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The European Parliament post-1993: Explaining macroscopic trends of Inter- and Intrainstitutional Developments

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Abstract

This paper will examine the impact the last enlargements and treaty change have had on the European Parliament and the EU’s system of legislative procedures. The paper assesses the dynamics of the European Parliament in operating according to a set of parliamentary functions. The overall question is, how the EP performs in adopting European legislation and in controlling the Union’s quasi-executive branches. Do the rules provided by treaties, inter-institutional agreements and similar bases matter for the EP as a „multifunctional organization” (Judge/Earnshaw 2003: 24) and how do they matter for the repartition of workload within the European Parliament? In analysing the European Parliament’s practice during the past 1994-1999, 1999-2004, and 2004-2009 legislatures, I propose to investigate the parliamentary implementation of the treaties and treaty amendments. In other terms, I explore the „real use” of the different „constitutional offers” at hand.

Constitutional offers are defined as the EU’s treaty provisions and subsequent inter- and intra-institutional agreements that build on so-called “grey areas” of the treaties, a dynamic and evolving set of opportunity structures that provide parliamentarians with opportunity structures to participate in the EU’s policy making process. I thus conceive the EU’s primary law – the treaties and similar constitutional acts like inter-institutional agreements - as subsequent propositions to the EU institutions and the Member States for joint decision making and for delegating powers from one level to another. Evidently, the Union’s constitutional bases do not „dictate” a clear nomenclature of procedures, actors to be involved and policy fields to be applied (Hofmann 2003). Instead, the institutions have to choose – by application of one or more legal bases. In other words, different constitutionalised procedural blueprints and inter-institutional rules „compete” for application.

To capture the constitutionally based roles of the European Parliament, I distinguish and trace its different functions. Drawing on earlier works by Bourguignon-Wittke et al. (1985), Grabitz et al. (1988), Steppat (1988), Schmuck/Wessels (1989) and subsequent studies on the specific role of the European Parliament in a dynamic and evolving structure (Maurer 1996; Wessels 1996) I define these functions as policy-making, controlling, elective and system-developing (Maurer 2002: 86-88).

1. The European Parliament and institutional reform

One of the key features of the EU's constitutionalisation process has been the incremental parliamentarisation – i.e. the increased delegation of supervisory, budgetary and legislative powers to the European Parliament (EP) – of more and more policy fields since the Single European Act (SEA) in 1987. In four Intergovernmental Conferences (IGC's) – 1985/1987, 1991/1993, 1996/1999, and 2000 – the EP has seen its own position strengthened.¹ To date, there have only been few attempts to understand this process of parliamentarisation.²

Proponents of intergovernmentalism argue that the European Union (EU)'s constitutional order “has developed through a series of celebrated intergovernmental bargains” and that “[t]he most fundamental task facing a theoretical account of European Integration is to explain these bargains”.³ Viewed in this way, the strengthening of the EP depends solely on member states interests, which are negotiated at IGCs. However, both the underlying rationale and the theoretical preponderance of IGCs for the constitutional development have increasingly come under attack. On the one hand, it has been stressed that on the basis of a rationalist logic of action it is impossible to explain the at least partial parliamentarisation of the EU. Indeed, why should governments, which want to maximise their national interests, agree to create and empower a supranational parliament, whose powers could conflict with their own? On the other hand, it has been argued that IGCs do not act on a “tabula rasa”. Instead, existing institutional arrangements and practices of co-operation predetermine the outcomes of the negotiation process. Consequently, the EU's institutional development should not simply be seen as isolated, free-standing interstate bargains but rather as continuous process of informal and formal Treaty revision, with IGCs often merely formalising existing practices.⁴ Looked at this way, the process of parliamentarisation takes place through developments which take place between IGCs. But how exactly does parliamentarisation between IGCs occur?

I tackle the puzzle of parliamentarisation by focusing on the role of Interinstitutional Agreements (IIAs) within the context of IGC's. The number of IIAs concluded between the EP, the Commission and the Council has sharply risen since the Maastricht Treaty.⁵ IIAs are designed to facilitate interinstitutional co-operation and prevent conflicts between the institutions. However, IIAs are more than just pragmatic answers to interinstitutional co-operation problems since they tend to strengthen the EP's position in the EU's constitutional set-up by expanding the EP's control, information and legislative competencies, and placing it on equal footing with the Council.

Arguing about the European Parliament and its potential to provide the European citizens a collective voice in the Union's policy cycles does not mean that parliamentarism and the parliamentarisation of the EU's system (Fischer 2000; Napolitano 2002) is the only way for bridging the gap between the citizens and the Union. One can easily assume that even with the entry into force of the Draft Constitutional Treaty (DCT, see: CIG 86/04), many scholars and practitioners of European integration will continue to argue that focusing on the parliamentary input structures of the Union is only one of several ways in which governance „beyond the state” (Jachtenfuchs/Kohler-Koch 1996) might gain legitimacy. I therefore conceive the European Parliament and the cascade-like parliamentarisation of the Union's decision making system (Maurer/Wessels 2001; Maurer 2002) as one but an essential tool for building a legitimate European order.

1 On the EP's system development function see W. Wessels and U. Diedrichs, 'A New Kind of Legitimacy for a New Kind of Parliament: the Evolution of the European Parliament' (1997) 6, EIOF (<http://eiop.or.at>); A. Maurer, *What next for the European Parliament*, (London, 1999); A. Maurer and W. Wessels, *Das Europäische Parlament nach Amsterdam und Nizza: Akteur, Arena oder Alibi?* (Nomos, Baden-Baden, 2003); R. Corbett/F. Jacobs/M. Shackleton, *The European Parliament* (London, 2003).

2 Cf. S. Hix, 'Constitutional Agenda-Setting Through Discretion in Rule Interpretation: Why the European Parliament Won at Amsterdam' (2002) 2, *British Journal of Political Science*, pp. 259-280; B. Rittberger, 'The Creation and Empowerment of the European Parliament' 41 *JCMS* (2003), pp. 203-226.

3 A. Moravcsik, 'Preferences and Power in the European Community, A Liberal Intergovernmentalist Approach' 31 *JCMS* (1993), pp. 473-524 at p. 473.

4 G. Falkner, 'EU treaty reform as a three-level process' 9 *JEPP* (2002), pp. 1-11.

5 Cf. for a quantitative overview W. Hummer, 'Interinstitutionelle Vereinbarungen und "institutionelles Gleichgewicht"' in W. Hummer (ed.), *Paradigmenwechsel im Europarecht zur Jahrtausendwende. Ansichten österreichischer Integrationsexperten zu aktuellen Problemlagen. Forschung und Lehre im Europarecht in Österreich* (Vienna 2004), pp. 111-180.

The EP constitutes one of the four core institutions of the EU. It is the only directly legitimated component of the EU's institutional set-up. The last five treaty reforms caused major implications for the European Parliament and its position vis-à-vis the other institutions, specifically the Council and the Commission. The DCT confirms Helen Wallace' analysis that the European Parliament was and still is "the largest net beneficiary of the institutional changes" (Wallace 1996: 63).

This paper first tries to assess the dynamics of the European Parliament in operating according to a set of parliamentary functions. The overall question is, how the EP performs in adopting European legislation and in controlling the Union's quasi-executive branches. Do the rules provided by treaties, inter-institutional agreements and similar bases matter for the EP as a „multifunctional organization" (Judge/Earnshaw 2003: 24) and how do they matter for the repartition of workload within the European Parliament?

In analysing the European Parliament's practice during the past 1994-1999 and 1999-2004 legislatures, I propose to investigate the parliamentary implementation of the treaties and treaty amendments. In other terms, we will explore the „real use" of the different „constitutional offers" at hand.

