

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT **C**
CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS

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**The European Parliament
as a driving force of
constitutionalisation**

STUDY FOR THE AFCO COMMITTEE

DIRECTORATE GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT C: CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS

CONSTITUTIONAL AFFAIRS

THE EUROPEAN PARLIAMENT AS A DRIVING FORCE OF CONSTITUTIONALISATION

STUDY

Abstract

This report analyses the increasing role played by the European Parliament (EP) in the EU decision-making process. In the first part (Sections 2, 3, 4 and 5), it describes how the EP acquired more power in legislation, comitology, in the appointment of the European Commission and in the budgetary field. In the second part (Sections 6 and 7), the report illustrates the EP's role in two relevant policy fields: economic governance and external trade agreements.

The report demonstrates that EP's formal and informal powers in legislation, comitology, Commission investiture, the budgetary process, economic governance and international agreements have increased strikingly since the Treaty of Rome. This empowerment is partially explained by the concern for democratic legitimacy on the part of some member states' (and the Commission). To another important part the empowerment may be explained by the fact that treaties frequently contain ambiguous provisions and thus allow room for informal rules to emerge through bargaining specifying the details of treaty provisions.

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EXECUTIVE SUMMARY¹

In recent decades the European Parliament (EP) has been extremely skilful in pushing forward its institutional agenda in the direction of a parliamentarisation of the European political system. Parliamentarisation is an important component of the constitutionalisation of the European Union (EU).² We define it as the process where a polity moves increasingly in the direction of government based on the support of a majority of members of a democratically elected parliament. The majority of representatives in the parliament then elect and support the government, which in turn is accountable to parliament. In a parliamentary system the parliament is responsible for legislation in all areas of decision-making including budgetary powers both as regards revenues and expenditures. In legislative and budgetary matters the government/executive and its supporting majority in parliament has to face the critique of the opposition parties in the legislature.

From the outset the European polity included the Council of Ministers as a legislator, composed of ministers of democratically elected national governments. The assembly, later the directly elected EP, constitutes the other legislator. Over time the EP has grown from a minor partner in the legislative procedure to a full co-legislator with the Council of Ministers. The members of the Commission are proposed and elected by member-state governments, and the EP confirms the Commission as a whole. From the outset the EP has had a right of political supervision over the Commission, whereas it has only gradually developed a role in influencing the composition of the Commission. Today the EP plays an important role in the investiture of the Commission. From the outset the Council and member-state governments played a prominent role in secondary legislation, or Commission rule-making, i.e. specifying the details of how primary legislation should be implemented in member states under the comitology system. Today the EP is almost a co-equal partner with the Council and member-state governments in the rule-making process of the Commission for secondary legislation. Over time the EP has gained increasing competences in the budgetary process as regards expenditures, non-compulsory and compulsory, if not as regards "own EU resources".

How can we explain the fact that the EP over time gained such important powers in the legislative process, the investiture of the Commission, in the area of the Commission's implementing powers as well as in the budgetary process? How are these powers reflected in the substantive policy areas of financial and economic governance and external trade agreements? And how do these extended powers relate to an increasing parliamentarisation of the European polity? One key answer is that obtaining the role of co-legislator with the Council was crucial in developing the EP's powers in all these areas.

THE ROLE OF THE EUROPEAN PARLIAMENT (EP) IN LEGISLATION, FROM CONSULTATION TO CO-DECISION: THE NORMAL LEGISLATIVE PROCEDURE³

What were the main forces driving the expansion of the EP's rights in legislation from consultation to co-decision? From a process perspective we argue that the EP on the basis of a given formal institutional rule negotiated informal rules extending its power. Frequently it was able to obtain the formalization of the informal rules.

In the period examined the EP has come a long way in expanding and strengthening its legislative powers until it has become a co-equal legislator with the Council of Ministers. The engine driving this expansion was the EP's determination to strengthen its own role by re-negotiating ambiguous insti-

¹ We are indebted to Paolo Ponzano for critical and constructive feedback on our analysis.

² Constitutionalisation could also take the form of presidential democracy.

³ This section is to a large extent based on Héritier 2007, chapter 4.2.

tutional rules to its advantage by 1) engaging in cross-arena linkage, i.e. supporting a policy issue in one arena only under the condition of obtaining more competencies in another arena; 2) using problem pressure in order to expand its role and strengthen its institutional powers; 3) successfully invoking its importance and democratic legitimacy as the only directly elected political institution in the EU legislative process; 4) cooperating with national parliaments in trying to take influence on treaty revisions and 5) in some cases successfully invoked an ECJ ruling in order to strengthen its competencies.

CHANGING THE RULES OF COMITOLGY: MORE COMPETENCES FOR THE PARLIAMENT⁴

Initially the EP played no role in the comitology system. Today the EP has a co-equal right to object to Commission rule making and to shape the comitology decisions with the Council. How did these changes come about?

The successful strategies it used were: the renegotiation of ambiguous institutional rules in order to assert its power; two strategies have been particularly important: cross-arena linkage and invoking third party dispute resolution, more specifically, when the EP put pressure on both the Commission and the Council, and threatened to withhold its support for a substantive legislative matter in the co-decision and/or budgetary arenas, it was able to indirectly influence the shaping of comitology rules; in case of a conflict with the other institutional actors as regards the interpretation of an ambiguous institutional rule, it turned to the ECJ in the hope of seeing a settling of the conflict in its favour.

NOMINATING THE COMMISSION

The EP's powers to appoint and invest the Commission has developed from nothing at all, to encompass the investiture of the Commission (in the Maastricht Treaty) and the 'election' of the Commission President in spite of initial opposition of a considerable number of member states.

When considering the process through which the EP's powers to appoint and invest the Commission have emerged and developed, we are faced with several intriguing puzzles. Indeed, it is difficult to understand why the EP's formal power in this respect has developed from nothing at all, to encompass the investiture of the Commission (in the Maastricht Treaty) and the 'election' of the Commission President (in the Lisbon Treaty), despite a considerable number of member states being initially opposed to such an increase. Similarly, the fact why the Commissioners were willing to present themselves individually to the EP for hearings is puzzling, particularly since the Commission and the Council were resisting this sort of practice; and how the EP political groups managed to present alternative candidates for the Commission presidency against the initial opposition of powerful member states.

We show that treaties, because they are incomplete and ambiguous, allow room for informal rules to emerge through bargaining with the EP often being the winner in the process. It also shows that the Commission is often an ally of the EP in increasing the latter's power in the nomination – as the Commission has much to gain from increasing its 'democratic legitimacy'. This is a potentially useful Commission resource for strengthening its own position when facing the European Council. Such changes will be often formalised by member states, when they agree that such a formalisation is in their interest to do so or when such a formalisation appears to be an acceptable compromise between the less integrationist member states which would accept a new Treaty provision that merely formalises an existing practice and most integrationist member states which saw granting more power to the EP as their priority.

⁴ This section is largely based on Héritier 2007; and Héritier, Moury, Bischoff and Bergstrom 2013

THE EP IN THE BUDGETARY PROCESS

When first created the EP only had the power to approve the budget or amend it and the Council could reject the changes by qualified majority voting (QMV). Today, the EU finances are decided by different sets of rules, in which the EP's prerogatives vary. Annual budgets are jointly decided by the Council of Ministers and the EP; but both have to respect the ceilings of expenditure set by the multi-annual financial framework (MFF). MFFs are passed by the Council by unanimity, after obtaining the consent of the EP. How to finance this budget (the 'own resources' issue) can only be modified by a decision of the Council deciding by unanimity after having consulted the EP – a decision that should be ratified in each member state. Discharge of the Commission's execution of the budget shall be granted by the EP in the budgetary areas, thus, we witness a partial, clear trend towards parliamentarisation: while the EP has no power over the EU's own resources and revenues, it co-decides the annual budget and, informally, the multi-annual budget planning and holds the executive (i.e. Commission) accountable.

The evolution of EP competences in budgetary issues differs from other policies in two ways. First, it is not an area in which EP prerogatives have increased steadily over time. If we compare the current budgetary rules to those specified in the Treaty of Rome, then the EP has indeed been empowered. The EP gained the right to 'co-decide with the Council' on annual budgets, to reject the entire annual budget or any supplementary budget by a simple majority and the exclusive right to grant a discharge to the Commission with respect of the implementation of the budget. However, on balance the member states still have an edge, notably on the revenue side. Furthermore, many scholars have put forward arguments claiming that the Lisbon Treaty actually weakened the EP's powers as compared to the previous rules. A second specific feature of the budgetary policy is that most institutional change has taken place without Treaty reforms: Treaty provisions governing the budget have remained unchanged for over thirty years (from the Brussels Treaty of 1975 to the Lisbon Treaty). During this period, however, the EP, the Council and the Commission have signed several interinstitutional agreements including procedures and rules that fundamentally altered the budgetary process.

THE ROLE OF THE EP IN ECONOMIC GOVERNANCE

Since the entry into force of the Lisbon Treaty in December 2009, the European Parliament's (EP) competences in the field of economic governance have primarily been based on Art. 121.6 TFEU. It grants the EP co-decision rights for multilateral surveillance "to ensure closer coordination of economic policies and sustained convergence of the economic performances of the Member States" (Art. 121.3 TFEU). Based on Art. 136, the same applies to provisions relating specifically to members of the Eurozone (Fasone 2014: 171).⁵

The introduction of the ordinary legislative procedure (OLP) in this area replaced the cooperation procedure, which allowed the Council to adopt a legislative proposal unanimously despite the rejection of the EP. This formal increase of the EP's competences in the Lisbon Treaty became effective at the onset of the European sovereign debt crisis⁶. The Treaty provisions constituted the legal basis for the community response to the crisis. For the EP, this implied not only a formal empowerment, but also a substantial increase of workload and requirements of new expertise as well as decision-making output in economic governance. In short, simultaneity of the entry into force of the Lisbon Treaty, making the EP co-legislator in almost all areas, and the outbreak of the Eurozone crisis can thus be

⁵ As regards monetary policy, Art. 284.3 makes the European Central Bank (ECB) accountable to the EP. First, the ECB must present an annual report on its activities and monetary policy to the EP. Second, the President of the ECB and the other members of the executive board may be heard by the competent committees of the EP.

⁶ In the following 'Eurozone crisis'.

seen as the reason for the considerable and sudden increase of the EP's activity in the field of EU economic governance.

Moreover, the Eurozone crisis and the new European economic, fiscal, and financial policy it brought about implied a general power shift to the European level. In response to the crisis, all EU institutions obtained new powers. Hence, the EP's role can only be assessed in relation to the gain in power of the other institutional actors. At the same time, in a multi-level polity, the legislature at the European level has to take into account the input from national politics of member states.

The conjunction of the coming into force of the Lisbon Treaty and the outbreak of the Eurozone crisis strengthened the EP because suddenly it had become co-legislator in the area which was at the centre of attention and where new rules were urgently needed. Moreover, the sovereign debt crisis had led to a politicisation of economic governance. Among other things, this induced the EC to collaborate more closely with the EP as the only EU institution directly elected by European citizens.

As regards the role of the EP as a driver of parliamentarisation, what emerges is that the EP was able to strengthen its power to hold the executive accountable. The EP must now be informed – and sometimes even consulted – by the EC and it can invite the EC, national ministers, and the Presidents of the Council, the Eurogroup, and the European Council to an Economic Dialogue or Exchange of Views. These are institutional powers the EP has gained through the crisis, but that were not formally provided for by the Lisbon Treaty. Thus, this constitutes an interstitial institutional change which has been negotiated between the institutional actors after the adoption of formal decision making rules of economic governance. It also gained a role in assessing the implementation of country-specific recommendations, which would be the task of the executive. The same is true as regards the Economic Dialogue with the President of the Eurogroup, which understands itself as an intergovernmental body and therefore held accountable by the national parliaments.

In short, the EP has been successful to some extent in shaping legislation and generating public debate in economic governance, but its formal role in the coordination and surveillance of the largely intergovernmental EU economic governance is still modest. It has tried to compensate this by political activity in legislation and the attempt to hold the EC and ECB accountable. Nevertheless, based on the intergovernmental foundations of the EU economic governance, the EP has remained largely excluded from all areas which touch the actual application of national budgets, namely the ESM and the Single Resolution Fund.

THE ROLE OF THE EP IN EXTERNAL RELATIONS

The Lisbon Treaty and the Inter-institutional Agreement between the Commission and the European Parliament (EP) strengthened the EP's role in international agreements by giving it the right to ratification and the right to information at all stages of negotiations. Since the Lisbon Treaty came into force in December 2009, the EP has broadly expanded its informal role in the negotiation of international agreements. Its role now goes beyond the provisions stipulated in the Lisbon Treaty and the Inter-institutional Agreement, and even the role of national parliaments in international agreements. Over time, among the EP's main achievements have been to gain access to limited and classified documents, to be debriefed before and after each round of negotiations, to influence the substance of the negotiation directives and the final agreement, to enter into direct contact with the negotiation partner, and to suspend the provisional application of negotiations. Since the negotiations on a Transatlantic Trade and Investment Partnership (TTIP), the EP has been active at all stages of negotiations, including those not limited to voting on the agreement: negotiation directives, negotiation rounds, ratification, and implementation. The EP's activities encompass formal and informal instruments, the most powerful being the right to ratification, the release of resolutions, and the demand

for opinions by the LIBE Committee and the European Court of Justice. EP internal organization and collaboration with third actors such as NGOs, experts, and international institutions have been important informal instruments. The EP's influence on the negotiations varies between the agreements and is linked to the EP's various activities. The EP was most active in the Anti-Counterfeiting Trade Agreement (ACTA) and TTIP, whereas in the EU-Singapore free trade negotiations the EP did not even exhaust its formal instruments. The EP's degree of activity seems to depend on the salience of agreements and on the effectiveness of the EP's internal organization.

CONCLUSION

In this report, we have tried to explain how and why the EP has been empowered in a way that has 'parliamentarised' the European polity. We focused on six areas: legislation, comitology, Commission investiture, the budgetary process, economic governance and international trade agreements and show how EP competences have increased over time and now resemble those of the most powerful member-state parliaments. We have also illustrated the strategies used by the EP to influence policies and rules to its own advantage.

A first point to make is that the EP's formal and informal powers have increased over time in all six areas.

As regards legislation, first, the EP's role has grown from that of mere consultation to co-legislation or veto in most areas.

Second, the EP initially played no role in secondary legislation – i.e. the specification of how primary legislation should be implemented (in the TFEU, implementing acts); or even completed, amended or deleted (delegated acts). Since the Lisbon Treaty, the EP can – for delegated acts – revoke the delegation and/or cancel the acts (so can the Council).

Third, while the role of EP as regards Commission nomination was inexistent under the Treaty of Rome, the Commission is now subject to a collective vote of investiture, held after individual hearings of candidate commissioners. Moreover, the Commission president must be approved by the EP before forming its team; and the current one has been chosen by member states amongst candidates put forward by the European political parties.

Fourth, the increase in the EP's competences in the budgetary processes as regards the expenditure side, although irregular, has improved markedly since the Treaty of Rome - from a very limited role to the power to co-decide budgets with the member states and the right of discharge. It, however, has not made headway as regards the revenue or own EU resources side.

Fifth, as regards the role of the EP in economic governance the Lisbon Treaty provides it with legislative co-decision rights; and in recent years it has managed to obtain information and sometimes consultation rights as regards the coordination and surveillance of national budgets.

Sixth, the Lisbon Treaty also gave the EP a veto on most international agreements; and today it is regularly and fully informed about all stages of negotiations and is able to influence the content of the agreements.

The empowerment of the EP is something of a puzzle if we consider that a considerable number of member states – which have a veto on Treaty modifications- were initially opposed to this empowerment. The first reason for this empowerment (particularly in the early stage of the European project) is the concern of some member states' (and the Commission) about democratic legitimacy. Over time, furthermore, there has been a process of normative socialization that has changed the preferences of, or made it difficult for, member states to deny an equal footing with the Council to the only

directly elected political body in the European project. The principle that loss of control by national parliaments should be compensated by a corresponding empowerment of the EP was thus a powerful bargaining mechanism for both pro-integration member states and the EP.

However, the report clearly shows that changes can also take place against member states' wishes. For example, there was the Commission's and Council's initial and vehement opposition to the idea of individual hearings. Our main finding in this report is that the Treaties allow room for informal rules to emerge through bargaining. This is because Treaty provisions are frequently ambiguous, i.e. they constitute incomplete contracts, and in some cases the EP has simply exploited the fact that a Treaty did not explicitly prohibit certain actions. As we have seen, the EP is often the winner in this bargaining process. This is mainly because the EP – especially — but not exclusively since the granting of budgetary and legislative veto powers — has the capacity to block or delay political processes. Unlike office holders in the Council and Commission, MEPs have often been willing to forgo short-term policy benefits in exchange for longer-term institutional empowerment.

Moreover, the EP was skilful in linking areas, i.e. using its formal veto in one arena to create leverage in another in which it has no formal power. For instance, in economic governance, the EP exerted its influence in all six legislative acts of the six-pack, although its formal right as co-legislator only applied to four of them. Another example regards how the EP using its early budgetary powers to obtain influence in legislation or comitology. We also illustrate how the EP has made skilful alliances to increase its prerogatives, particularly with the Commission (as in the case of the vote of confirmation of its president) or with some member states in the Council (for instance, with Southern member states to increase its budgetary prerogatives). The EP also allied with national parliaments (particularly to convince the European Council to protect or increase the EP's prerogatives in Treaty changes) or NGOs (in negotiations over international agreements). It often brought (or threatened to bring) actions to the ECJ when it considered that its rights had been violated. Additionally, the EP successfully sought to bring about a concurrence between the duration of budget plans as well as the duration of office (in the Commission) with the duration of the EP legislatures, which is an important feature of a parliamentary democracy.

Most of the informal changes, which emerged between treaty revisions, were subsequently formalized. For example, the Lisbon Treaty formalizes the multi-annual financial framework created in 1988 and abolishes the classification of expenditure into compulsory and non-compulsory.

What do these formal and informal changes mean in the light of an increasing parliamentarisation of the EU polity? The report defines this as a process which allows a polity to develop increasingly in the direction of a government based on the support of a majority of members of a democratically elected parliament, where the government/executive is politically accountable to the legislature, and where the legislature holds the purse-strings for both revenues and expenditures. In legislative and budgetary matters the government/executive and its supporting majority in parliament has to face the critique of the opposition parties in parliament.

We may conclude that there are some features of parliamentarisation in the EU to the emergence of which EP contributed, but other features are absent:

- With the advent of co-decision-making as the ordinary legislative procedure, the EP together with the Council, is now responsible for legislation in almost all areas.
- However, there is no organized opposition in the EP to systematically criticize the Commission as would be the case in a parliamentary democracy with the opposition criticizing the government.

- Moreover, the Commission holds the formal right of legislative initiative, not the EP as would be the case in a parliamentary democracy.
- With an important role in the control of the implementing powers of the Commission (former comitology) the EP has carved out an important role for itself in specifying legislation.
- Parliamentary features in the sense of co-decision of the EP are missing in the budgetary process on the revenue side. In the decision on who supplies EU financial resources, the member states are still clearly in the driving seat.
- With the increasing role in the investiture of the Commission and the '*Spitzenkandidaten*' strategy it has taken steps in the direction of a government/an executive elected also by the EP, not only by the Council. However, the head of the executive does not have to be a member of the parliament as the prime minister is in a parliamentary democracy. Moreover, the executive does not solely depend on the support of a majority in the EP, but as well on the support of the European Council/member governments.

1 INTRODUCTION

In recent decades the European Parliament (EP) has been extremely skillful in pushing forward its institutional agenda in the direction of a parliamentarisation of the European political system. Parliamentarisation is an important component of the constitutionalisation of the European Union (EU).⁷ We define it as the process where a polity moves increasingly in the direction of government based on the support of a majority of members of a democratically elected parliament. The majority of representatives in the parliament then elect and support the government, which in turn is accountable to parliament. In a parliamentary system the parliament is responsible for legislation in all areas of decision-making including budgetary powers both as regards revenues and expenditures. In legislative and budgetary matters the government/executive and its supporting majority in parliament has to face the critique of the opposition parties in the legislature.

From the outset the European polity included the Council of Ministers as a legislator, composed of ministers of democratically elected national governments. The assembly, later the directly elected EP, constitutes the other legislator. Over time the EP has grown from a minor partner in the legislative procedure to a full co-legislator with the Council of Ministers. The members of the Commission are proposed and elected by member-state governments, and the EP confirms the Commission as a whole. From the outset the EP has had a right of political supervision over the Commission, whereas it has only gradually developed a role in influencing the composition of the Commission. Today the EP plays an important role in the investiture of the Commission. From the outset the Council and member-state governments played a prominent role in secondary legislation, or Commission rule-making, i.e. specifying the details of how primary legislation should be implemented in member states under the comitology system. Today the EP is almost a co-equal partner with the Council and member-state governments in the rule-making process of the Commission for secondary legislation. Over time the EP has gained increasing competences in the budgetary process as regards expenditures, non-compulsory and compulsory, if not as regards "own EU resources".

How can we explain the fact that the EP over time gained such important powers in the legislative process, the investiture of the Commission, in the area of the Commission's implementing powers as well as in the budgetary process? How are these powers reflected in the substantive policy areas of financial and economic governance and external trade agreements? And how do these extended powers relate to an increasing parliamentarisation of the European polity? One key answer is that obtaining the role of co-legislator with the Council was crucial in developing the EP's powers in all these areas.

First of all, the legislative procedure and the role of the EP as a legislator coequal with the Council of Ministers is a key aspect of a political system in a process of parliamentarisation. If a parliament only has limited legislative powers, then the necessary conditions for a parliamentarisation do not exist. How then did the EP gain an ever-increasing role in European law-making? And once obtained, how did it use these co-decision-making powers to gain broader competences in other areas of decision-making? Since co-decision plays a key role in explaining why the EP gained increasing institutional powers in the investiture of the Commission and in comitology, and the budgetary process⁸ as well as in the other areas examined in this study, in particular budgetary powers, we first focus on the changing role the EP in the legislative procedure.

⁷ Constitutionalisation could also take the form of presidential democracy.

⁸ The conciliation process in the budgetary process in turn helped the EP gain a more important role in the legislative process and in comitology.

2 THE ROLE OF THE EUROPEAN PARLIAMENT (EP) IN LEGISLATION, FROM CONSULTATION TO CO-DECISION: THE NORMAL LEGISLATIVE PROCEDURE⁹

KEY FINDINGS

- What were the main forces driving the expansion of the EP's rights in legislation from consultation to co-decision? From a process perspective we argue that the EP on the basis of a given formal institutional rule negotiated informal rules extending its power. Frequently it was able to obtain the formalization of the informal rules.
- The following strategies were used:
- If the interpretation of an ambiguous institutional rule gave rise to an inter-institutional conflict, the EP would address the ECJ in order to obtain a ruling in its favour.
- Exogenous problem pressure, such as the completion of the internal market and monetary union, exerted pressure to redesign the institutional design allowing for more decision-making competences of the EP.
- In particular after the direct election of MEPs the direct democratic legitimation of the EP was used as a normative argument to democratize the EC/EU.
- By using a cross-arena linkage strategy, the EP successfully linked the support of a decision in one arena in which it has formal decision competences to wield influence on decision outcomes in another arena in which it has no decision competence.

In a period of over fifty years the institutional rule that initially gave the EP a merely consultative role in the legislative procedure changed into a rule that established the EP¹⁰ as a co-equal legislator with the Council of Ministers under the co-decision procedure. The main forces driving the expansion of the EP's rights from consultation to co-decision has been the ability of the EP to *use given formal ambiguous institutional rules* and in the course of their application to re-negotiate them and thereby extend its powers, leading to informal institutional rules which were often formalised subsequently or which continued to be applied *de facto*. To give just one example, in the phase from the European Economic Treaty (EEC 1957) to the Single European Act (SEA 1986) where the EP's rights were extended from consultation to cooperation, it exploited the Treaty provisions to the fullest and gained influence by delaying its opinion in the decision-making process and by applying a veto in budgetary issues. When this generated conflict between the Council and the EP, the question was transferred to the European Court of Justice (ECJ), which in the Isoglucose case decided in favour of the EP. The EP also formed alliances with individual member states in order to obtain broader competences under the SEA.

Another driving force behind the expansion of the EP's powers was *exogenous problem pressure* which induced actors to redesign the formal institutional rules. Thus, the completion of the internal market and monetary union and various rounds of enlargement triggered rounds of redesigning Treaty rules. Since these institutional rules are mostly incomplete, i.e. they do not specify precisely how the rules should be applied in all future contexts, the daily application of these rules engenders new informal

⁹ This section is to a large extent based on Héritier 2007, chapter 4.2.

rules which may be confirmed in a bargaining process in the context of the unanimity rule in a subsequent round of rule revision. The EP was also the institutional actor which advocated the Convention method early on, and which enabled it to play a role in redesigning new Treaty rules.

Yet another important driving force accounting for the expanding power of EP in the EU's institutional architecture, that is, steps in the direction of a parliamentary system with stronger rights *vis-à-vis* the executive is, is a process of normative socialisation in the course of which the democratic legitimation argument convinced the Council and the Commission to yield more power to the EP. As the only directly elected political body the EP could refer to its direct democratic legitimation. Frequently, legitimation arguments and functional causes of deepening of integration, such as in the Single Market Programme, were linked in the bargaining process. Thus, some member states were only willing to shift the competences necessary to complete the internal market to the supranational level if this shift was connected to a strengthening of the power of the EP. In what follows we will explain exactly how the EP expanded its powers in the legislative process of the European polity based on the mechanisms driving change.

2.1 From consultation to cooperation

Under the EEC Treaty (1957) the EP had a limited, consultative, role in the adoption of Community legislation. The legislative power lay entirely in the hands of the Council of Ministers.¹¹ Twenty-two articles of the EEC Treaty and eleven articles in the Euratom Treaty, stipulate how the Council was obliged to consult the EP before the adoption of legislative proposals. When consulted, the EP did not have to formulate its opinion by a specified/pressing deadline (Corbett et al. 2000: 176). Soon the EP set out to press for an extension of the consultation procedure to a wider range of issues, i.e. 'all important problems' (Corbett et al. 2000: 177). In 1960 the Council obliged and added the opportunity for 'voluntary consultations', and in 1964 it extended the consultation beyond 'important problems'. By the mid-1970s, the Council consulted the EP on all legislative proposals (Corbett et al. 2000: 178).

Following the first Community enlargement in 1973 with the accession of Denmark, the UK and Ireland, the Paris Heads of Summit called for the EP's power of control to be strengthened and for an improvement of the relations with the EP. The Council committed itself to consult the EP on Commission proposals provided that it issued its opinion within an appropriate period of time. The Commission also stated its willingness to consult the EP on all proposals (Corbett et al. 2000: 178).

In 1979 the first direct democratic elections of the EP strengthened its position *vis-à-vis* the Council and the Commission. The EP immediately set up a subcommittee for 'institutional problems' in the Political Affairs Committee and proposed a number of institutional reforms *within* the context of the existing treaties. The overall goal was to come to 'joint agreements' which would allow the EP to share in the exercise of powers attributed to the other institutions (Corbett 1998:132). More specifically, the EP issued a resolution demanding that the Commission should consult the EP on all drafts of legislation before making a formal proposal to the Council; that the Commission should alter its proposal following the amendments made by the EP; that the Council returns to QMV (in the wake of the Luxemburg compromise); that the Council honours commitments made to the EP during the consultation process; and that the conciliation procedure (see also chapter 5 in this report) which applied in budget issues should be extended to all proposals that the EP deems important. While the Commission's response to these demands was generally favourable, the Council only promised to keep the EP regularly informed.

¹¹ In the words of one EP official: "Council ...treated Parliament with complete disdain and disregard. Each new Council President would hardly [bother to] turn up in Parliament"(quoted in Boucher 2006).

In 1981 the Colombo–Genscher initiative between Germany and Italy tried to relaunch the impetus of European integration and accommodated many of the institutional reforms proposed by the EP. In 1983 the Stuttgart Solemn Declaration proposed the creation of a European Union; this plan had also been developed by the EP, independent of the Colombo–Genscher initiative (Beach 2005: 36) and met some of the EP's proposed institutional reforms, although to a far lesser extent than the EP had hoped.

Recognizing the limits of a strategy of institutional self-promotion through simply advocating the expansion of institutional rights *within* the existing formal rules, the EP changed gear and began to exert stronger political pressure on the Council and the Commission. It started to use a strategy of delaying its opinion on legislative items. In the absence of a specific time limit set for the EP to deliver its opinions, the EP could stress its demands for a more extensive interpretation of its formal rights.

The EP had yet another, albeit indirect, means with which it could exert pressure to achieve an extension of its legislative consultation rights: by using its budgetary powers (see also chapter 5 in this report). In 1975, a conciliation procedure had been introduced to reduce conflicts between the Council and the EP that emerged in the context of the EP's new budgetary powers. The budgetary rules created in the 1970s had been formulated vaguely, thus providing distinct incentives and opportunity structures for the actors that operating under them: the EP consistently challenged them (Rittberger 2003, 2004). Basically a practice had developed under which the EP could prevent the implementation of legislation with budgetary implications. Hence in a Joint Declaration of 1975 the Council agreed to a conciliation mechanism to reduce a risk of non-agreement (Corbett et al. 2000: 181).

