

The Legislative Powers and Impact of the European Parliament

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Abstract

This article investigates the impact of the legislative powers of the European Parliament (EP), particularly the co-decision procedure. After explaining the development of the legislative procedures, the article analyses the extent to which the different procedures have been used since their creation. It then considers how growing legislative power has affected the EP's internal development, how far the EP has been able to influence EU legislation, and whether EP involvement in legislation has enhanced or impeded the efficiency of the EU legislative process. The article concludes by considering possible areas for further reform of the EP's role in the EU's legislative system.

Introduction

The role of the European Parliament (EP) in the EU's policy-making process has long been a matter of controversy (Corbett, 2000; Hix, 2001; Hubschmid and Moser, 1997; Kreppel, 2000; Maurer, 1999; Scully, 1997; Shackleton, 2000). When the Maastricht Treaty came into force, some suggested that the EP 'was perhaps the largest net beneficiary of the institutional changes in the Treaty' (Wallace, 1996, p. 63) and that 'Maastricht marks the point in the Community's development at which the Parliament became the first chamber of a real legislature; and the Council is obliged to act from time to time like a second legislative chamber rather than a ministerial directorate' (Duff, 1995, pp. 253–4). Through the introduction of the co-decision procedure, the EP appeared to gain more control over the legislative process (the final legislative act requires Parliament's explicit approval). However, there has been much debate on the impact of the then Article 189b TEC on the EU's legislative efficiency, with several authors noting that the procedure for shuttling draft

acts between the institutions is (too) complex, lengthy, cumbersome and protracted (Duff, 1995; Gosalbo Bono, 1995; Westlake, 1994; Corbett *et al.*, 2000; Nugent, 1998). Indeed, the original procedure could well be interpreted as symptomatic of a 'general trade-off' between the efficiency of EU decision-making on the one hand and parliamentary involvement on the other (Scharpf, 1994). Apart from this kind of criticism of the Union's and Parliament's incapability to act efficiently, other authors considered the material scope for co-decision rather limited (Gosalbo Bono, 1995; Tsinisizelis and Chrysochoou, 1996). More specifically, it could be argued that 'the granting of co-decision rights regarding internal market legislation is only of limited significance, given that such legislation should have been adopted by 1992 and that Articles 95 and 100b TEC would no longer serve a purpose after that date' (Corbett, 1994, p. 209).

This article investigates the practical impact of the legislative powers that the EP has acquired, paying particular attention to the most important and controversial power, namely co-decision. After explaining the development of these powers and the legislative procedures within which they fit, I provide an overview of the extent to which these procedures have been used since their creation. I then consider the impact of developing powers on the EP's internal profile, before going on to examine the extent to which parliamentary involvement in legislation has enhanced or impeded the efficiency of EU legislative production. The final section of the article considers possible areas for future reform.

I. The European Parliament's Powers

The Amsterdam Treaty considerably altered the institutional balance between the Union's main actors and increased the EP's powers in several different ways (Duff, 1997; Hix, 2002; Laurssen, 2002; Maurer, 1997, 2002): extending the areas where the co-decision and assent procedure apply, simplifying the co-decision procedure, recognizing Parliament's involvement within the field of home and judicial affairs, and changing the procedures for the nomination of the Commission President and the other Commissioners. Table 1 summarizes the situation with regard to the different legislative procedures laid out in the treaties after Amsterdam.

Apart from the extension of co-decision, the Amsterdam Treaty simplified the procedure in four ways. First, the new co-decision procedure provides for the adoption of legislation at first reading if the EP and Council agree at this stage. Given the enlarged scope of the legal bases where co-decision applies, the possibility of conclusion after the first reading may lead to considerable time savings. Second, the phase whereby the EP could vote an 'intention to

Table 1: European Parliament and Council Decision-making Powers since the Entry into Force of the Amsterdam Treaty

<i>Participation of the EP</i>	<i>Unanimity in Council</i>		<i>QMV in Council</i>		<i>Simple Majority in Council</i>		<i>Special Majorities other than QMV</i>		<i>Total</i>	
	<i>No. of Articles</i>	<i>%</i>	<i>No. of Articles</i>	<i>%</i>	<i>No. of Articles</i>	<i>%</i>	<i>No. of Articles</i>	<i>%</i>	<i>No. of Articles</i>	<i>%</i>
Consultation	33 EC	17.09	23 EC	11.91	1 EC	0.518	2 EC	1.03	59 EC	30.57
	4 EU	13.79	1 EU	3.44	1 EU	3.44	1 EU	3.44	7 EU	24.13
Co-operation	0 EC	0.00	4 EC	2.07	0 EC	0.00	0 EC	0.00	4 EC	2.07
Co-decision	5 EC	2.59	33 EC	17.14	0 EC	0.00	0 EC	0.00	38 EC	19.67
Assent	6 EC	3.10	2 EC	1.03	1 EC	0.518	2 EC	1.03	11 EC	5.69
	2 EU	6.89							2 EU	6.89
Information	1 EC	0.52	8 EC	4.14	0 EC	0.00	0 EC	0.00	9 EC	4.66
Parliamentary exclusion	31 EC	16.06	31 EC	16.06	4 EC	2.07	6 EC	3.10	72 EC	37.30
	9 EU	31.03	3 EU	10.34	3 EU	10.34	5 EU	17.24	20 EU	68.96
Total	76 EC	39.38	101 EC	52.33	6 EC	3.10	10 EC	5.18	193 EC	100.00
	15 EU	51.72	4 EU	13.79	4 EU	13.79	6 EU	20.68	29 EU	100.00

Source: Treaty of Amsterdam, author's calculations.

reject' the Council's common position was dropped. If the EP now votes to reject the common position, the legislation fails. This reform largely corresponds to the practice of co-decision: in the intergovernmental conference (IGC) negotiations, the Member States, the Parliament and the Commission all declared this part of the procedure to be moribund.