2. Legal Offers and Exploitation. Methodological clarification

I define constitutional offers as the EU's treaty provisions, a dynamic and evolving set of opportunity structures that provide parliamentarians with potential power to participate in the EU's policy making process. I thus conceive the EU's primary law – the treaties and similar constitutional acts like inter-institutional agreements - as subsequent propositions to the EU institutions and the Member States for joint decision making and for delegating powers from one level to another. Evidently, the Union's constitutional bases do not „dictate" a clear nomenclature of procedures, actors to be involved and policy fields to be applied (Hofmann 2003). Instead, the institutions have to choose – by application of one or more legal bases - whether an envisaged piece of legislation is subject to parliamentary scrutiny through consultation, for EP initiative reports or urgency resolutions, or has to be decided by qualified majority or unanimity, whether the legislation should be adopted in the format of a regulation, a directive or another type, and whether referral should be made to the consultation, the co-operation, the assent, or the co-decision procedure or without any participation of the European Parliament. In other words, different constitutionalised procedural blueprints and inter-institutional rules „compete" for application.

To understand the European Parliament's development from a merely consultative assembly into a more „powerful" legislative chamber, I look at the realization of EU treaty based provisions with regard to the day-to-day utilisation of different legislative procedures involving the European Parliament as an at least consultative body, the exploitation of different policy areas and respective legal bases which the treaties provide for adopting binding legislation, the workload of Committees in the European Parliament, and the implications of procedures and institutional rules for Parliament's management. Several other developments illustrate the European Parliament's performance in the implementation of its scrutiny powers, inter alia its original scrutiny powers, the appointment and investiture of the European Commission and its role with regard to the nomination of the European Central Bank and other institutions, the possibilities to hold the EU's non-parliamentary institutions to account, and the proceedings and findings of the European Parliament's temporary Committees of Inquiry.

To capture the constitutionally based roles of the European Parliament, I distinguish and trace its different functions. Drawing on earlier works by Bourguignon-Wittke et al. (1985), Grabitz et al. (1988), Steppat (1988), Schmuck/Wessels (1989) and subsequent studies on the specific role of the European Parliament in a dynamic and evolving structure (Maurer 1996; Wessels 1996) I define these functions as policy-making, controlling, elective and system-developing (Maurer 2002: 86-88).

- Policy-making is defined as the participation of the European Parliament in the EC/EU policy cycle in relation to the Council and the Commission. The function derives from parliament's rights and obligations to (co-)negotiate and -decide on European politics. The policy-making function thus reflects Parliament's capacity to participate in and to influence the preparation, adoption, implementation and control of binding legislative acts.
- The control function is defined through Parliament's rights and obligations to call other institutions of the Union to account. In addition to its traditional role in granting the budgetary discharge to the European Commission, the Parliament is involved in other, less spectacular, scrutiny activities. It may put oral and written questions to the Commission and the Council, hear Commission officials and national ministers in parliamentary committees, hold public hearings, set up temporary committees of inquiry and discuss the EU's performance with the Council's Presidency.
- The elective function covers Parliament's right to participate in the nomination and investiture of other EU institutions (the Commission, to appoint a European Ombudsman or Mediator. Thus, as studies previously carried out on the European Parliament considered the elective function only to a limited extent, this function has since been significantly developed.
- Finally, the system-development function refers to the participation of the European Parliament in the development of the EU's constitutional system (such as institutional reforms and the division of competencies). Making full use of this function also relies on instruments such as the use of internally binding law such as the Rules of Procedure. Thus, the system-development function refers to Parliament's ability to present, promote and defend proposals for institutional reform.

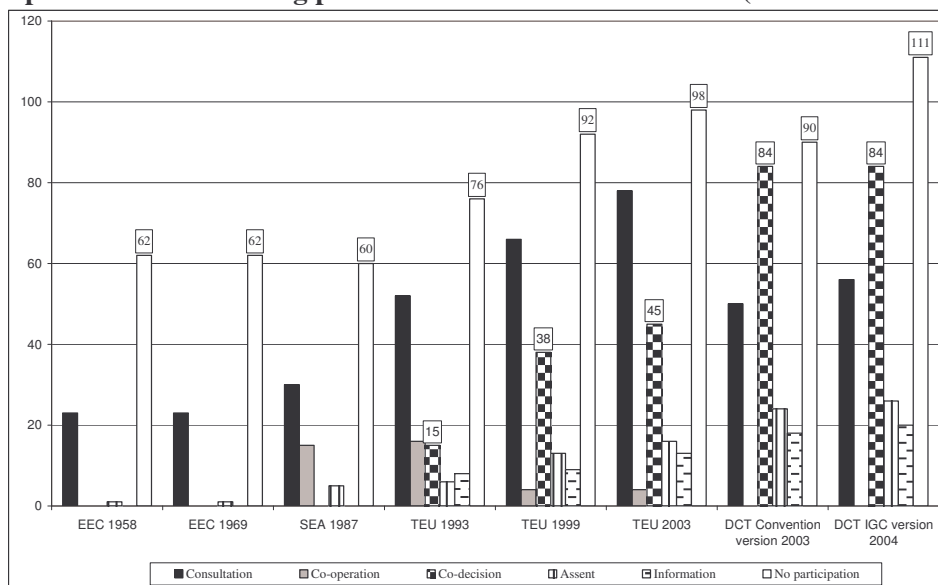
Time is a scarce resource. Different issues, agendas, parliamentary functions and roles compete for attention and define the relative, daily importance of EP functions and MEP's profiles. Given the limits on time and resources of parliamentarians, the definition of certain priorities necessarily leads to other points on the agenda being treated as secondary. Hence, the European Parliament, its Committees and its individual MEP's have to manage the allocation of their resources in order to fulfil the treaty-based duties according to a rather rigid time-schedule. Each new EU treaty does not only bring new powers to the EP, but induces a revision of parliamentary tasks and functions in the light of time as a fixed constraint. To put it bluntly: During the 1970's, the EP could easily allow each individual member to act as freely as possible, because the EU's constitutional framework did not force the EP to deliver legislative amendments within a given time-period. The introduction of the cooperation, the assent, and later on the codecision procedure thus terminated the EP's relative independence from the Commission's and the Council's work programme. The substance of the policy-making function altered considerably and forced the EP to reallocate the time-schedule of its plenary and committee sessions in order to digest incoming – legislative - workload. Parliamentary efficiency became one of the favourite jingles of the EP. Kreppel's analysis on the evolution of the EP's rules of procedure underlines rightly that the „most frequently cited reason for a adopting a change, and often controversial changes were proposed in the name of greater efficiency” (Kreppel 2002, 104). Consequently, giving priority to a set of duties and resulting functions defines the set of duties to be treated as secondary issues and moves other parliamentary functions on the political backburner.

3. The evolution of the European Parliament's roles

As the Luxembourg, Maastricht, Amsterdam and Nice versions of the EU treaties, the DCT considerably alters the institutional balance between the Union's main actors (Huber 2003: 574-599; Jacobs 2003; Nickel 2003: 501-509; Scelo 2002: 578-582; Schoo 2004: 63-74). The Treaty will have a major impact on the EP by increasing its formal powers in different ways. The extension of the areas where the co-decision and the assent procedure apply, the simplification of the co-decision procedure, the full recognition of Parliament within the field of home and judicial affairs, and the changes made to the procedure for the nomination of the President of the Commission and the other Commissioners.