In using delay as a means of pressing for an extension of its consultation rights, the EP clashed with the Council over the Isoglucose Directive. Since the EP was slow in giving its opinion on the decision, the Council moved ahead and made a decision on the directive. The EP appealed to the ECJ which annulled the Directive on the grounds that the EP had not given its opinion. It argued that through the consultation of the EP 'the people should take part in the exercise of power through the intermediary of the representative assembly' (quoted in Corbett et al. 2000: 179). The Isoglucose ruling gave the EP an important instrument to emphasise its institutional demands in cooperation with the Council and the Commission.

In sum, in the 1960s and early 1970s the Commission and the Council seem to have voluntarily agreed to an extension of the scope of application of the consultation rule, giving in to the institutional self-promotion and demands of the EP. Throughout this period the EP was supported by the general call for a stronger democratic legitimation of European decision-making. The exogenous event of enlargement with new members supporting the power of the EP, and the project to complete the internal market favoured a reconsideration of the existing institutional rule governing the role of the EP in legislation. Finally the EP started to link its extensive interpretation of its existing right of consultation to a wider range of issues to a threat to delay the delivery of its opinion on a legislative draft (Corbett 1998).

In a next step to obtain more extensive institutional changes, the EP started to target a Treaty revision. The Crocodile Club, originally set up by the independent MEP, Altiero Spinelli, won broad cross-partisan support for the project, and called for far-reaching institutional reforms to strengthen the power of supranational organisations. In 1984 the EP adopted a proposal for Treaty reform (Draft Treaty on a European Union, DTEU). At the same time member-state governments established the Dooge Committee to discuss a possible reform of the legislative process. Both the EP's draft and the proposal made by the Dooge Report contained similar proposals, such as an extension of QMV, strengthening the Commission, the EP appointment of the Commission by the EP, and co-decision by the Council/Commission and the EP.

Under Delors' leadership and the revival of the integration process under the Single Market Programme, the EP called for an IGC to reform the Treaty. Under the Italian Presidency the question of an IGC – contested among Member States – was put to a majority vote, a very unusual practice, and was accepted. In the process of Treaty reform as such the EP did not participate, but was merely informed about the outcome of the negotiations. The introduction of the new cooperation procedure in the legislative process applying to nine articles was favoured by a majority of member states and the Commission. All EP amendments during second reading were to be submitted to the Council, even if not approved by the Commission. Those not adopted by the Commission could only be adopted by a unanimous vote in the Council. In view of the EP's high hopes in its DTEU, this outcome was rather disappointing.

2.2 From cooperation to co-decision

After the adoption of the SEA, the EP soon called for another IGC, alongside the EMU IGC, to establish a 'federal type' Political Union, extending the powers of the EP, and in particular, introducing co-decision. In 1990 the European Council agreed to organise a second IGC. Since the EP does not have a formal role in an IGC, it organised the European Assizes, an assembly of national parliaments, to muster support for its claims. In most member states it is the national parliament which has to ratify the outcome of IGC negotiations. It also organised a number of inter-institutional conferences between member states, the EP and the Commission, to directly discuss with ministers taking part in the IGC. The outcome of the negotiations provided that co-decision was accepted in fifteen issue areas. Thus, the EP was fairly successful in obtaining the extension of its own power in legislation.

2.3 Extending and transforming co-decision

After the introduction of co-decision there were a series of institutional battles between the EP and the Council over how to interpret the text. One important development concerns the emergence of 'early agreements' or the conclusion of the legislative procedure at first reading or early in the second reading. This institutional transformation emerged soon after the introduction of co-decision (Farrell and Héri-tier 2003; Héri-tier 2007). As of today, 'early agreements' constitute the overwhelming majority of legislative acts under co-decision.

Another important change relates to the *de facto* abolition of the third reading provided for by the Maastricht Treaty, allowing the Council to reintroduce its common position in the conciliation procedure fails. This provision was a thorn in the flesh of the EP because it introduced an asymmetry into the relative powers of the Council and the EP in the co-decision procedure. Therefore the EP has always opposed the use of this Council right. It unilaterally stated in its rule of procedure that it would never accept the Council's common position after the failure to reach conciliation. After an open and prolonged conflict over the Open Telephony Directive the Council refrained from using its right to revert to its common position after a failed conciliation procedure. That was the end of the Council's introducing a common position after a failed conciliation procedure.

In preparing the negotiations for the Amsterdam Treaty, the EP took part in a Reflection Group to prepare Treaty negotiations and discussed possible revisions in numerous preparatory meetings with ministers and the Commission. In a White Paper it requested an extension of co-decision to all issue areas as well as the formalisation of the prospect of early agreements. The outcome of the negotiations was an extension of co-decision from fifteen to twenty-three areas. In preparing the negotiations for the Nice Treaty the EP proposed to extend co-decision to all legislative acts and to link it automatically to QMV. However, the outcome of the negotiations only brought a fairly small extension, which did not include all first pillar issues or the CAP.

As mentioned, the EP had been proposing to use the Convention method to prepare Treaty revisions for a long time. This would give the EP an important formal role in shaping treaty revisions. The Protocol to the Nice Treaty declared that a new IGC should be held by 2004 to tackle more extensive treaty reforms. This claim was also voiced by member states in the Laeken Declaration.

The Convention on the Future of Europe comprised 204 delegates and three chairmen (one representative from each of the fifteen member states and from thirteen candidate countries, sixteen MEPs, two representatives from each national parliament, two Commissioners and an alternate for each member). The EP with sixteen members and sixteen alternates held an important position. It also occupied two seats on the Praesidium. This offered an opportunity to exert influence on the negotiations and to shape the selection for proposals put to the plenary. The Convention started with a phase of hearings, engaged in a deliberation phase in a number of working groups and finally decided in the plenary. Given the large number of actors, negotiation could not take place in the plenary, but occurred in the working groups. The final text was drafted in the Praesidium secretariat under the leadership of its chairman.

Co-decision was not centre stage in the Convention, except in its link with the extension of QMV. There was a broad support for an extension of co-decision and QMV, albeit not including justice and home affairs and agricultural policy. The final text, however, did not extend QMV to all policy areas, but established a 'passerelle' providing that, on unanimity decision of the Council a particular policy area could be subject QMV. The European Council of Thessaloniki left the EP's extension of budgetary powers to the CAP. The process of institutional change incorporated into the Constitutional Treaty and accepted in the IGC subsequently came to a halt due to the rejection of the referenda held in France and the Netherlands.

Under the Lisbon Treaty the codecision procedure was further extended and now is the ordinary legislative procedure. For the first time the EP also obtained the right of co-decision in economic and financial governance as well as external relations (see chapters 6 and 7 in this report).

2.4 Conclusion

In the period examined the EP has come a long way in expanding and strengthening its legislative powers until it has become a co-equal legislator with the Council of Ministers. The engine driving this expansion was the EP's determination to strengthen its own role by re-negotiating ambiguous institutional rules to its advantage by 1) engaging in cross-arena linkage, i.e. supporting a policy issue in one arena only under the condition of obtaining more competencies in another arena; 2) using problem pressure in order to expand its role and strengthen its institutional powers; 3) successfully invoking its importance and democratic legitimacy as the only directly elected political institution in the EU legislative process; 4) cooperating with national parliaments in trying to take influence on treaty revisions and 5) in some cases successfully invoked an ECJ ruling in order to strengthen its competencies.

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3 CHANGING THE RULES OF COMITOLGY: MORE COMPETENCES FOR THE PARLIAMENT¹²

KEY FINDINGS

- Initially the EP played no role in the comitology system. Today the EP has a co-equal right to object to Commission rule making and to shape the comitology decisions with the Council.
- Since institutional rules usually are not complete contracts which determine in each possible future situation how to be applied, they are re-negotiated and re-interpreted in the course of their application. If this was the case, the EP used this opportunity to assert its power.
- Two strategies have been particularly important: cross-arena linkage and invoking third party dispute resolution:
- When the EP puts pressure on both the Commission and the Council, and threatens to withhold its support for a substantive legislative matter in the co-decision and/or budgetary arenas, it was able to indirectly influence the shaping of comitology rules. In other words, if the EP engaged in cross-arena linkage and issue linkage.
- Another strategy – in case of a conflict with the other institutional actors – was to turn to the ECJ in the hope of settling a conflict in the EP's favour.

The rules that govern the application of comitology procedures have changed over time and with them the role that the Parliament has played in comitology. What accounts for their transformation of the rules in the last forty years, and how did this transformation affect the role of the EP? How did the Parliament itself try to play role in shaping these rules? We argue that when the EP puts pressure on both the Commission and the Council, and threatens to withhold its support for a substantive legislative issue in another linked arena, such as the co-decision and/or budgetary arenas, it can exert an indirect influence on shaping comitology rules.

3.1 Shaping the original comitology system

The EP did not play a role in shaping the original comitology system in the first decades of its existence. After a period of discussing various institutional proposals between the Commission and the Council common organisations were established for the markets in cereals, pork, eggs, poultry, fruit and vegetables, and wine. It was only towards 1961 that the Parliament became aware of the Commission's and Council's plan to create 'new organs' and issued a resolution demanding that no decision should be taken before it had given its opinion. It argued it was indirectly affected because under the Treaty it exercises a political supervisory power over the Commission (Deringer Report: 33, 36). However, the Commission refused to assume political responsibility for the new organs for cooperation, and insisted that the matters dealt with in comitology should not be subject to parliamentary consultation. It was also concerned about the scope of delegation to the Commission and cautioned that the new management committees should not lead to an increasing number of political issues being dealt with under comitology procedures that did not permit the Parliament to discuss and promote its position publicly (Deringer Report 1962: 33–35).

As a result, in this first phase of establishing the comitology system the Parliament did not play any role whatsoever. It had no direct role in the Commission's and Council's implicit bargaining of the

¹² This section is largely based on Héritier 2007; and Héritier, Moury, Bischoff and Bergstrom 2013

Council Regulation in 1962. There was no leverage it could bring to bear by vetoing a decision in a linked arena because no such linked arena existed. The EP could not stall the decision-making process by withholding its consent to a co-decision issue, or by withholding its consent to funding the comitology procedure.

Step by step the use of management committees spread beyond the CAP to common commercial policy. It became the normal decision-making procedure in all areas where the Council delegated powers to the Commission. In order to strengthen their control of the Commission, member states insisted on introducing a new type of committee procedure, the regulatory committees. Both in the management committee and the regulatory committee the national representatives' influence in the committee was based on its ability to express its discontent with the measure proposed by the Commission. What was new, was that under the Regulatory Committee Procedure the Commission could only adopt a rule if it had previously been approved in a positive opinion by the EP. If the Committee failed to approve the proposal (by qualified majority), the Commission would have to submit a proposal for legislation to the Council. If the Council failed to act within a certain period, the Commission could proceed as intended. This 'filet' or 'safety net' was to ensure that some sort of action would always be taken.

In this period of expansion for the comitology procedure to include trade policy and subsequently foodstuffs regulation, the EP did not play a role in shaping the decision on the regulatory committee procedure. It did issue a resolution in 1967 and several reports expressing its concerns of being bypassed. It stressed that the regulatory committee procedure would undercut the power of the Commission and thereby - indirectly - the Parliament's power of political supervision of the Commission. It also criticised the fact that there was a surge in legislative issues being dealt with in the form of implementing measures instead of legislative matters. In its Jozeau-Marigné Report it set out an inventory of implementing measures and proposed systematic criteria to be followed in their allocation to advisory, management and regulatory committees. The Report also requested a 'droit de regard' for the EP in order to be informed about matters dealt with in management and regulatory committees and the right to state an opinion whenever it considered that a comitology issue went beyond simple, technical implementation. Yet, these requests were not taken into account when the rules governing the regulatory committee procedure were agreed upon by the Council and the Commission. In this situation, the Parliament set its hopes on the European Court of Justice. It brought a legal action against a Commission decision in which it argued that the decision was of a legislative nature (Case 41/69 *Chemiefarma v. Commission*) hoping that the ECJ would redefine the substantive scope of comitology decisions. Yet, the Court confirmed that "the Council *shall* confer powers on the Commission". In another ruling (Case 25/70 *Einfuhr- und Vorratsstelle für Getreide- und Futtermittel v. Köster, Berodt & Co*) the ECJ again confirmed a broad interpretation of what constitutes an implementing measure. Hence, in this first period in which the different comitology procedures were established the Parliament only played a marginal role. It considered the new procedures as a threat to its own status and its right [and duty] to exercise political supervision over the Commission.

3.2 The increasing influence of the EP

Throughout the 'political stalemate' and "the empty chair crisis" before the SEA, the comitology decision-making machinery continued to regularly produce implementing decisions. In view of the relative inactivity at the legislative level, the Council broadened the mandate of COREPER and reached a gentlemen's agreement to abstain from formal voting and conferred more implementing powers on the Commission Bulletin EC 6-1974, point 2506). This contributed to a further surge in comitology procedures spreading to additional areas of policy-making. It was in particular the regulatory commit-

tees that grew rapidly in numbers (from 6 in 1970 to 154 in 1985), in which the EP sought to create a role for itself in the decision-making process.

It proposed holding an IGC to reconsider the existing institutional rules and to adopt a Treaty of the European Union that would also reform the comitology system. It proposed that new 'laws' should be introduced as the main form of legislation to be adopted jointly by the Council and Parliament and that comitology committees should only be advisory. It also asked for a 'droit de regard' under which the Commission should be obliged to transmit to the Parliament any draft measure which it sent to the regulatory committees. For the first time it used both its cross-arena linkage and its consultation right in legislation to exert influence. It also resorted to its powers of budgetary control, freezing the funding for committees, until specific demands had been satisfied. In 1983 the Parliament suspended a part of the Commission's funds until the latter explained the substantial increase in its expenditure for committees (EP Resolution 16.9.1983). Its success was limited, though, since it did not yet have a veto power in legislation. Its only leverage was withholding its assent to voluntary spending.

After the adoption of the SEA the EP's Political Affairs Committee stated that the provisions introduced by the SEA were to be exploited 'to the very limit'. The SEA provided that the Council should only be permitted to choose between a limited number of fixed comitology procedures among the more than thirty different variants of the basic procedures in operation. These procedures were formally established in the first comitology decision of the Council in 1987. The Commission presented a proposal for a regulation laying down the procedures for the exercise of implementing powers under three basic types of advisory, management, and regulatory committee procedures linked to particular matters. The EP presented the Haensch Report arguing that the management and the regulatory committee procedures put the 'the institutional balance' at risk because they enabled the Council to take back the power from the Commission, thereby depriving the Parliament of its rights to supervisory control over the Commission and, even more importantly, contributing to a circumvention of the Parliament's right to participate in the legislative process.

In its amendments to the draft of the comitology decision it demanded that the Commission forward all draft measures to the parliamentary committees (Debates of EP, 9.7.1986, 118–119). It also called for the elimination of the regulatory committee procedure and that precedence be given to the advisory committee procedure in the field of the internal market. In order to stress its demand, it decided not to deliver a formal opinion, but to refer the matter back to its Political Affairs Committee. Even if the opinion of the Parliament was merely consultative, the proposal could not be adopted before it had been submitted. The resulting delay put pressure on the Commission and it also proposed that the advisory committee should be given a predominant place in internal market measures and committed itself to comprehensively inform and consult the Parliament about planned draft implementing measures.

But the unanimously adopted Council Decision (87/373/EEC) of 1987 reflected close to nothing of the Commission's and Parliament's proposals. The Decision did not define general principles of categorizing cases, but preserved the flexible nature of implementing powers and the possibility to establish boundaries only on a case-by-case basis. Against both the Commission's and the Parliament's wishes it went even further and added a more restrictive management and regulatory committee procedure, the 'contre-filet' procedure, allowing for more control by the member states. Thus, the new Comitology Decision completely ignored the EP's demands.

The EP was more successful in its bilateral dealings with the Commission. When the Commission hesitated with the implementation of the information and consultation right regarding committee decisions, Lord Plumb, sent a letter to the Commission President, stating that all draft decisions relating to legislative documents should be forwarded to the Parliament at the same time as they were forward-

ed to the committees. Delors accepted these terms in a letter to Lord Plumb (Plumb–Delors Agreement of 1988). For the first time a written concession had been made to the Parliament's life-long demand for a 'droit de regard'.

3.3 Co-decision brings about a sea change

The Maastricht Treaty of 1991 with the introduction of co-decision (see Chapter 2 on co-decision) brought about a sea change in the EP's power in the realm of comitology. With co-decision, the EP argued that it was an equal partner in legislation and that it was no longer acceptable that the Council reserve exclusive competence in the exercising of control over the Commission's implementing powers.

The EP was utterly dissatisfied with the Comitology Decision of 1987. In its view it made insufficient use of the advisory committee procedure by the Council in internal market issues; moreover, disappointed with the Commission's half-hearted use of the 'droit de regard', the EP pressed for a change at the IGC level. The Commission agreed to make a basic overhaul of the existing comitology system in a Treaty change. 'Laws' adopted under co-decision should be used in all policy areas with general guidelines and the basic elements for the measures then delegated to implementation. Implementing matters should be covered by regulations or decisions left to the Commission. The regulatory committee procedure would be abolished and replaced by a substitution mechanism under which the Council and the Parliament were entitled to act in place of the Commission if they considered that the Commission was exceeding its powers or straying from the guidelines allowing them to block its entry into force.

In order to lend pressure to its claims of revising comitology, the EP launched an offensive against the regulatory committee procedure. During the first year of operation of co-decision, the "issue was fought out on each individual item of legislation" (Corbett 1998: 258, 347, 348). The precedent was set in the very first case dealt with under co-decision, the 'Open network provision to voice telephony'. The Council replaced the advisory committee procedure with a regulatory committee procedure. The EP asked for a shift back to the original advisory committee procedure, as well as provisions to secure its 'droit de regard' and a substitution mechanism. The Council refused and the conciliation committee was convened. The conciliation negotiations ended in a deadlock; and the Council reintroduced the Common Position which was rejected by the Parliament in July 1994. Given the atmosphere of intensified conflict the Council Presidency proposed a compromise. Governments would commit themselves to examine the question of implementing powers in the impending IGC. In the meantime a *modus vivendi* should meet the EP's demand for a 'droit de regard', while preserving the existing arrangements for implementing powers. As a reaction, the EP placed a substantial share of the proposed budget for committees in the reserve, in order to underline its role in the negotiation of the *modus vivendi*. It was signed by the Council, the Parliament and the Commission in December 1994 and provided that the Commission inform the appropriate parliamentary committee when adopting a measure and, in case of amendment, a second time; and the Council would adopt a draft general implementing act only after informing the EP and take the latter's opinion in due account. For the very first time the Council had placed itself under a direct obligation to the EP. After the agreement on the *modus vivendi* in 1994, the Parliament was willing to accept the Directive on the Open Network.

The developments after the introduction of co-decision clearly show that the EP now had an instrument to force the other actors, in particular, the Council to pay more heed to its institutional demands. By making its acquiescence to a substantive co-decision issue contingent on the acceptance of its institutional demands regarding the rules governing comitology, it forced its (implicit) negotiat-

ing partners to take its proposals for rule revisions in account, albeit to a limited extent. In a further step of hostage taking, the EP froze the budget funds for comitology in order to exert influence on the content of the *modus vivendi*. The strategy proved successful. The EP obtained formal recognition of the 'droit de regard' agreed upon in the *modus vivendi*. The Council, for the first time, committed itself directly to the Parliament in comitology matters.

After the adoption of the *modus vivendi* the EP soon sought to extend this to consultation and cooperation procedures. To reinforce its request/demands it again used its powers of delay: it postponed votes and insisted on re-consultation whenever amendments were introduced by the Council. In the instance of legislation on ambient air quality (Council Directive 96/62/EC), the EP took almost two years to deliver its final opinion. The ECJ was brought into play and ruled that the Parliament was not entitled to complain when legislation was adopted before it had stated an opinion if it had failed to discharge its obligation 'to cooperate sincerely' with the Council. (Case 156/93 EP v Commission and C-417/93 EP v Council).

Whereas the Parliament's rights had been increased in the 'droit de regard', the application suffered from the same practical problems as the Plumb–Delors and Klepsch–Millan agreements. Only a smaller part of the draft measures were transmitted to the EP. As a result the Parliament placed 90% of the proposed funding for committees in the reserve and demanded that the Commission provide it with a list of the issues these committees had been involved in during the previous year. The Commission swiftly produced an almost 2,000 page report listing 355 committees involved in the exercise of implementing powers. As a result, the Parliament released 50% of the funds, and the other 50% after the report had been studied.

The Amsterdam Treaty had requested a revision of the first comitology decision. In response the Commission submitted an entirely new set of rules for existing and future committees: Under the regulatory committee procedure, if a draft implementing measure was not approved by the committee, the Commission would present a normal legislative proposal. The 'droit de regard' of the EP was to be formalised. When consulted, the EP submitted the Aglietta Report stating that too many issues were dealt with as implementing matters rather than as legislative issues; it also asked for an equal role in comitology and a right to repeal an implementing decision. When the Commission failed to incorporate these requests, the EP launched an offensive: It delayed the issuing of its Opinion. The impact was however diminished by the ECJ ruling stating that the right of consultation did not apply when the Parliament failed to discharge "its obligation to cooperate sincerely with the Council". Therefore, the EP also used its power of budgetary control to put more weight behind its demands, and in November 1999, put over half of the appropriations for committees in the reserve "in order to maintain pressure on all sides to come to an equitable and effective solution on the new comitology structure" (EP Resolution, 17.12.1998 on the Draft General Budget of the EU for the Financial Year 1999).

In its revised Aglietta Report of March 1999 the EP restated its demand for an equal share of the powers of political supervision in all comitology issues under co-decision; it called for the abolition of the regulatory committees, the delimitation of the substantive scope of implementing measures, as well as a protection mechanism for the legislative sphere consisting of a right to revoke a comitology decision under co-decision as well as a right 'to blow the whistle', i.e. a safeguard clause. The Council, finally, accepted a simplification of the comitology procedures, albeit not along the ambitious lines proposed by the Commission. Under the management committee procedure the restrictive variant was eliminated: the Commission could adopt a measure which would apply immediately. The regulatory committee procedure was simplified. The Parliament's right of information, was replaced by a legally binding commitment.

What emerges as the most salient factor of change is the reinforced bargaining power of the Parliament. This is reflected in institutional changes favouring the Parliament. The bargaining power is used on a dual basis: the Parliament's formal power under co-decision and its budgetary control. By skilfully linking the power in each of the arenas (co-decision and budget control) to the arena where the new comitology rules were negotiated, it could increase its influence in the latter although it formally had a mere consultative role. By threatening 'inter-institutional conflicts' and by stalling the legislative process it obtained a formalised 'droit de regard' and right of whistle-blowing.

3.4 Changing comitology under the Lamfalussy Reform, the White Paper on Governance, the Convention and the Constitutional Treaty

After the adoption of the Second Comitology Decision (1999) a significant institutional innovation of comitology decision-making occurred in the context of the Lamfalussy reform to speed up legislation within the field of financial securities markets. New framework legislation was to be adopted that would be linked to a delegation of powers to the Commission subject to comitology under the regulatory procedure and an enhanced consultation of market actors. The EP asked for a call-back right if dissatisfied with the delegation, that is, dissatisfied not just with the scope of implementing measures, but with the substance of the measures. After extended negotiations the Commission accepted that the EP should have three months to examine draft implementing measures, not just with respect to scope but also on substance. It also included a 'sunset clause', fixing a specific date at which delegation would automatically expire. The compromise reflected the EP's willingness to accept delegation and comitology for pragmatic reasons, but only if, in return, it would be granted a real power to exercise its responsibility for political supervision.

Following the Lamfalussy reform the comitology debate evolved at three different levels: the Commission White Paper on Governance, the proposal for a reform of the Second Comitology Decision, and the Convention. In its White Paper on Governance the Commission called for a reform of its implementing powers along the model previously proposed. Legislation was to be reduced to essential principles and framework legislation, called 'laws', to be jointly adopted by the Council and Parliament. The regulations or decisions necessary to implement legislation would be adopted by the Commission, subject to the supervision by the Council and the Parliament by means of a 'call-back system'.

At another level, attempts were made to reform the Second Comitology Decision (1999). The Commission reform proposal basically sought to transform comitology from an arena of member-state participation in the exercise of implementing powers, into an arena for the 'legislature' (Council and Parliament) supervising the 'executive' (the Commission) whose autonomy was to be strengthened (House of Lords Select Committee 31st Report 1.7.2003). More specifically, the Commission proposed that regulatory committees should be used whenever the executive measures are designed to implement essential aspects of the basic instruments, i.e. laws, or to adapt certain aspects of them; the advisory committee procedure would be used when the executive measure has an individual scope. The new regulatory committee procedure would have two phases: the 'executive phase' would be the same as the under the Second Comitology Decision of 1999, with the only difference that, in case of an unfavourable or no opinion of the committee, the Commission would not have to submit a proposal to the Council; within one further month the committee, using QMV as a decision-making rule, should make another attempt to reach a solution. In the 'supervisory' phase, the final draft would be submitted to the EP and the Council. If objections were raised the Commission would be left with two options: to enact the measure, possibly amending its draft to take account of objections, or to present a legislative proposal under the co-decision procedure. The EP immediately rejected the provision

that the Commission *could*, but *was not obliged* to take into account the amendments of the EP and the Council. The Commission was not willing to yield on the regulatory committee procedure and the Parliament refused to accept that the Commission was free to adopt an implementing measure even if it was not in line with the views of the legislator. However, rather surprisingly it then accepted the Commission's proposal, probably because it placed all its hopes in the imminent Convention. The revised Commission proposal stated that, in case of the EP and the Council objecting to a draft measure, the Commission may choose between (i) a modification of the draft, (ii) the presentation of a legislative proposal, (iii) the adoption of its draft without change or iv) the withdrawal of the draft measure (Commission proposal, April 2004). This proposal, however, was removed from public attention due to the Convention elaborating a reform of the Nice Treaty and only later resumed after the rejection of the Constitutional Treaty (see below).

In the *Convention*, the working group chaired by Giuliano Amato proposed a classification of legal instruments that would be clear to the European public: the final report of the Amato working group, which was to have an impact on the final text of the Draft Constitutional Treaty adopted by the Convention, proposed a hierarchy of legal acts: legislative acts, called laws and framework laws, and non-legislative acts, i.e. delegated acts and implementing acts taking the form of regulations and decisions. The Praesidium also insisted that comitology would have to take into account that the Council was no any longer the sole legislator, but that the EP had become a co-legislator. Therefore, the procedure for defining the principles and rules of comitology should be shifted to co-decision. This meant that comitology might be stripped of everything but its purely advisory functions. The text adopted by the plenary in June 2003 provided that the legislative acts would have the form of laws or framework laws, the non-legislative acts regulations or decisions. To control the executive there would be: (1) a mechanism of control on a case-by-case basis through a right of 'call-back', i.e. to retrieve the right to legislate by the Council or EP; (2) a period of tacit approval: if the Council and the Parliament have not raised objections, the delegated acts would enter into force; (3) finally there would be a 'sunset clause': delegated acts would have a limited period of duration to be extended by the EP *and* the Council. During the IGC, the hierarchy of legal acts was not taken up and renegotiated.

The failure to ratify the Constitutional Treaty in 2005 meant that the revision of the Second Comitology Decision moved back to centre stage. The EP refused the renewal of the Lamfalussy framework legislation under the sunset clause and proceeded to block individual items under the Lamfalussy system. It also withheld part of the budget for committees. These three measures boosted its indirect influence on the revision of the Comitology Decision, a decision in which did not formally take part except for being consulted. The Commission resubmitted its proposal (of 2002) to redefine the logic of comitology from being a national input into the exercise of implementing powers, to being supervision by the 'legislature' over the 'executive', and in line with that, to strengthen the autonomy of the Commission. But according to the Commission itself, the main objective of its proposal is to "take account of the European Parliament's position as a co-legislator...placing on an equal footing the European Parliament and the Council as supervisors of the Commission's exercise of the implementing powers" (Expl. Memorandum for Commission Proposal of 11.12.2002).

There was close to unanimous agreement in the Council that there should only be a limited reform focused on regulatory committees. In particular, it emphasised the need to meet the EP's wishes to define criteria to delimit the scope for implementing measures of a 'legislative' or 'quasi-legislative' nature, but at the same time wished to preserve room for manoeuvre for itself. It was willing to concede in cases of quasi-legislative decisions in which purely executive decisions were not at stake, that the EP (and the Council) should be granted more competences to block a decision or some *ex-post* opportunity of control (Interview Council Feb. 2006) extending the period from one to three

month(s). But there was a deep resistance to any attempt to transform the EP's right to review matters dealt with under the regulatory committee procedure from procedural to substantive. The proposal of MEPs to attend committee meetings was also rejected.