Third, the so-called third reading, whereby the Council could re-propose its common position after a breakdown of conciliation was also dropped. The elimination of this element of the third reading was one of the most controversial issues at the Amsterdam IGC. In the end, France accepted the new procedure for two reasons. First, French proposals for strengthening the role of national parliaments were successful in that Amsterdam provided for a legally binding protocol on national legislatures. Second, unlike its neo-Gaullist predecessor, the coalition government led by Lionel Jospin adopted a more positive attitude towards the EP.

Fourth, as a result of the change to the third reading, the reformed procedure provided for the proposal to fail if an agreement is not reached in conciliation. This deletion of the third-reading phase put the Parliament on an equal footing with the Council in every stage of the procedure. Under the original co-decision procedure the Council could obstruct Parliament with a 'take-it-or-leave-it' offer after unsuccessful conciliation (Moser, 1996; Garrett, 1995; Tsebelis and Garrett, 1997). The 'equalization' of both legislative branches now implied a balanced set of veto powers. With the entry into force of Amsterdam, both the Council and the Parliament share the responsibility for the adoption as well as for the failure of a proposed legislative act. Interestingly, both institutions anticipated this reform in March 1998, when no agreement on the comitology issue could be found within the conciliation committee on draft directives 93/6/EEC and 93/22/EEC. Instead of reshuffling the draft according to the Maastricht Treaty provisions, the two institutions declared the failure of the procedure after conciliation.¹

I conceive the Amsterdam Treaty's reforms on the Parliament as follows and adjustments to the Maastricht Treaty, and not as a totally new conceptualization of the Union's constitutional basis (Maurer, 2002). Therefore, and in order to see how the Parliament may develop in the next years, we should go one step below primary law and look into the exploitation of what has already been achieved.

¹ See European Parliament: Conciliation Procedures – Stop Press, No. 18/March 1998.

II. The Powers in Perspective

The Amsterdam Treaty revealed a tendency towards a multi-level polity where competencies are shared not only between the members of the Council but also between the Council and the EP. To put the Amsterdam provisions on the Parliament in an historical context, Figures 1a and b show that Parliament’s access to decision-making has been a slow but unrelenting process of treaty reforms. The relative proportion of Parliament’s exclusion from the EU policy process has diminished considerably. However, if we focus on the absolute rates of the treaty-based decision-making procedures (Figure 1a), we see that a growth in consultation, co-operation and co-decision procedures has been offset by an increase in Parliament’s ‘non-participation’.

Both the co-operation and co-decision procedures had a considerable impact on the EP’s involvement in the production of binding legislation. We observe a clear trend towards more use of the co-decision procedure at the expense of the co-operation procedure (see Table 2). The main reason for the shift from co-operation to co-decision is the procedural change applied to one legal basis – namely Article 95 TEC, the general basis for harmonization measures in the framework of the internal market. With Maastricht, the procedure to be applied for Article 95 shifted from co-operation to co-decision, and 45.9 per cent of co-decision procedures concluded between November 1993 and December 2001 fell under this article.

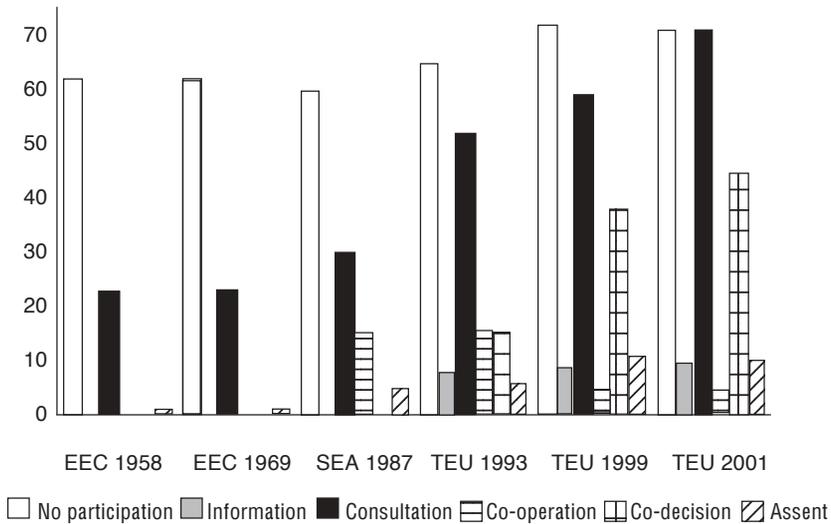


Figure 1a: Evolution of the EP’s Legislative Powers 1957–2002 (Absolute Numbers)

