ultimate question for the Court was if the Community institutions had exceeded the limits of their Treaty-based powers in an indirect way by vesting extra powers in the auxiliary bodies.In the *Meroni* case, the Court came to the conclusion that the limits of the Treaties were exceeded as the document in question "in reality gives the Brussels agenciesmore extensive powers than those, which the High Authority holds from the Treaty".In the *Köster* casethe Court did not find any infringement,as the Management Committee did not have the power to make decisions instead of the Commission or Council; therefore "without distorting the Community structure and the institutional balance, the Management Committee machinery enables the Council to delegate to the Commission an impending power of appreciable scope, subject to its power to take the decision itself if necessary".

The decision in the *Meroni* case was used to link institutional balance with the separation-of-powers principle (Jacqué 2004: 384). But this link reflects a somewhat superficial similarity rather than deep conceptual connections: the determination of the external limits of competences of the EU institutions has little in common with the division of power into three functional branches. A.Fritzsche offered a much better comment on the decision:

> "The institutional balance is infringed whenever the ultimately deciding body differs from the institution declared to be responsible by the Treaties" (Fritsche 2010: 382).

This comment reflects the essence of these two cases, which initiated the creation of the formula, articulated later in the joint case "*France, Italy and UK v Commission*"

> "The Commission is to participate in carrying out the tasks entrusted to the Community *on the same basis as the other institutions, each acting within the limits of the powers conferred upon it by the Treaty*" (Cases 188/80, 189/80, 190/80).

The current transformation of the "Meroni doctrine was in the focus of the opinion of Advocate General Jääskinen(Case C-270/12).He thinks thatthe "Meronidoctrine" still remains relevant at least in two issues:

- the powers cannot be delegated to an agency that are different from the implementing powers the EU legislature has conferred on the delegating authority;
- the delegated powers must be sufficiently well defined to preclude arbitrary exercise of power.

The breach of the principles would lead to inability to safeguard the effective judicial control of the use of implementing powers as well as the existing institutional balance.

The other group of the ECJ's casesconcentrated more on legislative procedures and usually included the triangle of the Council, Commission, and the European Parliament. In the *Isoglucose* cases (Cases 138/79 and 139/79)the ECJ defended the legislative prerogatives of the European Parliament as an "essential factor of the institutional balance intended by the Treaty", emphasizing its new role as the only democratically elected Community institution. However, it took the Court certain time to grant the Parliament the right to file annulment cases as a procedural tool to secure its privileges. The discussion began in the *Les Verts* case (Case 294/83), asthe Court broadly interpreted Art. 173 of the EEC Treaty for both applicant and defendant. It extended the rights of the privileged applicants to a political party, but refused to grant the same right to the European Parliament. The Court declined the appeal to "institutional balance" as a separate theoretical concept and instead based its decision on the rule of law principle, undermining the Parliament's attempt to gain a vital right for filing the annulment claims.In the *Comitology* case (Case 302/87), the Court also had to deal with appeals to equality and the balance between the institutions made by the European Parliament. But the ECJ remained persistent in its conviction to comply rather with the letter of the Treaty than with its spirit in the way Parliament perceived it. Therefore it demonstratively rejected the Parliament's claims twice in this case.

However, the issue of the Parliament's right to file annulment claims was not over. It was further elaborated in the famous *Chernobyl* case (Case 70/88). Supporting the Parliament's submission that "there is a legal vacuum, which the Court has to fill", the Court finally agreed to grant this right to the Parliament.Yet, the problem the Court had to overcome after an explicit decision in the *Comitology* case was the legal ground for such a drastic change of mind. For this purpose the Court used the concept of institutional balance, although in its own original interpretation.Commenting upon this decision K. Lenaerts and A. Verhoeven remarked that the question is, however, how far the Court can go in this respect, as it is also bound by the principle of the institutional balance (Lenaerts, Verhoeven 2002: 45).

Other aspects of the legal use of the institutional balance concept deal with the choice of the legal basis for the secondary legislation,which is to be based on such "objective factors" (Case 45/86)as "the aim and the content of the measure" (Case C-22/96) and the choice of the legislative procedure (Cases 68/86 and C-133/06).

In several later cases, with the same reference to Article 7(1) of the EC Treaty, the Court repeated the basic formula of the institutional balance – "the Community institutions may act only within the limits of the powers conferred upon them by the Treaty" (Cases C-93/00, C-110/03, 403/05).

Interpreting this body of jurisprudence in the light of the concept of institutional balance there are two issues to be emphasized. First, is the specific position of the ECJ, whose political role in the formation of the major concepts of the EU law is well-known.However, it seems to be a different story with the concept of institutional balance. Its role is shifted to a position of a judge or the "guardian of the institutional balance" (Craig, de Burca 1999: 60), rather than an institution enjoying actual rights under the concept. The Court's own legislative role has nothing to do with the "secondary acts", but rather with the interpretation of the Treaties' texts and legal principles. Moreover, the Court does not endeavour to provide any kind of political development with regards to the concept of institutional balance limiting its involvement by the issues of procedure, which is the second point to be stressed.

Recent cases involving institutional balance as a separate theoretical principle only confirm the latter statement. In particular, the Court limited the application of the institutional balance concept by declaring that "the principle is intended to apply only to relations between Community institutions and bodies" (Case C-301/02). In *"Commission v. Portugal"* case (Case C-38/06) the Court dismissed the reference to the institutional balance without actually commenting it from any conceptual approach. Instead it declared that Article 346 TFEU cannot be read as allowing a Member State to derogate from the Treaties by relying on no more than its essential security interests. In *France v. Commission* case (Case C-233/02) the Court's decision was rather controversial. Although acknowledging "the fact that a measure such as the Guidelines is not binding is sufficient to confer on that institution (*Commission*) the competence to adopt it" and referring with this regard to the concept of institutional balance, the Court rejected the French claims. Commenting upon this decision Lavranos and van Ooik called it "mystical" (Lavranos, van Ooik 2004), certainly meaning the inconsistent application of the concept of institutional balance. In the most recent case *Council v. Parliament* (Case C-77/11) the Court merely ignored the reference to the concept of institutional balance, which was used as an argument by both institutions. The referred cases demonstrate that the Court prefers to state politically neutral and not to apply the concept of the institutional balance if the case is not focused around the adoption of legally binding acts.

G. Conway notes that the relevant case-law is "open to criticism" (Conway 2011: 320). It is true if the ECJ's case-law is used to justify any scheme of power distribution. The picture emerging from the ECJ's practice presents institutional balance as a rather narrow concept dealing with the procedural issue of the formation of the secondary legislation. Thus, the legal aspects of the concept are too far away from any offers of the realm of politics or re-distribution of competences between the main EU institutions. The gap between two major uses of the concept of institutional balance leads to three following consequences. First, the legal basis of the concept does not provide any direct political output, unlike other principles elaborated by the ECJ case-law, like for example principles of proportionality or subsidiarity. Second, politically neutral legal basis of the concept is constantly used as a solid

normative reference while providing different power configurations within the EU context. Actually this phenomenal combination of politically neutral normative basis with the balancing as a dynamic political method creates the specific conceptual vehicle for criticizing or legitimizing changes to the EU institutional framework, thus ensuring its adequate development in response to new challenges. And third, the legal and political components of the concept remain rather independent, thus making the entire concept look split.

To sum up, it seems clear that thelegal aspect of the institutional balance concept as elaborated in ECJcase-lawconstitutesa set of procedural rules, providing no direct political outcome. However, it is also this neutrality of the legal basis of the concept that provides *carte blanche*for diverse interpretations dealing with the development of the EU institutional framework.

V. Institutional balance and representative theory: examining the basis for coherence.

Legal and political perspectives to the concept of institutional balance provide two different images of the concept. One might still try to see these two images as a part of a coherent whole. Indeed, representative theory has been suggested to provide this kind of general background framework (Craig, de Burca 2011:41; Lenaerts, Verhoeven 2002: 47). However, the attempt of a mere transfer of the representative democracy principles existing in national political systems to the reality of the European Union turns out to be unconvincing. A closer look at the endeavour to apply the representative model to the EU institutional framework reveals an incompatibility between the idealistic theory and the existing practice.

Within the context of the EU, the representative approach is based upon the presumption that the EU institutions fulfil, *inter alia,*a representative role. In the Lisbon Treaty, this approach is reflected in Articles 10 and 17 of TEU.These normative provisions repeat a well-known postulate that the Council represents the interests of the Member States; the European Parliament – interests of citizens of the Member States, "brought together in the European Union" and Commission – represents the common interests of the European Union (Sbragia 1993).This approach was elaborated with a further connection between the institutional balance concept and the representative basis:

> "The institutional balance requires the makers of the European constitution to shape institutions and the interactions between them in such a manner that each interest and constituency present in the Union is duly represented and co-operates with others in the frame of an institutionalized debate geared towards the formulation of the common good" (Lenaerts, Verhoeven 2002: 47).

This is the key idea behind the concept. In theory, the concept may sound attractive and reasonable. However,the representative theory is under-inclusive, as it ignores vast layers of the EU political processes. Moreover, it is based on a utopian presumption about the mechanism of representation. It is also methodologically vague and as such dubious. Finally, representative theory does not offer a clear output,as there is no connection between the offered representative model andthe re-shuffle of competences among EU institutions.

It is the fact that the ***representative theory ignores vast layers of the EU political processes***.The practice of the European Union policy- and decision-making processes is far from transparent. This fact has been constantly repeated in the academic literature (Smismans 2002: 92),and is usually described in the following way:

> "Substantial elements of European governance operate in the margins of or wholly outside constitutional frame as defined by the institutional balance. The whole area of executive rule-making within the European Union is characterized by intricate institutional elements such as comitology committees and agencies and operates in a constitutional twilight zone, regulated only by a few and ambiguous Treaty provisions, some case-law of the European courts, incomplete pieces of secondary legislation and a number of declarations and inter-institutional agreements" (Lenaerts, Verhoeven 2002: 48).

The fact that a substantial part of the EU decision-making is done outside the representative bodies undermines the complete concept, as itsimply ignores this part of the process. Indeed, what kind of representation is it when "neither European Parliament nor media is in the position to review, evaluate or monitor what is happening in the committee rooms" (Pedler, Schaefer 1996)? The same applies to the numerous agencies which "do not have regulatory functions although the expertise they provide is used by the principal policy-making institutions and actors and affects the implementation process" (Kreher 1997: 239.).The process of 'agencification' in the European Union has significantly intensified since the new millennium, bringing up the total quantity of the agencies operative in the European Union to forty. As emphasized in the opinion of AG Jääskinen the challenge now, and has always been, is to balance the functional benefits and independence of agencies against the possibility of them becoming 'uncontrollable centres of arbitrary power'(AG Jääskinen opinion, Case C-270/12).Even after the reforms of two recent decades, the scholars have to admit, "it is regrettable, however, that the new procedures are not sufficiently transparent to ensure accountability to the public" (Peers, Costa 2012: 460). From this point of view, the representative model fails to cover a vast number of processes dealing with the initial and preparatory phases of the legislative and decision-making process, where numerous committees and agencies are involved.

The formula, which is the cornerstone of the representative approachis certainly not a fact, but a ***utopian presumption***. The contrast can be best observed in the example ofthe European Parliament, which is presumed to

represent the people of the Member States "brought together by the Union". In reality, its representative ability is an issue in question (Douglas-Scott 2002: 132).

The issue of "common good" formation leads to a potential conflict between the European Parliament and the Commission(Lenaerts, Verhoeven 2002: 51). The Commission, originally designed as the engine and driving force of the European Union (Thody 1997: 29), for decades has been the one to determine the "common good", and not justto fulfil the ideas of others. And it will hardly yield its authority to determine the direction of the EU further development merely on the grounds that it represents neither the people of Europe nor the Member States.

L. Hoffman adequately emphasised the internal weakness of the representative model, thus trying to draw attention to its essence instead of the façade:

> "Quite often the institutional balance is viewed as the balance of representation model within which "the Commission represents the Union's interests, the Council the member state governments and the Parliament the EU citizens. Each of the stakeholders is adequately represented so the only thing missing is public participation and interest" (Hoffmann 2011).

With a rather controversial existing system of interest representation for the European Union's institutions, which is far more complicated than the theoretical model it is based upon, the use of the presumption as a cornerstone for power distribution schemes can hardly be convincing (Craig, de Burca 1999: 74).

The attempts to widen the representative concept to all EU main bodies, then to second-level organs, and then still to all institutions and agencies, leads to nowhere; thus creating complete chaos instead of a harmonious system.And the reason for this is the fact that ***the representative approach is methodologically improper***. Commenting upon K. Lenaerts and A. Verhoeven's concentration of the interest representation on the Council and European Parliament, S. Smismans tried to widen the application of the concept to the complete list of the main institutions.Further discussing the idea of defining institutional balance in broader terms by including into the system such bodies as the Economic and Social Committee and the Committee of the Regions, S. Smismans remarks that:

> "This formulation suggests that the institutional balance could also include the many bodies and representative structures for functional participation established by secondary European law".

But this raisesquestions– Is the list of institutions to be considered part of the institutional balance thus complete? Or, should organs such as the European Central Bank or the European Investment Bank, which are equally enshrined in the Treaty, also be part of the list?The language of S. Smismansis both accurate and adequate on these fronts:

> "By including automatically in the institutional balance all organs enshrined in the Treaty, the concept would be reduced to a simple application of the rule of law and would be emptied of its 'legitimating potential'" (Smismans 2002: 96-100).

The unfoundedly broad use of the representative model reveals a methodological fault, since instead of a unified representation formula,or a single criterion, there is a line of different ones, varying from people or countries to various ideas, interest groups, etc. The list can be continued, thus creating one universe of representative bodies and another universe of groups and ideas still to be represented on the EU level. The absence of unified criteria for representation, as well as the absence of clear rules for the representative mechanism, undermines the stability of the complete concept.

Probably the biggest problem of the representative model application is ***its lack of a clear output, as it thuslacks clear logic***. Even if one agrees with either the initial representative model dealing with the Commission–Parliament–Council triangle, or any derived model – from those including only the main bodies to those spreading the representation down to committees and agencies – then there is still no answer to the question which follows– so what? What is the practical outcome of the presumption that the Economic and Social Committee "shall consist of representatives of organisations of employers, of the employed, and of other parties representative of civil society, notably in socio- economic, civic, professional and cultural areas", and the Court of Auditors represents "the interest of financial accountability"(Smismans 2002: 97)? And what are the criteria to ensure that the powers, entrusted to the body in any way, correspond to the level of representation they are assumed to reflect?

Therefore there is a gap between the concept itself and the actions which are purportedly taken on its basis. The representative model thus looks more like a *post factum* analysis rather than a genuine basis for the actual decision-making process.

To finalise the examination of the representative approach, it should be emphasised that with existing inner flaws and inconsistencies it cannot be viewed as an adequate and steady theory,underlying and unifying the concept of institutional balance.

VI. CONCLUSIONS

The uniqueness of the European Union leads to the fact that the measures introduced to balance its existing system resemble a "hit or miss" method rather than the fulfilment of a pre-designed plan. However, such a state of affairs is an integral part of the evolution of the European Union as it advances along an unknown road with no exact destination, and with many *ad hoc* challenges encountered *en route*. From this perspective, institutional balance as a dynamic model reflects the necessity to periodically check and adjust the EU power distribution architecture in order to provide adequate responses to new challenges thatappear as a result of the evolving nature of the European Union. With its roots in the idea of balancing intergovernmentalism and surpanationalism, the concept of institutional balance

provides a dynamic conceptual vehicle for criticizing or legitimizing different power configurations within the European Union. However, the concept does not provide any single coherent ground for the design of distribution of powers within the EU institutional framework due to its own flaws.

Firstly, it does not have solid political theory to support it. The representative model behind the institutionalbalance concept can hardly be viewed as an adequate theoretical basis, since it does not offer a clear and systematic representationrules with their further connection to power distribution schemes.

Secondly, there is a gap between the use of institutional balance concept in terms of legal and political meaning. As a political principle, the concept of institutional balance reflects an intention to balance diverse aspects of the political system of the European Union to ensure mutual control within its institutional framework. As a legal principle the concept of institutional balance is a politically neutral set of procedural rules. However, neutrality in this sense creates too broad gates to provide any single coherent political formula for the power distribution. Therefore, it mostly opens up different argumentative possibilities readily available to anyone willing to either lock in or change the current power structures of the EU.

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