In short, in the absence of a new Constitutional Treaty, the EP revived the plans of a reform of the Second Comitology Decision. The Commission's proposal was one again clearly geared towards an increase of its own competences. The EP used its now classic set of strategic tools to exert influence on the contents of the proposal: it froze comitology funds and blocked decisions in related legislative arenas. By blocking issues in another related arena and redefining the possible choice of options, the EP successfully influenced the revised Second Comitology Decision.

3.5 Commission Rule Making under the Lisbon Treaty

The Lisbon Treaty broke new ground by distinguishing between legislative delegation and executive delegation. It established two separate procedures for delegated acts and implementing acts. Under delegated acts (Art. 290) legislators can delegate non-legislative decisions of general import, which modify and complement non-essential aspects of the basic act, to the Commission. These are adopted by the Commission, but both the Council and the EP may prevent them coming into force within a certain period of time. Under executive or implementing acts (Art. 291) member states delegate implementing powers to the Commission under control of the member states (comitology). The rules of the new comitology system were defined in a new comitology decision adopted by the Council *and* the EP.

Considering the outcome from the perspective of a gain and loss of powers the balance is clearly in favour of the Commission and the EP and to the disadvantage of the Council. The fact that under Art. 290 both the Council and the EP delegate decisions to the Commission constitutes a relative power loss for the Council which previously (except under the regulatory procedure with scrutiny created under the revised second comitology decision and abolished end of 2009) was the only actor entitled to delegate implementing powers to the Commission. Furthermore, under delegated acts comitology procedures were abolished which formerly allowed member states to intervene in Commission decision-making drafts while they were being drawn up. Moreover, in its *ex post* control of these decisions, the Council has to share its power with the EP. Under the executive/implementing acts (Art. 291) the Council's right to delegate to itself has been virtually abolished. The comitology decision will be decided upon by the Council and the EP. This balance of the gain and loss of powers raises the question: Why did member states acquiesce to this change of formal rules under the Lisbon Treaty? The answer is again *arena-linking*. Since the member states (and the Commission) set great store by the continuation of the Lamfalussy system for financial market regulation, the EP could use this as a lever under the 'sunset clause' of the Lamfalussy system to force member states to accept its demands for institutional reform of the delegation system.

The new provisions of the Lisbon Treaty leave open many questions as to how delegated acts (Art. 290) and implementing acts (Art. 291) should be applied. In other words the provisions constitute an incomplete contract. As a rule, when the Commission proposes a 'delegated act' a conflict ensues between the EP, the Council and the Commission. The Council seeks to oppose it entirely or to reduce its scope, or to translate it into an implementing act. In order to come an agreement packages are often made across various issues as to whether to use 'delegating' or implementing acts (Interview Commission, Jan. 2012).

In the following we discuss one example which shows how ambiguous terms in Arts 290 and 291 produce a re-negotiation of how to implement the new rules and, indeed, a transformation of these rules, which to some extent lead to an empowerment of the EP.

3.5.1 Financial Instruments External Relations: Pre-accession IPA II

A very recent example of an on-going power battle between the EP, the Commission and the member states in the application of Arts. 290–291 of the TFEU is the Financial Instruments External Relations: Pre-accession IPA II. In December 2011, the European Commission (EC) published the ‘Global Europe’ Communication and a package of proposals for EU instruments for external action for the period 2014–20. The instruments are set in the context of the recently agreed Multiannual Financial Framework (MFF) 2014–20, under its heading 4 with resources of €66.3 billion, or 6.12% of the total. This is a 3% increase on the previous MFF, but 16% less than the EC’s initial proposal. The main legal basis for the instruments for external action are Art. 209(1) TFEU (development cooperation programmes) and Art. 212(2) TFEU (economic, financial and technical cooperation with other third countries). The agreement on the MFF has been applicable as of 1 January 2014.

The legislative package comprises nine geographic and thematic instruments, and a horizontal regulation defining common implementing rules for six of them: the Instrument for Pre-accession Assistance (IPA II); European Neighbourhood Instrument (ENI); Partnership Instrument for cooperation with third countries (PI); Development Cooperation Instrument (DCI); Instrument for the Promotion of Democracy and Human Rights (EIDHR); Instrument contributing to Stability and Peace (IPS).¹³

Under the Lisbon Treaty, External Relations have been subject to the ordinary legislative procedure (co-decision) for the first time, hence implying new powers for the EP. As a consequence, in negotiating the specific details of Arts. 290–291 TFEU in their application to External Relations, all actors, i.e. the Commission, the Council or the member states and the EP were treading on institutionally new ground and very cautiously negotiated the specifics of the application of Arts. 290–291 TFEU to the Financial Instruments of External Relations.¹⁴

3.5.2 The Common Implementing Rule

The Commission proposed a *common implementing regulation*, i.e. a horizontal regulation defining common, simplified rules and procedures for all external action instruments. The Commission’s financing decisions will take the form of action programmes based on multiannual programming documents. Moreover, the Commission may set specific rules for some instruments (e.g. IPA II). The regulation also stipulates the conditions for access to assistance. The common regulation and each instrument will be reviewed at the end of 2017.

In the political decision-making process on the common implementing regulation, the Common Rule was negotiated at a senior level among the Chair of EP’s Foreign Affairs Committee, the Council presidency (Coreper ambassador), and the Commission. The Council proposed not using delegated acts (Art. 290 TFEU) while the EP insisted they be used. In other words, it asked for all the Commission’s strategic papers for individual countries (valid for seven years) to be subject to delegated acts under Art. 290 TFEU. It argued that strategic choices on important objectives for specific countries would be defined in this implementation phase. This, the EP argued, constitutes a political process in which the EP (and the Council) should be involved. It went on to stress that, given the seven-year commitment, as co-legislators the EP and the Council should be able to make a mid-term reflection on these priorities, i.e. after three and a half years. By this time, circumstances may have changed, making it necessary to reconsider priorities. It also argued that the outgoing EP should not commit future EP members for seven years without allowing them to make an intermittent review.

¹³ As a result of the inter-institutional negotiations, the Commission’s original proposal for the title (Instrument for Stability, IPS) was changed to Instrument contributing to Stability and Peace (IPS).

¹⁴ Interview EP January, February 2014.

Both the Commission and the Council rejected the EP's request and the Commission emphasised that pure implementation issues were at stake. After one and a half years of negotiations, a compromise was struck at the end of 2013. The EP had to renounce its request to use delegated acts for all strategic papers, but it was conceded that delegated acts could be used in the annexes or in the text of the instrument itself when thematic priorities were changed. In a mid-term review in 2017, the Commission will need to inform the EP and the Council on the state of affairs. Most importantly, any potential change of thematic priorities during the mid-term review will be subject to a so-called '*amending delegated act*' as opposed to a '*self-standing delegated act*'. In formulating such a decision and in accordance with the inter-institutional framework agreement, the Commission invites EP representatives to informally present their views on the draft.

To conclude, renewed negotiations took place given the ambiguity of how Arts. 290–291 TFEU should be employed in the case of the Financial Instruments External Relations *Common Rule*. In these negotiations a compromise was struck between the Commission and Council on the one hand and the EP on the other in which all involved actors made concessions. The outcome was a new type of delegated act, i.e. the '*amending delegated act*', in the mid-term review of the objectives/thematic priorities of individual beneficiary countries.

3.5.3 Pre-accession Assistance (IPA II)

More specifically, Council Regulation EC No 1085/2006 assistance expired at the end of 2013 in the case of the individual financial instrument Pre-accession Assistance IPA II which is part of the Budget for Europe 2020. The framework for planning and delivering external assistance, in this case of external assistance for enlargement, will be continued in the future. This is dependent on specific conditions: an applicant state can only become a member when it meets the membership criteria agreed upon in Copenhagen in 1993. These criteria include the stability of democratic institutions, the rule of law, human rights and the respect and protection of minorities, and the existence of a functioning market economy. Candidate status (as of February 2014) has been granted to Iceland¹⁵, Montenegro, Macedonia, Turkey and Serbia.

Assistance will be provided on the basis of country or multi-country indicative strategy papers of a duration of seven years as part of the multiannual framework (Art. 6). Progress in the achievement of specific objectives will be monitored and assessed (Art. 2). The Commission makes annual assessments of the implementation of the strategic papers, informs and, if deemed necessary, sends proposed revisions to the IPA II committee consisting of representatives of the member states, chaired by the Commission (Arts. 6, 12). If considered necessary, there will also be a mid-term review and possibly revision of the strategic papers at mid-term (Art. 6.4).

In order to take account of changes in beneficiary countries, the Commission was given the power to adopt acts under Art. 290 TFEU so that the thematic priorities for assistance listed in Annex II can be adapted and updated.¹⁶ The implementation of the Regulation will be exercised in accordance with Regulation EU No 182/2011 of the EP and the Council under Art. 291 TFEU. They will be adopted through an examination procedure unless they are technical measures involving low levels of expenditure (Art. 11a).

The essential provisions of IPA II described above are the outcome of inter-institutional negotiations between the Commission, the Council and the EP; as pointed out above, for the first time this has been subject to the ordinary legislative procedure (co-decision).¹⁷ Initially, the Commission proposed

¹⁵ At the time of negotiation end of 2013

¹⁶ Regulation EU No/213/2014, IPA II, Art. 10.

¹⁷ Interview EP January, February 2014.

a common strategy framework for all types of assistance to countries under pre-accession assistance which was to be subject to implementing acts under Art. 291 TFEU. The EP opposed this on the grounds that this common strategy framework should be subject to a stand-alone delegated act under Art. 290 TFEU. The EP's amendments were rejected by both the Council and the Commission. In response, the EP offered to renounce delegated acts in cases of individual strategic papers, but insisted on their demands of using a stand-alone delegated act the common strategy framework. This request was also rejected by the Council. The resulting deadlock in the decision-making process was overcome by deleting the proposal of a common strategy framework altogether. As a result, IPA II has only two levels of rules and no middle layer: the Regulation itself and the strategic papers describing the actions for individual countries.

In the case of strategic papers for individual pre-accession countries, the EP reintroduced its request to use delegated acts under Art. 290 TFEU. The Council opposed the EP's proposals to the very last and only made some concessions briefly before all instruments expired in December 2013.¹⁸ There was considerable political pressure resting on all actors involved to come to an agreement before the expiry of the instruments as well as to ensure that programming in beneficiary countries could start on time (or continue). In the end, a compromise was found by introducing an 'amending delegated act' with regard to Annex II. More specifically, the EP ensured that Annex II of the Regulation, which contains a list of overall thematic priorities, can be amended by a mid-term 'amending delegated act' if developments so require. In sum, the EP had to renounce its request to use delegated acts for all strategic papers, i.e. the common strategy paper, which was entirely dropped, but in return it was conceded that an 'amending delegated act' could be used in redefining thematic priorities in Annex II.

Moreover, while the EP had to renounce the use of stand-alone delegated acts with respect to strategic papers, it was also granted that a Strategic Dialogue be conducted with the Commission. This constitutes a *political (as opposed to legal) obligation* by the Commission. Under the Strategic Dialogue, in the preparation of strategic papers the Commission has the political obligation to take the EP's position into account when it is engaged in the programming process with beneficiary countries. This should allow the EP to hold the Commission accountable when formulating and implementing agreements with beneficiary countries.

"The Commission will conduct a strategic dialogue with the EP prior to the programming of ...[financial instrument external relations...]. [It] will present to the Parliament the relevant available documents on programming with indicative allocations foreseen per country/region....The Commission will present to the Parliament the relevant available documents on programming with thematic priorities, possible results, choice of assessing modalities, and financial allocations for such priorities foreseen in thematic programmes. The Commission will take into account the position expressed by the EP on the matter. The Commission conducts a strategic dialogue with the EP in preparing the Mid-Term Review and before any substantial revision of the programming documents during the period of validity of this Regulation." (Commission Declaration to the Legislative Resolution)

To conclude, in view of the ambiguity of how Arts. 290–291 TFEU should be applied in the case of the Financial Instruments IPA II, a compromise was struck in the negotiation process between the Commission and both the Council and the EP in which all actors involved made concessions. The institutional outcomes were the emergence of a new type of delegated act, i.e. the 'amending delegated act' in the mid-term review of the thematic priorities of individual beneficiary countries and the introduction of the Strategic Dialogue between the Commission and the EP.

¹⁸ Heading 4 (external relations) under the multiannual financial framework was one of the last which was approved at the end of 2013

3.6 Conclusions

The EP which initially had no competencies is now an (almost) co-equal player with the Council in the area the Commission implementing powers. The successful strategies it used were : the renegotiation of ambiguous institutional rules in order to assert its power; two strategies have been particularly important: cross-arena linkage and invoking third party dispute resolution, more specifically, when the EP put pressure on both the Commission and the Council, and threatened to withhold its support for a substantive legislative matter in the co-decision and/or budgetary arenas, it was able to indirectly influence the shaping of comitology rules; in case of a conflict with the other institutional actors as regards the interpretation of an ambiguous institutional rule, it turned to the ECJ in the hope of seeing a settling of the conflict in its favour.

3.7 References

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4 NOMINATING THE COMMISSION

KEY FINDINGS

- The EP's powers to appoint and invest the Commission has developed from nothing at all, to encompass the investiture of the Commission (in the Maastricht Treaty) and the 'election' of the Commission President in spite of initial opposition of a considerable number of member states.
- Treaties, because they are incomplete and ambiguous, allow for the emergence of informal rules.
- The institutional rule *not forbidding* a specific institutional fleshing out of the rule, i.e. introducing a hearing for the Commission President and informal hearings for individual Commissioners, allowed the EP to bring about an interstitial institutional change.
- Once the EP had the right to confirm the Commission in its entirety, by linking the approval of individual Commissioners to its formal right to approve the entire Commission, it de facto created a right of individual approval for individual commissioners.
- The Commission is often (but not always) an ally of the EP in increasing its power vis-a vis its nomination because it creates more democratic legitimation for the Commission.
- When formalizing an informal institutional change, less integrationist member states are less reluctant to formalize these informal changes increasing the formal power of the EP as opposed to more integrationist member states who would like to see an additional formal increase of EP powers, not just the formalization of the de status quo

When considering the process through which the EP's powers to appoint and invest the Commission have emerged and developed, we are faced with several intriguing puzzles. Indeed, it is difficult to understand why the EP's formal power in this respect has developed from nothing at all, to encompass the investiture of the Commission (in the Maastricht Treaty) and the 'election' of the Commission President (in the Lisbon Treaty), despite a considerable number of member states being initially opposed to such an increase. Similarly, the fact why the Commissioners were willing to present themselves individually to the EP for hearings is puzzling, particularly since the Commission and the Council were resisting this sort of practice; and how the EP political groups managed to present alternative candidates for the Commission presidency against the initial opposition of powerful member states.

As we will see, this chapter proves our argument that treaties, because they are incomplete and ambiguous, allow room for informal rules to emerge through bargaining with the EP often being the winner in the process. It also shows that the Commission is often an ally of the EP in increasing the latter's power in the nomination— as the Commission has much to gain from increasing its 'democratic legitimacy'. This is a potentially useful Commission resource for strengthening its own position when facing the European Council. Such changes will be often formalised by member states, when they agree that such a formalisation is in their interest to do so or when such a formalisation appears to be an acceptable compromise between the less integrationist member states which would accept a new Treaty provision that merely formalises an existing practice and most integrationist member states which saw granting more power to the EP as their priority.

4.1 Nomination and investiture of the Commission: formal changes

In order answer these questions, this section describes the mechanisms which lead to Treaty changes regarding 1) the right of the Parliament to be consulted on the President of the Commission (Maastricht Treaty), 2) the investiture of the Commission by the EP (Maastricht Treaty), 3) the approval of the Commission President by the EP (Amsterdam Treaty) and 4) the 'election' of the President by the EP (Lisbon Treaty).

We will analyse the mechanisms at work for each of these formal changes: a) for the EP's success in creating an interstitial institutional change; and b) for the formalisation of this interstitial institutional change in the subsequent round of Treaty revision. The empirical evidence is based on primary sources (memoirs, letters, reports by permanent representatives, etc.)¹⁹ and secondary literature.

4.1.1 Consultation of the EP on the nomination of the President of the Commission (Maastricht Treaty)

In its initial form the Treaty of Rome did not grant any right to the EP (then Assembly) in the appointment process of the Commission. This was reserved specifically to member states. More precisely, the Treaty stated that the President was to be appointed by the common agreement of member-state governments.

The Treaty, then, was not ambiguous as regards the choice of procedure: member states very clearly reserved for themselves the right to appoint all Commissioners, including the President. Its only 'incompleteness' may lie in the fact that no clause explicitly prohibits the EP from giving its opinion about the President of the Commission. In any case, this opinion would not generate the chance to delay or block the functioning of the institutions. Thus, we can reasonably assume that any EP veto power regarding the Council's right of appointment was unwanted by the member states at the time.

More than twenty years after the Treaty of Rome, in April 1980, the EP, enjoying the enhanced legitimacy stemming from its newly implemented direct election, adopted a resolution asking for a right to debate and vote on the candidate for President of the Commission proposed by the member states. Subsequently, Gaston Thorn, having been appointed President of the Commission, came to the EP to take part in a debate that the Parliament described as 'confirmation hearings' (Westlake 1998).

This event – the participation of the President of the Commission in a parliamentary debate – has since been repeated and consequently represents a first informal interstitial change. It has become an informal rule which was made possible by the incompleteness of the Treaty (as nothing prohibited the Commission President from presenting him/herself to the EP), notwithstanding the fact that the Treaty was not ambiguous (and clearly preserved the member states' competences in this sense). The EP had no opportunity to be a credible threat; indeed it did not make any threat at all. The president of the Commission voluntarily presented himself to the EP, allowing it to make a first step towards the investiture of the Commission's president.

Subsequently, the issue of granting some power to the EP regarding the investiture of the Commission was discussed in the Council following the presentation of the 'Genscher-Colombo initiative', officially launched in the EP by the German and Italian foreign ministers in November 1981. This initiative proposed that the *President* of the EP should be consulted regarding the President of the Commission. After several foreign ministers' meetings, in which agreement was not reached, it was only at the Stuttgart European Council in June 1983 that the member states eventually agreed on a Solemn

¹⁹ The primary sources for the Stuttgart Declaration were not available in the European Council's archives. I therefore rely on secondary sources in the first two sections.

Declaration on a European Union,²⁰ which provided that the President of the representatives of the member-state governments “seek the opinion of the *enlarged bureau* of the EP”. This procedure was first used for the first appointment of Delors in July 1984 when the President of the European Council met the enlarged bureau of the EP beforehand to discuss the proposal.²¹

With the Stuttgart Declaration, the bureau of the EP acquired the right to be consulted on the nomination of the President of the Commission. At this point, however, the EP probably would not have had the possibility to block the appointment of the Commission President by delaying its opinion. Indeed, the declaration may have had great political importance in the EU and its member states but required further translation into EU legislation to have legal effect.²²

Several months prior to the IGC of 1985, Italy declared that it would only ratify a new treaty if it was accepted by the EP (Corbett 1998: 223). The Dutch government submitted a proposal concerning the method of appointing the Commission which provided for the President of the Commission to be nominated only after consulting the EP, but this proposal was not discussed in the negotiations. The foreign ministers meeting in Luxembourg in October 1985 agreed on a package of reforms, with Italy reserving its consent pending approval by the EP. The EP adopted a resolution on 11 December stating that “the results were unsatisfactory, [...] particularly as regards the powers of the EP.”²³ but nevertheless the Foreign Ministers finalised the texts approved at the preceding meeting and declared negotiations closed, although still with Italian reservations. Nonetheless, the Italian parliament eventually ratified the Single European Act.

After the adoption of the Single European Act the EP passed a resolution requesting the right to ‘*elect*’ the candidate proposed by the Council to be President of the Commission by an absolute majority and to vote on the Commission.²⁴ In doing so, the EP proposed a two-stage procedure in which it would first elect the President on a proposal of the European Council, and secondly hold a debate and a vote of confidence on the Commission as a whole before it could take office.

During the IGC, the EP continued to push its proposals on the election of the Commission President. It received early support from Germany, which tabled a similar proposal, and the Commission itself, supported by Germany, Belgium, Italy and Spain, was prepared to accept the proposal. However, several member states (the UK, Ireland, Portugal, Denmark and the Netherlands) were opposing it (Corbett 1993: 58–59). Finally the Dutch presidency’s proposal, according to which the EP would only be consulted on the nomination of the President, was conserved in the final Treaty text. Strikingly, during the negotiations this treaty change appeared as nothing more than *de facto* formalisation of an existing informal rule. For example, one of the member states claimed that it was only ready to accept a “simple consultation by the EP” because it “would not give a right of veto to the EP regarding a can-

²⁰ European Council, Solemn Declaration on European Union, Stuttgart 19 June 1983, *Bulletin of the European Communities*, No. 6/1983.

²¹ By definition, the declarations of the European Council should be considered an interstitial institutional change, because they are not subject to revision by the ECJ. However, this is interstitial institutional change created unilaterally by the member states which is thus close to the logic of treaty revision. Consequently, it would complicate the analysis to equate them with interstitial institutional changes created after a bargain between the three supranational institutions, and we will not introduce the declarations of the European Council as a unit of analysis.

²² In 1994, the European Court of First Instance ruled in *Roujansky v Council of the European Union* (where a private citizen attempted to annul a declaration of the European Council on the date of entry into force of the Maastricht Treaty) the Court was not competent to review a declaration of the European Council.

The argument was that Article 31 of the Single European Act expressly excluded the application to the European Council of the provisions of the Treaty concerning the jurisdiction of the Community judicature, and because this exclusion was maintained by Article L of the Treaty on European Union.

²³ Minutes EP, 11 December 1985, cited by Corbett 1998.

²⁴ Resolution Martin, doc PE 144/177/def, 31 October 1990.

didate chosen by the Council".²⁵ Similarly, Italy and the Commission critiqued this proposal because "they did not change anything to the existing practice".²⁶

Several observations must be made regarding the events described above: First, the interstitial institutional change initiated by the EP (presentation of the Commission President to the EP) came without the EP having any ability to block the functioning of the European Union, but rather through the voluntary collaboration of another institution (the Commission). Second, this informal rule was not formalised in the subsequent round of Treaty revision (Single European Act), but in the second one (Maastricht Treaty). Third, the fact that the EP used the consultation rights granted to it at Maastricht in a way which gave it a *de facto* veto on the nomination of the Commission President (see above) was not predicted by the member states, which believed that allowing the EP to be consulted on the nomination of the Commission President would not change the *de facto* situation.

4.1.2 Investiture of the Commission by the EP (Maastricht Treaty)

According to the Treaty of Rome, the Commissioners are appointed by common agreement of the governments of the member states. Thus, as regarding the President of the Commission, the Treaty is not ambiguous either with respect to the choice of the Commission itself, and only incomplete in the sense that it does not explicitly prohibit the EP from holding a vote on the Commission. It is interesting to note that the Treaty of Rome introduced a specific notion of responsibility of the Commission to the EP, by granting the EP the right to censure the Commission (but not individual Commissioners) by a two-thirds majority of the votes cast, representing a majority of the members.

The resolution adopted by the EP in April 1980, cited above, also stated that the EP should hold a "vote ratifying and expressing confidence" in the appointment of the Commission as a whole following a debate on its programme. The EP carried out its intention without regard to the position of the other actors in February 1981, when it held a debate and a vote on the incoming Thorn Commission, "recalling its determination to express confidence or non-confidence in the Commission" (Westlake 1998).

This was a very important interstitial change, because it introduced the *de facto* rule whereby the Commission was subject to a vote of consultation. In referring back to the Héritier and Farrell framework, it is interesting to note that this event took place precisely because the contract was in a sense incomplete, but without the EP having any ability to block the system: instead, the EP was independently able to create a new role, and it was impossible for the Commission and for the Council of Ministers to prevent the EP from doing so.

Following this, the Genscher–Colombo initiative proposed that the EP should "hold a vote of confidence on the Commission". The Stuttgart Declaration, for its part, did not go that far, and stated that the EP should "debate and vote on the programme of the Commission" after its appointment by the Council.

At the end of 1983, the EP's Committee for institutional affairs presented a Draft Treaty on European Union (DTEU). This included a provision modifying the term of office of the Commission to coincide with that of the EP. Its appointment would follow each European Parliamentary election and would involve choosing its President by the European Council, the President's team and programme, and a parliamentary vote of confidence enabling it to take office.

²⁵ Internal note of Commission service, January 1991.

²⁶ Internal note of Commission service, May 1991 and 'European Commission, commentaires sur le projet de traité du 8 Novembre 1991 élaborés par la présidence néerlandaise', respectively.

In early 1985, the Commissioners of the Delors I Commission delayed their oath-taking ceremony at the Court of Justice until after they had obtained the EP's confidence. Thus, thanks to the Commission, there was a move from a vote on the programme to something approaching a parliamentary vote of confidence as a condition for taking up office. This event represents a third interstitial change, and again, took place because the EP, even though it did not constitute a credible threat, had the opportunity to act as it did, given the collaboration of the Commission. As we have seen, the negotiations of the Single European Act did not grant new power to the EP regarding the investiture of the Commission, despite the fact that Italy threatened not to ratify the Treaty if the EP did not give its consent.

During the IGC, the EP pushed its proposals already presented in the Draft Treaty and received early support from Germany. During the negotiations, the formalisation of the vote of confidence in the treaties appears to have met with early acceptance despite initial Danish and British resistance,²⁷ and the Presidency's draft paper included it.²⁸ As stated by Corbett (1993: 58–59): "Even member states not enthusiastic about increasing Parliament's powers were prepared to accept this change, which could be presented as being little more than entrenching existing practice".

The new Treaty thus took up the EP's proposal (and existing practice) according to which the Commission could only take office following a vote of confidence.²⁹ However, the EP's request that the Commission should present its programme was not integrated into the Treaties. In this case, there was no unanimity to revert to the *ex ante* situation and member states initially disagreed on whether or not to formalise the interstitial institutional change.

4.1.3 Approval of the Commission President by the EP (Amsterdam Treaty)

The Maastricht Treaty ushered in a new procedure for appointing the Commission, whereby the member states first agree on a candidate, upon consultation with the EP, after which the Commission, as a whole, is subject to a vote of confidence by the European Parliament. The Treaty was ambiguous on the choice of procedure regarding the EP's consultation: it did not specify how the EP should be 'consulted'.

This gave rise to three important innovations.

First, the European Parliament adopted two amendments to its *internal rules*, pushing the Maastricht provisions to their limits through a bold interpretation in which the EP's opinion on the nomination of the President is determined in a plenary session of a majority of its members and is deemed to be substantially 'binding'. The rules of procedure explicitly state that if the EP has submitted a negative opinion on the nomination for President, it must notify the Council and the governments that it will not be possible to proceed with the approval of the Commission as a whole. Moreover, at the point of choosing the Commission President in 1994, the EP reminded the Council that the Stuttgart Declaration had not been abrogated, and that the Council therefore ought to consult the EP on the person it was going to present to the EP prior to holding a vote on the candidate presented by the Council.³⁰ Thirdly, and perhaps most importantly, before the contentious vote on Jacques Santer, the EP threatened not to confirm the Commission as a whole, if its negative vote regarding the Commission President was not taken into account.³¹ Moreover, Santer confirmed that a negative vote in the Parliament

²⁷ Internal note of Commission service, January 1991.

²⁸ UP/26/91, Note de la présidence, 26 February 1991.

²⁹ Moreover the terms of the Commission and the EP were made co-incide, which was also opposed by several member states. For an excellent review of the event see Corbett 1993.

³⁰ Internal note of the Commission services, June 1992.

³¹ The European Parliament points out that, if it delivers a negative vote on the name of the person whom the governments of the member states plan to appoint as President of the Commission, it will refuse the investiture of the Commission

would mean that the Council would have to find another candidate. In any event, the EP approved his appointment only by 260 votes to 238, and the process confirmed that its 'consultative' vote as specified in the Treaty amounts to a *de facto* vote of confirmation.

In this case, Farrell and Hérítier's theory perfectly fits with the circumstances: given the incompleteness of the rules, the EP used its authority to block the system (voting against the Commission or delaying its vote) so that its consultative role became a *de facto* veto power (see also Hérítier and Moury 2007: 139-159).

Here, then, Hix's (2002) argument that EP managed successful institutional change by changing its rule of procedures must be completed: the EP managed to appropriate a veto power regarding the Commission President not only because it changed its rules of procedure, but also because it explicitly threatened the Council to vote against the Commission if its vote on the President was not taken into account. To sum up, the EP's strength came more from the rule of investiture of the Commission than its right to be consulted. As we have seen above, this was an unexpected effect: there is no indication that during the permanent representatives' and foreign ministers' meeting member states were aware of such a linkage. On the contrary, several member states and the Commission explicitly declared that 'granting a right of consultation to the EP would not grant it a veto power on the Council's choice'³². We must then in the following section re-qualify this theory, taking into account the possible linkages between different rules.

Prior to negotiations, the EP pushed its proposal that it should elect the Commission President on the basis of a list of names presented by the Council. Early on in the negotiations it became clear that Greece, Italy, the Netherlands and Austria were the only member states which favoured such an election. The Commission, for its part, was pushing for the 'approbation of the Commission by the EP' because this constituted a "recognition of the *de facto* rules".³³ Despite opposition from the UK, Finland and Ireland, this idea was rapidly accepted by almost all other member states. The Commission underlined that this was very probably because such an approval was seen as formalising existing informal rules. The EP also advocated "this recognition of the formal practice".³⁴ As a consequence, and without too much struggle, the Treaty of Amsterdam came to amend Art. 214 of the EC Treaty. The President, who was previously nominated by the governments of the member states after consulting the EP, is now nominated by common accord of the governments of the member states, with the nomination having to be approved by the EP. A change was then introduced in the timing of the EP's intervention. Before the Amsterdam Treaty, it was consulted *before* the appointment by the Council; its intervention is now necessary *after* such an appointment. Technically, the President is subject to two votes of approval by the EP, the initial approval of the nomination and the subsequent approval of the Commission as a body (President and Commission).

The introduction to the Amsterdam Treaty of the right of the EP to approve the Commission President is clearly a formalisation of an existing informal rule created by the EP. Moreover, as Hix observed, the European Council did not, in creating new formal rules, specify them to further limit discretion by the EP. Therefore, it is questionable that the new rule was created in order to increase simplicity.

if the governments of the member states present the same candidate again'. European Parliament, 'Résolution sur l'investiture de la Commission (21 avril 1994): A3-0240/94', in *Journal officiel des Communautés européennes* (JOCE). 09.05.1994, n° C 128, p. 358.

³² Internal note of the Commission services, June 1992.

³³ Internal note of Commission service, January 1997.

³⁴ Conférence des représentants des gouvernements des Etats Membres, copie – letter, 29 January 1997, CONF/3810/97.

4.1.4 Election of the Commission President by the EP (Lisbon Treaty)

The Amsterdam Treaty stated that the EP should approve the President of the Commission. The EP tried to build on this Treaty provision by providing a set of criteria in its revised rules of procedure according to which the office of the President of the Commission should take into account the outcome of the European elections.

Some changes were introduced in the EP's internal rules in 1999, so that the expression 'vote of approval of the Commission President' was replaced by the term 'election of the Commission President'.³⁵ This, however, is only a symbolic increase in the competences of the EP regarding the approval of the Commission President. In actual fact there has been no shift in competence, but rather a change in how the process is denominated. The EP made this change unilaterally, and it is not clear what the other institutions could have done or could still do to prevent this. In the Declaration of Laeken, the European Council established the European Convention with the task of "to pav[ing] the way for the next Intergovernmental Conference". The European Council determined that representatives of national governments together with national and European parliamentarians and a European Commissioner would compose the Convention.

Regarding our question of interest, it is interesting to note that the EP was divided on the EP's competences regarding the election of the Commission President: the PSE wanted an election directly by the EP (on the base of several potential candidates), while the PPE only acknowledged the 'election of a candidate named by the Council'.³⁶ The EP finally issued a declaration advocating the "election of the Commission President by the EP with a majority of its members". The Commission, for its part, wanted its President to be elected by a majority of 3/5 of the MEPs.

The first draft presented by the Praesidium proposed that:

"taking into account the elections to the European Parliament, the European Council, deciding by QMV, shall put forward to the European Parliament its proposed candidate for the Presidency of the Commission. The European Parliament by a majority of its members shall elect this candidate. If this candidate does not receive the required majority support, the European Council shall within one month put forward a new candidate, following the same procedure as before".

In short and very remarkably, the Praesidium's first draft is almost identical to the internal rules of the EP, except for the requirement of deciding on the President by QMV rather than by unanimity.

This formulation appears like a compromise amongst those countries wanting a direct election by the EP on the basis of one or several candidates presented by the Council (Benelux, Greece, Portugal) and the five member states favouring the *status quo* (Spain, Finland, Ireland, the UK and Sweden).³⁷ As a consequence, in the following meeting of the permanent representatives, 18 representatives expressed their view in favour of such an election while five asked for the election to be held by a mixed electoral college (composed of members of the EP and the national parliaments). Remarkably, many Convention members (e.g. Benelux) favouring the election of the Commission President by the EP favoured an election by a three-fifth majority,³⁸ while the final text adopted by the Council of Ministers incorporated the Praesidium's text without amendments (that is, incorporating the election of

³⁵ Agence Europe, 'PE/Traité d'Amsterdam: les principales modifications du Règlement du PE approuvées afin de l'adapter au niveau traité', 10/03/1999.

³⁶ European Commission, 'Thème de la future Communication institutionnelle de la Commission – principales prises de positions exprimées à la Convention', 25 September 2002. <http://European-convention.eu.int>.

³⁷ Papers presented by governments and European Commission, <http://european-convention.eu.int>.

³⁸ European Parliament, report on Convention work, 21 January 2003, http://www.europarl.eu.int/europe2004/textes/verbatim_030121_summary.htm.

the Commission President by a majority of MEPs). In the final draft of the Convention, the proposed text was adopted.

After the failure of the Constitutional Treaty, the Lisbon Treaty kept the main idea and states that the European Council, “taking into account the elections to the European Parliament and after having held the appropriate consultations”, “propose to the EP a candidate for President of the Commission [. . .] [who] shall be elected by the European Parliament by a majority of its component members”. Once the candidate is elected, adds the following paragraph of the same Article, “the Council, by common accord with the President-elect, shall adopt the list of the other persons whom it proposes for appointment as members of the Commission [...]”. Thus, “the President, the High Representative of the Union for Foreign Affairs and Security Policy and the other members of the Commission shall be subject as a body to a vote of consent by the European Parliament. On the basis of this consent the Commission shall be appointed by the European Council, acting by a qualified majority”. Declaration 11, attached to the Treaty, says:

“[T]he European Parliament and the European Council are jointly responsible for the smooth running of the process leading to the election of the President of the European Commission. Prior to the decision of the European Council, representatives of the European Parliament and the European Council will thus conduct the necessary consultations in the framework deemed most appropriate. These consultations will focus on the backgrounds of the candidates for President of the Commission, taking account of the elections to the European Parliament, in accordance with the first sub-paragraph of Article 17(7). The arrangements for such consultations may be determined, in due course, by common accord between the European Parliament and the European Council.”

4.1.5 Implementation of the Lisbon Treaty

In the European Council of June 2009, a few days after the elections, the member states agreed unanimously that Barroso was “the person they intend to nominate as President for the European Commission for the period 2009–14”, and asked the current and incoming Presidents of the European Council to “have discussions with the European Parliament in order to determine whether the Parliament is in a position to approve that nomination at its July plenary session” (Council 2009a). Despite the fact that Barroso came from the EPP – the party with the majority of seats and despite the fact that the Lisbon Treaty was not yet effective for the nomination, some MEPs, especially the Socialists and the Greens, claimed that pushing through Barroso’s candidacy without due consultation with the EP was a violation of the Lisbon Treaty (Dinan 2010). In the end, Barroso convincingly won the vote on 16 September, although by a smaller margin than in 2004; and only after that he introduced a programme for the Commission’s next term, at the behest of the EP. The Lisbon Treaty came into force in December 2009 and Barroso’s Commission was approved to take office on 9 February 2010.

After this, both the Commission and the EP – especially the Socialist Party – exploited the ambiguity introduced by the Lisbon Treaty to build a case for an entirely new approach to selecting the Commission president (Dinan 2014). As early as in December 2010, at the Warsaw Council, the PES decided to nominate a candidate for their party for the post of president of the European Commission. Interestingly, the Commission was very supportive that such a process should be followed by other parties. In his State of the Union Address before the EP on 12 September 2012, the President of the Commission, Barroso, claimed that “an important means to deepen the pan-European political debate would be the presentation by European political parties of their candidate for the post of Commission President at the European Parliament elections already in 2014”.

One month after, on 22 November, the EP voted a resolution on Elections to the European Parliament in 2014 in which it urged “the European political parties to nominate candidates for the Presidency of

the Commission and expect those candidates to play a leading role in the parliamentary electoral campaign in particular by personally presenting their program in all Member States of the Union”.

As noted by Dinan (2014) the President of the EP, Martin Schulz and the EP Secretary General, Klaus Welle, were very active in promoting such a development. For example, the Secretary General observed in Brussels in September 2013 that:

[P]eople are now finding out – to their astonishment – that [. . .] the Lisbon Treaty has very much changed the legal basis for the process on how to get the Commission into office. First, the EP ‘elects’ – not simply ‘approves’ – the Commission President. Second, the European Council selects its nominee for President based on the outcome of the European elections. (Welle 2013, cited by Dinan 2014)

In a similar vein, Schulz, who addressed the European Council in March 2013, stressed that in “a genuinely democratic European Union [...] the Commission must be transformed into a proper European government which is elected by [...] the EP.” (Schulz 2013, cited by Dinan 2014). At about the same time, he announced that he was willing to be the candidate for his party.

This too had the backing of the European Commission which argued in its Recommendation in March 2013 that a previous selection of candidates by each party “would make concrete and visible the link between the individual vote of a citizen of the Union for a political party in the European elections and the candidate for President of the Commission supported by that party” and thereby increase the legitimacy and accountability of the Commission, and more generally the democratic legitimacy of EU policy-making (cited by Hobolt 2014).³⁹

In July 2013, the EP adopted the non-binding resolution “Improving the practical arrangements for the holding of the European elections in 2014”, with the intention of providing more details on how the new arrangements should be implemented. Among other things, the initiative calls for the European Council to first consider the candidate put forward by the European political party that wins the most seats in the elections, and for political parties to nominate their candidates for Commission President early enough to ensure that they can promote a pan-European campaign focused on a party platform or political programme for the coming five-year term.

Schulz’s candidacy was confirmed in a special congress that took place in Rome in March the following year. Four of the six European parties followed the Socialists’ lead and selected their own candidates for Commission President, in early 2014. The Eurosceptic right-wing Euro-parties, the Alliance of European Conservatives and Reformists (AECR) and the Movement for a Europe of Liberties and Democracy, did not nominate any candidate.

The German Chancellor, Angela Merkel, David Cameron and other national leaders, together with the president of the European Council H. Van Rompuy, initially voiced their disagreement with the EP’s interpretation of the implications of the Lisbon Treaty changes which eventually was called the “Spitzenkandidaten Strategy”. However, after each party had selected their candidate it became increasingly difficult for them to push for an alternative candidate for presidency.

After the elections in May 2014, which gave the EPP a majority, the leaders of the four political groups that had put forward candidates agreed, after several days’ negotiation, to require the European Council to invite Jean Claude Juncker, the lead candidate of the EPP, to see if he could find an absolute majority of at least 376; this majority was subsequently found by Juncker. This proposal met with strong opposition from some countries in the European Council, notably the UK and Hungary.

³⁹ Commission Recommendation of 12 March 2013 enhancing the democratic and efficient conduct of the elections to the European Parliament (2013/142/EU).

Angela Merkel, by contrast, used the 'democratic legitimacy argument' to persuade these countries to vote for the EPP candidate. On 15 June 2014, Jean-Claude Juncker was elected by the Parliament, with the support of the Alliance of Liberals and Democrats for Europe, and some of the European Socialists and Greens – the deal being that Schulz would then be elected as a president of the European Parliament. On 27 June, Juncker was nominated as a candidate by the Heads of State and Government, but only after, in an unprecedented fashion, that the two countries opposing his nomination explicitly requested a vote and voted negatively.

4.2 A de facto rule never translated into treaty change: the individual investiture of commissioners

To recap, the Maastricht Treaty provided for the nominated college of Commissioners as a whole to be subject to a vote of approval by the EP before being confirmed by the member-state governments. Following this, the EP sought to exert some qualitative control over the member states' nominees. Using its internal rule-making autonomy, in 1996 the EP therefore created a procedure in which individual nominees had to appear before its parliamentary committees which would be evaluating their policy competences. This internal rule also stated that the approval vote of the Commission would be held only after these confirmation hearings. Finally, the EP set up several criteria for Commissioners to be chosen (some of the members must be MEPs, women should be equally represented, etc.).

This provision was contested by the Commission and the outgoing Commission expressed strong reluctance to such an idea.⁴⁰ Nonetheless, the EP made it explicit that it simply would not schedule a vote on the new Commission at all until the Commission had complied with this requirement.⁴¹ Santer and his colleagues therefore accepted to examine the procedure, which in turn required a prior agreement on the distribution of portfolios. MEPs strongly criticised the performance of some candidates, but rather than rejecting the Commission as a whole, MEPs pressed for a reallocation of responsibilities. This happened in the case of Commissioner Flynn, after which the EP expressed its confidence in the new Commission by a vote of 417 votes to 104.

Following this, in 1999, the EP used the option of collectively rejecting the incoming Prodi Commission to obtain from the Commission President the concession that he would consider requesting any Commissioner to resign if the EP expressed a lack of confidence in him or her (Nugent 2001: 86).

Again in 2004, the EP conducted public hearings of the nominees. Following these, the EP threatened that it would not vote for the Commission if the incoming Commission President Jose Manuel Barroso did not replace and reshuffle some of the Commissioner-nominees. In particular, an EP committee narrowly voted to oppose Italian Rocco Buttiglione as the EU's next Justice Commissioner. Barroso initially resisted the pressure to reshuffle his team, but the Socialists, who with 200 seats make up the second biggest group in the Parliament, along with the Communists and the Greens, insisted that the situation was unacceptable. Finally, Barroso decided to reshuffle the Commission: he used the signing ceremony for the EU Constitutional Treaty in Rome to ask some government leaders to withdraw their nominees and to submit new candidates. Member states finally accepted this, and two Commissioners were replaced and one reshuffled. The EP finally expressed its confidence by 449 votes to 145.

A similar scenario occurred in February 2010: MEPs had questions both on the transparency of the financial declarations and the competence of the Bulgarian candidate for humanitarian aid Ms Jeleva,

⁴⁰ Interview with a Commission Official and with a Council Official, November 2004.

⁴¹ Internal note of Commission service, June 1994.

who finally abandoned her candidacy; and in 2014 with the Slovenian nominee Alenka Bratusek, who was also replaced. In this case, therefore, the EP successfully created a new informal rule to its advantage – the rule to hold hearings of Commissioners, in order to judge their competencies, and to reserve the right to ask the Commission President to reshuffle or replace some members of his/her team. In short, the EP created an informal rule close to the investiture of the individual Commissioners. This success depended on several factors. First, while the Maastricht Treaty grants the EP the right to approve the Commission, nothing is said about how this approval should occur; and the Treaty does not explicitly prohibit individual hearings. Second, the success of the EP's strategy certainly derived from its ability/power to block the functioning of the EU by refusing to vote, or vote against, a new Commission. This was a very credible threat: the Council certainly has much more to lose in a vote against its choice of a college of Commissioners than the EP does (Héritier and Moury 2007).

It is interesting to note that the EP never asked for this rule to be incorporated into the Treaty of Lisbon. There was no unanimity amongst member states on the *ex ante* situation, but formalising the informal rule was never discussed during the IGCs. In fact, none of the member states seemed interested in formalising this informal rule. This may be due to the fact that most integrationist member states probably were not interested in proposing a policy change that was not even asked for by the EP, and all member states may have been particularly reluctant to introduce the idea of individual responsibility of the Commissioners, which may have strong repercussions in the future.⁴²

However, this informal rule was formalised in an inter-institutional agreement in November 2010. It was agreed that: If Parliament asks the President of the Commission to withdraw confidence in an individual Member of the Commission, s/he will seriously consider whether to request that Member to resign [...]. The President shall either require the resignation of that Member or explain his/her refusal to do so before Parliament in the following part-session⁴³.

4.3 Conclusion

The history of the development of the EP's power regarding the investiture of the Commission is a success story: the EP did all it could and succeeded in maximizing its competences. However, the EP would not have succeeded in doing so without the support of some member states which saw this increase as an important priority; and in some instances of the Commission which probably was seeking to enhance its own legitimacy.

The first point to note in this successful story is that supranational actors bargain to exploit the treaties at the limit in order to increase their own competencies, and sometimes the shift of competencies may differ from the original preferences of member states. This is possible because all treaties in a sense incomplete, but not necessarily in the sense of ambiguity about the choice of procedure. In some of our cases, indeed, the only incompleteness resided in the fact that nothing explicitly prohibited the EP to act as it did.

Bargaining, and particularly the potential of the EP to delay or block, combined with a lower susceptibility to failure and a longer time horizon, was a sufficient condition to create interstitial institutional change. The formal power required to threaten could be derived from a linked power, as was seen in

⁴² It is worth noting that the new framework agreement, between the Commission and the EP in July 2005, does not introduce this principle of individual investiture either, but only recognises that when a member of the Commission has to be replaced, the President of the Commission shall present the nominee to the Parliament 'in full compliance with the prerogatives of the institutions'.

⁴³ Framework Agreement on relations between the European Parliament and the European Commission, 20th November 2010.

the exploitation of the EP's right of investiture to create the informal right to approve the Commission President. However, interstitial institutional change to the benefit of an actor occurred twice as a result of the Commission's collaboration.

As regards the formalisation of an informal change, we observe that interstitial institutional change alters the *status quo* and thus the preferences of Member States regarding a new shift of power to the advantage of the EP. More precisely, less integrationist member states are less reluctant to increase the formal power of the EP in situations where a new treaty provision formalises an interstitial institutional change rather than when it creates new power for the EP. Given that most integrationist member states usually see granting more power to the EP as a high priority, the formalisation of interstitial institutional change appears as a compromise where member states with little to lose (no *de facto* change in power perceived) cede to member states with much to gain (pretending that they won more power for the EP to their electors or national parliaments). Less integrationist Member States will accept such a slight move from the *status quo* in order to claim that they 'already make concessions' and to win in linked arenas. There is a clear example of this in the Maastricht Treaty, where the increase in the EP's power was seen as part of a package deal.

Table 1 : Change of procedure (Commission investiture)

Change of Procedure in the Treaty	Previous Procedure	Interstitial institutional change	Positions of member states
<u>Maastricht Treaty (1991)</u> : EP <i>consulted</i> on member states' nominee for Commission President	Treaty of Rome, Art. 161: the President of the Commission shall be appointed from among its members for a term of two years by common accord of the governments of the member states	- Thorn presents himself to the Parliament. This was described by the EP as a 'confirmation hearing'. - Stuttgart European Council, June 1983: 'The President of the representatives of the governments of the member states seeks the opinion of the enlarged Bureau of the EP before appointing the President of the Commission'	UK, Ireland, Portugal, Denmark and the Netherlands opposed the election of the President of the Commission by the EP. Germany, Belgium, Italy and Spain prepared to accept the proposal.
<u>Maastricht Treaty (1991)</u> : college of Commissioners subject to a vote of approval (Art. 158 ETC).	Treaty of Rome, Art. 158: The members of the Commission shall be appointed by common accord of the governments of the member states. Their term of office shall be four years. It shall be renewable. Treaty of Rome, Art. 144: If the motion of	- Parliament held a debate and a vote of confidence unilaterally on the incoming Thorn Commission in February 1981. - Stuttgart European Council, June 1983: 'After the appointment of the members of the Commission by the governments of the member	Italy, Belgium, Luxembourg, Germany and the Netherlands supported the investiture of the Commission; opposition from Denmark, Greece and the UK.

Change of Procedure in the Treaty	Previous Procedure	Interstitial institutional change	Positions of member states
	censure is carried by a two-thirds majority of the votes cast, representing a majority of the members of the Assembly [European Parliament], The members of the Commission shall resign as a body.	states, the Commission presents its programme to the European Parliament to debate and vote on the programme'. -Delors I's Commissioners delayed their oath-taking ceremony at the Court of Justice until after obtaining the Parliament's vote of confidence in 1985.	
<u>Maastricht Treaty (1991)</u> : the Commission's term of office can be modified to coincide with that of the European Parliament.	Treaty of Rome, Art. 158. The Commission's term of office set at four years.	None	Germany, Italy and Spain supportIreland, France, Greece, Portugal and the UK hostile.
<u>Treaty of Amsterdam</u> : Nominee for Commission President has to be <i>approved</i> by the EP (Art. 214).	Maastricht Treaty: the EP to be <i>consulted</i> the on member states' nominee for Commission President.	New rule of procedure: The EP shall approve or reject the nomination of the President of the Commission by a majority vote. If the outcome of the vote in the European Parliament is negative, the EP President shall request the governments of the member states nominate another candidate.	Greece, Italy, the Netherlands and Austria favoured such an election of the Commission President by the EP. The Commission was pushing for 'approbation', the UK, Finland and Ireland opt for the status quo.
<u>Lisbon Treaty</u> : nominee for Commission President is <i>elected by EP with member states</i> after a proposal by the EP taking into account the elections to the EP (Art. 1 – 26 I).	Treaty of Amsterdam: nominee for Commission President has to be <i>approved</i> by the EP.	Rule of procedure after Maastricht: election of the candidate president by EP. Presentation of alternative candidates by five of the seven European party groups, one of them eventually nominated as commission President.	Strongly supported by most MEPs and representatives of smaller governments and the Commission. Opposed by the UK and Spain.

Change of Procedure in the Treaty	Previous Procedure	Interstitial institutional change	Positions of member states
No treaty change		<p><u>Hearing of Commissioners</u>: revised rules of procedure - individual members of the Commission designate must appear before the parliamentary committee corresponding to their prospective portfolio for a public confirmation hearing.</p> <p>EP threatens not to schedule a vote at all on the new Commission until it has complied with this requirement.</p> <p>J. Santer and his colleagues examined the procedure.</p>	Not discussed in IGC.

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5 THE EP IN THE BUDGETARY PROCESS

KEY FINDINGS

- In the budgetary areas, we witness a clear trend towards parliamentarisation on the spending side. With the Lisbon Treaty, the EP gained the right to ‘co-decide with the Council’ on annual budgets and to reject the whole annual budget by a simple majority.
- On the revenue side, member states still have a clear edge.
- Most institutional changes have taken place without Treaty reforms; however, several inter-institutional agreements (IIA’s) have fundamentally altered the budgetary process.
- During the first year of the European Economic Community (EEC) existence, the empowerment of the EP originated from some member states’ concerns for democratic legitimacy.
- Since the adoption of budgetary provisions in the treaties, the EP continuously interpreted the Treaties in a ‘maximalist’ way and strategically used the creation and revision of the IIA’s to increase its own power.
- Budgetary prerogatives enabled the EP to obtain more legislative powers, and *vice versa*.
- Most of the new provisions of the Lisbon Treaty are a mere formalization of existing practice.

When first created the EP only had the power to approve the budget or amend it and the Council could reject the changes by qualified majority voting (QMV). Today, the EU finances are decided by different sets of rules, in which the EP’s prerogatives vary. Annual budgets are jointly decided by the Council of Ministers and the EP; but both have to respect the ceilings of expenditure set by the multi-annual financial framework (MFF). MFFs are passed by the Council by unanimity, after obtaining the consent of the EP. How to finance this budget (the ‘own resources’ issue) can only be modified by a decision of the Council deciding by unanimity after having consulted the EP – a decision that should be ratified in each member state. Discharge of the Commission’s execution of the budget shall be granted by the EP in the budgetary areas, thus, we witness a partial, clear trend towards parliamentarisation: while the EP has no power over the EU’s own resources and revenues, it co-decides the annual budget and, informally, the multi-annual budget planning and holds the executive (i.e. Commission) accountable.

The evolution of EP competences in budgetary issues differs from other policies in two ways. First, it is not an area in which EP prerogatives have increased steadily over time. If we compare the current budgetary rules to those specified in the Treaty of Rome, then the EP has indeed been empowered. The EP, indeed, gained the right to ‘co-decide with the Council’ on annual budgets, to reject the entire annual budget or any supplementary budget by a simple majority and the exclusive right to grant a discharge to the Commission with respect of the implementation of the budget. However, on balance the member states still have an edge, notably on the revenue side. Furthermore, many scholars have put forward arguments claiming that the Lisbon Treaty actually weakened the EP’s powers as compared to the previous rules (see below). A second specific feature of the budgetary policy is that most institutional change has taken place without Treaty reforms: Treaty provisions governing the budget have remained unchanged for over thirty years (from the Brussels Treaty of 1975 to the Lisbon Treaty). During this period, however, the EP, the Council and the Commission have signed several

inter-institutional agreements including procedures and rules that fundamentally altered the budgetary process.

In what follows we describe both the formal and informal changes that have redistributed power and competences in budgetary affairs, with a particular focus on the role of the EP in shaping these reforms. We illustrate that, as in other areas, the EP has strategically exploited the ambiguities and incompleteness of the Treaty to increase its own prerogatives – often with the Commission's support. It also shows how budgetary powers were used to gain legislative powers; and how, in turn, those were used to gain more budgetary prerogatives.

5.1 From the Treaty of Rome to the Budgetary Treaties

Article 203 of the Treaty of Rome provides for a budgetary procedure that left the Assembly with limited powers. The draft budget presented by the Commission had to be modified and approved by Council with a qualified majority. In the space of a month, the Parliament could either approve the budget or amend it. If the latter, then the Council was obliged to amend or reject each amendment by qualified majority voting. If the Parliament did not react within the one-month limit, the budget was automatically approved. Finally, discharge of the Commission execution of the budget shall be granted by the EP.⁴⁴

In 1965 with the introduction of agricultural levies, the Council requested the Commission to make a proposal regarding their practical implementation. The Commission took the view that since the introduction of 'own resources' would deprive national parliaments control over part of the budget, this should be linked to a strengthening of the powers of the EP in the budgetary area. The Commission then suggested granting the EP the right to approve the Community budget (Lindner and Rittberger 2005). While the Benelux countries, Italy and Germany supported the principle, the French president De Gaulle violently opposed it (together with any kind of supranationalism). In the night of 30 June-1 July 1965, French representatives left the negotiations and De Gaulle forbid his ministers to attend future Council meetings. This 'empty chair crisis' ended with the 'Luxembourg compromise' of January 1966 in which member states and the Commission committed to avoid qualified majority voting when national vital interests were at stake and to end any discussion of empowerment of the EP in budgetary procedures.

When de Gaulle resigned in April 1969, French ministers - wishing to ensure the sustainability of CAP spending before the UK became a member - put the issue of own resources and the EP back on the table. In the summer, the Commission again proposed the introduction of a system of own resources and to empower the EP in the budgetary procedures (Lindner and Rittberger 2003; Pollack 2008). This demand was clearly backed by the EP itself,⁴⁵ which also wanted to introduce the direct elections of its members – a coupling that the Commission was more hesitant to accept.⁴⁶ Within the Council, France once again took a stand against the other five member states which supported the view that the introduction of own resources should go hand in hand with the EP empowerment, while France claimed that such a change would open the door to 'demagogic' spending (Rittberger 2005; Rittberger and Lindner 2003). Yet even the five supporting member states objected to the more supranationalist aspects of the Commission proposal, namely the examination of the budget proposal

⁴⁴ In the Treaty of Rome (1957) the EP had a power on administrative expenditure, with a procedure translated by the ECSC Treaty, subsequently suppressed with the Merger Treaty (1965).

⁴⁵ Parlement Européen/Commission Politique Proposition de résolution/Rapport, 3 Octobre 1969. *Rapport sur l'extension des pouvoirs du Parlement européen, notamment dans le domaine budgétaire - Rapporteur: M. Furler*

⁴⁶ Commission, Parlement Européen/Commission des finances et des budgets, Compte Rendu de Réunion, 29 Septembre 1969, *COMMISSION DES FINANCES ET DES BUDGETS - COMMISSION POLITIQUE - Compte rendu sommaire de la réunion du 25/09/1969 - Pouvoir budgétaire du Parlement européen*

by the EP rather than by the Council; the creation of a conciliation committee in which the Commission, the EP and the Council would have a veto power; the right of the EP and the Commission to increase all kinds of expenditure without the Council's agreement (Pollack 2008); and a greater competence on the part of the Assembly over Community revenues.⁴⁷

Early in 1970, the heads of governments finally reached a compromise which was materialized by the Luxembourg Treaty of 22 April 1970 and the Brussels Treaty of 22 July 1975. They committed to the gradual replacement, during the 1970s, of member-state contributions by own resources including agricultural levies, customs duties and a share of VAT receipts. They granted the EP the power by a two-thirds majority, to reject the entire budget.⁴⁸ In this case, a system of 'provisional twelfth' based on the past budget would be put in place until the adoption of a new budget, thus preventing the EP from blocking the functioning of the Communities. In parallel, they accepted the French proposal to distinguish between compulsory expenditure 'necessarily resulting from the Treaty or from acts adopted in accordance therewith' (where the Council had the last word) from the others, 'non-compulsory' expenditure over which the Assembly had the final say.⁴⁹ At the time these accounted for a very small proportion of the total expenditure (4%, Lindner 2003). The rationale underlying this distinction was that the authors of the Treaty wanted to protect the Council's legislative power. As noted by an expert at the Centre Visuel de la Connaissance sur l'Europe, 'Member states sought to prevent Parliament from using its budgetary power so that the situation would not arise whereby the legislative texts adopted by the Council could not be implemented because the appropriations involved had been rejected by Parliament. By giving the Council the final say on compulsory expenditure, they protected themselves against that risk'⁵⁰. Moreover, this distinction kept agriculture outside of the control of the EP.