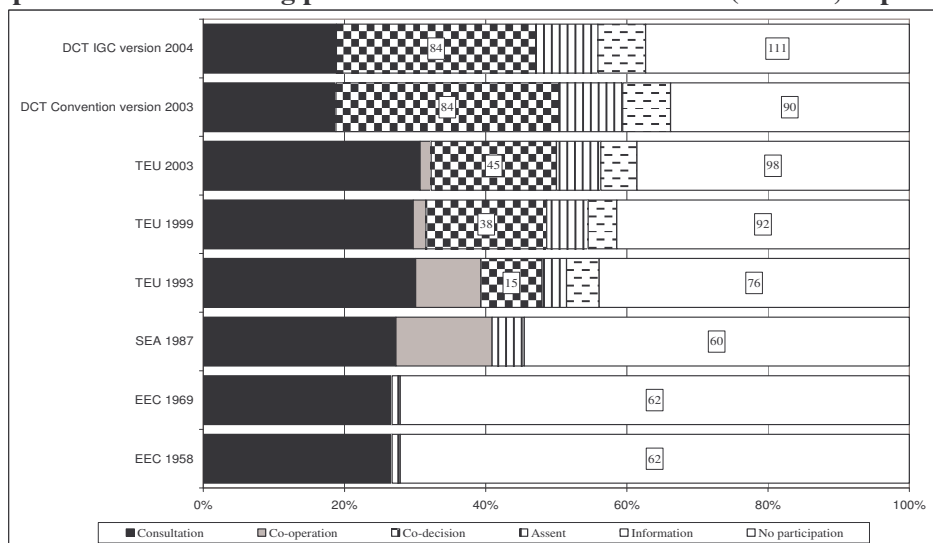
The DCT's reforms are constitutional follow-ups and adjustments to the Maastricht Treaty, and not a totally new conceptualisation of the Union's para-constitutional basis. Therefore, and in order to accelerate ideas about how the Parliament may develop in the next years, we should go one step below primary law and look into the exploitation of what has already been achieved. The DCT reveals a tendency towards a multi-level polity where competencies are not only shared between the Members of the Council but also between the Council and the EP. In a retrospective view, Parliament's access to the decision-making system of the EC is the result of a slow but unrelenting process of Treaty reforms. Hence, the relative proportion of Parliament's exclusion from the European policy-making process has diminished considerably. However, if we focus on the absolute rates of the treaty-based decision-making procedures, we have to recognise that the growth in consultation, co-operation and co-decision procedures has been offset by an incessant increase in Parliament's 'non-participation'.

Graph 1: Decision Making powers of the EP and the Council (absolute numbers)



Author's own calculation on the basis of the original EU treaties

Graph 2: Decision Making powers of the EP and the Council (relative, in per cent)



Author's own calculation on the basis of the original EU treaties

The Treaty reforms introduced and subsequently widened the scope of application of the co-decision procedure both with respect to those policy areas which it had just introduced into the EC sphere and with respect to policy areas already covered by the co-operation procedure. The assent procedure was extended to new TEU provisions such as sanctions in the event of a serious and persistent breach of fundamental rights by a Member State. The IGC's from Luxembourg (1986) to Nice (2000) also confirmed a constant extension of consultation procedures for new policy areas such as in the field of home and judicial affairs, social and employment policy. The Convention, and the introduction of a hierarchy of norms and procedures (Articles I-32 to I-36 DCT) then resulted in a reduction of consultation and a switch from consultation to codecision. As a result of the last IGC processes, many core issues of European integration had been added to decision-making procedures providing the European Parliament with considerable powers vis-à-vis the Council of Ministers and the European Commission. However, the European Parliament continues to be excluded from dynamic and „costly” policy areas such tax harmonization (Article 93 ECT) and trade policy (Article 133 ECT).

Apart from the extension of co-decision, the Amsterdam Treaty simplified the procedure itself considerably in four ways: It provides for the adoption of a legislative text at first reading phase if the European Parliament does not propose any amendment at first reading or if the Council agrees with all of the European Parliament's first reading amendments. Second, the phase whereby the European Parliament could vote on its intention to reject the Council's common position was dropped – mainly on the basis of the EP's own attempts during the IGC. Consequently, the European Parliament can go straight to a vote of rejection and the draft proposal will fail. Third, the so-called third reading whereby the Council could seek to impose the common position after a breakdown of conciliation, unless the European Parliament could overrule it by an absolute majority of its members, was dropped, too. The elimination of the third reading was the most controversial question. In the end, France accepted the new procedure for two reasons: First, Paris' proposals for strengthening the role of national parliaments in the Union were successful in that Amsterdam provided for a new, legal-binding protocol on the powers offered to these actors (Maurer 2001). Secondly, unlike its then Gaullist predecessor, not only the French Socialist Party as such, but also the Red-Green coalition led by Lionel Jospin had a more positive attitude towards the European Parliament. Fourth, as one of the most important achievements of Amsterdam, the procedure provided for the proposal to have failed in the absence of agreement in conciliation. This deletion of the third-reading phase finally put 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 (Tsebilis 1994; Garrett 1995; Tsebelis & Garrett 1997). The „equalisation” of both legislative branches thus induced a more balanced set of veto powers. In more concrete terms, Codecision II (post-Amsterdam) had important effects for how the Parliament is perceived by the outside world: Under the Maastricht rules, the Council could easily make the Parliament pay for the failure of a draft legislative act. Since the entry into force of Amsterdam, both Council and Parliament share the responsibility for the adoption as well as the failure of a proposed legislative act. Both institutions anticipated this reform in March 1998, when no agreement on the Comitology issue could be found within the conciliation committee on the draft directives 93/6/EEC and 93/22/EEC. Instead of revising the draft according to the Maastricht Treaty provisions, the two institutions declared the failure of the procedure after conciliation.

4. Exploitation I - Parliamentary Co-Governance in practice

Both the co-operation and the co-decision procedure had a considerable impact on the EP's involvement in the production of binding EC legislation (Crombez 1997, Crombez 2000). Until July 2004 a total of 759 legislative proposals had been transmitted to the EP pursuant to the co-decision procedure, of which 630 had been concluded. In 559 cases the Commission's initiatives resulted in binding legislation decided jointly by the EP and the Council. 71 legislative proposals of the Commission failed. In 63 of these, the procedure lapsed because the Council was unable to adopt a common position and the Commission decided to withdraw its original proposal. Only eight cases

failed due to unsuccessful conciliation (four times) or after the EP voted against the agreement reached in the conciliation committee (four times). Apart from these failures, the co-decision procedure has led to satisfactory outcomes.¹

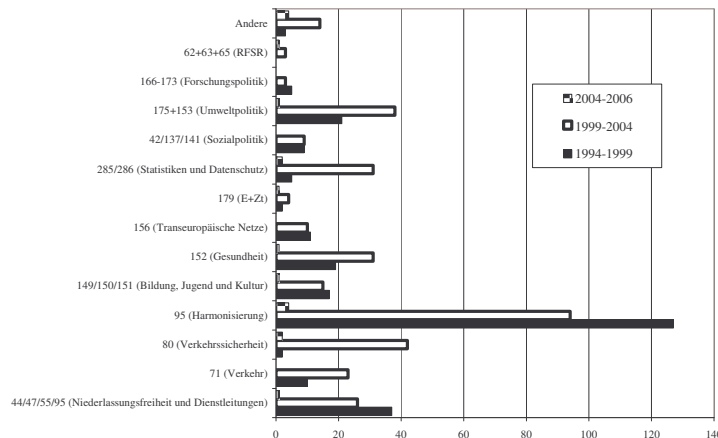
Since 1996 nearly one quarter of EC legislation considered by the EP was adopted under the co-decision procedure. The last three versions of the EU Treaties strengthened the position and legislative role of Parliament regarding the internal market, including the areas of environment, consumer protection, transport, research and education policy. Moreover, taking into account the total of legislation passed since 1986/87 by adding together the percentages of both co-operation and co-decision, their scope of application within Parliament had been significantly extended. However, if we take into account the overall output of binding legislation adopted either by the Council of Ministers or by the EP jointly with the Council, we should qualify this assessment: Hence, legislative acts concluded in 2003 pursuant to both the co-operation and co-decision procedure represented only 39,3 % of the total of legislation adopted by the Council. But before jumping on conclusions highlighting the relative failure of Parliament as a 'truly' legislative chamber, we should take a closer look into the proportion between the Council's legislation and Parliament's involvement therein:

The overall EU legislative output is mainly due to three policy fields: Agriculture and Fisheries, Trade policy and Customs policy. Note also the high percentage of Commission legislation - authorised either by the Treaty itself or the Council pursuant to its right to delegate executive competencies to the Commission - in agriculture policy. In turn, the policy fields dealing with Socio-Economics represent only 15 to 25 % of the EC's production in binding law. If we concentrate on these fields which comprise the internal market, industry, economic policy, environment and consumer protection, telecommunication and transport policy, the EP's legislative role becomes much more significant: Since most of the legislation in these fields required either for co-operation or co-decision, the participation of Parliament tends towards 75 %. Hence a high proportion of the Council's output concerns non-legislative acts, i.e. executive or administrative acts, especially in the fields of agriculture, competition, trade and customs policy. Neither the EP as such nor any of its component political groups asked to participate in consultation or any other procedural rule when the Council deals as a price-fixing agency or when it confirms Member State nominations for one of its standing committees. If one concentrates exclusively on the Council's output in the fields of environment or consumer protection policy, the EP's participation through co-operation and co-decision is much more significant (in 2003 around 82%).

45,69 % of the codecision procedures concluded up to the end of July 1999 were based on Article 95 (harmonisation measures concerning the internal market). For the 1999-2004 legislature, the exploitation of Article 95 diminished towards 26 %, while the use of the legal bases for environment, health, social and transport policy augmented considerably, thus mirroring both the EP's new legislative powers and the increased importance attached to these policy fields.

If we take a closer look at the „internal market” measures passed under co-decision, we identify nearly 80% of acts which were related to environmental and consumer protection policy. Being of a regulatory nature (definition of norms, restrictions, limits etc.), the EU institutions based legislation on the general harmonisation clause Article 95 provides for. During the 1999-2004 legislature, 51 % 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). On the other hand, the exploitation of legal bases dealing with Title III ECT on the free movement of persons, services and capital was less significant: 7,8 % of all co-decision procedures were based on one of these articles.

Graph 3: Exploitation of Legal Bases in Codecision 1994-2006



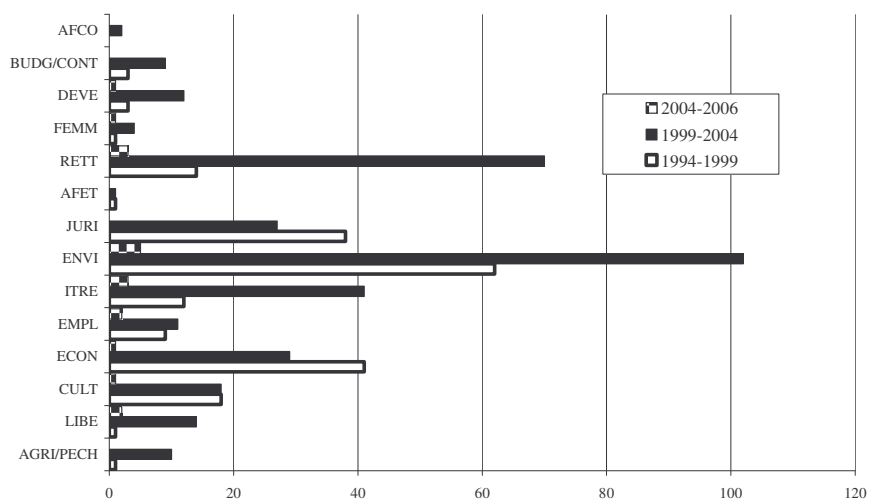
Author's own calculation on the basis of the Legislative Observatory; Legend: Art. 40 – Free movement of workers; Art. 44 – Right of establishment; Art. 46 – Treatment of foreign nationals; Art. 47 – Mutual recognition of diplomas and provisions for the self-employed; Art. 55 – Services; Art. 71 – Transport policy; Art. 80 – Transport policy; Art. 95 – Internal market harmonisation; Art. 137/138/141 – Social policy; Art. 149 – Education and Youth; Art. 150 – Vocational training; Art. 151 – Culture; Art. 152 – Incentive measures for public health; Art. 156 – Trans-European Network guidelines; Art. 166-173 – Multi-annual Framework Programme for Research & Technology; Art. 175 – Environment programmes; Art. 179 – Development policy; Art. 284 - Information policy; Art. 285-286: Statistics and Data Protection.

The increased referral to 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 is leading to a structural concentration of workload in three permanent committees. Hence, the bulk of procedures during the 1994-1999 period touched the Committee on the Environment, Public Health and Consumer Protection, the Committee on Economics and the Committee on Legal Affairs. During the 1999-2004 period, the Committee on Regional Policy and Transport and the Committee on Trade, Industry, Energy and Research Policy entered into the Club of the busiest legislative Committees. The procedure proved to be very time-consuming for MEP's in those committees with a heavy co-decision burden. The five committees concerned shared nearly 80,1 % of all procedures concluded until July 2004.

The Committees on Agriculture, on Fisheries and on Civil Liberties were activated by a relatively high amount of legislative consultation procedures. The Committee on Foreign Affairs digested the highest amount of Assent procedures, and the two budgetary committees focused on both consultation and budgetary procedures. Only the Committees on Employment and Social Affairs, on Constitutional Affairs, and on Women's Rights and Equal Opportunities dealt merely with EU legislation.

Graph 4: Exploitation of EP Committees in Codecision 1994-2006



Author's own calculation on the basis of the Legislative Observatory; Legend for Committees: BUDG – on Budgets, CONT – on Budgetary Control, LIBE – on Citizens's Freedoms and Rights, Justice and Home Affairs, ECON – on Economic and Monetary Affairs, JURI – on Legal Affairs and the Internal Market, EMPL – on Employment and Social Affairs, ITRE – on Industry, External Trade, RTD and Energy, ENVI – on the Environment, Public Health and Consumer Policy, AGRI – on Agriculture and Rural Development, PECH – on Fisheries, RETT – on Regional Policy, Transport and Tourism, CULT – on Culture, Youth, Education, the Media and Sport, AFCE – on Constitutional Affairs, FEMM – on Women's Rights and Equal Opportunities, AFET – on Foreign Affairs, Human Rights, CFSP, DEVE – on Development and Cooperation

Table 1: Overall Exploitation of Codecision, Consultation and Assent procedures within the EP Committees 1994-2004

	AGRI PECH	LIBE	CULT	ECON	EMPL	ITRE	ENVI	JURI	AFET	RETT	FEMM	DEVE	BUDG CONT	AFCE
COD	15	10	33	71	20	50	175	73	2	78	5	12	12	2
CON	571	145	39	114	96	231	96	69	26	23	5	22	113	3
Assent	2	0	0	0	0	34	0	4	47	3	0	4	1	2
Sum	588	155	72	185	116	315	271	146	75	104	10	38	126	7

Author's own calculation on the basis of the Legislative Observatory

Obviously, the extension of co-decision confirms the ongoing dynamics of organisational concentration and functional differentiation-specialisation within the EP (Bowler/Farrell 1995, Farrell/Héritier 2003). The rearrangement of Parliament's Committee structure of April 1999 boosted these features to some extent. Both the new Committee on Legal affairs and the Internal Market (JURI) and the Committee on Industry, External Trade, Research and Energy (ITRE) took over the tasks related to co-decision of the former three Committees: Economic and Monetary Affairs and Industrial Policy; Research, Technological Development and Energy; Legal Affairs and Citizen Rights. Therefore, concentration remained within the family of former 'legislative' Committees. More challenging the new Committee on Regional Policy, Transport and Tourism (RETT) fused two Committee structures, which heretofore fulfilled fairly different tasks: Whereas the bygone 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 kind of 'European public goods' (Trans-European Networks) and regulatory policy making. 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, the Members of the Parliament's cross-cutting Committee provided a more comprehensive perspective into the fragmented „policies-actors” structure of the Council, COREPER and the related working group network.