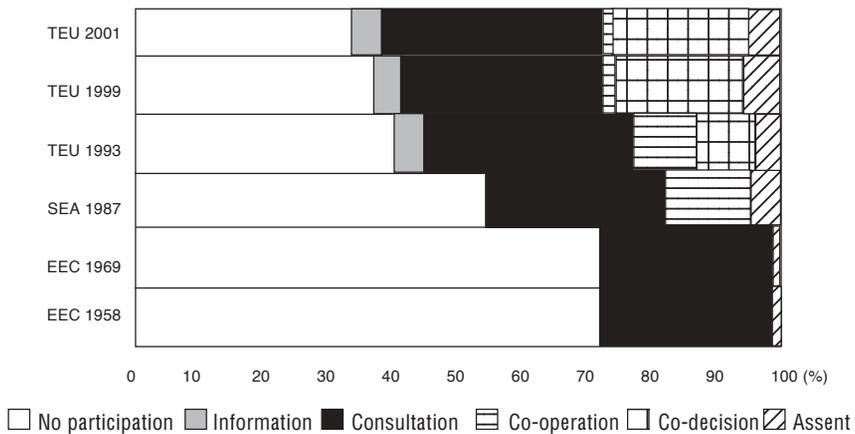


Figure 1b: Evolution of the EP's Legislative Powers 1957–2000 (Relative)

Source: Maurer (2001), Calculation based on EC/EU treaties 1952–2001.

By July 2002 a total of 602 legislative proposals had been transmitted to the EP under the co-decision procedure, of which 417 had been concluded. In 348 cases the Commission's initiatives resulted in binding legislation decided jointly by the EP and the Council. To date, there have been 69 cases in which the proposal by the Commission has failed. In 65 of these, the procedure lapsed because the Council was unable to adopt a common position. Only five cases failed due to unsuccessful conciliation (three times) or after the EP voted against the agreement reached in the conciliation committee (twice).

Of the 348 approved acts under co-decision:

- in 236 cases agreement was reached without convening the conciliation committee – 157 cases were approved by Parliament without amending the common position of the Council, and in the remaining 79 cases the Council accepted all of the second reading amendments proposed by the EP; and
- in 112 cases agreement was reached in conciliation.

As for the proposals that failed after conciliation, two cases could not reach an agreement on the type of committee that would assist the Commission in implementing the directives. One proposal reached the stage of a joint legislative text (directive on the legal protection of bio-technological inventions), but the agreement from conciliation was rejected by a majority of the EP. Besides co-decision, the EP and the Council were confronted with a further 7,054 legal acts of the Council, out of which the institutions closed 448

Table 2: Parliamentary Activity 1987–2001: Completed Procedures and Resolutions of the EP

Year	Council Secondary Legislation	EP: Consul- tation	– Parliament: Co-operation –			Parliament: Co-decision					EP: Assent	EP: Budget Resolutions, Statements, Urgencies	EP: Initiative	Co-operation & Co-decision Legislation / All Legislation (%)
			1st Reading	2nd Reading	Passed	1st Reading	2nd Reading	3rd Reading	Passed	Failed, Lapsed or Withdrawn				
1987	623	152	13	9	7						20	21	290	1.12
1988	628	131	45	45	44						14	39	316	7.00
1989	634	128	55	71	63						3	19	319	9.93
1990	614	159	70	49	56						2	27	282	9.12
1991	581	209	62	37	50						3	26	271	8.60
1992	738	243	70	66	62						11	28	257	8.40
1993	546	199	50	46	52	5	–	–	–	9	8	25	345	9.52
1994	468	168	33	21	21	18	34	8	23	3	11	31	298	9.40
1995	456	164	26	12	10	35	19	7	16	2	17	25	253	5.70
1996	484	164	31	34	25	34	37	9	31	–	8	27	231	11.57
1997	410	154	19	15	17	34	27	21	32	1	15	24	188	11.95
1998	461	215	38	24	24	41	43	11	36	1	4	16	168	13.20
1999	327	177	0	17	17	69	34	12	37	–	17	18	146	16.51
2000	262	113	0	0	0	60	53	18	50	11	14	22	251	19.08
2001	239	190	0	0	0	85	51	22	51	1	16	32	256	21.33

Source: Commission: Annual Report of the European Commission 1986–2001, author's calculations.

co-operation procedures (19 failed or withdrawn), 163 assent procedures and 2,566 consultation procedures.

Since 1996 nearly one-quarter of EU legislation considered by the EP was adopted under the co-decision procedure. In this regard, the Maastricht Treaty strengthened the position and legislative role of Parliament in areas related to the internal market, including the areas of environment, research and education policy. Moreover, taking into account the total legislation passed since 1986–87, by adding together the percentages of both co-operation and co-decision, the scope of application of these procedures within the Parliament has been significantly extended (from 11.3 per cent in 1987 to nearly 34 per cent in 2001). However, if we consider the overall output of binding legislation adopted by either the Council or the EP and the Council together, we should qualify this assessment. Legislative acts concluded in 2001 under both the co-operation and co-decision procedures represented only 21.3 per cent of all legislation adopted by the Council. Yet, before jumping to conclusions about the relative failure of Parliament as a legislative chamber, we should take a closer look into the Council's legislation and Parliament's involvement therein.