In order to ensure that the EP did not increase the expenditure under its control without restraint the Treaty provides for a maximum rate of increase (MRI) for NCE.⁵¹ This is adopted by the Commission every year, on the basis on the GNP, inflation and governments' variation in spending. The MRI can be increased in two specific instances: when the Council and the EP jointly agree to do so, and when the Council has already increased the NCE by more than half the maximum rate, in which case it the EP is allowed to make a further increase in expenditure but by half the rate. Finally, contrary to the wishes of the EP, the Council retained full competences for Community revenues and the Treaty of Rome, that provided unanimity for more national ratification, remained intact. This provision still applies. Finally, the Brussels Treaty also grants the EP the power of discharge and created a European Court of Auditors, whose decisions would guide the EP in its own decisions.

In this period the EP was still not yet democratically elected and had no major role in Treaty revisions. Instead, it was clearly the concerns of the Commission and the member states over democratic legit-

⁴⁷Bulletin de la Communauté économique européenne. dir. de publ. Communauté économique européenne. Mai 1965, n° 5. Bruxelles: Office des publications des Communautés européennes. "Financement de la politique agricole commune - ressources propres de la Communauté - renforcement des pouvoirs du Parlement européen", pp. 2-11

⁴⁸ The 1970 Treaty was ambiguous on the right to reject the budget. The EP and the Commission and some national parliaments interpreted it in this way, but a majority of member states were against this interpretation. The question resolved by the 1975 Treaty.

⁴⁹ More precisely, modifications introduced by the Assembly to increase compulsory expenditures (CE) require a qualified majority support in the Council, while those that reduce or transfer such expenditures required a qualified majority. As regards non-compulsory expenditures (NCE), the Parliament can propose amendments in its first reading, which can be modified only by a qualified majority in the Council's second reading; if there is no qualified majority, the EP's amendments are deemed to be accepted by the Council. Moreover, Parliament is not bound by the decisions of the Council, and may reinstate these amendments in its second reading.

⁵⁰ Centre Virtuel de la Connaissance sur l'Europe, CVCE. European Navigator. Laurence Maufort (2013a) The difference between compulsory and non-compulsory expenditure in the European Union.

⁵¹ Centre Virtuel de la Connaissance sur l'Europe, CVCE. European Navigator. Laurence Maufort (2013a) The maximum rate of increase of European Union non-compulsory expenditure

imacy that were the major reason for increasing the powers of the EP (Rittberger 2005). This increase was nevertheless limited in its scope, and even the most integrationist member states had not supported the marked increase of the EP's powers as originally proposed by the Commission. Instead, they settled on a deal where they kept control of the process (Pollack 2008).

5.2 From the Budgetary Treaties to the Inter-Institutional agreement of 1988

In the two decades after the Luxembourg Treaty, until the creation of the Financial Perspective of 1988 we witness very intense controversies within the member states and between member states and the EP (Lindner 2006). During this period the EP engaged in a 'maximalist' or in Lindner's words, an 'opportunistic' interpretation of the Treaties, together with an overall strategy to increase spending. Deploring, indeed, that 'the Council was neither able nor willing to take part in a constructive dialogue with Parliament on the unresolved questions',⁵² the EP systematically introduced amendments to increase its budgetary prerogatives, including 1) the criteria for differentiating between compulsory expenditure (CE) and other types of expenditure, 2) the application of the annual rate of increase for non-compulsory expenditure (NCE) and 3) the linkage between budget and legislation. In this sub-section we examine each of these areas and summarize the main successes and defeats of the EP.

First, the ambiguous boundary between compulsory and non-compulsory expenditure left room for interpretation, and the EP often managed to re-classify budgetary items that were categorized by the Commission and the Council as compulsory as 'non-compulsory'. When preparing the 1975 budget which featured this distinction for the first time, the Commission attached a list of budget lines to the preliminary draft budget showing how it intended to classify each heading, basing itself on the decision to 'consider an item of expenditure as compulsory when the principle and the amount of the expenditure were statutorily prescribed in the Treaties' or other European binding acts (Strasser 1990).⁵³ The Council regarded as compulsory all expenditure 'in respect of which, by virtue of existing enactments, no budgetary authority, be it the Council or the EP, has the right freely to determine the appropriations'; and the EP defined CE as those 'to which a third party already has a legal claim' (Dankert 1983). Initially disagreements arising from these different interpretations were resolved on a case-by-case basis; as the Court never gave an interpretation of this definition. For example, in 1974 and 1977 conflicts arose over how to classify the Regional Fund and in each of those years it was classified differently.⁵⁴ During this period, however, research shows a constant increase in the definition of what constituted NCE (Strasser 1990).

When voting the 1982 budget, the EP which, according to its president was tired of the fact that 'the Council had not responded to its repeated calls for joint discussion of the criteria to be adopted (Dankert 1983)', decided to only treat as compulsory expenditure which had been previously classified in the same way by all three institutions. On 17 February 1982 the Council instituted proceedings against the EP and the Commission, and at the same time the Presidents of the Council, the EP and the Commission began joint discussions to see whether the dispute could be settled outside the ECJ. On 30 June 1982 they signed the 'Joint Declaration on various measures to improve the budgetary procedure' and withdrew the proceedings brought before the ECJ. This gave a new definition for non-compulsory expenditure, as 'Community legal obligations towards third parties'. In other words, a definition very close to that of the EP. This meaning meant that a substantial proportion of CAP

⁵² See the EP Resolution of April 1981, O.J. No. C 101/1981/107.

⁵³ In drawing up the list the Commission was guided by a Council document, the so-called Harmel list.

⁵⁴ Comission/S cretariat general, Note Interne, 19 Mars 1979, SEC(/9)278. Election du Parlement europ en au suffrage universel direct.

spending (including some food-aid expenditure) and all administrative expenditure by the institutions was now classified as non-compulsory (Dankert 1993).

The EP's second strategy was to gain leverage on the calculation of the 'maximum rate of increase';⁵⁵ this was subject to interpretation and could in theory be modified by the consent of both arms of the budgetary authority. In 1985, for example, the EP unilaterally exceeded the maximum rate for the 1986 budget, arguing that the Council had failed to provide adequate finance accounting for the accession of Spain and Portugal and had ignored the problem of the accumulated commitments from previous years (Corbett et al. 2009). The Council took the Parliament to the ECJ in case C34-86. The Court did not defeat the EP on the substance of its claims but ruled that the two institutions had to agree explicitly on a new maximum rate of increase. Nevertheless, the new budget agreed in July 1986 included virtually identical increases in the structural funds to those voted by the EP as well as significant increases in agricultural expenditure in the EAGGF guarantee section (Corbett et al. 2009).

Third, the EP frequently managed to allocate funding to new programs for which the Council had failed to adopt enabling legislation, thus managing to obtain some legislative competences indirectly. For example, the EP allocated 20,700 ECU in 1976 and 100,000 ECU in 1977 for 'pet projects' in the cultural sector (Corbett et al. 2009). Moreover, the EP argued that entry of appropriations in the budget was considered a sufficient basis for future legislation, a position firmly rejected by the Council (Corbett et al. 2003). The joint declaration of June 1982 specified that where expenditure was entered in the budget for 'significant, new Community action', the EP and the Council were to 'use their best endeavours' to adopt a regulation by the end of May of the budgetary year in question.

Finally, the EP's acquisition of the last word on NCE and of the right to reject the budget in the 1975 Treaty led to the creation a new informal conciliation procedure for legislative acts with important budgetary implications. With this the Council allegedly attempted to integrate the EP's preferences into legislation in order to avoid defeats when the budget for this legislation would have to be adopted. At the time the Council's approach was not conciliatory,⁵⁶ the procedure challenged its absolute power in legislative matters. This was a change that would materialize with the cooperation procedure in the Single European Act. Similarly, the EP repeatedly opposed the Council's inclination to incorporate budgetary commitments for a given action - known as 'amounts deemed necessary' - into the text of EU legislation, a practice that limited its budgetary rights. The 1982 Joint Declaration provides that 'the fixing of maximum amounts by regulation must be avoided'. However, the Council effectively continued to sidestep this agreement through the practice of setting 'amounts deemed necessary' (Earnshaw and Judge 1995).

In the period 1970-1988 we thus observe an 'opportunistic Parliament' that tried to increase its own prerogatives within the limits established by the Treaty, and to be relatively successful in doing so. During this period the EP, which until the SEA of 1986 had small legislative competences, focused on the budget as its primary mean of affecting policy outcome. According to Lindner (2006), the EP was extraordinarily united at this time around the budget committee and managed to get the cross-party majorities of MEPs required to defend its institutional prerogatives. Lindner also demonstrates that the EP was encouraged by the Commission, which frequently sided with it, and that it wisely allied with Southern Member States (SMS) which were more interested in an increase of the budget (allowed by a classification of expenditure and a use of MRI that benefited the EP) than in defending the Council's long-term prerogatives.

⁵⁵ In order to increase spending along the way, see Corbett et al. 2003 and Lindner 2006 for a complete description of EP's strategies to increase spending.

⁵⁶ Written comments from Alfredo de Feo, 31 March 2015.

5.3 The 1998 Inter-Institutional Agreement (IIA)

Towards the end of the 1980s, the European budget was evidently unsustainable. The CAP was becoming increasingly due to chronic overproduction and the revenues became insufficient due to the drop in custom duties and the commitment made to Southern Member States to increase structural funds in return for the completion of the Single Market (Pollack 2008). Conflicts between member states and between the Council and the EP were intense and recurring. In this context, Jacques Delors proposed an ambitious reform of European finances carefully framed to satisfy demands of the twelve member states concurrently. Crucially, Delors proposed to fix the maximum amount (ceiling) for each broad category of expenditure in advance in a 'multi-annual financial perspective'. The proposal also provided for an increase of the Community resources through direct member-states contributions (depending partially on their GDP), for the introduction of stabilizers to reduce the increase of spending on agriculture and for a doubling of allocations for structural policies. The Commission finally recommended that this plan should take the form of an inter-institutional agreement between the three institutions.⁵⁷ In response to this, the EP made it clear that this initiative would be conditional on an increase in the EP's involvement (particularly for compulsory spending and on the Commission's management of its expenses).⁵⁸

Delors' package was adopted unanimously by the European Council meeting in Brussels in February 1988; and the German presidency negotiated the Inter-Institutional Agreement (IIA) with the EP. An important point of contention at this time was the Council's introduction of a distinction between two forms of non-compulsory expenditure: privileged and non-privileged, of which only the former would be allowed to expand at rates beyond the maximum rate (Eiselt et al. 2007). The EP immediately opposed this distinction, stressing that any increase of non-compulsory expenditure should only be allowed if it remained below the ceiling. In the deal, which was finally agreed in June 1988, the Council removed this distinction. Moreover, the EP managed to obtain the Council's commitment to respect multi-annual ceilings, and an improvement of its competences in budgetary politics, for two reasons.

First, we can argue that the IIA provided the EP with *de facto* co-decision powers for the entire budget, including compulsory expenditure. Indeed, the IIA stipulated that the revision of the agreed ceilings (on both compulsory and non-compulsory expenditure) was subject to a joint agreement by the EP and the Council (deciding unanimously or with QMV for minor revisions).⁵⁹ Moreover, the EP secured the use of conciliation meetings (including an equal numbers of representatives from the Council and the EP) at various stages in the annual budgetary process. As a consequence, the distinction between compulsory and non-compulsory expenditure became less relevant. This change increased the EP's rights on CE, but it also reduced its prerogatives on NCE, i.e. in a domain that it originally dominated (Eiselt et al. 2007).

Second, the EP to some extent won the on-going battle over the Council's tendency to introduce 'amounts deemed necessary' into legislation. Indeed, it persuaded the Council to insert a clause in the IIA stating that, where the financial provision for a legislative act was not available, the implementation of the policy could not take place until the budget had been suitably amended, a process in which the EP had important prerogatives (Corbett et al. 2009).

On top of this, we should note that the financial perspective also satisfied another of the EP's core objectives: an increase of spending. Indeed the 1988 IIA provided an increase of spending that was

⁵⁷ Financement futur de la Communauté, Compte rendu de reunion du 18.11.1987, Commission and Parliament Européen.

⁵⁸ PE 112.483/déf./Ann.

⁵⁹ Revision to the financial perspectives that involved less than 0.03% of Union GNI.

above the 'maximum rate of increase'⁶⁰, thus enabling the EP to double the structural funds without freezing other non-compulsory expenditure (Corbett 1989).

5.4 From the IIA of 1988 to the Constitutional Treaty

The 1988 Inter-Institutional agreement undoubtedly reduced the intensity of conflicts within the Council and between institutions during the adoption of annual budgets. In particular, the IIA neutralized one of the most regular causes of conflict between the Council and the EP, namely the calculation of the Maximum Rate of increase. Since the Single European Act, moreover, the EP had been gaining substantive legislative power with the introduction of cooperation and assent; and later with the co-decision I and II legislative procedures (Maastricht and Amsterdam). As a consequence, it shifted most of its attention away from the budgetary arena to other arenas in order to influence decisions (Lindner 2006).

However, each time that old IIAs expired and new ones were negotiated by the three institutions (in 1993, 1996, 1999, 2006),⁶¹ the EP managed to increase its influence in both multi-annual and annual budgetary processes. As already noted, the EP has a veto power on these renewals; and since the IIAs had no binding value, withdrawal or non-renewal was always an option. As a consequence actors' bargaining power was directly linked to the intensity of their preferences (Lindner 2006: 188), and the deterioration of their interests when negotiations failed. Farrell and Héritier (2007) argue that the intensity of preferences for institutional empowerment is higher for MEPs than for the member-states representatives who traditionally have a more short-term policy orientations. Consequently, during the 1990s the EP was able to win institutional concessions from the Council, accepting in return member-state demands for financial austerity (Lindner 2006). More precisely, the EP made considerable advances regarding 1) the classification of expenditure; 2) the flexibility in ceilings and the creation of reserves, 3) its role in the budgetary procedures and 4) the introduction in legislation for 'amounts deemed necessary'.

In the 1990s the EP indeed made further gains in the classification of expenditure, although in practice this distinction had been becoming progressively less relevant. However, a firm EP objective was to guarantee formal equity with the Council in the budgetary process, particularly by eliminating the formal distinction between the two types of expenditure⁶². In each IIA the EP persuaded the Council to include a clause to abolish this distinction at the next Treaty revision. This promise was only fulfilled much later on, in 2004 with the Constitutional Treaty. In the meantime the EP managed to gradually classify or reclassify categories of expenditure as non-compulsory and to create new conciliatory methods to classify both types of expenditure. For example, the 1993 IIA set up a new *ad hoc* conciliation procedure, which intensified the cooperation on compulsory expenditure and shifted some lines from CE to NCE. Another victory took place in December 1996, when the EP gained the adoption of the 'joint statement of improving the provisions of the information to the budgetary authority on fishery agreements', in which the Council accepted that the EP and the Council would make decisions on these budget lines jointly in the *ad hoc* procedure (Lindner 2006). Similarly, the 1997 IIA on provisions for financing the Common Foreign and Security Policy (CFSP) considered these as non-compulsory, but provided for competence shared by the Council and the EP (Maurer et al. 2005). In the 1999 IIA the Council accepted that some items of agricultural expenditure (rural developments and accompanying measures), now accounting for over 20% of the total, should be considered non-

⁶⁰ European Parliament, Report A5-0268/2004.

⁶¹ For 2013 see section 5.6.

⁶² Parlement Européen, 27 Mai 1992, A3-0209/92/PARTIEC/ PE200.830/déf./PartieC. RAPPORT de la commission temporaire "De l'Acte unique à l'après-Maastricht : les moyens de nos ambitions" sur la communication de la Commission "De l'Acte unique à l'après-Maastricht : les moyens de nos ambitions.

compulsory.⁶³ However, in some instances the EP was also defeated. In particular in the annual budget of 1995, it adopted 131 amendments to what the Council and the Commission judged to be compulsory expenditure. The Council took the EP to the ECJ to have the budget annulled (Case C-41/95). In its judgment of December 1995, the ECJ annulled the budget but returned the issue to the budgetary authority and encouraged the EP and Council to find a permanent political solution to the problem (Corbett et al. 2009).

Second, the EP managed to introduce some flexibility into the budget lines and ceilings in the Financial Framework. While the Council insisted on strict compliance with the expenditure ceilings, the EP wanted more flexibility. In particular, it requested to be able to increase expenditure for new policy projects when positive economic climate allowed surplus of resources and/or when programmes cost less than expected (Lindner 2006). In each revision of the financial perspective, the EP presented amendments to go over the ceilings when these circumstances were met; the Council never formally accepted these amendments but it never challenged them in the ECJ (Lindner 2003, 2006). During the negotiations of the 1999 IIA, member states wished to keep the expenditure ceilings identical to those of the previous FP (1.24% of GNP, thus below the automatic maximum rate of increase). The EP threatened to abandon the negotiations and the threat was taken very seriously. It persuaded the Council to introduce a new flexibility reserve that provides funding for new expenses or expenses which could not be covered without exceeding the expenditure ceilings.⁶⁴

Third, during this period the EP managed to install new procedures that increased its prerogatives during the annual and multi-annual budgetary decision-making. For example, the EP denied its assent to the 1993 IIA for over a year until it was granted more inter-institutional co-operation in budgetary matters (including opinion exchanges on the financial priorities and joint negotiations on Compulsory Expenditure; and the negative co-decision procedure to mobilize the monetary reserve and the external action reserve, Giurato 2006). Moreover, the EP persuaded the Council to hold informal trilogues and/or conciliation meetings before each formal stage of the proceedings. A key example of this development is what happened before the Council's second reading. Pollack (2008: 34) observed that *'By contrast with earlier practice, in which the Council's second reading typically rejected the bulk of the EP's first-reading amendments, only to have the EP restore many of these amendments in its own second reading, the Council and the EP now regularly attempt, in conciliation, to reach agreement on all aspects of the budget, and an agreed-upon text is then submitted to the Council and to the EP plenary for approval by their respective majorities'*.

Fourth, with the adoption of co-decision-making in 1992, the EP became more willing to accept the introduction of 'amounts deemed necessary' in the legislation. In March 1995 the EP ratified the 'Declaration by the three institutions on the incorporation of financial provisions into legislative acts'. It specified the acts adopted under co-decision could include binding approximate budgets for multi-annual spending programmes. Moreover, in the agreement, the EP relinquished its right to insert budget lines with no legislative authority as the Declaration specifies that appropriations in the budget for any Community action require the prior adoption of a basic legislative act.⁶⁵ In exchange, the EP obtained budgetary powers protected in policy fields not covered by co-decision: the agreement specifies that legislative acts in these areas could only include non-binding financial estimates

⁶³ Resolution of the European Parliament A4-0230/99, OJ C 279/304 1999.

⁶⁴ European Parliament, Committee on Budgets, Revision of the Inter-institutional Agreement, Revision of the financial perspective, 'Working Document No. 3 on structure and flexibility in future financial perspectives' (rapporteur: Mr. Joan Colom i Naval), 13 February 1998, PE 225.540.

⁶⁵ With the exception of Pilot schemes under a certain amount, preparatory actions, actions carried out by the commissions by virtue of the prerogatives specifically conferred on it and those intended for the administrative operation of each institution.

(Lindner 2006: 194). In other words, where the Council and Parliament jointly adopt legislation they may include a binding indicative budget; whereas this is not the case when the Council acts alone.⁶⁶

An important (and ongoing) conflict where the EP could not gain additional powers is the issue of its prerogatives over own resources.⁶⁷ Indeed, the EP never managed to obtain more than a commitment by member states to address the question at the next IGC; a promise that has not yet been met. Another important setback for the EP during this period has been the lack of formalization of IIAs and the legal abolition of the distinction between types of expenditure. The two issues have been repeatedly requested by the Commission and Parliament,⁶⁸ but were never seriously discussed until the Convention, despite support from Belgium and Spain (Lindner 2006).

Finally we should mention that the Parliament became more assertive in exercising its rights to control the execution of the budget in this period. For example, it claimed (and obtained) the right to receive information from the Commission whenever required, the right to control the good management of politics where this could have financial implications, and the right to take whatever actions were needed in the process of discharging the budget.⁶⁹ The EP also required, and obtained, that the Court of Auditors provide it with regular reports to control the execution of the budget in real time.⁷⁰ In 1996 the EP declined to discharge the budget in 1998 — as it had already done in November 1984 — after having postponed the vote to give the Commission time to respond to the “unacceptably high number of cases where the execution of the budget has been inappropriate.”⁷¹ A motion of censure was tabled, but in the last instance it was not voted. The report of the committee of inquiry created after the event caused the resignation of the Santer Commission on 16 March 1999, showing that the EP took its prerogatives of control very seriously. We should note, however, that the EP was heavily divided over this issue, depending on their ideological proximity with the Commissioners (Ringe 2005).

In this section we have observed a gradual and informal increase of the EP’s powers in many aspects of the budgetary process, with the exception of the own resources system which has remained intact. According to Lindner (2006) the explanation for this increase is that the member had struggled a great deal to reach an agreement amongst themselves over the multi-financial framework; and since 1999 they aimed to increase expenditure at a lower rate than the MRI. Consequently, they were willing to cede institutional powers to the EP in exchange for not seeing the reached deals questioned in renewed discussions.

⁶⁶ Moreover, the declaration provides the option of diverging from amounts entered in the legislative text by 5% (now 10%), thus giving the Parliament and the Council an important margin for manoeuvre to monitor the efficiency and effectiveness of the implementation of programmes (Written interview with A. De Feo, op. cit.).

⁶⁷ Commission, Council Européen, Conférence Intergouvernementale/Maastricht, 23 Octobre 1990, COM(90)600final. *PARECER DA COMISSÃO DE 21/10/1990 SOBRE O PROJECTO DE REVISÃO DO TRATADO QUE INSTITUI A COMUNIDADE ECONÓMICA EUROPEIA RELATIVO À UNIÃO POLÍTICA*

⁶⁸ Commission, Conférence Intergouvernementale/Nice, Avis, 26 Janvier 2000, COM(2000)34final. *Adapting the institutions to make a success of enlargement Commission Opinion in accordance with Article 48 of the Treaty on European Union on the calling of a Conference of Representatives of the Governments of the Member States to amend the Treaties.*

⁶⁹ Parlement Européen, Résolution, 22 Novembre 1990, A3-233/90 / PV43II/ PE146.824. RESOLUTION sur le renforcement des compétences du Parlement européen en matière de contrôle budgétaire, dans le cadre de la stratégie du Parlement pour l'Union européenne.

⁷⁰ Parlement Européen, Proposition de resolution/Rapport, 27 Septembre 1991, A3-0253/91/ PE151.465/déf. RAPPORT FINAL de la commission du contrôle budgétaire sur le renforcement des compétences du Parlement européen en matière de contrôle budgétaire, dans le cadre de la stratégie du Parlement pour l'Union européenne - Rapporteur: A.-M. M.C. Goedmakers.

⁷¹ European Parliament, report on giving discharge to the Commission in respect of the implementation of the general budget of the European Communities for the 1996 financial year, Committee on Budgetary Control, 1998.

5.5 The Constitutional Treaty and Lisbon Treaty

Once the Convention became effective, the EP reiterated its long-term request for the abolition of the distinction between different types of expenditure, the introduction of co-decision for the budgetary procedure; and the formalization of the Financial Perspective within the Treaty. To increase the attractiveness of the fall-back option (and hence its bargaining leverage), it also called for the introduction of an automatic Maximum Rate of Expenditures (MRE) in cases of non-agreement of the FFP. It demanded that the time frame of the financial perspective be reduced to five years in order to make it concurrent with the EP elections and requested the integration of the European Development Fund (EDF) into the general budget of the EU. Perhaps anticipating a rejection, it did not specifically request a re-discussion of the role of the EP in own resources, but simply stressed the need for a reform to be discussed by the two budgetary arms.⁷² The Commission supported the EP's claims, although in more general terms.⁷³ When the Convention representatives met, there was a broad consensus on the formalization of the FF, perhaps because the discrepancy between the formal and informal practice was too high to sustain (Lindner 2006). However, the Conventions' participants were divided over the adoption procedure for both multiannual perspectives and annual budgets, as some member states wanted to limit the EP's role and others pressed for a 'joint adoption' of the budget and the multiannual perspective (Giurato 2006).

After the work of the IX working group on simplification, the final draft of the Convention proposed that 'the multi-financial framework should be established for a period of at least five years by the Council of Ministers (by unanimity), after obtaining the consent of the EP (by absolute majority). It also provided for the continuation of the old ceilings in cases of disagreements (and not an automatic MRI as requested by the EP). Thus, the provisions for the maximum rate of increase were cancelled. As for the annual budget, the Convention proposal provided a complete description of the procedure, modelling it on Maastricht procedure on legislative co-decision, with three differences (Giurato 2006). First, the Council of Ministers (and not the EP) is now the first to comment on the Commission draft. Second, the number of readings is reduced to one plus conciliation. Third, when the Conciliation Committee does not reach an agreement (or if only the Council rejects the joint draft) the procedure does not come to an end but is passed to the EP for a final decision. In this case, the EP may confirm its amendments by a majority of its members and three-fifths of the votes cast. As for the system of own resources, the Convention proposal maintained the principle of double unanimity (unanimity in the Council of Ministers with ratification in each member state), and only provides for the consultation by the EP. Finally, as regards the links between legislation and the budget the Constitution formalizes the inter-institutional agreement that, as rule, 'The implementation of expenditure shown in the budget shall require the prior adoption of a legally binding Union act'.⁷⁴

In order to complete the EU's reform process, a Conference of representatives of the governments of the member states was convened on 4 October 2003 in Rome. All elements from the Convention's proposal for the budgetary procedure were rapidly accepted, with one key exception: the role of the EP in the annual budget procedure. This issue was controversial as some member states opposed the increase of EP prerogatives in the procedure (Giurato 2006). During the first months of the Italian presidency the Italian government acknowledged that it had been unable to reach a consensus over

⁷² European Parliament (2003): 'Report on the reform of the budgetary procedure: possible options in view of the revisions of the treaties', 20 February 2003, A5-0046/2003.

⁷³ Commission, SEcretariat General, *ibid.* and Draft Constitution – financial and budgetary provisions, analysis, European Convention 2002-2003, Internal Note, 18-07-2006.

⁷⁴ Draft TREATY ESTABLISHING A CONSTITUTION FOR EUROPE, Adopted by consensus by the European Convention on 13 June and 10 July 2003 SUBMITTED TO THE PRESIDENT OF THE EUROPEAN COUNCIL IN ROME, 18 July 2003, (2003/C 169/01).

an alternative and hence kept the Convention text as a proposal.⁷⁵ In preparation for the Brussels Council in December, the presidency proposed to limit the EP's powers by including a veto power to the Council in the final stage of the Parliament's amended text.⁷⁶ This provoked a strong reaction from EP representatives to the ICG who declared that the new provision was unacceptable. In particular, the leaders of the Socialist and Liberal groups threatened to campaign against ratification under these circumstances (Benedetto and Hoyland 2007: 580). The EP moreover allied with national parliaments, and together they issued a declaration that stated, amongst other demands, that 'A Constitution that failed to respect the budgetary rights of the EP will not obtain the approval of either the European or national parliaments'.⁷⁷

As the member states failed to reach an agreement in Brussels, the Irish presidency proposed a new text which provided for a detailed account of all the possibilities and confirmed the veto power of the Council on the amendments made by the EP when conciliation failed (Giurato 2006). However some member states (and obviously the EP) reiterated their opposition to a process that would not put the EP and Council of Ministers on an equal footing.⁷⁸ This forced the Irish presidency to propose a new version, that rebalances the power of both institutions. In this version, in case of non-consensus in conciliation the process ends and the Commission must present a new draft budget. The EP was granted the opportunity to confirm its amendments only in the (albeit rare) case in which the conciliation committee adopts a joint text that is then rejected by the Council. Additionally, the consensus provides for a 'passerelle' enabling the European Council, by unanimity, to authorize the Council to act by a qualified majority when adopting the multiannual financial framework. This presidency's proposal was received favourably and was confirmed in the provisional consolidated version of the Treaty establishing a Constitution for Europe, signed in Rome on 29 October 2004. These provisions remained intact in the Lisbon Treaty.

Most of the changes introduced by the Constitution/Lisbon Treaty were thus a formalization of informal practices (Linder 2006). The Treaty formalizes, as requested by the EP, the existing informal procedures and thus transforms the informal multi-annual financial perspective into a binding legislation, adopted by the Council after assent by the EP). It abolishes the distinction between compulsory and non-compulsory expenditure, and provides for a joint adoption of annual budgets by the Council and the EP: if the Conciliation Committee does not reach an agreement, the budget draft is rejected and the Commission prepares a new draft. However, some shifts in the balance of powers occur with the new procedures, that do not necessarily empower the EP.

First, as regards the multiannual perspective, the Treaty modifies the fall-back position in case of non-adoption: instead of returning to annual budgets with automatic MRI (abolished), ceilings of the previous MFF remain effective. This may alter the bargaining position of the EP. As a matter of fact, the EP budgetary committee was uncertain about the consequences of the formalization. Its report reads that: 'Incorporation of the MFF into the draft Treaty reduces room for manoeuvre (...) : once in, the possibility of rejecting an MFF no longer exists, and a provision in the draft Treaty would roll the MFF forward even in the event of disagreement between Parliament and Council on a new MFF. This could be seen as a weakening of Parliament's powers. However, writing the MFF into the Treaty also delivered substantial benefits. An orderly development of the Union's finances is essential to underpin

⁷⁵ Presidency, Conference of the representatives of the Governments of the Member States, CIG 52/03, 9 December 2003.

⁷⁶ Presidency, Conference of the representatives of the Governments of the Member States, CIG 60/03 ADD 1, 25 November 2003.

⁷⁷ Declaration by Parliamentary members of the European Convention, Brussels, 5 December 2003, see also Benedetto and Hoyland 2007: 580.

⁷⁸ Presidency, Conference of the representatives of the Governments of the Member States, CIG 75/04, 17-18 May 2004.

Parliament's legislative prerogatives. Moreover, the draft Constitution for Europe provides for a time-frame period of at least five years (...), an important democratic element which would allow for coordination with the terms of office of the Commission and the EP'.⁷⁹

As for the annual budgetary procedure, the EP budgetary committee considers that the draft Constitutional Treaty increased EP's powers, as the EP's veto was extended to all types of expenditure with the abolition of the distinction between compulsory and non-compulsory.⁸⁰ Similarly, an EP resolution on the Lisbon Treaty indicated its general satisfaction with the new procedure.⁸¹ This view is not shared by some scholars who have argued that the current changes actually weaken the EP's prerogatives in the annual budget, for two main reasons. First, the EP's new veto on CE is coupled with the loss of having the last word on NCE (now the major part of EU spending). Only in one, probably rare, specific case (see above) could the EP impose, with a large majority, its standpoint. However, as noted below, over time this distinction had become irrelevant. Moreover, the Lisbon Treaty introduces changes to the fall-back option if no agreement is reached and provisional twelfths activated. Whereas previously the EP had the power to overrule the Council by a three-fifths majority on proposed increases in non-compulsory expenditure on those provisional twelfths, it can now co-decide in all policy areas, but only to the extent that it can block increases or vote for a decrease (Bauer et al. 2015; Benedetto 2013). This makes it more difficult for the EP to threaten the Council with the prospect of rejecting the entire budget. However, the majority necessary to reject the budget was reduced to a simple majority. As regards implementation, the EP has been empowered in the sense that co-decision was introduced for the financial regulation (i.e. procedures governing the implementation of the EU budget and the control of EC finances), but according to Benedetto these powers are relatively modest (Benedetto 2013).

5.6 After the Lisbon Treaty

In January 2006, the EP used its not-yet formalized veto power on the MFF and rejected the Council position that fixed the ceiling for expenditure to 1.045% of GNI. It finally approved a new MFF in May 2006 with a slightly higher ceiling (1.05%). In a joint resolution, it called for further reform of the EU's finances, including an independent EU funding system to be discussed in a joint conference with national parliaments and the EP before 2014 (Bauer et al. 2015).

A few years later, the EP rejected the 2011 budget under the new rules of the Lisbon Treaty. While the Commission had proposed an increase of 2.9% in spending, the EP in its single reading introduced amendments raising this to 5.9% arguing that the new policies under the Lisbon Treaty should be covered and demanding a greater role for itself in the inter-institutional politics of the MFF for 2014-2020 (Benedetto 2013). Although the EP reduced its demands for a budgetary increase to the Commission's figure of 2.9%, the Council cut it back further to 1%, and the EP rejected the budget on 20 October 2010,⁸² thus making negotiations fail even before conciliation. The budget was finally adopted a few weeks later. After this the EP had obtained three important changes: 1) an agreement on new flexibility mechanisms; 2) a commitment from the Council to include MEPs in 'relevant meetings and (...) deliberations held at the level of the Presidents of the Parliament, the Council and the Com-

⁷⁹ BUDGETARY SUPPORT UNIT, Financial Aspects of the Constitution for Europe, Does the draft Constitution for Europe strengthen or weaken the European Parliament's powers over the Union's finances?, IPOL/D/BSU/NT/2006_013, 06/06/2006.

⁸⁰ BUDGETARY SUPPORT UNIT, Financial Aspects of the Constitution for Europe, Does the draft Constitution for Europe strengthen or weaken the European Parliament's powers over the Union's finances?, IPOL/D/BSU/NT/2006_013, 06/06/2006.

⁸¹ REPORT on the Treaty of Lisbon - (2007/2286(INI)) - Committee on Constitutional Affairs - Rapporteurs: Richard Corbett and Íñigo Méndez de Vigo, A6-0013/2008, 19-01-2008.

⁸² Parliament's position on the 2011 draft budget as modified by the Council – all sections, P7_TA(2010)0372, 20 October 2010.

mission' for the negotiations of the next multi-annual financial framework; and 3) a promise by the Commission and the Council to present and discuss (respectively) proposals on reform of the system of own resources for the EU. In July 2011 an amended MFF regulation for 2007-2013 was rejected by the EP because it did not take its position sufficiently into account (Bauer et al. 2015).

In its resolution of 3 July 2013 on the political agreement on the multiannual financial framework 2014-2020, the EP reconfirmed its adherence to the principle that 'nothing is agreed until everything is agreed'.⁸³ As conditions to the adoption of the MFF regulation and the new IIA, it demanded: 1) the adoption of amending budgets needed to provide extra payment appropriations for the financial year 2013; 2) an agreement on the legal bases of relevant multiannual programmes; 3) the setting-up of a high-level group on own resources; 4) an obligatory revision clause making it possible to reassess the budgetary needs during the MFF period after the elections and a commitment to review the duration of future MFFs; and 5) a timetable for setting-up an effective system of own resources for the EU.⁸⁴ When these conditions were met Parliament gave its consent to the draft regulation on 19 November 2013, and the Council adopted the MFF regulation for the years 2014-2020 on 2 December 2013.

Member states are obviously still willing to cede institutional prerogatives to the EP in return for the acceptance of lower increases in expenditure, thus allowing the continuation of the gradual increase of the EP's powers in this area. At the time of writing, the EP's offensive to increase its power in budgetary matters is still active. Indeed, in its resolution of 3 July 2013 the EP requested the Committee on Budgets, in cooperation with its Committee on Constitutional Affairs, to present new proposals on the negotiations of the next MFF, in order to 'ensure the democratic and transparent nature of the whole budgetary procedure'.

Finally, during this period it is worth mentioning the offensive of the EP against the Council as regards the implementation of its budget. In 2009, the EP 'regretting a lack of cooperation from the Council to provide information' refused to grant discharge for the implementation of the Council's budget for the financial year 2009. It reiterated its refusal in 2010 and 2011. In April 2014, the outgoing Parliament postponed its decision on the discharge to the Council and European Council for financial year 2012. This was only voted in October after having received more information from the Council.

In this section, we have documented a gradual, irregular but yet definitive, increase of the EP's competence on budgetary matters since the Treaty of Rome. Despite this increase, however, the balance of power is still clearly in favour of the Member states. Indeed, two fundamental pillars of the EU finances, the FP and the Own Resources system, are negotiated by Member states; and the EP has a veto power on the former only. In this conclusive part, we summarize the explanations given above over why this shift occurred; but also over why changes have been irregular and limited in scope.

A first argument that could be posed to explain Parliament's limited success concerns the tenure of the arguments used in the debate. The principle that the EP should be put on an equal footing with the Council (the 'democratic argument') is, as we know, a powerful bargaining resource for both pro-integration Member states and the EP (Rittberger 2005, Moury 2007). However, in the budgetary area – and contrary to the legislative one for example – another argument which goes against the EP has also been posited: the one that a strong power to parliamentarians might lead to 'demagogic' and 'unlimited' spending. That is the same argument used to legitimate the fact that national parliaments in many countries shall not propose amendments that increase the budget (see Doring 1995 for a

⁸³European Parliament resolution of 3 July 2013 on the political agreement on the Multiannual Financial Framework 2014-2020, P7_TA(2013)0304, 3 July 2013.

⁸⁴ European Parliament, Fact Sheets on the European Union, Multiannual financial framework, available at: http://www.europarl.europa.eu/aboutparliament/en/displayFtu.html?ftuld=FTU_1.5.3.html on 24 February 2015.

review). In the EP this argument is even stronger, since the EP is seen to advocate spending for 'European public goods' so to demonstrate the added value of the EU; while being not electorally responsible to its electorate for raising revenues (Bauer and al. 2015).

We further believe that different explanations for the EP's successes and failure hold for different periods of time. During the first year of the existence of the CEE (1957-1975), Rittberger and Lindner (2003) convincingly demonstrate that the main motor behind the empowerment of the EP was some Member states' concerns for democratic legitimacy. Preoccupied with the loss of control from their national parliaments on budget with the introduction of own resources, some Member states wished to increase EP's prerogatives in the budgetary procedure – a coupling that was also supported by the Commission (Rittberger 2005, Rittberger and Lindner 2003). However, Member states carefully thought a system that enabled them to keep the control of the process (Pollack 2008). In that time, thus, the –yet non-elected EP – had very little role in the treaty modifications.

From the budgetary treaties until the first multi-annual framework (1988), the EP became more assertive, and continuously interpreted the treaties in a 'maximalist' way – especially since it has no other arena to exercise its influence. At this time institutional objectives played an important role in unifying parliament. For example, already in the first application of the new procedure in 1974 budget experts portrayed the dispute over regional funds as a dispute for the rights of the EP (Linder 2006). In this period, moreover, the EP wisely allied with Southern Member States that were more interested by an increase of budget (allowed by a classification of expenditures and an use of the MRI that benefited the EP) than by a defense of the Council long-term prerogatives. Despite this however, given the lack of bargaining resources, the EP scored only limited successes.

After 1988 and up to the treaty revisions, the EP had other arenas to exercise its influence than the budgetary ones and the adoption of annual budgets were relatively consensual. In his period, furthermore, the EP's cohesion as regards the defense of its institutional prerogatives over the budget weakened (Lindner 2006). However, the EP saw the creation and revision of the IIA's as opportunities to increase its own power. This time the bargaining resources of the EP were considerable, because it could at any time refuse withdraw, or refuse to renew, the non-binding institutional agreements. In particular, after 1999 the increase of expenditures planned in the MFF were clearly inferior to the MRI and the EP was very credible in threatening to withdrawn from the multiannual system. As a consequence, the EP managed to gain important prerogatives, trading them against a lower rate of increase that cost so long to the Council to agree on.

Finally, the new dispositions of the Lisbon Treaty are not clearly in favour of the EP, most importantly because they abolish the possibility of the EP to threaten to withdrawn from the IIA and cancel the MRI; thus weakening the bargaining power of the EP. Nevertheless, the EP – by threatening not to sign the Constitutional Treaty and by allying with national parliaments – managed to avoid a most conservative version that would have given the Council an edge in the annual budgetary procedures. And, as new developments show, the issue of own resources is still on the agenda, and the EP is pursuing its strategy of 'opportunistic' interpretation of the treaties.

5.7 Conclusion

In this chapter we have documented the gradual, irregular yet definitive increase of the EP's competence on budgetary matters since the Treaty of Rome. Despite this increase the balance of power is still clearly in favour of the member states. Indeed, two fundamental pillars of the EU finances, the FP and the own resources system, are negotiated by member states; and the EP only has a veto power on the former. In this section we summarize the explanations given above for this shift, and explain why changes have been so irregular and limited in scope and draw policy conclusions.

The first argument to explain the EP's limited success concerns the type of argument used in the debate. The principle that the EP should be put on an equal footing with the Council (the 'democratic argument') is a powerful bargaining resource for both pro-integration member states and the EP (Rittberger 2005; Moury 2007). However, in the budgetary area, and unlike the legislative one, another argument which goes against the EP has also been put forward: that is, that giving stronger power to the EP might lead to 'demagogic' and 'unlimited' spending. This is the same argument used to legitimate the fact that national parliaments in many countries cannot propose amendments that increase the budget (Doring 1995). In the EP this argument has even more weight since the EP is seen as an advocate of spending for 'European public goods' in order to demonstrate the added value of the EU; at the same time it is not electorally responsible to its electorate for raising revenues/taxes (Bauer et al. 2015). Hence, if the EP proposes new expenditure for European public goods, this should always be linked to a specification of its funding from existing EU revenues.

To make the explanation more complex: different explanations for the EP's successes and failures need to be offered for different periods of time. In the first year of the EEC's existence (1957-1975), Rittberger and Lindner (2003) convincingly demonstrate that the main motor behind the empowerment of the EP was the concern of some member states for democratic legitimacy. Worried by the loss of control for their own national parliaments on the EEC budget with the introduction of own resources, some member states wished to increase the EP's prerogatives in the budgetary procedure, a position supported by the Commission (Rittberger 2005; Rittberger and Lindner 2003). However, member states carefully devised a system that enabled them to maintain their control of the process (Pollack 2008). At the time the not yet elected EP had very small role in Treaty modifications.

From the budgetary treaties until the first multi-annual framework (1988), the EP became more assertive, and continuously interpreted the treaties in a 'maximalist' way, especially since it had no other arena to exercise its influence. At this time institutional objectives played an important role in unifying the EP. For example, even in the first application of the new procedure in 1974 budget experts portrayed the dispute over regional funds as a dispute for the rights of the EP (Lindner 2006). In this period, moreover, the EP wisely allied itself with the Southern Member States which were more interested by an increase in the budget (allowed by a classification of expenditure and a use of MRI that benefited the EP) than in defending the Council's long-term prerogatives. Despite this, and given the lack of bargaining resources, the EP only scored limited successes.

After 1988 and up to the Treaty revisions, the EP had other arenas to exercise its influence than the budgetary ones and the adoption of annual budgets were relatively consensual. In this period the EP's cohesion as regards the defense of its institutional prerogatives over the budget weakened (Lindner 2006). However, the EP saw the creation and revision of the IIA's as an opportunity to increase its own power. This time the bargaining resources of the EP were considerable, because it could at any time refuse to withdraw, or refuse to renew, the non-binding institutional agreements. In particular, after 1999 the increase of expenditure planned in the MFF was clearly lower than that of the MRI and the EP was very credible in threatening to withdraw from the multiannual system. As a consequence, the EP managed to gain important new prerogatives, trading them against a lower rate of increase that cost the Council so much time to agree on.

Finally, the new dispositions of the Lisbon Treaty are a mere formalization of existing practice, and are not clearly in favour of the EP. Nevertheless, the EP – by threatening not to sign the Constitutional Treaty and by allying with national parliaments – has managed to avoid a very conservative version that would have given the Council an edge in the annual budgetary procedure. And, as new developments show, the issue of own resources is still on the agenda, and the EP is still pursuing its strategy of 'opportunistic' interpretation of the Treaties.

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6 THE ROLE OF THE EP IN ECONOMIC GOVERNANCE

KEY FINDINGS

- The Lisbon Treaty granted the EP codecision rights in the area of multilateral economic surveillance. In the context of the Eurozone crisis, the EP could make extensive use of these new competences.
- By skilfully using its new powers, the EP even managed to extend its influence on legislation for which it formally had no competences (e.g. Fiscal Compact, Banking Union).
- In order to hold the executive accountable, the EP managed to introduce the Economic Dialogues with representatives of EU institutions/fora and member states. Moreover, the EP has obtained a role in the appointment of top officials at the SSM. Finally, the EP started to monitor the implementation of provisions by means of own studies.
- In order to take influence, the EP used a wide range of strategies. Among others, these include a considerable increase in permanent staff and expertise at the onset of the crisis, the exertion of public pressure on the other institutions, and – where appropriate – the ‘delaying’ of negotiation issues. One of the EP’s most successful strategies was the strategic linkage of different issues and arenas.
- In formal terms, the EP still has a very modest role in the EU economic governance. Only in the area of multilateral economic surveillance it has co-decision rights. Moreover, the EP has remained largely excluded from all the areas that regard the application of national budgets at the European level (most prominently the ESM).
- The EP could partly compensate this modest role by a skilful extension of its formal rights to other areas (where it had no formal role) and by increasing its power to hold the executive accountable. In certain occasions, it also acted as informal agenda-setter (e.g. Eurobonds).
- With regard to future constitutionalisation efforts, the EP will face the challenge of transposing the present intergovernmental elements of the EU economic governance into EU law (mainly the funds). Furthermore, the EP can boost input- and output legitimacy of the economic governance by striving for a simplification of the current institutional framework

Since the entry into force of the Lisbon Treaty in December 2009, the European Parliament’s (EP) competences in the field of economic governance have primarily been based on Art. 121.6 TFEU. It grants the EP co-decision rights for multilateral surveillance “to ensure closer coordination of economic policies and sustained convergence of the economic performances of the Member States” (Art. 121.3 TFEU). Based on Art. 136, the same applies to provisions relating specifically to members of the Eurozone (Fasone 2014: 171).⁸⁵

The introduction of the ordinary legislative procedure (OLP) in this area replaced the cooperation procedure, which allowed the Council to adopt a legislative proposal unanimously despite the rejection of the EP. This formal increase of the EP’s competences in the Lisbon Treaty became effective at the onset of the European sovereign debt crisis⁸⁶. The Treaty provisions constituted the legal basis for

⁸⁵ As regards monetary policy, Art. 284.3 makes the European Central Bank (ECB) accountable to the EP. First, the ECB must present an annual report on its activities and monetary policy to the EP. Second, the President of the ECB and the other members of the executive board may be heard by the competent committees of the EP.

⁸⁶ In the following ‘Eurozone crisis’.

the community response to the crisis. For the EP, this implied not only a formal empowerment, but also a substantial increase of workload and requirements of new expertise as well as decision-making output in economic governance. In short, simultaneity of the entry into force of the Lisbon Treaty, making the EP co-legislator in almost all areas, and the outbreak of the Eurozone crisis can thus be seen as the reason for the considerable and sudden increase of the EP's activity in the field of EU economic governance.

Moreover, the Eurozone crisis and the new European economic, fiscal, and financial policy it brought about implied a general power shift to the European level. In response to the crisis, all EU institutions obtained new powers. Hence, the EP's role can only be assessed in relation to the gain in power of the other institutional actors. At the same time, in a multi-level polity, the legislature at the European level has to take into account the input from national politics of member states. With these caveats in mind, we ask: to what extent was the EP able to shape the provisions of the new financial and economic governance in the EU and to what extent does this change contribute to a parliamentarisation of the EU? As defined in the introduction to this report, we define parliamentarisation as the election of the executive/Commission by a majority of the democratically elected legislature; an increasing obligation of the executive/Commission to be held accountable to the legislature; as well competences in the budgetary process both on the expenditure and revenue side.

6.1 Case studies

6.1.1 The Six-pack Legislation

At the end of 2011 the so called "Six-pack" legislation to enhance economic governance in the EU came into force. The Six-pack includes measures to strengthen the budgetary surveillance as well as a new surveillance procedure to help prevent and correct macroeconomic imbalances, the so-called Macroeconomic Imbalances Procedure (MIP) (Bouwen and Fischer 2012:21). The Six-pack consists of 5 regulations and one directive. In fiscal policy the six-pack aims at strengthening the Stability and Growth pact (SGP) (European Commission 26.7.2013), the Excessive Deficit Procedure, and the Excessive Macro Economic Imbalance Procedure, both in a preventive and a corrective sense. (European Commission 26.7.2013)

In the case of the Six-Pack legislation the EP was for the first time involved in economic governance as provided for in the Lisbon Treaty. From the very beginning it was a general concern of the EP to make the Six-pack procedures less bureaucratic, to allow for more transparency and accountability (to the EP), for instance by inviting national finance ministers to defend national budgets before the EP (Interview 2; Interview 5; Interview 3) and "preventing Council from taking backroom decisions" (Interview 5). Since the Six-pack was decided under considerable time pressure and a prevailing sense of emergency of sovereign defaults, the EP did not excessively use a delaying strategy (Interview 2; Interview 7) except when it opposed the Hungarian Presidency's finishing the legislation, a decision crucially urged by the ALDE political group which did not want Victor Orbán and the Hungarian presidency to have a victory (Interview 7; Interview 2), but then ended the negotiations under the Polish Presidency.

In the negotiations of the EP with the Polish Presidency, the EP insisted that in the implementation of the Six-Pack from the outset in the process a semi-automaticity comes to bear. If the Commission decides that no effective action has been taken by a member state in observing the limits of budget deficits and government debt, it can only be disregarded if a majority of Eurozone member states agree to this, i.e. the Commission decision is adopted unless the Council majority votes it down (re-

verse qualified majority). The EP pressed for this decision in order to lessen member states' influence on the Commission's assessment of compliance with stability and growth pact rules.⁸⁷

The EP also insisted on the codification of the European Semester, the annual national budget assessment procedure for economic policy coordination, transforming it into a legal text and the establishing of a legal framework for the surveillance of the national reform programmes.⁸⁸ (Interview 2; Interview 3). Interestingly, the EP also has been seeking to take influence on the control procedures of programme countries by becoming part of the appointment processes. It has organized informal hearings for the candidates in question and then made recommendations depending on the outcome of the hearings. From the Commission's point of view this is an attempt to make individual officials directly accountable to the EP,⁸⁹ whereas under the treaties the Commissions as a collegiate body is politically responsible to the EP (Interview 6).

The EP also proposed and obtained the introduction of a so-called Economic Dialogue, proposed by Sylvie Goulard (Interview 2). The formulation of the Economic Dialogue provision was contested between the institutions. The agreed text would see the EP "offer the opportunity to the Member State concerned (and other institutions...) to participate in an exchange of views".

The Council wanted to ensure that the formulation would not imply that the Council can be summoned by the EP (Interview 7). The Economic Dialogue, for the first time, allows the EP to invite the other institutions, i.e. the European Council, member governments, the Commission and the Eurogroup to discuss spill-over effects of the Six-Pack in an open discussion (Interview 3). In the view of the EP constitutes an important institutional innovation and an important instrument. By contrast, interviewees of the Council do not consider them as a substantial change (Interview 7). One interviewee of the Council observed that the dialogues are not really dialogues, but rather 'unilateral briefings' by the member governments (Interview 4).

Which strategies did the EP apply in order to obtain the objectives pursued in the decision over the Six-Pack legislation? The strategies applied to exert substantive influence on the outcome of the Six-Pack legislation have to be seen against the background of a complex internal coordination process. About 2000 amendments were proposed and had to be reduced to a number of important blocks which then had to be brought into balance between the different proposals of the political groups. Six reports which were voted on in the plenary constituted then the EP negotiation mandate on the basis of these amendments. This vote, however, did not close the text at first reading, i.e. no legislative resolution was taken that would have carried into second reading and would have implied time limits. Instead the EP wishes to remain under first reading in order to avoid time restrictions (Interview 5). The mandate, being voted on in plenary, gave the six rapporteurs responsible for the Six-pack a strong mandate. But as the negotiations with the Council evolved, compromises needed to be made and the mandate had to be modified. For these compromises the support of the main political groups had to be secured (Interview 5). Both in the EP and the Council, there are basically two political camps in economic governance, one emphasizing demand management and the other emphasizing strict compliance with the existing rules of the SGP. This means that in each institution these two camps' positions need to be reconciled before a compromise can be found between the two institutions. For instance was there a disagreement within the EP as to how to treat investment under the preventive arm of the SGP. (Interview 3). The consequence of these intra-institutional compromises, and subsequently, compromises between the institutions is that there are no drastic shifts, but rather

⁸⁷ <http://www.europarl.europa.eu/news/de/news-room/content/20110920BKG27073/html/FAQ>

⁸⁸ <http://www.europarl.europa.eu/news/de/news-room/content/20110920BKG27073/html/FAQ>

⁸⁹ Such hearings have also been organized for members of the Troika, the ECB, ESM, and agencies (Interview 6).

incremental and complex decision outcomes. These in turn leave loopholes and incomplete rules which successively have to be specified in the course of the application of the rules (Interview 7).

Another striking strategic feature of the negotiations of the Six-pack legislation between the institutions is that the EP employed a strategy of cross arena and/or issue linkage. By dealing with the regulations and directives as a package, it successfully sought to take influence across regulations. Even if one was not decided under co-decision, it was dealt with *as though* being under co-decision. The strategy implied that the support for a regulation under co-decision would depend on taking the EP views into account when deciding on a regulation *not* under co-decision. It thereby acquired the role of a full co-legislator in the Six-pack decision process (Interview 7; Interview 2). As one interviewee put it: "A little friendly blackmail not to adopt the rest of the legislation (under codecision) helps" (Interview 2; Interview 7).

The Macroeconomic Imbalances Procedure:

In analysing the role of the EP in shaping rules we now focus more closely on the control of macroeconomic imbalances across the EU where the EP by withholding its acquiescence to implementation rules of the Excessive Macro Economic Imbalance brought about an – albeit informal - change of institutional rules.

In a nutshell, in the case of the Regulation on the Prevention and Correction of Macroeconomic Imbalances a conflict arose between the Commission, the Council and the EP in the definition of the economic indicators under the scoreboard regime as part of the preventive arm of the Prevention and Correction of Macroeconomic Imbalances. The conflict centered around the interpretation of the legal rules when deciding how to flesh out the scoreboard regime, i.e. the indicators used to measure and monitor macroeconomic and macrofinancial imbalances. This conflict gave rise to a new informal rule (set out in the recital of the regulation and not in the legal text), about how to specify the formal rule which. Due to its political importance it became *de facto* binding.

More in detail, the Macroeconomic Imbalances Procedure is based on two legislative acts.⁹⁰ One regulation defines the details of the new surveillance procedure and covers all member states. Another regulation, which introduces an enforcement mechanism and possible sanctions, is only applicable to the members of the euro area. Under the new surveillance procedure for the identification of possible imbalances, a two-step approach has been established. An alert mechanism seeks to provide early warning of signs of macroeconomic imbalances which require in-depth investigation. It serves as an instrument of scrutiny, as a first step before a more in-depth inquiry which may then be followed by concrete policy recommendations (Bouwen and Fischer 2013).

More specifically, the alert mechanism provides for a scoreboard based on indicators complemented by an economic reading thereof presented in an annual Alert Mechanism Report (AMR). The indicators in the scoreboard focus on the most relevant dimensions of macroeconomic imbalances and losses of competitiveness. A wide range of policies are included when addressing the issue of imbalances, including fiscal policies, financial market regulation and structural reforms.

The results of the ARM are discussed in the Council and Euro Group and, if deemed necessary, the Commission is empowered to decide which countries require in-depth reviews and to propose policy recommendations for the member state in question. In the preventive arm, these proposals are part of the recommendations under the European semester. If the Commission comes to the conclusion

⁹⁰ Regulation (EU) No 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances. Regulation (EU) No 1174/2011 of the European Parliament and of the Council of 16 November 2011 on enforcement measures to correct excessive macroeconomic imbalances in the euro area.

that there are severe imbalances, it will recommend an excessive imbalances procedure to the Council; this is part of the corrective arm of the new procedure (Bouwen and Fischer 2013).⁹¹

Some vague provisions were introduced in the Regulation on the Prevention and Correction of Macroeconomic Imbalances that needed specification through delegated legislation. In the interpretation of these incomplete institutional rules, a conflict emerged over the choice of either delegated acts (Art.290 TFEU) or implementing acts (Article 291 TFEU). When deciding how to flesh out the scoreboard regime, i.e. the indicators used to measure and monitor macroeconomic and macrofinancial imbalances, the Commission first proposed to define these indicators on its own. Following resistance from both the Council and the EP, the Commission and the EP proposed “delegated acts” (Art.290 TFEU) whilst the Council wished to use an implementing act (Art.291 TFEU). The EP obviously prefers delegated acts (Art.290 TFEU) because it has co-equal rights with the Council to revoke a Commission rule. The Council prefers implementing acts (Art.291 TFEU) because they imply a practice which is similar to the old comitology system. A deadlock ensued after a round of negotiations and the EP refused to accept that the Commission proceed under implementing acts Art.291 TFEU). Given the urgency of the measures to be taken in the deepening Eurozone crisis the delay in coming to an agreement, imposed pressure on all negotiating parties. This finally gave rise to the use of an informal new type of procedure which is *neither* Art.290 TFEU *nor* Art.291 TFEU, the so called “compromise” rule. The respective recital 12 of the Regulation says

“The Commission should closely cooperate with the European Parliament and the Council when drawing up the scoreboard and the set of macroeconomic and macrofinancial indicators for Member States. The Commission should present suggestions for comments to the competent committees of the European Parliament and of the Council on plans to establish and adjust the indicators and threshold. The Commission should inform the European Parliament and the Council of any changes to the indicators and threshold and explain its reasons for suggesting such changes.”

Note the difference to the “real” use of a delegated act used in another Six-pack regulation on the effective enforcement of budgetary surveillance in the euro area.⁹² As prescribed in the Comitology Regulation of 2010, it states that the Commission shall be empowered to adopt “delegated acts” regarding the criteria establishing fines, procedures for investigations (Art. 8.4); that the Commission shall draw up a report in respect of the delegation of power; and that the delegation may be revoked at any time by the Parliament or by the Council (Art. 11.2, and 3).

What is striking is that the existing formal rules constitute ambiguous terms of contract, which in the context of a decisional stalemate and a delay of urgent decisions - were re-bargained and transformed so as to overcome the impasse. By so doing, the power of the Commission was clearly strengthened.

However, the conflict did not end at this point. Renewed disagreements emerged in the further application of the transformed institutional rule. The EP considers that the compromise solution does not work out well and it does not feel fairly treated by the Commission. In its resolution of 2013 it states: the EP “... notes with deep regret a lack of equal treatment of the co-legislators in this process, as the Commission reportedly consulted the relevant working group of the Council.” More specifically in November 2012 the Commission added a new financial sector indicator on the growth rate of financial sector liabilities to the original set of indicators. The EP welcomed this addition and had in fact

⁹¹ Ibid at 26.

⁹² Regulation (EU) No 1173/2011 of the European Parliament and of the Council of 16 Nov. 2011 on the effective enforcement of budgetary surveillance in the euro area.

requested it in December 2011. However, they accused the Commission of not having respected the Six-pack rules requiring that the Commission should propose suggestions for comment to the EP and the Council when establishing and adjusting indicators and thresholds. The EP argued that it had not been properly consulted. To make matters worse, the EP accused the Commission of having consulted the Council at the technical level through the EcoFin Council. In short, as the chair of the Economic and Monetary Affairs Committee of the EP concluded in the Parliamentary Debate on this issue "...the message seems not to have quite trickled through yet to the relevant Commission services that Parliament has equal rights with the Council here." (Sharon Bowles, Parliamentary Debate 18.4.2013)⁹³. The Commission responded by affirming that it had acted in accordance with the relevant Regulation and in pursuit of a political agreement with the Council and Parliament of 2011 for completion of a scoreboard with an eleventh indicator...: 'The Commission shall assess on a regular basis the appropriateness of the scoreboard, including the composition of indicators, the thresholds set and the methodology used, and it shall adjust or modify them where necessary.' It emphasized that there had been close cooperation with the Council and Parliament, as mentioned in the modified new institutional rule (Recital 12). It argued that the Commission had treated the EP and the Council in the same way and informed them at the same time since the Commission had taken into account the views provided by the EP's Economic Policy Committee which has a mandate to 'provide advice to the Commission'.⁹⁴

In conclusion, in the case of the Six-pack the goals of the EP were to make the procedures less bureaucratic and to allow for more transparency and accountability. It obtained the introduction of the Economic Dialogues, the codification of the European Semester and the quasi-automaticity of the sanctioning procedure under the revised SGP and revised institutional rules when defining the indicators or the scoreboard measuring excessive macroeconomic imbalance. In order to obtain its goals it successfully used strategies of cross-issue and arena linkage (Héritier 2007) blocking the decision-making process, insisted on remaining under first reading to allow it more time for deliberation and organized informal hearings for appointments on positions in surveillance bodies.

6.1.2 The Two-pack Legislation

The 'Two-pack' legislation regards two regulations under the OLP which were proposed by the European Commission (EC) on 23 November 2011. They were both adopted by the EP in first reading on 12 March and signed by EP and Council on 21 May 2013. Finally, they entered into force on 30 May 2013.

Regulation 472/2013 concerns only those MS of the Eurozone which receive financial assistance or have an ongoing Excessive Imbalance Procedure (EP/Council 2013a). It provides for more stringent reporting and coordination requirements for the concerned MS, thereby strengthening the surveillance capacity of the EC, but it also anchors the ESM interventions in Community law since it regulates how the macroeconomic programmes have to be designed in order to receive financial assistance (Interview 1). The rapporteur for the responsible ECON Committee was Jean-Paul Gauzès (EPP).

Regulation 473/2013 concerns all MS of the Eurozone (EP/Council 2013b). It provides a more detailed framework for the Excessive Deficit Procedure. By regulating more precisely how the MS have to tune their national budgets with EC recommendations, it enables an *ex-ante* budgetary coordination.

⁹³ Debates - Thursday, 18 April 2013 - Completing the scoreboard for the Macroeconomic Imbalance Procedure (debate) 10/02/14 21:25 <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20130418+ITEM-004+DOC+XML+V0//EN&language=EN> Page 3 of 9;

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2013-188> Page 2 of 2.

⁹³ Ibid.

Most importantly, MS are required to submit already their plans for debt-issuance, so that they can be coordinated with other MS. The regulation thereby integrates important parts of the intergovernmental Fiscal Compact into Community law.⁹⁵ The rapporteur for the responsible ECON Committee was Elisa Ferreira (S&D).

As regards the political background of this legislation, the EP perceived the risk that after the establishment of the funding programmes (EFSM, ESFS, later also ESM) and the adoption of the Fiscal Compact, there could have been an even stronger intergovernmental turn in the EU crisis management, with the Eurogroup and the President of the European Council at its centre. Hence, the two-pack regulations can be seen as the Community response to these developments and were therefore strongly supported by the EP.

In line with this, the overall target of the EP was to integrate as much as possible of the Fiscal Compact and ESM provisions into Community law. Moreover, the EP strove for provisions which would make sure that the severe budgetary rules would not come at the expense of growth-friendly investments, fundamental rights, education and health care in the concerned MS. Both aims could be realised to a large extent.

The Gauzès report furthermore included a bankruptcy protection for MS at risk of default, which resembles Chapter 11 of the US Bankruptcy Code. Such a provision would have protected debtors against creditors in the case of default, which might have become relevant in the context of the ongoing Greek sovereign debt crisis. According to one interviewee, Gauzès was able to keep this in a recital until the very end of the trilogue negotiations, but in the last instance had to cancel it (Interview 5).

Moreover, it is striking that the Gauzès report attempted to strengthen the role of the EC – even more than it originally proposed – by making more extensive use of the reversed qualified majority voting (RQMV). In five paragraphs, the report replaces ‘Council acting by a qualified majority on a proposal from European Commission’ with ‘Council may [...] repeal it by qualified majority’ (EP 2012c: Amendments 43, 46, 48, 64, 66). However, also in this case the EP was relatively unsuccessful: Eventually only one of the five amendments has partly been agreed on (EP/Council 2013a: Art. 14.4).

Other negotiation targets in the context of this financial stability regulation, which the EP managed to realise, regarded a stronger involvement of the national parliaments and new duties of information for the EC vis-à-vis the EP going substantially beyond the Economic Dialogues (EP/Council 2013a; see also Fasone 2014: 181).

With regard to the other regulation on ex-ante budgetary coordination, the Ferreira report even introduced a new chapter to the EC proposal, which includes the setting up a debt redemption fund, a roadmap for the introduction of Eurobonds, and a proposal for a growth mechanism amounting to 1% of the EU GDP for infrastructural investments. Both the roadmap and the proposal should be prepared and presented by the EC one month after the entry into force of the regulation. Moreover, the report extends the subjects to the Economic Dialogue, which was introduced by the Six-pack legislation (see above), and thereby increases the EP’s capacity to hold the EC accountable (EP 2012b).

Overall, the EP had a considerable influence on the two-pack legislation. In particular, the strengthening of its social aspects and the emphasis on growth in the provisions dealing with the enhanced budgetary surveillance must be seen as the EP’s biggest achievement (Interview 3; Fasone 2014: 172). The addition of a ‘social side’ to the regulations is not only the most salient amongst the EP’s

⁹⁵ Other examples are the requirement to implement a debt brake into national law and – for those under EDP – to prepare ‘economic partnership programmes’.

achievements, but it is also perfectly in line with the EP's function to be the advocate – directly mandated by the citizens – of the EU's common good. However, as emphasized by a MEP strongly involved in the EU economic governance, the EP had to give in vis-à-vis the MS when it came to a provision to increase the revenues of countries under programmes through the introduction of a 'fair tax system'. As regards the regulation on the further strengthening of the Six-pack, the EP 'failed' to introduce even more flexibility allowing for investments in the provisions (Interview 2).

With regard to the EP's position in the negotiations, there was no 'overall strategy', but rather a few general and relatively vague aims, such as extending the scope of the regulations beyond mere budgetary policy and transposing as much as possible of the intergovernmental agreements into EU law. As opposed to the preceding Six-pack negotiations, the lack of a more encompassing strategy can be traced back to the lower degree of urgency, which made it more difficult to shape a homogeneous position internally, and to less opportunity for issue-linking, given that the two regulations were less related to each other (Interview 3).

Formally, the EP has only been involved after the College decision by the EC. Thus, to our knowledge, there were no pre-consultations, as this is the case in other policy fields (Interview 6). Therefore, the EP had to rely on strategies it could employ *during* the negotiations. An innovation as compared to the Six-pack was the use of the meanwhile implemented Exchange of Views with national ministers as 'flanking strategies': First, the fact that a national minister appears in front of the competent EP Committee during the ongoing negotiations might already signal the EP's influential role in this; second, expressions of single national ministers can be used for a press release in favour of the EP (Interview 5). The actual effect of the Economic Dialogues on the negotiations, however, are contentious and have remained unclear so far.

Another negotiating strategy, which had not been used in the six-pack negotiations, was 'delaying'. Given that the generally perceived urgency was lower than during the shaping of the six-pack, the EP could afford bide its time, which simply means not to admit a final agreement in the trilogues until a certain minimum demand has been met. This has been used successfully in the case of the demand for a redemption fund, where a compromise could be found only in the last negotiation round. Although the EP has not obtained a review clause (as in the case of Eurobonds in the Six-pack), by 'delaying' it managed to achieve a declaration by the EC promising to set up an expert group investigating on a redemption fund and eurobills. The fact that the EC actually established an expert group on an issue it was reluctant to deal with and which was not related to the content of the two-pack legislation, has been perceived as an unexpected victory for the EP (Interview 6).⁹⁶ However, the final outcome of the expert group, which was chaired by Gertrude Tumpel-Gugerell, has been rather disappointing from an EP's perspective, given that the final report presents a relatively reserved and neutral position. This is not least a result of the 'politically very balanced' composition of the group, which might be a counter-strategy on the part of the EC, in order to avoid the stimulation of a debate on common debt in the light of the clear 'veto' expressed by some member states.

6.1.3 Eurobonds

The issue of Eurobonds, here broadly understood as topic dealing with the issuance of common debt, goes beyond the narrow focus on concrete policy and institutional change and highlights the EP's function to influence the public debate and thereby to set the political agenda. In doing so, the EP does not only ensure the input legitimacy of EU economic governance, but it also attempts to enhance its output legitimacy. In the concrete case of Eurobonds, the EP thus goes beyond its compe-

⁹⁶ Although this might be considered rather a symbolic gesture than a real change in substance, it allowed the EP to keep the issue on the agenda against the preferences of the EC.

tences as co-legislator in the field of multilateral surveillance. It also goes beyond the traditional role of a parliament to hold the executive accountable. Instead, it enters the stage of problem-definition and agenda-setting, where it holds few competences. As such, the EP has exercised its role as watchdog of the EU common good and thereby demonstrated an alternative route towards achieving further parliamentarisation (although this has not yet materialised in the case of Eurobonds).

The idea of Eurobonds or – more generally – the issuance of common Eurozone debt - is not new. The EP, under the lead of Six-pack rapporteur Sylvie Goulard, formally re-introduced the idea through the trialogue negotiations by asking the EC “to present a report, [...] accompanied, where appropriate, by legislative proposals and, if necessary, a Treaty change to set up a system of common issuance of European sovereign bonds (eurosecurities) under joint and several liability” (EP 2011b: Art. 8a.5) before the end of 2011. In the following months the EP kept the topic in the discourse. For instance, it launched an own initiative procedure on the feasibility of introducing stability bonds (EP 2012a) and it mentioned them in resolutions linked in substance, such as the legislative initiative resolution ‘Towards a genuine Economic and Monetary Union’, in which Eurobonds are considered as “a possible way to supplement the EMU” in the longer run (EP 2012d). Finally, the EP’s promotion of a debt redemption fund in the two-pack negotiations (see above) is a continuation of the EP’s efforts to stimulate engagement with the issuance of common debt (Interview 6).

Through these actions the EP is generally perceived as a promoter of Eurobonds, although there are a considerable number of MEPs who were and are strictly against the issuance of common debt (Interview 4). The proponents of Eurobonds within the EP can be divided into the federalists, who consider them as a further unavoidable step towards integration and an instrument to lower average interests for sovereign bonds in the long term, and the leftists, who primarily regard Eurobonds as a tool to lower interest in the Southern member states in the short term. In line with this, only the former propose Eurobonds in conjunction with a strong conditionality (Interview 5). Nevertheless, during the 7th legislative term 2009-14, the two political camps were able to build an influential block in favour of Eurobonds. The strategic target of this block, and especially of the federalists, was not the immediate introduction of Eurobonds, but the evocation of a public debate on common debt (Interviews 2, 5, 6). This was clearly against the preferences of the EC and the Council, which both tried to avoid any public engagement with the topic (Interview 2).

The battle about how to reach this target had already started within the EP during the Six-pack negotiations. In order to obtain a majority for the legislation, EPP needed ALDE, which gave its vote in exchange for the inclusion of Eurobonds. Although the original amendments of Goulard’s draft report, which would have provided for the actual introduction of Eurobonds (EP 2011a: Amendment 37), were cancelled during the trialogue negotiations, a small but operative review clause, which commits the EC to “present a report [...] on the possibility of introducing euro-securities” (EP/Council 2011: Art. 13.4) remained.

As regards the achievements of the EP, not only the EC’s ‘Green Paper on the feasibility of introducing Stability Bonds’ (EC 2011) must be considered. The fact that the EP managed to get a declaration of Commissioner Olli Rehn in the plenary was also very important with regard to the creation of a public debate. This is especially true when considering that the EC had so far successfully avoided to publicly engage with the topic (Interview 2).

6.1.4 The Fiscal Compact

The shaping of the Fiscal Compact is an example of one of the most successful strategies used by the EP during the crisis management in the Eurozone: arena-linking (see also p.60; Héritier 2007). Alt-

though the EP had no rights of decision-making, it influenced the treaty in a few crucial points by using its rights as co-legislator in related fields as a lever.

The Fiscal Compact⁹⁷ is an international treaty, which was endorsed at the informal European Council of 30 January 2012 and signed on 2 March 2012 by all EU member states except the UK and the Czech Republic. The treaty came into force on 1 January 2013 and has been ratified by 24 of the 25 contracting parties at the time of writing. The signatories commit themselves to a budget which is balanced or in surplus. They agree on an automatic correction mechanism established by their national law at a constitutional or equivalent level, which is triggered if a signatory breaches the agreed benchmark figures. The granting of financial assistance by the European Stability Mechanism (ESM) has been made conditional on the ratification of the Fiscal Compact, which has to be incorporated into EU law within five years after it came into force (TSCG 2012).

The EP was invited as an observer to the Sherpa meetings where the treaty was drafted. The EP's delegates were the MEPs Gualtieri, Brok, Verhofstadt, and – as a substitute – Cohn-Bendit. However, the EP's objective was much more ambitious than just observing. The EP's overall target was to make the Fiscal Compact as similar as possible to EU law, so that it could be easily integrated at a later point in time. Here the EP had probably the support of the EC which shared the same interest (Interview 3). Moreover, the EP had two more concrete preferences: first, to establish and codify a conference with national parliaments; second, it wanted its President to fully participate in the summits of the Eurozone's heads of government (Eurosummits) which were formalised by the treaty (Fasone 2014: 179).

A crucial feature of the negotiations was that at the same time the two-pack regulations were already in the process of being negotiated. This strengthened the EP's bargaining position as it could have blocked the Two-pack negotiations if its demands regarding the Fiscal Compact were not sufficiently considered. Moreover, this facilitated the EP's task to make the Fiscal Compact similar to EU law, since its provisions could directly be transposed into EU law while it was shaped (Interview 6).

As a result the EP achieved two crucial objectives in the negotiations. Firstly, it managed to introduce a 'repatriation clause' into the Treaty, according to which the Treaty is to be incorporated into EU law five years after its entry into force (Interview 1, 6). Secondly, the EP obtained that also contracting parties whose currency is *not* the Euro can take part in Euro Summits if they concern "the competitiveness for the Contracting Parties, the modification of the global architecture of the Euro area and the fundamental rules that will apply to it in the future" (TSCG 2012: Art. 12.3).

The EP was also successful with its call for a conference with the national parliaments. Representatives of the relevant committees shall organise and promote a conference to "discuss budgetary policies and other issues covered by the Treaty" (TSCG 2012: Art. 13). The fact that the EP thereby becomes involved in budgetary issues of the national parliaments gives this provision special significance (Interview 7) though its actual effect remains debatable (see Ch. 6.3.2). By contrast, the EP also suffered a partial defeat as regards the participation of its President in the Euro Summits. Instead of having the right to participate, the President may be invited to be heard *if* the heads of government recognize the need (Fasone 2014: 179).

6.1.5 The Banking Union

The Banking Union consists of the Single Rule Book, the Single Supervisory Mechanism (SSM), the Single Resolution Mechanism (SRM) and the Single Resolution Fund (SRF). The SSM grants the ECB a supervisory role to monitor the implementation of the single rulebook and the financial stability of banks in participating states (Council Regulation (EU) No 1024/2013) Regulation (EU) No 1022/2013 of

⁹⁷ Formally 'Treaty on Stability, Coordination and Governance in the Economic and Monetary Union' (TSCG).

the EP and the Council of October 2013 established a European Supervisory Authority (European Banking Authority).

The EP was very supportive of the overall project of a European Banking Union (Interview 3). It was the EP which as early as 2010 had proposed a Banking Union in the De La Rosière Report, an idea which was rejected by Finance Ministers at that time. However, in 2012 the Council of Ministers proposed it themselves (Interview 2; Interview 3). The Commission submitted a draft for the SSM in September 2012, after which the EP and Council agreed on the specifics of the SSM in March 2013. The EP voted in favour in September 2013, and the Council on the basis of a unanimity vote gave their approval in October 2013. The objective of the SSM is to assess and ensure the quality of the assets of 6000 European banks with 150 large banks being directly controlled by the ECB, while the other banks will remain under the control of national authorities (James Fontanella-Khan)⁹⁸.

It was the specific policy objectives of the EP to ensure that the monetary policy functions and the surveillance functions of the ECB would be clearly separated (Interview 2). It also insisted on more transparency of the procedures of the SSM and accepted the legislation only after obtaining better access to information from the ECB in its supervision of banks. For that purpose an inter-institutional agreement was concluded with the ECB providing that the ECB regularly inform the EP on the surveillance process.

The EP also influenced the governance form of the SSM. From the outset it sought to improve the accountability of the decision making authorities under the SSM (and SRM and SRF) by seeking a role in the governance of the various boards and their duties to report to the EP (Interview 2; Interview 3). In order to achieve these aims it only gave its support to the legislation after it had been granted more powers than originally envisaged over the appointment for top officials at the new single supervisor and after obtaining better access to information from the ECB in its supervision of banks. However, national governments will have the final vote on whether to approve the nominees.

The SRM provides a single European resolution mechanism in the case of a bank default. Since SRM constitutes a distributive issue, the negotiations have been difficult. The distributive nature of the issue is reflected in three conflicts of interests: between debtor and creditor states, between member states favouring a centralisation of competences and member states resisting centralization in the resolution, but also between stakeholders of banks and governments/taxpayers. Here we focus on the cleavage between debtor and creditor states which – to a large extent – overlaps with the cleavage over centralization/decentralization.

As regards the debtor/creditor conflict of interests, without a SRM, debtor states have to bear high borrowing costs while creditor countries enjoy low borrowing costs. A SRM with a mutual deposit insurance, would lead to a convergence of interest rates for all Eurozone countries. From the creditor states' perspective, by contrast, sharing the costs of debtor states' negative legacies would impose high costs on them. In particular, Germany resisted a sharing of past costs (Barker, FT Oct. 13.10.2013). Germany, moreover, argued that introducing a SRM would require a change of the European treaties.

The centralization of competences conflict is closely linked to the debtor/creditor states interest cleavage. The Commission proposed itself as the 'best placed institution to adopt all relevant decisions related to resolution with a 'discretionary nature'. A newly created resolution body would prepare, propose and enforce decisions via an executive board, dominated by nominees from the Commission and ECB, rather than member states" (Barker, Fontanella-Khan and Spiegel, FT 3.6.2013). This

⁹⁸ James Fontanella-Khan) FT 19.3.2013, 'EU agrees on ECB bank regulatory role'

resolution authority should have had the power to borrow from markets using assets of Euro banks as a guarantee and backstop (Barker, James Fontanella-Khan and Peter Spiegel, FT, 3.6.2013).

By contrast, Germany and France moved rapidly to propose (before the Commission submitted its draft) a system run by a resolution board made up of national authorities rather than a single EU agency. This board would eventually become part of the ESM in which the three biggest Eurozone countries, Germany, France and Italy have a veto right.

While the Commission with its right of initiative could formally propose a solution for a SRM, it depended on the decision-making of the Council of Ministers and the EP. It was crucial to have the political support of a majority of member states in the Council of Ministers, in particular the large member states, with the largest percentage in ECB funds. A compromise in the resolution procedure was reached in early summer 2014. The decision to close down a bank involves the European Commission, the Council of Ministers, the ECB, the supervisory board of the SSM, the new bank supervisor and the executive board of the SRM (Muenchau, FT, 16 March 2014) within a set time limit of 24 hour (Barker, FT, 20 March 2014).

A resolution and deposit guarantee funds through levies on banks (FT 27 June, 2013)⁹⁹ was agreed (FT 23 March 2014). This regime, which should come into force from 2018 onwards,¹⁰⁰ foresees the following 'backstops' in case that a bank requires extra capital: (i) shareholders, bondholders and some depositors are to contribute to the costs of bank failure (bail-in regime)¹⁰¹; ii) public support from a bank's home state (i.e. tax funds); iii) ESM loans to a sovereign struggling to pay for recapitalization¹⁰². After long negotiations with the Commission and the EP the German Finance Minister, Wolfgang Schaeuble, agreed to a central control of the guarantee fund paid for by banks¹⁰³ in exchange for the agreement that national finance ministers should have a final say in the resolution mechanism. The EP, by pushing for more centralisation and more mutualisation of funds supported the Commission and obtained the concessions from finance ministers that they could only reject resolution proposals only under specific conditions.

Importantly, Germany insisted that the SRF was agreed upon in an intergovernmental agreement between member states, giving each a veto power on the changing conditions of the fund (Barker FT 20 March 2014). The EP was very much opposed to taking the SRF out of the Community procedure. In a broad alliance of all political groups it brought indirect pressure to bear by going public in press releases in order to get some of its proposals regarding the size of the SRF, the speed of its deployment, the nature of the contributions to the fund, and the procedure to deploy the funds included into the final decision (Interview 3). The indirect pressure also consisted in making the formal support to SRM dependent on the acceptance of these proposals regarding the SRF (Interview 2). In short, by linking the different measures and the different decisional arenas of SSM, SRM and SRF, the EP managed to be included in the SRF decision step by step (Interview 2; Interview 6)

In conclusion, while decision making in the case of SSM was relatively smooth and the EP was successful in obtaining some of its objectives of a more transparent and accountable form of governance, the decision-making process in the case of the SRM / SRF was highly contested. The EP being formally excluded from the SRF decision-making process, nonetheless managed to take some influence through cross arena and issue linkage.

⁹⁹ Alex Barker FT 27 June, 2013 EU reaches deal on failed banks.

¹⁰⁰ Until 2018 in case of a bank failure European state aid rules are to be applied.

¹⁰¹ Insured deposits under 100000 Euros are exempt and uninsured deposits of individuals and small companies are given preferential status.

¹⁰² Alex Barker FT Oct. 15th 2013

¹⁰³ In 2022 the fund is to amount to 55 bn Euros.

6.1.6 The Amendment of Article 136 and the ESM

In order to establish European Stability Mechanism (ESM) it was deemed necessary to amend Article 136 TFEU. While the treaty amendment took place under the simplified treaty revision procedure (Art. 48.6 TEU), to which the EP has to give its initial consent and needs to be consulted, the ESM is based on an international agreement outside EU law which does not allow for any influence on the part of the EP. The case of the ESM is not only relevant due to the fund's importance in the crisis management, but also because it allows for a comparison with the shaping of the Fiscal Compact, in which the EP exerted considerable influence despite the intergovernmental nature of the treaty.

As regards the amendment of Article 136, the EP was formally consulted as it is provided for by the simplified treaty revision procedure. However, the amendments proposed by the EP were entirely disregarded by the European Council (Fasone 2014: 170). Most prominently, the EP demanded that the conditions for the provision of financial assistance by the ESM should be determined by an EU regulation adopted under the OLP. In this context it has been argued that the amendments proposed by the EP were legally not possible, since the simplified treaty revision procedure does not allow for a conferral of competences to the supranational level. Thus, according to the dominant view the EP couldn't possibly obtain anything in the shaping of the ESM (e.g. Fasone 2014: 169; Library of the European Parliament 2012: 4). This, however, is not what happened: In exchange for its consent to the simplified treaty provision, the EP obtained the EC's promise to present a legal proposal to partly integrate the financial assistance under the ESM into community law. This legal framework was then indeed proposed by the EC as one of the two-pack regulations (Interview 3).

As opposed to the amendment of Article 136, the EP had no formal rights in shaping the international agreement which established the ESM. Informally it also has been completely excluded from the negotiations (Interview 5, 7). Demands to get included as well as concrete proposals, such as accountability or reporting duties for the EC as regards its involvement into the ESM (Library of the European Parliament 2012: 4), were deliberately ignored by the preparatory bodies in charge (Interview 7).

In comparison to the shaping of the Fiscal Compact, the EP's leverage in the establishment of the ESM can be judged as "minimum to non-existent" (Interview 5). This is puzzling because both TSCG and ESM are intergovernmental treaties outside EU-law and both offered the EP the opportunity to link negotiations to another 'arena' in which it had greater influence. In the case of the Fiscal Compact, this was the Two-pack legislation, in which the EP was co-legislator. In the case of the ESM, this was the simplified treaty revision procedure, which required the EP's consent. Yet, only in the first case the EP managed to apply this lever. Consequently, the difference is not given by the EP's competences or negotiating strategies at hand, but rather by the content of the treaties. While the Fiscal Compact concerns the restrictions for national budgets, the ESM concerns their actual application. Thus, in both Fiscal Compact and ESM the EP had no formal rights to participate in the negotiations and was therefore dependent on the willingness of the MS to include it. Their resistance, however, was much greater in the case of the ESM because this treaty concerned the actual use of huge amounts of national taxpayers' money. This made the ESM a more sensitive issue than the Fiscal Compact, which regards only the shaping, but not the actual use of national budgets. This difference may help explain why the EP managed to participate in the shaping of the Fiscal Compact, but not in the ESM.

6.2 Results

6.2.1 The Parliament's Use of the New Lisbon Competences

The Lisbon Treaty granted the EP co-decision rights in the area of multilateral economic surveillance. In the context of the crisis, precisely where this area had to be reformed, the EP could make extensive

use of these new competences (Ch. 6.2.1, 6.2.2). By skilfully using its new powers, the EP even managed to extend its influence on legislation for which it formally had no competences, such as Regulation 1177/2011 in the Six-pack legislation, the Fiscal Compact (Ch. 6.2.4) or the SRF (Ch. 6.2.5).

In addition to the new powers as co-legislator, the Lisbon Treaty strengthened the EP's formal role in the treaty amendment process. Under the simplified treaty revision procedure, which became relevant for the introduction of the ESM, the EP's consent was required and it had to be consulted during the process. Although the EP's opinion was disregarded in shaping the ESM, it obtained the EC's promise to propose a legislative framework around the ESM in exchange for its consent to the revision procedure (Ch. 6.2.6).

6.2.2 The Parliament's formal and informal channels of influence

The EP's capacity to exert influence on the EU economic governance can be distinguished into formal and informal. The most effective *formal* resource is clearly the EP's legislative power under the OLP. The venue where this power materialises is the trilogue with the Council and the EC, which is an informal way of taking influence. Further legislative powers regard the EP's involvement in the process of treaty amendments, which especially in view of the intergovernmental nature of the EU economic governance should not be underestimated. Moreover, the EP has the opportunity to conclude inter-institutional agreements in areas where no competences are provided for by the Treaties. Finally, the President of the EP can represent its institution in the start of European Council meetings and Euro Summits. However, it is unlikely that the President can exert any substantial influence in these meetings going beyond a recital in the Conclusions or a favourable press release (Interview 7).

As regards formal agenda-setting, the EP can prepare and adopt legislative initiative resolutions, by which it can request the EC to submit a legislative proposal within a set period of time. However, the EC can refuse to submit the requested proposal. In general, own initiative reports seem to be a rather weak tool to influence legislation. One interviewee observed that in the Council they are not even read due to their non-binding nature (Interview 7). Nevertheless, they might be used in a less ambitious way by the EP, for instance to collect points of view or to stimulate public debate (Interview 2). In the same way, non-binding plenary resolutions might be used to publically put pressure on the EC to come up with a legislative proposal.

In order to hold the other supranational institutions accountable, the EP makes use of the so-called dialogues and exchanges of views. Especially in the sensitive case of the politically independent ECB, the Monetary Dialogue with the ECB President four times a year is seen as one of the most successful committee activities (Interview 1). However, as Stefan Collignon has shown in a recent study under the contract of the EP's policy department A, "the Monetary Dialogue has served primarily as one of several communication instruments for the ECB" (EP 2014a: 4). The EP, instead, has not taken a clear stance in the Dialogue nor developed a debate about policy alternatives. The Monetary Dialogue's impact on the financial markets has even been negative (EP 2014a: 12-17).

Through the Six-pack and Two-pack legislation, the EP obtained the Economic Dialogue as a new tool of accountability: Now the competent committee can invite the President of the Council, the European Commission, and, where appropriate, the President of the European Council or the Eurogroup to discuss issues relevant to the European Semester (EP 2015). Moreover, the national Finance Ministers may also be invited. The Economic Dialogues have been used extensively so far. However, it would require a further study to assess their actual effectiveness, as this has been done in the case of the Monetary Dialogue (EP 2014a). Bearing this caveat in mind, the Economic Dialogue seems to be a relatively weak tool, given that it does not allow for any binding commitments or enforcement powers on the side of the EP. Moreover, participation to the Dialogue takes place on a voluntary basis.

This institutional weakness has been notably demonstrated by the President of the European Council, Van Rompuy, who never appeared in the committee (Interview 1). Last but not least, one can ask if the Q&A format of the Economic Dialogue is an appropriate institutional environment for the EP to express its own position. Yet, although the Economic Dialogue seems to be a relatively weak way of holding the executive accountable, it might still help raise public awareness on certain issues (Interview 7).

A last formal channel of influence is the EP's relations with the national parliaments. More precisely, this regards the Interparliamentary Meetings on the European Semester Cycles and the Interparliamentary Conference under Article 13 of the TSCG. These conferences serve as a venue for the exchange of information and the mutual enhancement of the capacity to hold the respective executives accountable (EP 2014b). However, from a Council perspective they are observed with some distrust, since they could also serve the EP to influence the national parliaments as regards the scrutiny of their national budgets – a competence which to date had been beyond reach for the EP. As such, the institutionalisation of these relations could be a very first step in transferring budgetary power from the national to the supranational level. Institutionally, conferences with national parliaments could be a first step towards the development of a second chamber (Interview 7).

With regard to the EP's informal ways of taking influence, the EP exerts most influence through the trialogues if it has co-decision rights in a specific legislative act or in related legislative acts. The substantive influence in these negotiations varies according to the issue at stake and to the negotiating strategies employed by the EP (Ch. 6.3.3). The EP considerably increases this impact if it is able to influence the respective legislative proposal *before* the EC officially presents it.

However, according to our information, pre-consultation between the EC and the EP did not take place either in the Six-pack legislation or in the Two-pack legislation (Interview 6).

In this context, the permanent contacts of the MEPs to Commissioners (or the services of the EC), national ministers, and public institutions play a crucial role to influence the content of the legislation *ante* or during the negotiations (Interview 2, 6, 7). The same is true for the permanent bilateral meetings between the Presidency of the Council and the rapporteur(s) throughout the triologue negotiations. They play an important role if it comes to the mutual revelation of 'red lines' and negotiating range.

Finally, the EP can exert influence by raising public awareness on certain issues. This happens through press releases or conferences, interviews and public appearance of MEPs, as well as debate in the plenary. In this way, the EP can mobilise the public and put peer pressure on the other institutions (Interview 3, 5).

Table 2: Formal vs. Informal Channels of Influence

	Formal	Informal
Agenda-Setting	Own (legislative) initiative reports Non-binding plenary resolutions	(Pre-consultations) Public Debate
Decision-making	Co-decision rights in multilateral surveillance Rights in treaty amendment process Inter-institutional agreements President's participation in European Council and Euro Summits	Public Debate Trialogues Contacts MEPs – EC Contacts MEPs – national governments Meetings Council Presidency – Rapporteur (s)
Implementation Evaluation	Monetary Dialogue Economic Dialogue Interparliamentary Meetings Interparliamentary Conference (Art. 13 TSCG)	Contacts MEPs – EC Contacts MEPs – national governments Public Debate

Reference: Own Table

Functionally, we can distinguish three types of taking influence:

1. *Legislative competences*: This is the most influential way of talking influence. The EP's leverage is greatest in the area of multilateral surveillance where it is on equal footing with the Council under the OLP. But also in case of treaty amendments the EP's rights have been strengthened by the Lisbon Treaty.
2. *Public Debate*: Given that the EP is an open political body, a political debate can relatively easy be evoked (see above). Thereby, peer pressure can be exerted on the other institutions through the support or rejection of certain issues.
3. *Scrutiny*: This is a relatively new area of influence in the economic governance. Firstly, it is a consequence of the new accountability tools obtained by co-deciding in the Six- and Two-pack legislation, namely the right to invite the other institutions and the MS to the Economic Dialogue. Secondly, scrutiny results from the inter-institutional agreement concluded with the ECB in the context of the SSM. The EP also obtained some role in the appointment of top officials at the new single supervisor: MEPs now have the right to approve the ECB's candidate for the role of chairman and deputy chairman of the supervisory board. Thirdly, the EP started by itself to increasingly check the implementation of certain provisions by means of publically available information. This has been the case, for instance, as regards the implementation of the country-specific recommendation in the MS (Interview 3).

6.2.3 The Parliament's Strategies

The EP has used a wide range of strategies to further its ends in the economic governance since the Lisbon Treaty came into force. First of all, the EP invested into *staff and expertise*. It recruited specialists from the EC's DG ECFIN and – to a lesser extent from the General Secretariat of the Council – who had mainly dealt with the implementation of the Excessive Deficit Procedure. A 'macro-economic team' was built in the ECON secretariat and a new 'Economic Governance Support Unit' was created to provide technical expertise (Interview 1).

As mentioned above, the EP can also create *public pressure* through press conferences and express its disagreement in order to further its interests. In the area of economic governance, this has also been done in connection with the Economic Dialogue/Exchange of Views. Single expressions of the national ministers invited were released to the press with a view to weaken the Council's negotiation position in the trilogues (Interview 5). Moreover, where appropriate, the EP can threaten to bring an action to the European Court of Justice (ECJ), as this has been done in the case of the banking union (Interview 2).

With regard to the OLP, the EP can act as an *agenda-setter*. This can be done formally through legislative initiative reports (see Ch. 6.3.2) or informally by trying to exert influence on the EC before it presents a legislative proposal. Given the great extent to which the initial proposal determines the final outcome of a legislative text, an *ex ante* influence on the EC cannot be overrated.

When it comes to the actual negotiations, it makes an important difference if the EP shapes a *homogenous position* internally before it faces the Council in the trilogues (Interview 2). This is even more important if decisions concern more than one issue at a time (Interview 6). The more homogenous the EP's position in the negotiations, the harder it is for the Council to successfully apply its own negotiating strategies. This implies that the rapporteurs need to maintain an intense feedback loop with the political groups, in order to make sure that there is always a majority in the plenary behind the mandate (Interview 7, 8). The EP can also strengthen its negotiating position through the 'partial vote': By making the plenary vote on the text, but not on the legislative resolution, the EP can on the one hand back the mandate by the entire plenary (credible commitment) and, on the other hand, stay within the scope of the first reading and thereby avoid any time-limits in the further negotiations (Interview 5).

At the outset of negotiations, the EP has often started with unrealistic or '*excessive*' demands. Given its greater flexibility in the negotiations as opposed to the Council which would need a new meeting of all MS to adapt its mandate, the EP can use these demands as a bargaining chip that can be exchanged against other concession by the Council. As a result, a residual of such demands often remains in a recital or a review clause, as this has been the case with the Green Paper on Eurobonds (Six-pack negotiations) or the EC expert group on a redemption fund (Two-pack negotiations). Moreover, even if a demand only remains in a recital, it might be treated as an operative provision. This has been the case, for instance, with the scoreboard adoption in Regulation 1176/2011 on the prevention and correction of macroeconomic imbalances. Eventually, it might be codified as an operative provision at a later point in time (Interview 6, 7).

Another time-tested negotiating strategy consists in *issue-linking* or package deals. Whilst this is normally done with closely related issues, the Six-pack negotiations have shown that it can be also extended to relatively unrelated ones. A good example is Regulation 1173/2011 on the enforcement of budgetary surveillance in the euro area (EP/Council 2011), where the EP managed to introduce the Economic Dialogues *and* the review clause on Eurobonds, although both had virtually nothing to do with the purpose and content of the regulation.

Issue-linking differs from *arena-linking* (Héritier 2007). Here the EP uses its formal veto in one legislative issue to create a leverage on another issue where it has no formal vote. The EP has been enormously successful in practicing this strategy throughout the crisis management. For instance, it took influence on all six legislative acts of the Six-pack, although its formal right as co-legislator applied only to four of them. Another example regards the Fiscal Compact, where the EP had no rights at all, but still managed to take influence due to its role as co-legislator in the related Two-pack negotiations. This strategy was used most effectively in the Six-pack negotiations, in which the EP gained the role of a full co-legislator: Once the six texts were tabled together, it was impossible for the Council to exclude the EP from those acts where it formally had no co-decision powers, because the EP credibly threatened to block the other regulations (Interview 2, 6, 7). Nevertheless, also arena-linking works only in cases in which the Council has the latitude to concede. In the Six-pack negotiations, for instance, the EP managed to influence the regulation on the implementation of the excessive deficit procedure, but not the directive dealing with the budgetary frameworks of the member states (Fasone 2014: 171). It influenced the Fiscal Compact by linking arenas, but not the establishment of the ESM (Ch. 6.2.6). We suggest that the reason for this variation consists in the greater sensitivity of the directive and the ESM, respectively. Given that they had stronger implications for national budgets than the regulation and the Fiscal Compact, arena-linking had an impact only in the case of the latter.

Moreover, in cases where the EP has a veto, it can use *delaying tactics* in its favour. This has not happened in the Six-pack negotiations, where a sense of emergency to act was shared by all three negotiation parties. However, in the case of the Two-pack negotiations, the EP successfully used this strategy (Ch. 6.2.2).

Finally, a strategy successfully used by the EP is the attempt to take influence in the implementation and monitoring of economic governance provisions, such as controlling programme countries under the SGP. For instance, the EP has sought to become part of the appointment processes of the controlling institutions. It has organized informal hearings for the candidates in question and then made recommendations depending on the outcome of the hearings, although it does not have a formal role of appointment. From the Commission this is viewed as an attempt to make individual officials directly accountable to the EP,¹⁰⁴ whereas under the treaties it is the Commission as a collegiate body which is politically responsible to the EP (Interview 6).

6.2.4 The Parliament's Role in economic governance: Interstitial Institutional Change?

The conjunction of the coming into force of the Lisbon Treaty and the outbreak of the Eurozone crisis strengthened the EP because suddenly it had become co-legislator in the area which was at the centre of attention and where new rules were urgently needed. Moreover, the sovereign debt crisis had led to a politicisation of economic governance. Among other things, this induced the EC to collaborate more closely with the EP as the only EU institution directly elected by European citizens.

As regards the role of the EP as a driver of parliamentarisation, what emerges is that the EP was able to strengthen its power to hold the executive accountable. The EP must now be informed – and sometimes even consulted – by the EC and it can invite the EC, national ministers, and the Presidents of the Council, the Eurogroup, and the European Council to an Economic Dialogue or Exchange of Views (also Fasone 2014: 183f). These are institutional rights the EP has gained through the crisis, but that were not formally provided for by the Lisbon Treaty. Thus, this constitutes an interstitial institutional change which has been negotiated between the institutional actors after the adoption of formal decision making (Héritier 2007) rules of economic governance.

¹⁰⁴ Such hearing have also been organized for members of the Troika, the ECB, ESM, and agencies (Interview 6).

In some respects, the EP went not only beyond its formal powers granted by the Lisbon Treaty, but even beyond the traditional understanding of a parliament's function in Western democracies, i.e. holding accountable a government as a whole. Thus, the EP was able to obtain an informal role in the appointment processes of the controlling institutions by organizing informal hearings for the candidates in question and then making recommendations, although it does not have a formal role of appointment. It also gained a role in assessing the implementation of country-specific recommendations, which would be the task of the executive. The same is true as regards the Economic Dialogue with the President of the Eurogroup, which understands itself as an intergovernmental body and therefore held accountable by the national parliaments.

In short, the EP has been successful to some extent in shaping legislation and generating public debate in economic governance, but its formal role in the coordination and surveillance of the largely intergovernmental EU economic governance is still modest. It has tried to compensate this by political activity in legislation and the attempt to hold the EC and ECB accountable (Interview 1, 5, 6). As Fasone has pointed out: "the EP is stronger now than it was at the time of the previous regime of the Stability and Growth Pact (1997 and reformed in 2005) when the name of this institution was not even mentioned in Regulations 1466/97 and 1467/97" (Fasone 2014: 173). Nevertheless, based on the intergovernmental foundations of the EU economic governance, the EP has remained largely excluded from all areas which touch the actual application of national budgets, namely the ESM and the Single Resolution Fund.

6.2.5 Policy Implications and Future Challenges for the EP

With regard to the EP's future role in the parliamentarisation of the EU economic governance, four implications can be drawn as a result of this study:

1. As regards the OLP, it appears that the EP was able to take influence on legislative proposals when actively engaging in pre-consultations with the EC, in order to take influence on the legislative proposals *before* they were officially presented by the EC. This appears to have strengthened the EP's influence on the content of the respective provisions.
2. When substantively appropriate, the EP involving the ECJ in the context of the EU economic governance by making a mere reference to the Court in the negotiations, asking for a request for opinion, or a formal complaint has proved to be effective in enhancing the influence of the EP.
3. As a more general challenge, the EP should strive for a simplification of the extremely complex rules in the field. In line with this, it will have to press for a systematisation and clarification of the division of competences a) horizontally between the EU institutions and b) vertically between the national and the EU level. This would not what appears a "jungle of rules" today more intelligible and accessible to European citizens, and it would increase their efficacy. Thereby both input- and output legitimacy of the EU economic governance could be considerably increased.
4. Finally, the major challenge in the medium and long term for the EP's parliamentarisation efforts is the transposition of the present intergovernmental elements of the economic governance into EU law. This regards primarily the funds (ESFS, ESM, SRF) which would make the latter accountable to the EP. However, here the EP meets the limits set by national budget sovereignty.

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7 THE ROLE OF THE EP IN EXTERNAL RELATIONS

KEY FINDINGS

- The Lisbon Treaty and the Inter-institutional Agreement between the Commission and the European Parliament (EP) strengthened the EP's role in international agreements by giving it the right to ratification and the right to information at all stages of negotiations.
- Since the Lisbon Treaty came into force in December 2009, the EP has broadly expanded its informal role in the negotiation of international agreements. Its role now goes beyond the provisions stipulated in the Lisbon Treaty and the Inter-institutional Agreement, and even the role of national parliaments in international agreements.
- Over time, among the EP's main achievements have been to gain access to limited and classified documents, to be debriefed before and after each round of negotiations, to influence the substance of the negotiation directives and the final agreement, to enter into direct contact with the negotiation partner, and to suspend the provisional application of negotiations.
- Since the negotiations on a Transatlantic Trade and Investment Partnership (TTIP), the EP has been active at all stages of negotiations, including those not limited to voting on the agreement: negotiation directives, negotiation rounds, ratification, and implementation.
- The EP's activities encompass formal and informal instruments, the most powerful being the right to ratification, the release of resolutions, and the demand for opinions by the LIBE Committee and the European Court of Justice. EP internal organization and collaboration with third actors such as NGOs, experts, and international institutions have been important informal instruments

The EP's influence on the negotiations varies between the agreements and is linked to the EP's various activities. The EP was most active in the Anti-Counterfeiting Trade Agreement (ACTA) and TTIP, whereas in the EU-Singapore free trade negotiations the EP did not even exhaust its formal instruments. The EP's degree of activity seems to depend on the salience of agreements and on the effectiveness of the EP's internal organization.

Since the Lisbon Treaty came into force in December 2009, the European Parliament (EP)'s approval is required for all international agreements of common commercial policy and agreements covering fields in which the ordinary legislative procedure or consent are applied.¹⁰⁵ Furthermore, the TFEU makes arrangements for the Commission to regularly inform the EP about the negotiations, which are in turn concretised by the Inter-institutional Framework Agreement on relations between the EP and the European Commission (Inter-institutional Agreement).

This chapter analyses the extent to which the EP has exerted influence on international agreements as laid out in the TFEU. It will assess how far the EP has used its rights as specified in the Lisbon Treaty, and where it went beyond the arrangements. Due to time and space constraints, this chapter focuses on the EP's participation in the negotiation of international trade agreements, thus not covering the EP's role in other international agreements and on foreign defence and security policy. Within this

¹⁰⁵ Assent also applies to agreements which have budgetary implications for the EU, accession agreements and association agreements between the EU and third countries, agreements creating a specific institutional framework by organising co-operation procedures, an agreement on EU membership of the European Convention on Human Rights and Fundamental Freedoms. For all other agreements, approval by the Parliament is not required, but it must be consulted during the negotiations.

topic, we concentrate on how the EP had tried to increase its influence on the rules of decision-making.

The chapter examines the evolution of the EP's role in external relations since the Lisbon Treaty since the treaty formalized the EP's far-reaching right of ratification. However, before the Treaty came into force, the EP had already acquired formal and informal rights in the negotiation of international agreements.¹⁰⁶ As early as 1964, the Luns procedure, extended in the Luns-Westerterp procedure of 1973, the Council and the Commission committed themselves to keep the EP informed about association and trade agreements prior to ratification. The Stuttgart declaration (1983) further expanded the EP's informal consultation to all significant international agreements. The Single European Act formally strengthened the EP's role by giving it the right to consent to association and accession agreements, which the EP used by rejecting protocols with Israel (1988), Syria and Morocco (1992).

Meanwhile, in 1990, the Commission committed itself to include some MEPs in delegations taking part in multilateral conferences. Later, the Maastricht Treaty broadened the consent procedure to international agreements with notable budgetary implications or to those agreements which fall under the introduced co-decision procedure. The Nice Treaty gave the EP the right to ask the European Court of Justice (ECJ) for an opinion on the compatibility of international agreements with the Treaty. Furthermore, the EP gained access to some confidential documents, including the negotiation directives of international agreements. In 2006, the Commission and the EP signed an Inter-institutional Agreement, which gave the EP a right to information throughout the negotiation process of international agreements.

The analysis focuses on salient case studies, including situations in which the EP could exert less influence on international agreements. Relying on document analysis and on fifteen semi-structured interviews with EU officials, the chapter will examine the SWIFT agreement, the Anti-Counterfeiting Trade Agreement (ACTA), and the ongoing negotiations on the Transatlantic Trade and Investment Partnership (TTIP). Furthermore, the study analyses the EP's role in negotiations of free trade agreements (FTA) by focusing on the EU-Singapore FTA.

7.1 Society for Worldwide Interbank Financial Telecommunication Agreement (SWIFT)

The Society for Worldwide Interbank Financial Telecommunication (SWIFT) is a financial messaging company based in Belgium, which manages a network of personal data from financial institutions. After the 9/11 terrorist attacks, the US requested and obtained financial transaction data from SWIFT—including European data. Five years later, this exchange leaked into the press, and the Belgian Privacy Commission initiated two proceedings against SWIFT to check whether there had been a breach of Belgian data protection rules.¹⁰⁷ Answering this, SWIFT committed to split its data into two mirror units (European and American) by 1 January 2010. This would have cancelled US access to European data.

The European Council and US governments shared a security interest in the exchange of financial data: on the American side because of several terrorist cells operating in Europe; on the European side because the intelligence services in the US were much superior to those of any European member state (Interview 15). As a consequence, the Council agreed in July 2009, i.e. a few months before the Lisbon Treaty came into force, on the negotiation of an agreement over the SWIFT data (Council

¹⁰⁶ The authors wish to thank Paolo Ponzano for pointing out the evolution of the EP's role in external relations prior to the Lisbon Treaty, on which the following two paragraphs are based.

¹⁰⁷ The case was finally closed without further action in December 2008.

2009), and it authorized the mandate for the Presidency, assisted by the Commission, to open negotiations on the transfer of financial messaging data (Council 2009).

7.1.1 Rejection of the SWIFT Interim Agreement

The power struggle between the EP and the Council were linked to the coming into force of the Lisbon Treaty and the earlier negotiations on the Passengers Name Record (PNR) agreement (Santos Vara 2013: 14). On the one hand, the EP and Council were aware that, once the Lisbon Treaty came into force, the EU member states would have to seek the EP's consent to the SWIFT Interim Agreement. Moreover, both institutional actors were aware of the EP's concern for international agreements, as in 2004 when the EP had been successful in forcing the renegotiation of the PNR agreement between the US and the EU.¹⁰⁸ In this spirit, the EP was aware of its new role in international agreements, which the Lisbon Treaty would eventually ascribe to the Parliament.

Following the adoption of the negotiation mandate on SWIFT in July 2009, the negotiation rounds began to take place under the leadership of the Presidency and the Commission in September 2009. In November the same year, two more negotiation rounds took place, and after that, the EU and the US agreed on a first draft of the SWIFT Interim Agreement (Interview 15). On 30 November 2009, exactly one day before the Lisbon Treaty came into force, the Presidency signed the agreement (Santos Vara 2013: 15). The provisional application of the SWIFT Interim Agreement was due in February 2010.

Early in September 2009, the EP had released a resolution on the negotiation of the SWIFT Interim Agreement. In this resolution, it wished to affirm its own role (Monar 2010). While admitting the relevance of the agreement, the resolution stressed the need to protect civil liberties and to respect privacy. It set explicit conditions for the EP's consent to the agreement: the guarantee that data would only be used to fight terrorism; the protection of the principle of proportionality; granting of defense rights to EU citizens; a reciprocity mechanism; and a sunset clause of twelve months (EP 2009). In the resolution, the EP demanded access to all negotiating documents. The EP also instructed its President to forward the resolution to the Commission, the Council, the European Central Bank, the EU member-state governments and parliaments, and the US' government and congresses.

Disregarding the EP's resolution, in November 2009, one day before the EP would acquire the right to consent to agreements as per the Lisbon Treaty, the Presidency and the US agreed on the interim agreement. This provided for mutual legal assistance channels and the maintenance of existing authorities responsible for mutual legal assistance requests. Thus, the US and the EU left the question of the identity of the authority that would supervise the requests from the US on financial payments and establish whether a request was abusive until a later date (Council 2009).

This decision provoked a strong reaction from the EP, which refused to ratify the agreement on 10 February 2010. Before this rejection, the EP used another instrument by adopting a report of the LIBE Committee, which recommended the rejection of the SWIFT Interim Agreement. Moreover, the EP repeated its demand for more information at all stages of negotiations. One week after the adoption of the LIBE report the EP decided to reject the SWIFT Interim Agreement although the Council had put the EP under enormous pressure not to do so (Santos Varas 2013).

When the EP rejected the SWIFT Interim Agreement, it reiterated its position and complained about the unwillingness of the Council and Commission to give it full information at all stages of the negotiation process. In addition to having reasons to be dissatisfied over the content and the processes of negotiations, we should stress that the *status quo* (i.e. the absence of agreement) would have obliged

¹⁰⁸ The EP asked for the annulment of the agreement to the European Court of Justice (ECJ), arguing that in the PNR negotiations the Council had acted without legal basis. The ECJ confirmed the EP's position and annulled the agreement (C-317/04 and C-318/04, Interview #15), thus forcing the Presidency to renegotiate it.

the US to request data on a case-by-case approach, a situation that was closer to the EP's preference. Consequently, the EP made it clear that having no agreement was preferable to infringing on data protection standards (Ripoll Servant 2014).

7.1.2 Approval of the SWIFT agreement

The EP's rejection of the SWIFT Interim Agreement annulled its provisional application and required a renegotiation of the agreement. After this rejection, the Commission and the Council unsurprisingly proved more willing to cooperate more closely with the EP. The new draft mandate committed to consult the EP during negotiations (Santos Varas 2013: 17). Moreover, MEPs contacted US representatives and negotiated with them directly (Interview 15).

In May 2010, the EP released a resolution on the new mandate, in which it "[w]elcome[d] the new spirit of cooperation demonstrated by the Commission and the Council". In this resolution, the EP also repeated its demand for all relevant documents and information on the negotiations. Besides the resolution, the EP used two other strategies to influence the new version of the SWIFT agreement. First, it reminded the Commission of its option to reject the new version of the SWIFT agreement if it did not meet the baseline of EP requirements (Interview 15). Second, it started to talk directly with the US negotiation representatives to push for a new version of the SWIFT agreement.

This time, the EP's requests were taken seriously. For example, the EP requested the introduction of a new article (Art. 12), in which it asked for a representative of the EU in the US who could block the extraction of personal data if the request of this data was abusive (Interview 15). The Commission had to go back to the negotiating table to introduce this article in order to avoid a new rejection of the agreement. However, the EP's request that this supervisor should constitute an independent authority was not taken into account. The Commission, in contrast, proposed a supervisor subject to the Commission (Interview 15).

On top of the Commission and Council's efforts, the US representatives themselves pursued several strategies to accommodate and to convince MEPs. Those included an increase of the cost of non-agreement by threatening to opt for bilateral agreements that would have left the EP out (Monar 2010: 145); the offer of side-payments such as an explicit parity between European and US citizens (Ripoll Servant 2014); and an invitation for key MEPs to visit the US. These efforts made the deal more acceptable and legitimate for the EP.

The final agreement incorporated some of the EP's preferences: The EP obtained a more precise definition of terrorism; to withhold internal Eurozone transactions from the scope of the agreement; to obtain more strict provisions regarding data protection. It also strengthened its right to be informed, and obtained the inclusion of a European Data Protection Supervisor (Europol, which was not an independent judicial authority though). It also put in place a system to analyse data in Europe prior to its transfer to the Americans (Servant and MacKenzie 2013). Overall, though, the second version of SWIFT was still far from what the EP wanted, as the main causes of concern raised by the EP had not been removed (Santos Vara 2013).

Nevertheless, in July 2010, the EP accepted the final text of the agreement, which came into force in August 2010. Although only few of the EP's demands were met in the SWIFT agreement, most MEPs were less critical of it than in the first round of negotiations. In the end, it was just the Greens and the leftist parties, which remained critical of the SWIFT agreement (Bendrath 2010).

7.1.3 Implementation of the SWIFT agreement

Although the EP had to make concessions in the SWIFT case, the rejection of the interim agreement showed that the EP was not afraid of clashing with member states, the Commission, and the US in

defence of citizens' rights (and of its own institutional power), even when its members acknowledged the political importance of an agreement (Interview 15). SWIFT represented a unique step because it was the first time the EP had managed to influence the content of an international agreement directly. SWIFT made it clear that the EP's right to approve or reject an agreement would mean having access to confidential documents and to its full involvement in negotiations (Interview 15). This goes beyond its role as per the Lisbon Treaty, which provides that the Commission actions be guided only by the Council's mandate.¹⁰⁹ Finally, we should note that the policy deal underlines that the EP is willing to make compromises, as long as its institutional powers are protected.

In March 2011, however, Europol reported to the EP that the requests of the US on information were too vague (making it impossible to understand if they were being abusive or not) and the right of citizens to know if their data was accessed by the US was not guaranteed. The EP knew from the Joint Supervisory Board of Europol that the US asked regularly for all data available, and that they did not have the capacity to de-codify it properly (Interview 15). Another unresolved point was the fact that SWIFT was an executive agreement and as such did not provide judicial review for citizens who were victims of data abuse in the US (Servant and MacKenzie 2013).

Thus, in 2013, the EP voted a resolution stating that the EU should suspend the SWIFT programme (EP 2013b). Although the EP has no formal powers to initiate the suspension or termination of an international agreement, the resolution stated that "Parliament will take account of the Commission's response to this demand when considering whether to give its consent to future international agreements". Thus, the EP even became active after the ratification of the agreement, namely in the implementation phase.

7.2 Anti-Counterfeiting Trade Agreement (ACTA)

ACTA was a multilateral agreement between the EU, its member states, the US, Australia, Canada, Japan, Mexico, Morocco, New Zealand, Singapore, South Korea, and Switzerland to establish an international legal framework to enforce intellectual property rights (IPR). The negotiations started in June 2008. In July 2012, due to the alleged secrecy of the negotiations and a public campaign against the agreement, the EP refused its consent (Van den Putte, De Ville, and Orbie 2014).

7.2.1 Assessing the EP's role in the negotiation on ACTA

One of the main problems of the ACTA negotiations was their timing. The rounds had started in 2008, and, thus, before the Lisbon Treaty came into force (Interview 1). The EP only stepped in when the negotiations were already ongoing (Interview 3), but when it had been allocated new powers by the Lisbon Treaty.

*The first stage.*¹¹⁰

When the Commission launched the negotiation mandate and requested the Council for authorization, the EP had not been involved actively. Even before the Lisbon Treaty, the Commission had informed the EP about negotiations, but in a less formal way (Interview 3) based on an earlier version of the Inter-institutional Agreement (2006). In 2007, the Commission shared with the EP the note for attention for the Trade Policy Committee (TPC) on the recommendation of the Commission to open negotiations on ACTA. In March 2008 it shared the recommendation to the Council with the EP. