Towards Developing a Model of Governance for Economic Union in the OECS: A Case Study of the European Union

Abstract

At the 34th Meeting of the Authority in July, 2001 in Dominica, the OECS Heads of Government endorsed proposals to deepen the integration process with the goal of creating an economic union in the long-term. Public announcements have been made in various fora about this economic union being modelled after the European Union. This paper aims to deepen the debate surrounding the issue of economic union through an examination of the institutional and governance structures of the European Union. The paper also presents issues that should be considered when crafting the institutional and governance framework for Economic Union in the OECS.

Organisation of Eastern Caribbean States

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1. Introduction

The success of any organisation depends critically on the strength of its governance and institutional structures. Economic union in the Organisation of Eastern Caribbean States (OECS), with its consequent requirement of the free movement of factor resources, represents a quantum change in the history of integration in the sub-region. Appropriate improvements to the governmental superstructure of the organisation are required to bring about the structural changes that economic union necessitates. Failure to upgrade the framework for governance of the organisation could possibly retard the implementation and development of the Economic Union.

The European Union (EU) like the OECS has been embarking on a process of economic and political integration for sometime. In the case of the EU, this process, formally launched in the 1950's, has resulted in successive rounds of member states jointly conferring greater *supranational* powers to the organisation and it institutions. The OECS on the other hand has been built exclusively of the brick of *intergovernmentalism*.

Box1: **Intergovernmantalism vs. Supranationalism**

Intergovernmentalism refers to a type of integration that is based on member governments' participation in shared decision-making in relation to activities covered under the integration treaty. In contrast, *Supranationalism* requires a transfer of decision-making from national governments to a select group of institutions (*supranational Institutions)* within the organisation. *Supranationalism* requires a greater degree of erosion of national sovereignty-which is what enables it to be such a powerful tool for integration.

The process of OECS integration, like the proverbial Phoenix, was born out of the ashes of the failed British West Indies Federation, when in 1968 agreement was reached among seven Windward and Leeward Islands to establish the Eastern Caribbean Common Market. About a decade prior to this, a parallel process had begun among the six European Countries who were the original signatories to the treaty of Rome.The signing

of this historic document in 1957 officially marks the nativity of European integration. After the passage of many years, one process, namely European integration, has graciously matured into adulthood, while the other though physically advanced in age is yet to catch up in other respects[1]. The journey toward economic union would be greatly enhanced if the dynamics behind the success of the European integration process can be properly understood and learnt. This paper therefore attempts to outline the main institutional, decision-making and legislative structures that have characterized the European integration dynamic.

Section 2: THE EUROPEAN UNION MODEL

2.1 Brief History

The process of European integration was launched in 1950 when France officially proposed to create 'the first concrete foundation of a European federation'. One year later, 18th April 1951 in Paris[2] the **Treaty establishing the European Coal and Steel Community** (ECSC) was signed. The ECSC was the first of three communities to be established that today are jointly called the European Union. The treaty satisfied both political and economic concerns by amalgamating the economic interests of member states (who were former enemies) in such significant industries, as coal and steel. Six years later on 25th March 1957 the "Treaties of Rome"[3] were signed establishing the European Economic Community (EEC) and the European Atomic Energy Community (Euratom) which are the other two founding communities of the European Union.

The main goal of the EEC - the creation of a common market, took thirty-five years to achieve. On 1st January 1993 the internal market[4] was created, it provided for the free circulation of goods and services and the free movement of labour and capital. In addition it provided for coordination in the areas of: investment policy, social policy, agricultural

[1] Notwithstanding the fact of decolonisation the point still stands.
[2] The treaty entered into force on 23 July 1952 and expired on 23 July 2002
[3] The "Treaties of Rome" is used to refer to the **Treaty establishing the European Economic Community** (EEC) and the **Treaty establishing the European Atomic Energy Community** (Euratom) that were signed in Rome on 25 March 1957, and entered into force on 1 January 1958. (When the term "Treaty of Rome" is used, only the EEC Treaty is meant).
[4] The common market is sometimes referred to as the internal market

policy and transportation policy, through the European Investment Bank, the European Social Fund, the Common Agricultural Policy and the Common Transport Policy.

The **Treaty on European Union**, which was signed in Maastricht on 7 February 1992, entered into force on 1 November 1993. 'The Maastricht Treaty' brought into being the long standing objective of the formation of a European Union which had not been clearly articulated in any of the previous treaties. The treaty, among other things created the notion of European citizenship.

Since the creation of the single market in 1993 the EU has successfully introduced a common currency in most of it member states, making the grouping by and large an *Economic and Monetary Union (EMU).* But the EU has always aspired for more[5] and its accomplishments thus far are just the concrete foundations for a 'United Europe'.

2.2 Main Institutions

The European Union is built on an institutional system that represents a unique mix of confederal and federal systems of administration that seeks to optimise between the notion of 'European citizenship' and the sovereignty of member states. The Council of the European Union, the European Parliament, the European Commission and to some extent the European Court of Justice are the main institutions of governance in the European Union. Figure 1 presents a classification of the other institutions of governance.

The *Council of the European Union* or the *Council* as it is sometimes called is the European Union's main decision-making body. The *Council* represents the will of Member States. According to the matters on the agenda, the *Council* meets in different compositions[6] for example: foreign affairs, finance, education and telecommunications. The Council has a number of key responsibilities, namely: (a) to share with the Parliament the power to legislate (however it is the more powerful of the two); (b) to coordinate the broad economic policies of the Member States; (c) to conclude

[5] At present a draft constitution is being discussed, this is one of the clearest signals of Europe's resolve in pursuing the goal of political union.
[6] The Council is a ministerial body

international agreements on behalf of the EU; (d) to share budgetary authority with Parliament; (e) to take the decisions necessary for framing and implementing the common foreign and security policy; (f) to coordinate the activities of Member States and adopt measures in the field of police and judicial cooperation in criminal matters.

The *European Parliament* represents the federal aspect of the quasi-federal polity. It is elected every five years by direct universal suffrage. The parliament has three functions namely: (a) to share with the Council the power to legislate; (b) to share budgetary authority with the Council; (c) to exercise democratic supervision over the Commission.

The *European Commission* embodies and upholds the general interest of the Union. The President and Members of the Commission are appointed by the Member States after they have been approved by the European Parliament. The Commission is the driving force in the Union's institutional system, as: (a) It has the right to initiate draft legislation and therefore presents legislative proposals to Parliament and the Council; (b) As the Union's executive body, it is responsible for implementing the European legislation (directives, regulations, decisions), budget and programmes adopted by Parliament and the Council; (c) It acts as guardian of the Treaties and, together with the Court of Justice, ensures that Community law is properly applied; (d) It represents the Union on the international stage and negotiates international agreements, chiefly in the field of trade and cooperation.

The *Court of Justice* ensures that Community law is uniformly interpreted and effectively applied. It has jurisdiction in disputes involving Member States, EU institutions, businesses and individuals. A Court of First Instance has been attached to it since 1989.

2.3 Decision-making

Decision-making at European Union level is the result of interaction between various parties, in particular the "institutional triangle" formed by the European Parliament, the Council of the European Union and the European Commission[7]. There are three main

[7] The Court of Auditors, the Economic and Social Committee, the Committee of the Regions, the European Central Bank and the Economic and Financial Committee also intervene in many specific areas.

decision-making procedures, namely: co-decision, assent and simple consultation. The *co-decision procedure*- provides for two successive readings, by Parliament and the Council, of a Commission proposal and the convocation. The *Assent procedure* on the other hand requires the Council to obtain the European Parliament's assent before certain very important decisions are taken. Parliament can accept or reject a proposal but cannot amend it. *Simple consultation procedure*-requires that the opinion of the European Parliament is sought before the Council examines a proposal from the Commission.

In addition to the unanimous vote the EU also recognizes majority voting, which incidentally is the most widely used method in the Council. Majority voting takes two forms:

- *Simple Majority*- requires the votes of at least 8 of the 15 Member States. This type of voting is restricted mainly to procedural matters and some elements of the Common Commercial Policy (CCP). In this voting procedure each member state is accorded one vote.
- *Qualified Majority*- weights the votes of each member state, on the basis of population among other things. This is the most widely used form of voting since the introduction of the Single European Act (SEA) and the Maastricht Treaty.

2.4 Community Law

One innovation that has been employed within the European integration process to great advantage is that of *Community Law*. *Community Law* refers to the legislative and judicial framework adopted by the EU to carry out their tasks under the Treaty of Rome. It comprises two related parts (i) Community legislative instruments and (ii) the European Court of Justice that ensures Community legislation is not interpreted or applied differently in each Member State. The legislative instruments available are:

- *Regulations*: these are binding in their entirety and directly applicable in all Member States;
- *Directives*: these bind the Member States as to the results to be achieved; they have to be transposed into the national legal framework and thus leave a margin for manoeuvre as to the form and means of implementation;
- *Decisions*: these are fully binding on those to whom they are addressed;
- *Recommendations and Opinions*: these are non-binding, declaratory instruments.

The treaties of the European Community have evolved from simply being a set of legal arrangements binding upon Member States into being a critical component of a legal regime conferring judicially enforceable obligations and rights on all natural and legal persons within the European Union. The evolutionary process so described has been referred to as *constitutionalisation of the treaty system* (Sweet & Brunell 1998). This process has led to some scholars describing the European Union as a *constitutional polity* The European Court of Justice (ECJ) plays a critical role in this *constitutional polity.* In the period 1962 –79 the court appropriated[8] to itself the core constitutional principles of supremacy and direct effect. According to Sweet and Brunell, 1998:

> These moves integrated national and supranational legal systems, establishing a decentralized enforcement mechanism for EC law. The mechanism relies on the initiative of private actors. The doctrine of direct effect empowers individuals and companies to sue national governments or other public authorities for not confirming to obligations contained in the treaties or regulations or for not properly transposing provisions of directives into national law. The doctrine of supremacy not only prohibits public authorities from relying on national law to justify their failure to comply with E C law but also requires national judges to resolve conflicts between national and EC law in favour of the latter.

[8] The ECJ made these moves without the express authorization of treaty law and inspite of opposition by member states (Smith 1981 as cited in Sweet & Brunell 1998)

***Box 2*: The Principles of Supremacy, Direct Effect and Indirect Effect**

Supremacy- this doctrine states that in the case of conflict between any legal rule of the EC and that of national law, the former (i.e. the EC legal rule) must be given primacy.
Direct Effect- this doctrine asserts that the provisions of EC law can confer on individuals legal privileges that public authorities must respect and that may be protected by national courts.
Indirect Effect-according to this doctrine, national judges must interpret national law in conformity with E C law.

Constitutionalisation was further enhanced by the principle of indirect effect (see Box 7) in the 1980's and the introduction of the concept of European Citizenship in the Maastricht Treaty (1992) that was further refined in the Treaty of Amsterdam (1997)

Section 3: TOWARDS A POSSIBLE MODEL FOR UNION IN THE OECS

3.1 The OECS Compared with the EU

Table 1 gives a comparison between the OECS and the EU. For the sake of conciseness these differences and similarities will not be stated here in great depth as the table covers many of these points of comparison in reasonable detail. As stated in the introduction to this paper the integration processes of the OECS and the European Union have generally followed different paths. The former has exclusivly chosen *intergovernmentalism*, while the latter has adopted significant elements of *supranationality* into its integration strategy.

Table 1: Comparison between the Institutions of the OECS and the EU		
Main Institutions	**OECS**	**EUROPEAN UNION**
Supreme Body (Policy direction)	*The Authority*- Body of Heads of Government	*European Council*-Body of Heads of Government.
Decision Making Body(ies)	1. The *Economic Affairs* and *Foreign Affairs Committees* -the composition of these groups are determined by the *Authority.* 2. Do not possess powers to Legislate.	1. The *Council of Ministers* sits in various ministerial compositions according to the matter up for deliberation (flexible). 2. **Possess legislative powers**
Parliament	Non-existent	Directly elected, shares (decision making) power with *Council of Ministers*.
Court of Justice	It is a superior court of record and has unlimited jurisdiction in the Member States in accordance with the respective Supreme Court Acts.	Ensures that Community law is uniformly interpreted and effectively applied. It has jurisdiction in disputes involving Member States, EU institutions, businesses and individuals.
Common Central Bank	Ensures the effective harmonization of monetary Policy within the ECCU.	Ensures the effective harmonization of monetary Policy within the Euro-zone
Various Consultative Bodies (civil society)	Non-existent	These bodies can make recommendations to other organs of the EU.
Secretariat/Commission	1. Administrative 2. Initiate proposals 3. Represents organisation in international negotiations	**1. Executive (implements legislation)** 2. Initiate proposals and draft legislation 3. Represents organisation in international negotiations
Decision Making		
Voting Mechanism	Unanimity is the most commonly used method.	**Majority voting (Simple & Qualified) is the more widely used method at the *Council of Ministers*.**
Decision Making Procedure	No formal requirement for consultation	Sometimes the *Council of Ministers* is required to consult with Parliament. Sometimes it has to gain the approval of Parliament before a decision can be taken.
Legislative Instruments	No mechanism for direct enactment of legislation	1. *Regulations*: these are binding in their entirety and directly applicable in all Member States; 2. *Directives*: these bind the Member States as to the results to be achieved; they have to be transposed into the national legal framework and thus leave a margin for manoeuvre as to the form and means of implementation; 3. *Decisions*: these are fully binding on those to whom they are addressed; 4. *Recommendations and Opinions*: these are non-binding, declaratory instruments.

Supranationality in the European Union is reflected in:

- The fact that the Commission is almost solely responsible for initiating legislation and most legislation is enacted in its name.
- The prevalence of qualified majority voting in the Council of the European Union.
- The enhanced powers of the European Parliament under the SEA and the Maastricht Treaty, reflected in the *co-decision* and *assent* decision making procedures.
- The doctrines of: *supremacy*, *direct* and *indirect effect.*

3.2 Political Basis

Economic Union cannot be defined in a strictly apolitical context. The political structure in which the economic union is placed has implications for the nature and functioning of its institutions. The European Union for example is a quasi-federal polity, meaning that it has borrowed elements of federalism and confederalism in its institutional design and philosophy. The European Parliament perfectly illustrates this mix of federal and confederal philosophies. The federal element is reflected in the fact that the parliament is directly elected by the European peoples and possesses decision-making powers, however confederal philosophy is exhibited in the fact that the greatest power the parliament can exercise is limited to co-decision with the Council the confederal arm of the European Union.

Box 3: Confederation versus Federation

Confederation- Unlike the other forms of political union a confederation is not a state. It is merely a political system that allows via treaty for participating sovereign states to delegate specific powers upwards to a central body.

Federation-Integration by federation requires a clearly defined constitution articulating among other things the powers of the central or federal government and that of the state governments. In practice the central authority controls external affairs issues (trade policy, other external economic policy and foreign policy), defence and national security. A federation usually implies economic and monetary union between the participating states, in which case the central authority exercises some control in the overall economic policies of the federation.

The *quasi-federalism* as exhibited by the EU seems to be quite cumbersome and expensive to maintain. Furthermore, it does not seem that by itself it will ensure easy and efficient decision-making.

While the EU has opted for quasi-federalism there are economic unions or aspiring economic unions that are governed by the philosophy of confederalism. The Economic union of Benelux is one such union. Established formally in 1958 by the countries of Belgium, The Netherlands and Luxembourg, the Economic Union entered into effect on the 1st of November 1960 and is still functioning today despite the fact that its members are part of the European Union's EMU. This economic union-which pre-dated the EMU of the EU is more confederal in its design than the EU. Though it has an inter-parliamentary committee commonly referred to as the Parliament it is not directly elected nor does it possess any decision-making powers. It is a strictly consultative body.

It is important to note that if the OECS espouses a confederal philosophy to the governance of economic union, that the organization's ability to implement the elements of supranationality similar to those outlined in section 3.1 (with the obvious exception being the one dealing with the European Parliament) will not be substantially hampered.

3.3 Institutions

The institutional structure of the European Union has served them well for nearly fifty years. Institutions are born out of particular socio-cultural, historical, economic and political realities. It is obvious that European realities are significantly different from the realities of the seven[9] OECS countries that wish to form an economic union. Among the areas of difference are population and the economic size. These two factors have tremendous implications on the relative size of institutions and on the cost to the tax-payer.

[9] Anguilla and the British Virgin Island are not participants in the economic union intitiative.

Table 2 presents a statistical comparison between the European Union and the Organisation of Eastern Caribbean States. Basic arithmetic calculations reveal what commentators on government and politics know theoretically and intuitively to be true, that is: for bigger countries (both in terms of population size and GDP per capita) even with more elaborate systems of governance, the relative cost of governance is much lower than in small countries even with less elaborate governance systems. Hence governance can be said to be subjected to 'economies of scale.'

The European Parliament is comprised of 626 members and has a Secretariat of approximately 3500 persons[10] with a budget of just under US$1billion needed in 2002 to support its administrative work. In the context of a population of 374 million with a GDP per capita of US$18,562, the cost of operating the European parliament might be the equivalent of 'pocket change'. However as the comparison between the EU Commission and the OECS Secretariat[11] illustrates running a similar type institution on a small scale within the context of a smaller population and economic base can significantly increase the relative cost of the institution.

Table 2: Selected Statistical Comparison between the EU and the OECS

Particulars	**European Union**	**OECS**
Population	374 million	580,000
GDP Per Capita (yr 2000)	US$18,562	US$3,564
Size of Commission/ Secretariat	17,000 persons	168 persons
Commission's/ Secretariat's Budget (2002)[12]	US$ 3.3 billion	US$3.7 million

Source: OECS Secretariat, EuroStat, European Commission

[10] Approximately one third is required just to deal with the problems associated with the multi-lingual nature of the institutions and its constitutents.
[11] The comparison was biased in favour of the OECS Secretariat as the EU commission operates more like a civil service than a secretariat.
[12] Only the administrative budget of the European commission for the sake of comparison because the commission manages heavy expenditure items like the CAP, pre-accession aid and structural fund.

The OECS should therefore give careful consideration to the question of the number of institutions in the governance structure of the Economic union. Also much thought should be given to the size and terms of reference of these institutions. It would seem advisable that where it makes sense selected aspects of the Secretariat be transformed into *regional civil service type units (RCSTU)* much like the Directorates General of the EU commission with member states transferring in a meaningful way power to these RCSTU. From a strictly financial point of view the idea of a directly elected OECS parliament may prove very costly.

3.4 Decision Making

The powers of the institutions of the *Union* in the OECS over member states should be governed in the broadest way by the principles of *proportionality* and *subsidiarity* as defined in Box 4. These principles are consistent with a confederal model as they are with the quasi-federal model and should ensure that the powers accorded to the *confederal government* are not excessively restrictive in as far as national governments are concerned.

Box 4: The Principles of *Proportionality* and *Subsidiarity*

The principles of ***proportionality*** and ***subsidiarity*** are considered as the most important principles to European integration. They were introduced by the Treaty of Maacstricht and are aimed at restraining the tendency towards excessive regulation. ***Proportionality*** requires that any action taken by the Community should not go beyond what is necessary for the achievement of its objectives. ***Subsidiarity*** requires that decisions should be taken at the lowest level possible i.e. national, regional or local, rather than at the European union level unless there is good reason to do otherwise.

Under the treaty that currently governs the OECS- the Treaty of Basseterre, decisions are taken only on the basis of *unanimous agreement*. Without speaking to the way this voting mechanism has worked for the OECS, *unanimous agreement* can sometimes prove to be a very inefficient voting mechanism that allows a minority dissenting voice to be the most powerful player(s) at the negotiation. This is not to say that *unanimous agreement* is not a useful voting arrangement. In a confederal type model it ensures that a spirit of

mutual agreement and trust is present, which is most important given the lack of a federal body that can make impartial trade-offs involving two or more member states. However the OECS may want to consider introducing some form of majority voting in selected areas.

4.4 *Legal Instruments*

Currently decisions taken at the OECS Authority must be enacted in national legislation before they can be effective. The process of transcribing these decisions into national legislation is some times lengthy and can be quite resource-consuming, and when completed there is no assurance that the various pieces of legislation would carry the same intent that was decided by the Authority. Therefore it is being proposed that legislative instruments be employed at the union level that are *supranational*, i.e. where certain decisions taken are binding in their entirety and directly applicable in all Member States (in the case of the European Union this would be called a 'regulation'). Hence it is recommended that the four legislative instruments of the European community (or variants of the same) be employed in the Economic Union.

4.5 *Integration: the process of creating legal and "living" institutions*

All integration processes as noted earlier involve the creation of institutions of governance and administration – political institutions. These institutions must necessarily have legal bases – making them *legal institutions*. However legislation alone does not guarantee that institutions will serve their desired purpose.Institutions must "really work" if they are to be effective – they must be *living institutions*.

The case of the EU represents a trust in governance by law and the legal integration of polity and society. While the EU uses a variety of policy modes, it is to a large extent a regulatory polity (Majone 1996). The European context invites integrationists to consider the relationships between, *on the one hand*, formal-legal institutions, legal concepts, categories and ways of reasoning, formal decisions, and legally binding rules, and, *on the*

other hand, "living institutions", rule-implementation, actual political conduct and outcomes. Despite the rather high level of compliance with rules and the development of legitimacy via judicial processes for the moment it is still unclear whether these legal institutions have developed themselves into ”living institutions” For instance, is it possible to build "a genuine European political and administrative culture" (Santér) by rewriting treaties and formal institutional designs? What actually happens after the great (formal) bargains are made and the treaties are written (Moravcsik 1998)?

Similar concerns can be expressed about the OECS integration initiative: will rewriting treaties and formal institutional designs create a real and meaningful political and administrative culture in the OECS? The answer to this and similar questions is not easily attained but one can certainly appreciate that the institutions that would be created via treaty must find tangible and meaningful expression so that they become of relevance to the peoples of the region, changing and influencing actions among them in a fashion that is optimal for the whole if union is to be successful. One can further imagine that public education would play an integral role in this transformation.

Section 4: CONCLUSION AND ISSUES FOR FURTHER CONSIDERATION

In the process of creating an economic union, the participating states have to also address political concerns, the most important of which is what degree of economic sovereignty (i.e. control over domestic economic policy) they are prepared to cede to the collective. Also of prime importance will be the issue of the political-institutional context in which to place the economic union.

The urgency of the need for economic integration was clearly articulated in the communiqué of the economic summit in October 2002. However this process would be severely impeded if member governments are reluctant to cede sovereignty in selected areas to the collective. The experience of the European Union is a testament to this fact. Brewster (2003)[13] states:

[13] Notes on “Options for Governance to Accelerate the Process for Regional Integration”

> The completely new feature that the European union (EU) introduced-and under which impressive advances have been made since it was created in 1992…-distinguishes it from the usual type of international association of States…-is that Member States have ceded some of their sovereign rights to the EC [European Community] at the center and have conferred on it powers to act independently. In exercising these powers, the EC is able to issue sovereign acts which have the same force of law in individual States. It is said that this development made it possible for the EU to achieve in seven years what the Member States failed to achieve in three decades.

The paper has made arguments in favour of confederalism, rather than quasi-federalism. It warns against wholesale adoption of the European Union governance model without paying due regard to the socio-economic realities of the EU. In particular it advises that careful consideration should be given to the question of the institutions of the union. It has also attempted to show that the success of the EU lies not merely in its institutional framework but also to a great extent in the underlying principles that these states have all agreed to (in varying degrees), principles of supranationalism, shared sovereignty and long-term commitment to the idea of unification.

To some extent the notion of endowing institutions with supranational authority is not alien to the OECS. Indeed the Eastern Caribbean Supreme Court (ECSC), the Civil Aviation Authority (CAA) and the Eastern Caribbean Central Bank (ECCB) are examples of such. Economic Union would afford the OECS the opportunity to complement these existing structures through the creation of an integrated structure for economic management and policy implementation. This structure to be effective must likewise be furnished with instruments that carry some level of supranational effect.

Figure 1: **Institutional Structure of the European Union's Economic and Monetary Union**

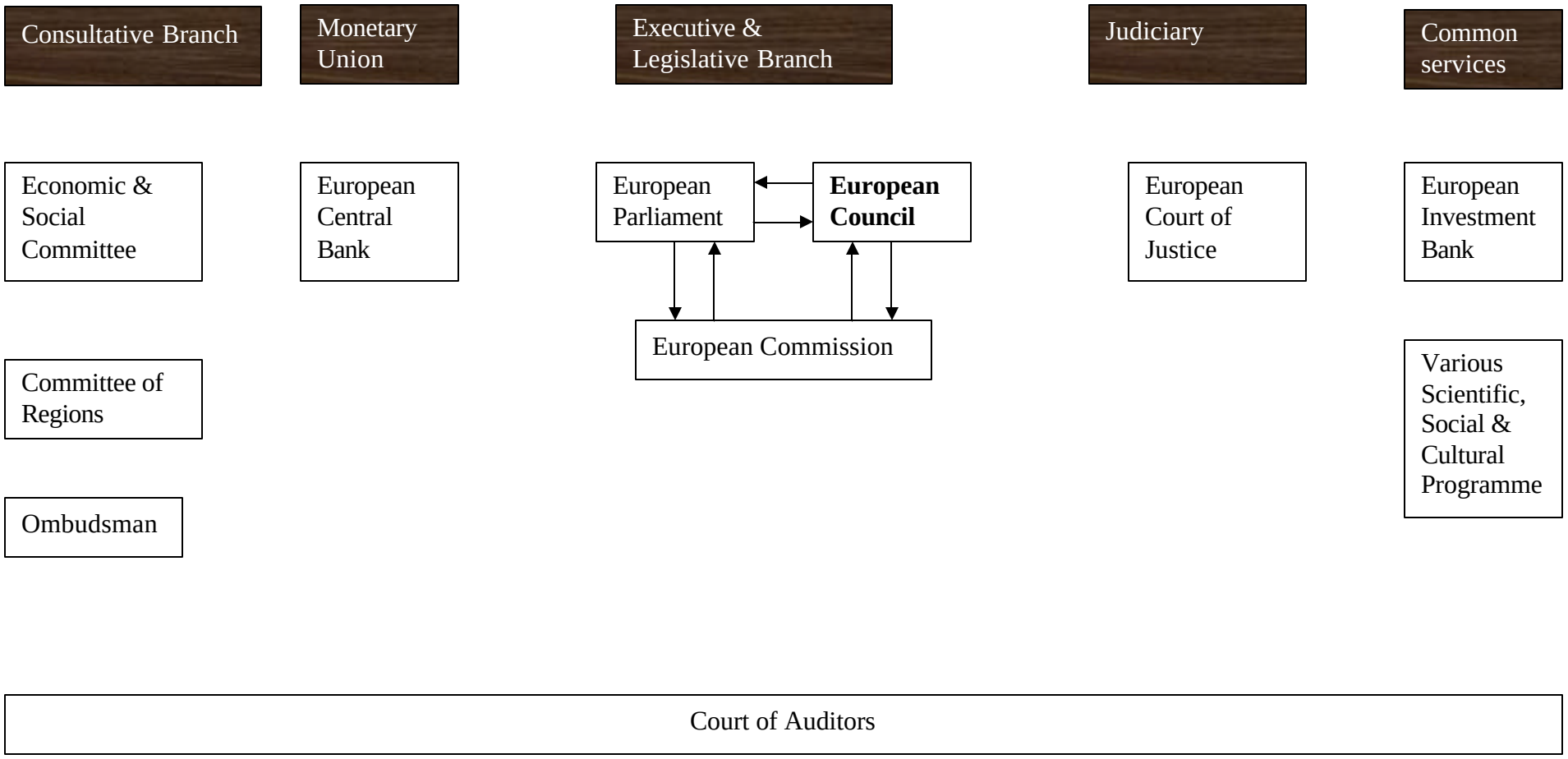
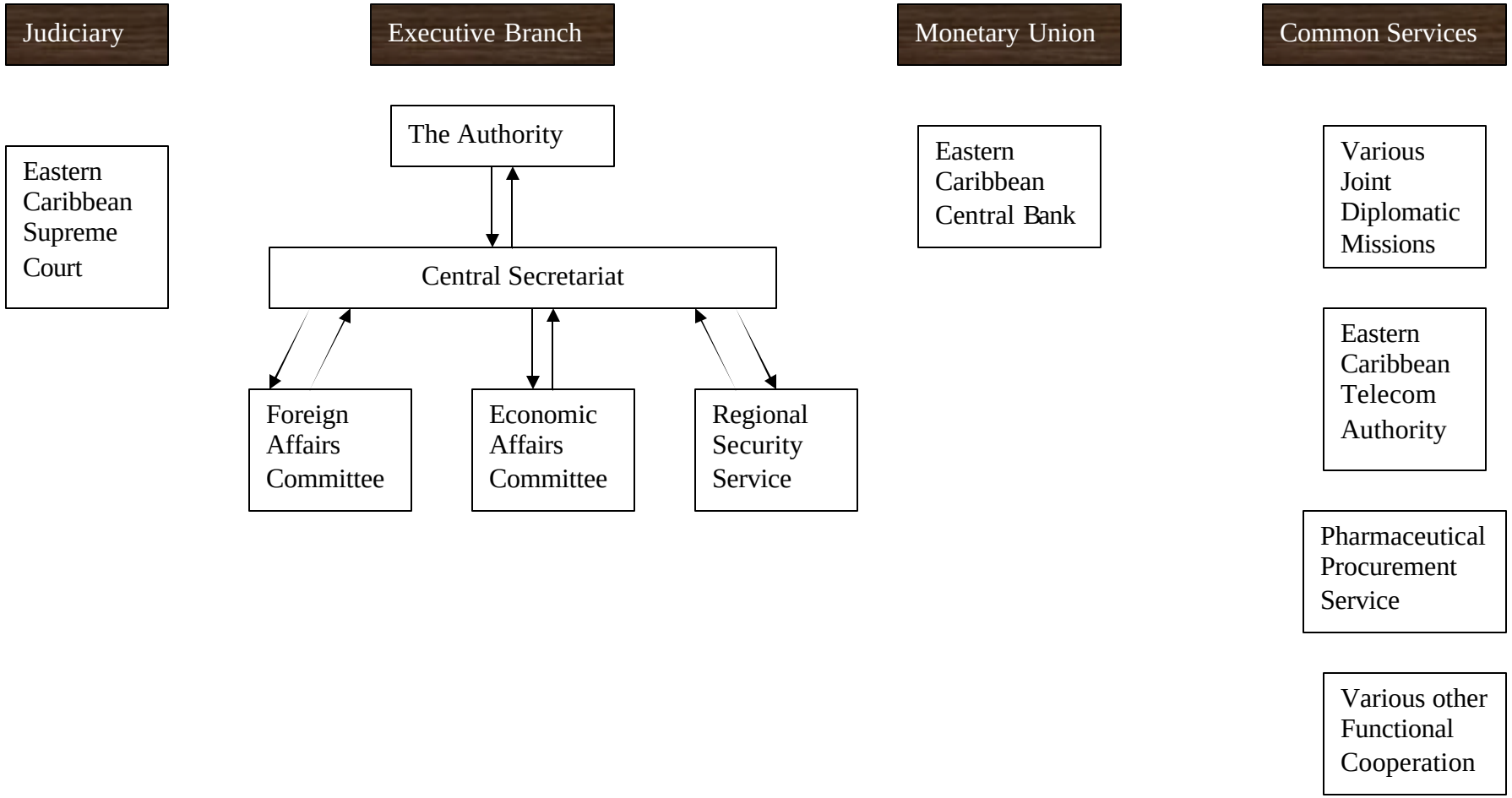


Figure 2**: Institutional Structure of the OECS (Including Monetary Union)**



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