Most legislative output of the EU is in three fields: agriculture and fisheries, trade policy and customs policy. Note the high percentage of Commission legislation in agriculture policy, authorized either by the Treaty or by the Council pursuant to its right to delegate executive competencies to the Commission. In turn, the socio-economic policy fields represent only 15–20 per cent of the EU's legislative production. In these fields – which include the internal market, industry, economic policy, environment and consumer protection, telecommunication and transport policy – the EP is much more significant. In these fields, 65 per cent of legislation requires either the co-operation or co-decision procedure.

Also, a high proportion of the Council's output concerns non-legislative acts, that is executive or administrative acts, especially in the fields of agriculture, competition, trade and customs policy. Neither the EP nor any of its component political groups has asked to participate in consultation or any other procedural rule when the Council deals as a price-fixing agency or when the Council confirms Member State nominations for one of its standing committees.

If we turn to the exploitation of the legal bases provided for co-decision, 45.7 per cent of the procedures concluded up to the end of July 2002 were based on Article 95 (harmonization measures concerning the internal market). The legal basis for the adoption of environmental programmes, Article 175, was used 35 times. This rather infrequent use of the explicit legal bases for environment policy does not automatically imply a failure of legislation

in this area. If we take a closer look at the internal market measures passed under co-decision, we identify nearly 80 per cent of acts related to environmental and consumer protection. Being of a regulatory nature (definition of norms, limits, etc.), the Parliament sought to base legislation in this area on the general harmonization clause provided in Article 95. Seventeen per cent of the co-decision procedures were based on ‘new’ policy competencies incorporated into the Maastricht and Amsterdam Treaties together with the co-decision procedure (education and youth, culture, health, consumer protection, trans-European networks, data protection, etc.). On the other hand, the exploitation of legal bases dealing with Title III TEC on the free movement of persons, services and capital was less significant: 10.9 per cent of all co-decision procedures in force were based on one of these articles.

The bulk of co-decision procedures concentrated on directives. Only 5.3 per cent of all co-decision procedures resulted in regulations. Another 17.4 per cent dealt with action programmes in the fields of education and youth, culture, health, research and technology, and the internal market. The scope of the co-decision procedure indicates that the EP became able to co-legislate with the Council not just on less binding action programmes, but also on a

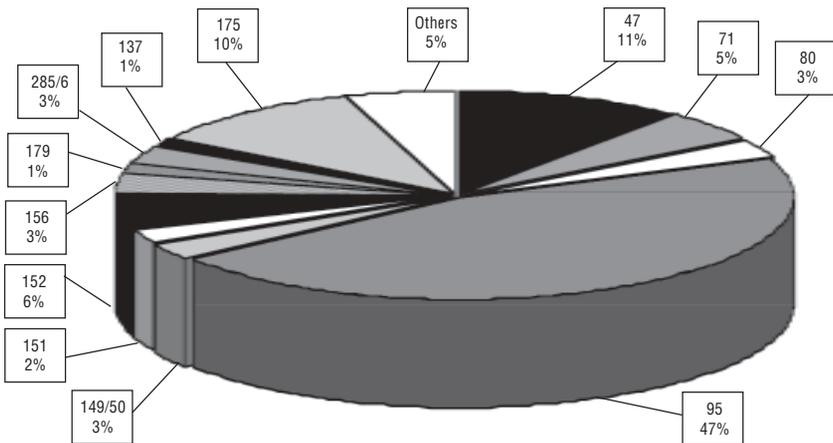


Figure 2a: Legal Bases for Co-decision

Note: Article 47 – Free movement of workers (incorporating: Article 44 – Right of establishment; Article 46 – Treatment of foreign nationals; Article 47 – Mutual recognition of diplomas and provisions for the self-employed; Article 55 – Services); Article 71 – Transport policy; Article 80 – Transport policy; Article 95 – Internal market harmonization; Article 137 – Social policy; Article 149 – Education and youth; Article 150 – Vocational training; Article 151 – Culture; Article 152 – Incentive measures for public health; Article 156 – Trans-European network guidelines; Article 175 – Environment programmes; Article 179 – Development policy; Articles 285–6 – Information policy.

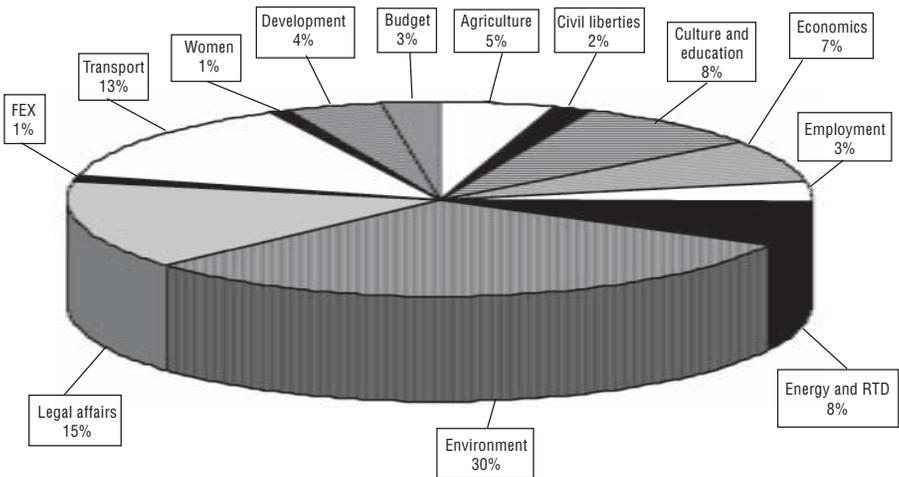


Figure 2b: EP Committees in Co-decision

large amount of binding legislation directly affecting the way of life of EU citizens.

III. The Impact on the EP's Profile: Between Specialization and Politicization

The co-decision procedure has extensive effects on the functioning and the internal management of the EP (Shackleton, 2000; Maurer, 2002). Given the time constraints imposed on the Parliament by the procedure and the concentration of its scope of application, Parliament had to adapt itself in several ways.

Similarly to what we can observe with regard to the scope of the procedure, co-decision led to a structural concentration of workload in only three of the 17–20 permanent EP committees: the Committee on the Environment, Public Health and Consumer Protection; the Committee on Transport Policy; and the Committee on Legal Affairs (see Figure 2b).² In fact, the new procedure proved to be very time-consuming for MEPs in these committees. The

² The 1999–2004 Parliament reduced its internal structure to 17 committees: Foreign Affairs, Human Rights, CFSP (AFET), Agriculture and Rural Development (AGRI), Budgets (BUDG), Fisheries (PECH), Budgetary Control (CONT), Regional Policy, Transport and Tourism (RETT), Citizens' Freedoms and Rights, JHA (LIBE), Culture, Youth, Education, Media, Sport (CULT), Economic and Monetary Affairs (ECON), Development and Co-operation (DEVE), Legal Affairs and the Internal Market (JURI), Constitutional Affairs (AFCO), Industry, External Trade, Research and Energy (ITRE), Women's Rights and Equal Opportunities (FEMM), Employment and Social Affairs (EMPL), Petitions (PETI), Environment, Public Health and Consumer Policy (ENVI).

three committees concerned shared nearly 58 per cent of all procedures concluded until July 2002. The concentration of co-decision on these three committees was primarily due to the exploitation of the legal bases concerned. Since most of the procedures were based on Article 95, the majority of procedures engaged the three committees mentioned above. Around 50 per cent of concluded co-decision procedures covered both Article 95 and one of these three committees. The enlargement of the scope of application of co-decision by the Amsterdam Treaty altered this concentration only to a limited extent and, as a consequence, brought about the differentiation of Parliament into 'legislative', 'consultative' and 'non-legislative' committees. As a result, the Amsterdam Treaty brought the Transport Committee, the Committee on Development and Co-operation, and the Committee on Employment and Social Affairs into the co-decision club.

Obviously, the extension of co-decision confirmed the ongoing dynamics of organizational concentration and functional differentiation/specialization within the EP (Bowler and Farrell, 1995; Farrell and Héritier, 2003). The rearrangement of Parliament's committee structure in April 1999 boosted these features. Both the new Committee on Legal Affairs and the Internal Market and the Committee on Industry, External Trade, Research and Energy took over the tasks related to co-decision of three former Committees: Economic and Monetary Affairs and Industrial Policy; Research, Technological Development and Energy; and Legal Affairs and Citizens' Rights. As a result, concentration remained within the family of former 'legislative' Committees. The new Committee on Regional Policy, Transport and Tourism fused two previous committees, which until then fulfilled fairly different tasks: whereas the earlier Committee on Regional Policy concentrated on a consultative role in distributive policy-making, the former Transport and Tourism Committee acted under consultation, co-operation and co-decision and was involved in both the generation of some 'European public goods' (trans-European networks) and regulatory policies. Therefore, the fused Committee on Regional Policy, Transport and Tourism developed a structure providing rather new cross-sectional views of Parliament. Since the Council retained its sectional structure for regional and structural policy, on the one hand, and transport policy, on the other, until 1999, this new cross-cutting committee provided a new perspective into the fragmented structure of the Council, Coreper and the related network of working groups.

Another consequence of the shift towards legislative power and its effective execution has been a marked decrease in the number of non-legislative resolutions, own initiative reports (inviting the Commission to forward legislative initiatives) and resolutions after statements or urgencies: from 2.4 per MEP in 1979, to 0.3 per MEP in 2001! Own initiative and urgency resolutions

can be interpreted as an indicator of the interest of MEPs in using non-legislative instruments offered to the EP. Initiative reports and resolutions reflect MEP awareness and interest in raising an issue with the public and with the Council and the Commission. Given the historical lack of parliamentary powers in relation to participation in binding legislation, MEPs and political groups used own initiatives or urgency resolutions to show their general interests, their attention to a given issue, or their willingness to shape the policy agenda. For political groups, initiative resolutions are one of the core instruments that allow them to present their point of view on a given issue.

Figure 3 shows the evolution of parliamentary initiative and urgency resolutions between 1979 and 2001. We see that the evolution of the quantity of initiatives and urgencies correlates with the constitutional setting and development of the Community/Union. The growth from 1984 to 1986 reflects Parliament's activity in relation to European Political Co-operation and, more importantly, to its attempts to move the then EEC into a European Union. The introduction of the co-operation and assent procedure (in the Single European Act) then resulted in a decrease of own initiatives. Only the debates on the Maastricht Treaty reversed this trend. However, since the entry into force of Maastricht, the use of initiatives has fallen. Moreover, if we take into account the growth of Parliament due to the enlargement of the Union to Spain and Portugal in 1985, and Finland, Sweden and Austria in 1995, we observe a significant decrease in resolutions per MEP from 1984 to 1985 and from 1994

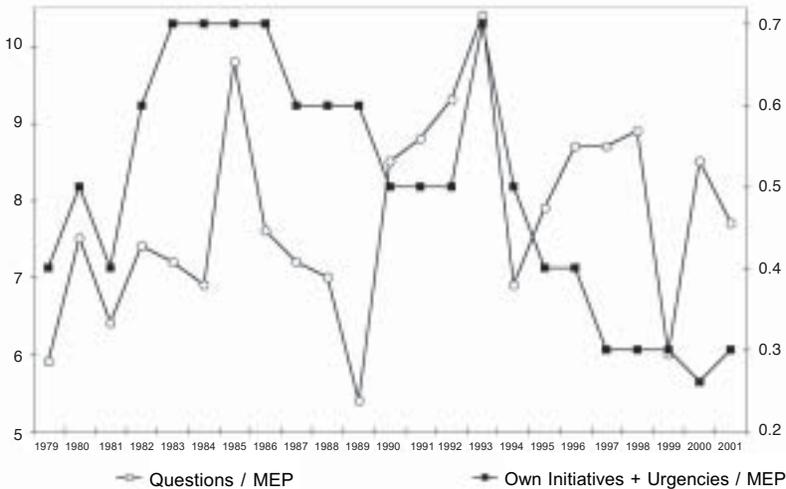


Figure 3: Questions, Initiative Reports and Urgency Resolutions per MEP, 1979–2001

to 1995, respectively. In other words, the growth in the number of MEPs did not result in an increase in the non-legislative activity of Parliament.

IV. Efficiency: The EP as a Complicating or a Facilitating Factor?

Contrary to perceptions commonly espoused in academic and political debates about a strengthened role for the EP, the co-decision procedure does not appear to lead to serious delays in the final adoption of EC legislation. Of course, the original procedure introduced by the Maastricht Treaty appeared cumbersome, and in practice was expected to be complex, lengthy and protracted (Earnshaw and Judge, 1996; Westlake, 1994; Nugent, 1998). The procedure was depicted as symptomatic of the 'general trade-off' between the 'problem-solving capacity' of EU decision-making and parliamentary involvement. As Fritz Scharpf (1994, p. 220) put it: 'Expanding the legislative ... powers of the EP could render European decision processes, already too complicated and time-consuming, even more cumbersome'.

However, in practice, co-decision did not significantly delay the final adoption of EU legislation. Both the co-operation and the co-decision procedures differentiate between a first phase, where Parliament and Council can act with no constraints on the time needed for adopting a first reading position on the Commission's proposal, and a second phase, where a set of fixed time limits applies. Under the Maastricht rules, co-operation could last nine months from the Council's common position to the final adoption of the act. In contrast, the co-decision procedure could potentially last 16 months from the date of the transmission of the Council's common position to Parliament. The Amsterdam Treaty abbreviated the procedure to 14 months. Once the Council has adopted its common position, the longest case scenario involves two Council and two parliamentary readings, plus one conciliation procedure, and then final adoption by the Council and EP.

However, Figure 4 shows that, since 10 November 1993, the duration of co-decision procedures has diminished. On this date the Commission presented 34 modified proposals originally founded on the co-operation procedure (Article 149 TEC, SEA version) that then became (due to the entry into force of the TEU on 1 November 1993) subject to the co-decision procedure. These modified 'co-operation proposals' lasted on average 838 days, whereas the original 'co-decision proposals' of 1993 needed 200 fewer days! A more detailed analysis indicates that the average duration of co-decision fell from 769 days (for the period November 1993–December 1994) to 409 days for proposals made between July 1999 and July 2002.

How is one to explain these trends? One explanation, based on nothing more than institutional self-interest, is that to produce some output – and

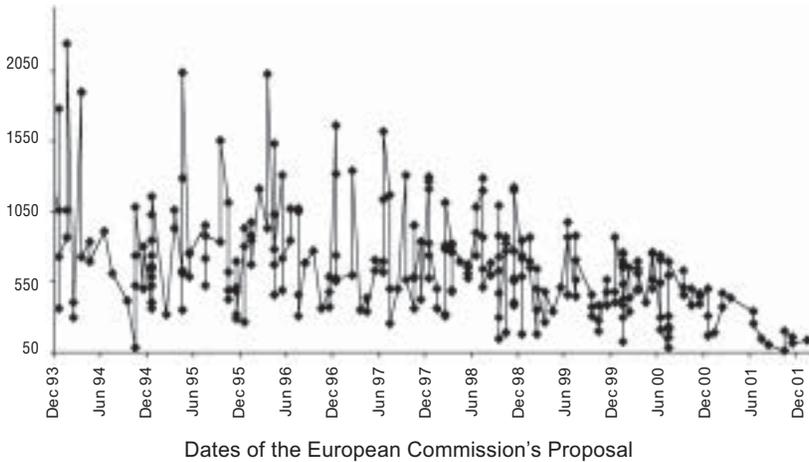


Figure 4: Overall Duration of Co-Decision Procedures

thereby perhaps attain enhanced public attention and legitimacy – either Parliament or Council prefer the adoption of second-best solutions instead of exhausting the negotiation arenas and battling for a long time for a joint agreement. If this argument holds, we would expect a decrease of conciliation meetings in relation to the adoption of joint legislation over time. However, the empirical reality shows an increasing number of conciliation meetings in relation to legislative acts from 1994 to 2002. Thus, the time-efficiency of co-decision appears based more on the ‘socialization’ of MEPs, Coreper and the Commission. The most important delays in co-decision occur because of lengthy procedures before the adoption of Parliament’s first reading and Council’s common position, where no deadlines are applicable (see Figure 5). Delegates of the Member States and private industry meet within a highly elaborate network of working groups, where the substance of the Commission’s drafts is fine-tuned by a wide range of civil servants and lobbyists. Also, MEPs meet with Council representatives, Commissioners, Commission Cabinet members and other officials to indicate their potential amendments and ideas on the draft. Once the Commission officially publishes and submits its proposal to Parliament and the Council, again informal meetings take place where EP rapporteurs, Coreper and Member State representatives, and interest groups deliberate on the draft. Hence the first reading by Parliament and the subsequent adoption of the Council’s common position are subject to informal deals between the institutions on matters such as the legal basis, the financial resources necessary, the possibility of implementing acts, and some of the substantive issues.

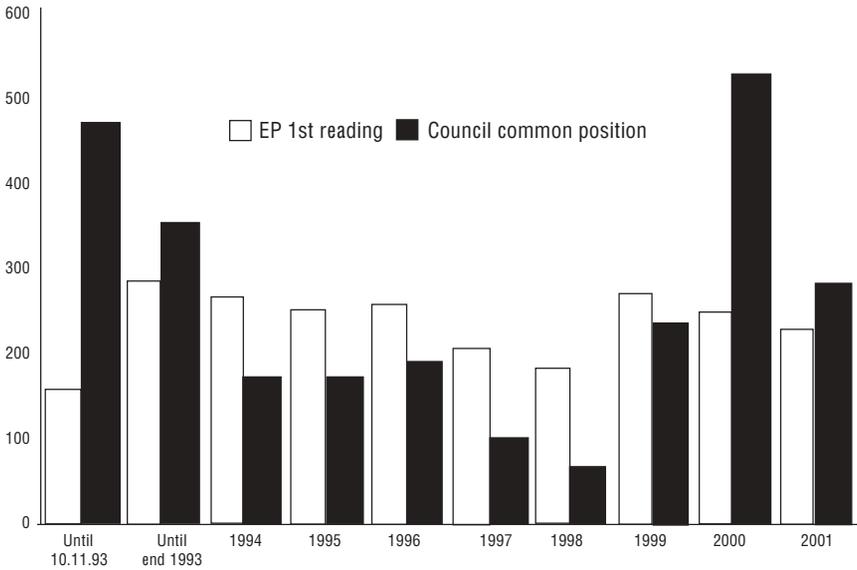


Figure 5: Time Lags for EP 1st Readings and Council Common Positions

Both the Parliament and the Council became acquainted with the new decision-making procedure during 1994, after the newly elected EP voted its first reading resolutions on matters relevant to the co-decision procedure. As noted above, Article 95 is the most prominent legal basis for co-decision. If we concentrate on the procedures based on this article, we note that both the Council and EP have undergone a considerable ‘learning process’ in adopting binding legislation in this area. The average duration for procedures proposed in 1991 was 882 days. Between 1991 and 1997 then, the average duration reduced by a factor of three to 257 days (for 1997 proposals)! This is particularly interesting since procedures based on Article 95 covered nearly half of all legislative acts where conciliation between the Council and the Parliament became necessary.

V. Does Parliament Matter?

What does Parliament affect? Do things change due to the fact that MEPs interact with the Council and the Commission? One way to ‘measure’ the influence of Parliament is to track parliamentary amendments and to compare the success rates of co-decision with those of co-operation (see Tsebelis *et al.*, 2001). A second method, still based on quantitative data, would be to compare the finally agreed acts with the preceding parts. A third method would

be to analyse the substance of successful and unsuccessful parliamentary amendments. Of course, the first two methods often do not take account of the relative political weight of amendments, nor do they indicate the extent to which rejected amendments are eventually taken up in modified form in other, new proposals (see, e.g., Kreppel, 2002). Moreover, Earnshaw and Judge note that it is not possible to ‘distinguish between “substantive” amendments, designed to be accepted, and “propagandistic” amendments, designed to advance an issue up the policy agenda of Council and Commission (without any realistic expectation of inclusion in the final directive)’ (Earnshaw and Judge, 1996, p. 102). The explanatory value of quantitative success rates should not be overestimated.

The EP does not simply propose amendments, it approves the draft texts at every stage of the procedure ‘with Parliament’s amendments’. Consequently, Parliament acts as a joint author alongside the Council. Thus, another way of measuring the degree of influence which Parliament exerts on the substance of a legislative act dealt with under the co-decision procedure is to compare the final texts with the different drafts prepared by the Council and/or the EP. Theoretically one could distinguish between three cases:

1. a final act corresponding to Parliament’s second reading, where the Council approves the EP’s second reading draft without amending it;
2. a final act corresponding to Council’s common position, where the EP, in its second reading, approves the Council’s common position without amending it; and
3. a final act corresponding to the conciliation committee’s joint compromise text, where the Council was not able to accept all Parliament’s second reading amendments, and so conciliation becomes necessary and both the Parliament and Council produce a joint text subject to a third reading in both institutions.

Using this method, the analysis of 124 acts concluded up to July 1998 (European Parliament [Maurer], 1999) indicates an increase in the Council’s influence on the outcome of the procedure, a slight increase in joint compromise texts and a decline in Parliament’s influence from 26.5 per cent in 1996 to 24 per cent in 1997 and finally to 7.7 per cent in 1998. However, we should not jump to conclusions in interpreting these figures as a failure on the part of the EP. First, even a legislative act which corresponds to the Council’s common position is an act concluded with Parliament’s agreement. Second, a legislative act corresponding to the common position of the Council does not automatically represent a legislative act where Parliament had any influence. Hence, the Council in its common position may incorporate parliamentary first reading amendments, and consequently the Parliament does not propose new

amendments in the second reading. As regards the substantial influence of Parliament (Hubschmid and Moser, 1997), most obvious are those matters where Parliament and Council have to find a compromise on the budgetary aspects of legislation – especially when it comes to the launch of action programmes or where Parliament strengthens environmental and consumer concerns by setting stricter limits or by the insertion of consumer-linked provisions into the act in question. Moreover, a relatively high percentage of internal market legislation is aimed at the distortion of internal market barriers within the EU. One of the common features of Parliament's involvement in this area is a tendency to combine strict deregulatory measures with setting standards for consumers, so ensuring that market liberalization does not take place at the expense of private users and disadvantaged groups.

VI. Towards the Constitutional Treaty: Issues for Reform

The EU's legitimacy is based neither on a collective personality ('the people', as federalists might argue) nor on the single peoples of the Member States (as in the realist vision), but on a pluralistic 'citizenship' (Beetham and Lord, 1998; Wiener, 1998). This 'multinational *civitas*' is not only a community of the states, but also of the citizens in a situation of 'unity in diversity' (Hassner, 1996). Each actor, including the Parliament, is bound by others. This system limits the room for manoeuvre of each participant. It generates a form of procedural and functional checks and balances, in which democratically elected and functional representative institutions intervene. The players are not able to coerce their view or to dominate the whole process entirely. Instead they are dependent on unstable (that is, unforeseeable) support, coalition-building and compromise. Decision-making mainly takes the shape of continuous negotiations, where each solution forms the basis for the next round and therefore shapes the preferences of the actors concerned. As Helen Wallace (1996, p. 33) notes:

Part of the reason for the predominance of negotiation at the core of the process had to do with the cartel of elites that dominated the negotiating fora and the interests that lay behind them. That cartel has been 'threatened' by the impact of other forms of policy influence. These include the imposition of policy through the courts, both ECJ and national, and the emergence of a form of parliamentarism at the EC level. Irrespective of whether the EP provides legitimacy of European executive decisions, it certainly interferes with the negotiating process. It can, and sometimes does, overturn the results of negotiation in and around the Commission and the Council.

The development of both the EU and the EP is thus organic and evolutionary. Using this dynamic perspective in analysing the EP's role with regard to its

contribution in the production of binding legislation, one observes an increasingly important component of the EU political system. The EP's performance clearly indicates that by building on precedents – conditional vetoes in co-decision, linking policy-making with institutional, financial and procedural aims and inter-institutional agreements – Parliament has been able to steer the geometry of institutional relations from a two-sided into a triangular form. The EP has grown considerably in importance. It cannot be denied that it has considerably developed from a rather 'decorative' (Wallace, 1996, p. 63) to a truly legislative institution. Co-decision is as cumbersome as the joint decision-making procedures between the German Bundestag and the Bundesrat, or between the French National Assembly and the Senate, and MEPs have become acquainted with it despite its shortcomings. The rather small proportion of failed procedures does not indicate a massive defeat of this new legislative instrument. Much analysis predicted that co-decision would not work effectively. On the contrary, we observe a procedure that is shorter than co-operation with regard to efficiency, and which, with regard to the substance of European legislation, enables Parliament to set the EU policy agenda on an equal footing with the Council.

What are the options for further institutional developments of the EP? The Convention on the Future of Europe offers a chance for accelerating, rationalizing and simplifying the EC's legislative process. Given new legal bases where co-decision will apply after the entry into force of the Nice Treaty, and given the potential extension of the scope of application of the procedure due to the Convention, the possibility of conclusion after the first reading may lead to time-saving for a higher number of legislative proposals. In this context, Parliament will probably improve both the process of adopting the relevant amendments and their quality.

To enhance the visibility of Parliament in co-decision, it should seek, with the Council and the Commission, to provide access for the media before and after conciliation takes place. Parliament might also reflect on the location of conciliation meetings: what if Parliament and Council organized key conciliation meetings during Strasbourg plenary sessions, where media attention is almost exclusively given to MEPs? Finally, efforts should be made to assist rapporteurs to become more visible as parliamentary experts on major policy questions. If Parliament is to develop further the 'linkage between institutions and constituencies within the polity' (Hix and Lord, 1997, pp. 7–10), MEPs must choose carefully between the different political and institutional capabilities at hand.

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