5. Does Parliament matter?

Through the introduction and subsequent reform of the co-decision procedure, the European Parliament gained more control in the legislative process (- it can prevent the adoption of legislation -) and acquired more means of input into binding EC legislation (- the final legislative act requires Parliament's explicit approval -). Co-decision had a considerable impact on the „functional professionalisation” and policy field linked ”specialisation” of MEP's. Hence, the nature of EU legislation under codecision condemns Members to become experts in highly technical and complex issues. Expertise is not a new feature for MEP's, and it is not exclusively relevant to the existence of the co-decision procedure. However, unlike other procedures, co-decision provides much more room for manoeuvre, where Parliament and Council are obliged to settle technical issues of an immediate relevance for the EU's citizenry, face to face, and on an equal footing. If Parliament amends the Council's common position and the latter is not willing to accept the amended version, Parliament has the power to bargain with the Council on a joint compromise text. However, procedures and inter-institutional rules are not what the electorate is primarily interested in. Citizens do not vote on the ground of highly aggregated institutional settings, nor do they vote for an institution as a unitary body among other at the disposal. Instead electing the EP means *selecting* those which reflect the citizenry wishes, interests, worries and concerns. Elections are about people, parties and cleavages (Hix 2001). Neither are the media interested in providing an account of *how* substance is being achieved. Public(hed) Opinion too is oriented to daily or weekly news on *who* has ruled out whom, who is paying for what, who has achieved substance. In this context, MEP's are in an uncomfortable situation. The bulk of achievements is reached with overwhelming majorities, leaving apart the fact that Parliament is composed by political groups. Thus, the usual confrontation between 'left' and 'right' does not appear in the public realm. The net which frames deliberation and decision-making processes in the Union is highly complex. Since the lines of confrontation are inter-institutional instead of partisanship, they tend to de-politicise conflicts and substance.

Given that the expansion in formal powers implies MEP's with a heavier burden of responsibility, they have to ensure that the culminated interests of the EU's citizenry are taken seriously. One possibility to 'measure' the influence of Parliament is to analyse the track of parliamentary amendments and to compare the success-rates of co-decision with those of co-operation or consultation. The empirical evidence about the EP's relative success at different stages and readings of the procedures (Maurer 1998: 42, partly reproduced in Hix 1999: 97) does not confirm the prediction by Tsebelis and Garrett (Tsebelis/Garrett 1997: 74-92) who argued that the introduction of codecision reduced the power of the EP (on the criticism against Tsebelis and Garrett see: Moser 1996: 56-62, Scully 1997: 233-252, Scully 1997a: 58-73, Scully 1997b: 93-103). Of the 86 joint texts agreed in conciliation during the 1999-2004 period, 17 % corresponded to the Council's Common position, 23 % were closer to the EP's amendments adopted at its second reading, and 60 % were genuine joint texts with EP amendments partly integrated into the final text (European Parliament 2004: 14).

The EP does not simply propose amendments, but it approves the draft legislative texts at every stage of the procedure ”with Parliament's amendments”. Consequently, Parliament acts as a joint author alongside the Council or – with regard to the first reading stage – the Commission during all phases of codecision. Thus, a second 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 European Parliament. One can distinguish between four cases:

- a final act corresponding to the Parliament's first reading which is defined as an act where the Council approves the EP's first reading draft without amending it;
- a final act corresponding to the Parliament's second reading which is defined as an act where the Council approves the EP's second reading draft without amending it;
- a final act corresponding to the Council's common position which is defined as an act where the European Parliament, in its second reading approves the Council's common position without amending it;
- a final act corresponding to the conciliation committee's joint compromise text which is defined as an act where the Council was not able to take over all parliamentary second reading amendments. In this case, conciliation becomes necessary and both the Parliament and Council produce a joint text subject to a third reading in both institutions.

During the 1994-1999 legislature, 73 successful pieces of legislation corresponded to the Council's common position, while only 31 were based on the EP's second reading and 63 cases on the joint compromise text agreed between Parliament and Council at third reading stage. During the 1999-2004 legislature, 118 legal acts were adopted on the basis of the EP's first reading, while 91 grounded on the Council's common position, 93 on Parliament's second reading and 86 on the joint compromise between the two institutions.

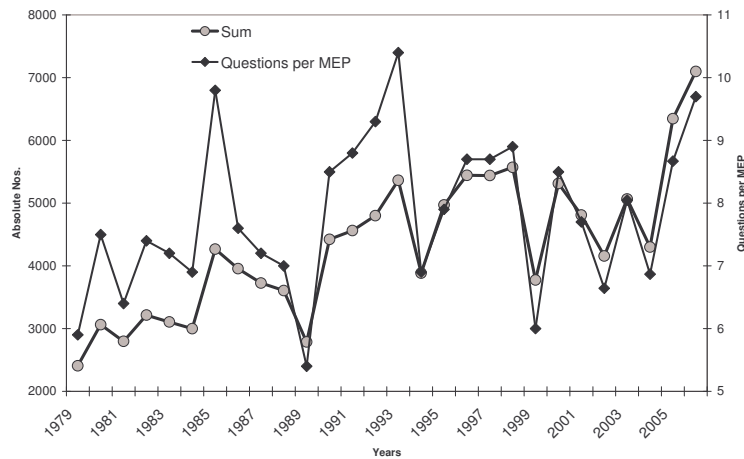
However, we should not jump to conclusions in interpreting these figures as a failure of the EP's influence. Firstly, even a legislative act which corresponds to the Council's common position is an act concluded with Parliament's agreement. Secondly, a legislative act corresponding to the common position of the Council does not automatically represent a legislative act where Parliament had any influence. Hence, the Council in its common position incorporates parliamentary first reading amendments and consequently, the Parliament does not propose new amendments in the second reading stage (Hubschmid/Moser 1997).

6. Exploitation II - More legislation does not increase parliamentary scrutiny

Does the increase of Parliament's workload with regard to its policy-making function induces a change in attention of its control function? Accountability is a key concept of western democracies. It „can be seen as a precondition for other components of democratic rule: it is political responsibility that ensures that the terms on which political power is authorised are duly observed; and it is the need for power-holders to compete for re-election that gives them an incentive to be responsive to the public” (Lord 1998: 80). The EP's traditional instruments for holding other institutions to account - parliamentary questions – are oriented towards the single MEP and political groups. Questions are one of the „freest procedures in modern legislatures”. They „give the individual MEP an excellent chance of promoting and defending those issues which he or she regards important” (Raunio 1996: 357). In other terms, questions also serve MEP's to present or to defend their perceived constituency's interest. Given the observed characteristics of a legislative and specialist parliament with regard to its policy-making function, questions can be regarded as a compensatory element for the individual and, with regard to the profile of MEP's, for the backbencher.

Due to the anticipated position and workload in EC legislation and thus to the expected restrictions on available plenary time, Parliament changed its internal rules already in 1993 to re-organise its working mechanisms for executing its control function. Since then three kinds of questions are allowed: Written questions tabled by any MEP are the most popular of the procedures, since there are no procedural constraints and Members are free to decide when to submit a written question. Questions for oral answer (with debate) can only be tabled by a committee, a Political group or 32 MEP's. These questions are filtered by the Conference of Presidents which decide on their admissibility and order. The reply to these questions may be followed by the adoption of a resolution. Again, only a Committee, a Political group or 32 MEP's may table such a resolution. Finally, questions in question-time can be tabled by any MEP but the President decides on their admissibility and on the order.

Graph 5: EP Questions 1979-2006



Author's own calculation on the basis of the Annual reports of the European Commission.

The oscillation of all three types of questions during a parliamentary term does not follow a clear pattern except that of direct elections. MEP's increase the frequency with which they table questions prior to direct elections. However, since the entry into force of the Maastricht Treaty, the two types of oral question have remained at a level of around 1000 and 250 respectively per year. Moreover, questions for oral answer are at a very low level and – given the increase in number of MEP's since 1995 (626 in relation to 518 since 1986) - clearly in decline. In contrast, it seems that written questions enjoy a growing interest among MEP's. As regards the destination of questions since November 1993, we observe a slight but constant growth in questions to the Council of Ministers. This interest in the Council started to increase in the early 90's, and remain stable since the coming into force of the Maastricht Treaty. Consequently, the newly introduced types of question with regard to the second and third pillars have not had a significant impact on the operation of Parliament's questions. Overall, the most original instrument of the European Parliament's control vis-à-vis the Commission and the Council has lost its attractiveness.

Another possibility for scrutiny exists in article 193 ECT providing for the European Parliament to set up temporary Committees of Inquiry in order to investigate "alleged contraventions or maladministration in the implementation of Community law". Parliament started its first inquiry at the beginning of 1996 with an examination of the EC's transit system.² In July 1996, the EP decided then to set up a second Committee on the BSE crisis which met 31 times during 6 months and presented its report in February 1997 (Shackleton 1997). The two committees of inquiry were successful in various ways. In spite of the lack of a judicial sanction mechanism in order to oblige witnesses to tell the truth, the two committees recorded the evidence and made it available to the general public. In doing so, the EP ensured that witnesses would be held to account by a wide audience outside the Parliament. Especially the BSE committee encouraged and enjoyed a significant press and media coverage (Shackleton 1997: 11).

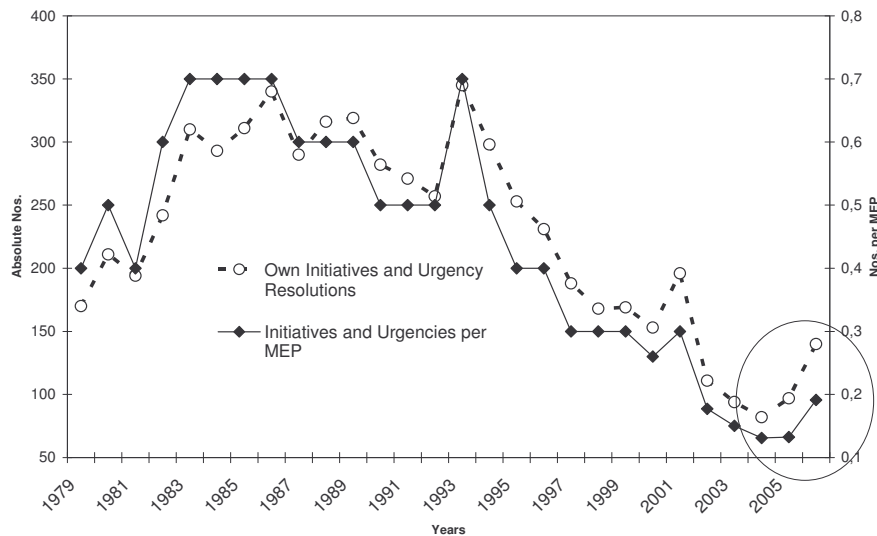
Due to a conditional threat of a possible motion of censure (Lord 1998), there was a direct and visible impact of the committees' work on the investigated institutions, namely the European Commission. In its resolution of 19 February 1997, Parliament warned the Commission, that if the recommendations of the BSE committee were not carried out within a reasonable deadline and in any event by November 1997, a motion of censure would be tabled. The threat of voting a motion of censure was a novelty for the European Union. It showed how the right of inquiry can be combined with other powers at Parliament's disposal. And Parliament's work mattered: Within the European Commission, the responsibilities of the Directorate General responsible for Consumer Affairs were widely expanded. In turn, the prestigious, but highly criticised DG for Agriculture was obliged to hand over seven scientific, veterinary and food committees as well as a special unit which evaluates public health risks. Most

important perhaps, the BSE inquiry also had a considerable impact on the outcome of the 1996/1997 IGC. It led to a fundamental change of the legal basis for EC legislation in the field of veterinary medicine. Article 152.4b ECT as amended by the Amsterdam Treaty held that "by way of derogation from Article 37, measures in the veterinary and phytosanitary fields which have as their direct objective the protection of public health", are to be decided pursuant to the co-decision procedure! The two committees of inquiry proved to be an effective additional means for the European Parliament's supervisory powers. The European Parliament demonstrated "its traditional pugnacious assertiveness of its rights and its ingenuity in exploiting constitutional grey areas" (Westlake 1997: 23). Article 6 of the Interinstitutional agreement holds that the rules "may be revised as from the end of the current term of the European Parliament in the light of experience". Given the two "test-cases" of the BSE- and the Transit-Committee, future negotiations between the institutions may focus on a sanction mechanism for Member States that refuse to co-operate in an inquiry. However, given the Council's – i.e. the Member States' – reluctance during the original negotiations on the agreement, the Parliament is not likely to gain additional powers.

7. Exploitation III - More legislation equals less individualised MEP work

Own initiative and urgency resolutions are an indicator for measuring the interest of MEP's in using different non-legislative scrutiny instruments offered to the EP. Initiative reports and resolutions reflect awareness and interest of individual MEP's in making an issue public to the outside world – towards the Union's citizenry but also towards the Council and the Commission. Given the historical lack of parliamentary powers in relation to participation in binding EC legislation, MEP's and political groups referred to the opportunity of own initiatives or urgency resolutions to give evidence of their general interests, their attention paid to a given issue or of their willingness to shape the policy agenda. For political groups, initiative resolutions are one of the core instruments which allow them to present their original point of view on a given issue. Even if own initiatives do not result in the adoption of new regulatory or distributive legislation, they allow MEP's and political groups to make prove of their collective – denationalised – interest in EU politics. Hence, in contrast to co-decision, where action against the Council (amendments to or rejection of its common position) requires the approval of an absolute majority (during the 1999-2004 legislature at least 314 votes), own initiative resolutions pass with the simple majority of votes cast. Accordingly, whereas co-decision condemns the two major political groups – the Party of European Socialists and the European Peoples Party – to reach agreement on parliamentary amendments which in consequence move the left-right cleavage apart from the agenda, own initiatives and similar resolutions provide each political group the opportunity to present their original socio-economic argument before the public. A major consequence of the shift towards EP legislative power and its effective execution is a strong decrease in the number of non-legislative resolutions, own initiative reports (inviting the Commission to forward legislative initiatives) and resolutions after statements or urgencies. The number of these activities fell sharply from 2,41 per MEP in 1979 to 0,15 per MEP in 2003! On the other hand, the longer trend of this parliamentary function reflects the impact of the 2004 enlargement. Hence, the ratio of initiative reports per MEP is increasing since that date, thus reflecting the concentration of new MEP from the CEEC towards this kind of policy control.

Graph 6: Initiative Reports and Urgency Resolutions 1979-2006



Author's own calculation on the basis of the Annual reports of the European Commission.

Graph 6 shows the evolution of parliamentary initiative and urgency resolutions between 1979 and 2006. What becomes observable is that the evolution of the total number of initiatives and urgencies correlate with the constitutional setting and development of the Community/Union over time. In this regard, the growth from 1984 to 1986 reflects Parliament's activity in relation to European Political Co-operation and – more important – to its attempts for moving the then EEC into a European Union. The introduction of the co-operation and the assent procedure (Single European Act) then resulted in a continuous decrease of own initiatives. Only the debates on the Maastricht Treaty reversed this trend. However, since the entry into force of Maastricht, the usage of initiatives is falling again continuously and dramatically. Moreover, if we take into account the growth of Parliament due to the enlargement of the Union towards Spain, 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 to 1995 respectively. In other terms: The growth in number of MEP's did not result in an increase of non-legislative activity of Parliament.

8. The European Parliament's Communication Deficit

Since 1993/1994 the codecision procedure has been implemented extensively. Clear focuses are observable in the areas of the internal market policy, environmental policy and parts of the EU's socio-economic agenda. The empirical analysis point to a specific process of EU-parliamentarisation in these policy areas. On the other hand, the exploitation of the EP's policy-making function induced a specialisation of MEP's and a segmentation of the EP into legislative and non-legislative Committees. MEP's active in policy-making become expert specialists in complicated matters. They present expertise and counterexpert's assessments to the Council's and the Commission's actors and argue about their political relevance and penetration into binding legislation. Indeed this potential is also given by the consultation procedure. However, providing and battling for expertise and counterexpert's assessments was barely used due to the ineffectiveness of parliamentary amendments in this procedure.

Overall, the institutional 'infinalité' of the EU treaties helped the EP to strengthen its potential of influence because it did not have to integrate itself into the stiff corset of a representative's chamber whose majority is obliged to the loyalty to the Commission or the Council. Differently: Just the absence of an institutional hierarchy otherwise usual in the EU member states between government and parliament permitted the EP to adapt its potential as a co-legislating and power-limiting

institution. The inclusion of the EP into the EU's legislative procedures had no negative effects on the efficiency of the whole decision making system. On the contrary: The power extensions of the EP in its policy-making function led all together to more efficient decision-making sequences, although the potential for interinstitutional conflict has increased between Council and EP (Maurer 2003: 239-241).

The increase of formal legislative powers of the EP induced a considerable shift of emphasis from the control function to the policy-making function, because policy-making claims more and more time and personnel resources. Under this point of view the investigation could prove that the parliamentary calendar downgrades the more original functions of the EP in the area of its control-function through questions, own initiative and urgency resolutions. Consequently, the possibilities of MEP's for mediating citizens' or constituency concerns are significantly reduced. This development should be considered as but one important reason for the low attraction of the EP with the EU's citizens. The policy-making function is not evolving as an incentive for the EU citizens to vote for the EP, because the possibility of party political aggregation of voter's interests within the EP remains complicated just in those phases of the EU's decision-making processes in which the EP can exercise its power vis-à-vis the Council.

The biggest mediation problem of the EP exists in a decisive rule of the EU treaties. The EP needs more than 50 % of the votes for adopting amendments in the legislative area. None of both big political groups manages this majority. Also in the sixth legislative period, the two groups are dependant on at least three further groups if they do not want to decide as a grand coalition. The treaty-based threshold constraints let the EP appear as a closed actor who is not able to transcend competing voter's interests into the day-to-day work. Both the Treaty constraints and the EP's practice thus provoke a structural competition and communication deficit.

One of the essential challenges for the EP future development follows from this mixed balance of the EP's functions: The search for mobilizing patterns to link the EP with those it claims to represent directly. Another increase in legislative power will not help to legitimize the increase of the EP's importance if the processes of interest articulation, interest mediation and interest penetration still run exclusively between institutions that can only be perceived as single actors in the abstract. An essential step to reinforcing linkage between the EP and the citizens could be made through a more open and self-confident use of the available conflicts of interests within Parliament as well as within the European political parties and other transnational aggregates of the civil society. The EP should start to use its potential as an arena and public space in order to assist the construction of transnational communication structures.

9. Explaining the European Parliament's growth

The EP's agenda in the system-development of the EU has been institutionally expansive - it has sought to maximise its role in future day-to-day decision-making configurations. The EP's own preferences about system-development should not, however, be considered in isolation from other actors' priorities. From an intergovernmentalist perspective the democratisation of the EU will occur where possible through processes which do not promote the supranationalisation of the EU. Yet if the intergovernmentalist perspective questions whether the EP is capable to pursue its own institutional expansion, whilst maintaining that member state governments promote supranationalisation only reluctantly, it struggles to explain the current form of "parliamentary democratisation" at the European level. This suggests either that Parliament's preferences for system-development do significantly overlap with those of the other actors involved in treaty change, or that the EP is capable of exhibiting a greater degree of leadership than it is given credit for by intergovernmentalists, or indeed both together.

From an intergovernmentalist point of view, the evolution of the EU system takes place through the short phases of IGCs as "big bargain decisions" (Moravcsik 1993, 473-524; Hurrell/Menon 1996,

386-402; Moravcsik/Nicolaïdis 1999, 59-85). From this perspective, the member states' governments are the dominant actors at the EU level – in daily politics as well as in treaty reform. At IGCs they make all the decisions on the reform of the institutional system on the basis of their fixed national interests. Supranational institutions have only been established and endowed with powers in order to help maximise the governments' national advantages, e.g. to resolve collective action problems and reduce transaction costs. However, the institutions remain at all times under the control of the member states. They implement the member states' decisions without having an autonomous reform agenda.

According to this analysis, the EP's material resources and the institutional set-up of 'grand bargaining' are non-conducive to its playing a strong leadership role, let alone its mobilising coalitions around its own, autonomous preferences. The EP would be identified as an actor able to steer political debates, to create tension in some parts of the agenda, to make issues public, but it is not a decision maker. According to this point of view the influence of the EP is limited, and thus it cannot explain the increase in power of the EP.

Yet system and institutional change in the Union do not exclusively take place at IGCs. Relations between Treaty reform and Treaty implementation are not one-directional, but characterized by "mutual interdependencies between and within the many levels of governance within the EU" (Sverdrup 2000, 249). Both the EP's leadership resources and the negotiation context must therefore be understood within a broader focus. Neo-institutionalists and structurationists argue that IGCs are just one step in the constitutional dynamic. In their broader vision of the institutional set-up of constitutional negotiations, the Parliament enjoys an autonomous and formative influence upon the agenda of IGCs that is overlooked by intergovernmentalists.

Neo-institutionalist explanations of institutional change of the EU systems challenge the view that member states' governments are the key actors that determine the constitutional development of the EU. Neo-institutionalists assert that a plurality of actors participate in the decision-making process. They acknowledge the role of autonomously acting supranational institutions that pursue their own reform agendas, as well as a dense cluster of governmental and non-governmental actors at all levels of the EU. At the core of their arguments is the claim that the scope for action of all these actors is defined by the institutions (informal and formal rules, procedures, or norms) in which the policy-making process is embedded (Pierson, 1998). Moreover, they view institutional change as a process unfolding over time. Restricting the analysis of institutional change of the EU to IGCs will only yield a snapshot of constitutional development.

Their model of the 'path-dependency' of policy preferences, institutions and procedures, policy-outcomes and policy-instruments (Pierson, 1998) suggests that, in such an institutionalised arrangement like the EC/EU, "past lines of policy [will] condition subsequent policy by encouraging societal forces to organise along some lines rather than others, to adapt particular identities or to develop interests in policies that are costly to shift" (Hall/Taylor, 1996: 941). Hence, every introduction of new rules constrains the decision-making options for all actors and the institutional change will incrementally develop along certain paths.

Importantly, therefore, this approach allows us to see the EP as an autonomous supranational actor with an independent reform agenda. Since its creation, the EP has been able to use the constraints and opportunities arising from the mass of decision-making procedures and the multitude of actors in the EU's policy making process to subject more and more policy fields to parliamentary control and legislation. This vision of the institutional set-up of constitutional dynamics indicates that the EP has been able to exploit the need for leadership in complex bargaining situations in order to pursue its own preferences (Maurer/Kietz/Völkel 2005).

Structurationist approaches to the evolution of the EU system (Christiansen/Jørgensen, 1999; Christiansen, 1998) come to similar conclusions. Like historical institutionalists they view the EU's

constitutional development since the very inception of the EC as an *unceasing process of incremental change* with a yet open end. They claim that instead of the member states' interests, the process of treaty reform during which these are constructed must be analysed. Following the notion of path dependency, the reform process is structured by pre-defined demands on the IGC, the convergence of beliefs about the outcome and the constraints and opportunities established by past choices.

Treaty reforms do not come out of the blue as a "deus ex machina" from some distant masters, but are reactions to prior trends. They "ratify" or "rubberstamp" institutional evolutions which have taken place within or outside the existing treaty provisions. They try to address institutional and procedural weaknesses identified during the implementation of previous provisions or aim at adapting the Union to new – external and/or internal – contexts (Christiansen and Jørgensen, 1999).

System-development takes place through incrementalism in a 'valley' of day-to-day politics. The resulting, incremental change suggests that treaty reform is subject to a wide range of actors (not only states) and to an unceasing process of discovering political preferences and "problem solving" in an unstable setting (Risse-Kappen 1996, 53-80). Member States identify their preferences not simply as a fixed set of demands, but also during the process of Treaty implementation and Treaty reform. The EP can then be located as an important actor able to influence the rolling agenda of the very process of system-development.

IAs are instrumental in gradually strengthening the EP. IAs do not simply implement Treaty provisions or lay down practical rules of cooperation. They provide the EP with powers not foreseen in the EU Treaties. And in some cases they provide the basis for future Treaty reform.

The analysis of the evolution of the EP's rights in comitology, legislative planning and in holding the Commission to account (Kietz/Maurer 2007) provides strong evidence. First, there is clear evidence that the EP uses its formal bargaining powers (stemming from the possibility to delay and reject legislation, appoint and censure the Commission and its budgetary rights) to wrest concessions from the other two main players in decision-making. In line with previous research⁶ we find that the common perception of interinstitutional conflict is the precondition for the conclusion of IAs which provide the EP with additional powers not foreseen in the Treaties. In the case of comitology this was the result of situations of legislative gridlock under co-decision and was often reinforced by the freezing of comitology funds, for example in the case of *Modus Vivendi* or the most recent agreement on comitology. The slow but gradual increase in the EP's influence in comitology is a clear function of its increased power in decision-making. For the other two areas – legislative planning and IAs governing the relationships between Commission and EP – the reason for conflict stemmed from the EP's increased power to hold the Commission accountable. In all three case studies the reason for the Council and the Commission to enter IAs with the EP was the necessity to end or at least ease the situation of interinstitutional conflict. In general terms, the period between the first rejection of a legislative proposal under the co-decision procedure in 1994 and the demission of the Santer Commission in 1999 proved crucial in the strengthening of the EP's bargaining power. In the negotiations of the framework agreement in 2000 and 2005 or when the EP pressed for amendments to the Comitology Decision, the EP was in a completely different negotiation position than at the end of the 1980s - its bargaining potential had largely increased.

There is also evidence for our second argument: In line with historical institutionalist explanations of constitutional change in the EU, IAs can be instrumental in Treaty reform. There is strong evidence for path dependency in IAs, for example, all four consecutive IAs governing the Commission-EP relations build up on each other and each takes the EP's competencies a step further. The case is even stronger for comitology, where IAs and the reform of secondary law, i.e. of the Comitology Decisions, are strongly linked.

6 Monar, 'Interinstitutional Agreements', n 2 above; Maurer, Kietz and Völkel, 'Interinstitutional Agreements in the CFSP' n 24 above.

However, although we can show evidence for informal and incremental institutional ‘development’⁷ or ‘sub-constitutional change’, assumptions on the gradual formalisation of informal practises laid down in IIAs, i.e. their codification in secondary and primary law, only hold for the case of comitology. Only in comitology were the powers handed over to the EP in the informal arena through IIAs also codified in secondary law (and will lead to Treaty amendments if the DCT is adopted). One explanation is that comitology is arguably the most crucial area for the EP’s agenda in legislative politics. It is the only area where the Treaties advantaged the Council over the EP by codifying the right to delegate and scrutinise the implementation of legislation which severely interfered with the EP’s power to co-legislate. Thus, the EP pursued a very consistent long term strategy of being placed on equal footing with the Council in the delegation and scrutiny of the implementation of legislation.

System-development appears to be the most laborious function of the EP, considering that the Parliament has to improve both its situation within the institutional framework and advance the community’s policies. System-development proves to function *à longue durée*. The EP still has to make use of its strategy of small steps and compromises with powerful partners. These compromises are, however, based on thin ice. A position of the EP, which is too inflexible and rigid, could obstruct further improvements. An attitude too weak, however, could prevent far-reaching solutions. To date, the European Parliament has not, used this possibility against major reforms or constitutional decisions, but rather showed a constructive attitude (Wessels 1996, 893).

The Parliament is capable of displaying a greater degree of leadership than it is given credit for by intergovernmentalists. Although the EP remains formally marginalised in the actual IGC processes, the process of constitutional reform must be viewed through a broader lens that takes into account both the ‘summits’ and ‘valleys’ of European integration. Exploiting its growing powers in day-to-day policy-making, the Parliament has employed system-developing strategies in order to improve resources it enjoys in negotiations, as well as to render the context of constitutional negotiations more favourable from its point of view.

Given the dynamic nature of the EU’s institutional structure it is unsurprising that the EP’s system-development strategy has developed over time. The mutually beneficial relationship between the Parliament’s resources in daily policy-making and those it enjoys in constitutional negotiations has permitted the EP to play a greater role in those negotiations. This has allowed it to turn its previously rather passive ideational role in constitutional negotiations into an active one. Similarly, its growing capacity to sanction and reward member states through its behaviour *outside* constitutional negotiations has allowed it to play a more active structural leadership role.

Conversely, the growth in its material resources and its capacity to play a decisive role in system-development appear in some respects to have actually reduced the Parliament’s scope to pursue its own, traditional preferences. In the public perception, MEPs are no longer democratic opponents of „EU bureaucracy“ but a part of the European political “establishment”. Has this gradual strategy of participation through gaining power turned the EP from a potential troublemaker into a tame partner? One thing is clear: Without personalising itself or defining its profile *vis a vis* the national actors - without establishing itself as an independent, political and politized actor - it is hard to make the EP’s role clear to citizens. By following a strategy of ‘containment’ towards the Commission and Council, the EP’s capacity to act increasingly resembles that of national parliamentary majorities, which have lost their profile *vis a vis* the governments which they have elected, except in crisis situations.

7 P. Pierson, ‘Not Just What, but When: Timing and Sequence in Political Processes’, (2000) *Studies in American Political Development* 14, 72-92.

Nevertheless - and although the extension of the EP's powers through the DCT was not one of the prime points of controversy during the ratification process – the more general question arises of whether the growth of the EP in the elaboration of the DCT contributed to the subsequent ratification crisis. The Parliament arguably exaggerated its material resources (legitimising function) in pushing for the Convention and slackened the principal-agent relationship with its electorate in the negotiations themselves. Whether the Parliament will turn out to have been a victim of its own success in mobilising coalitions around its own preferences in this round of constitutional negotiations, remains to be seen.

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- 1 Of the 348 approved acts, 236 cases were reached without convening the Conciliation committee out of which 157 were approved by Parliament without amending the common position of the Council. In the remaining 79 cases the Council accepted all of the second reading amendments proposed by the EP. 112 common positions were subject to conciliation and joint compromise texts of both the Parliament and the Council.
 - 2 The transit regime of the EC is a system whereby goods coming into the EC are exempted from tax until they reach their country of destination inside the EC or cease to be liable on leaving the EC’s territory.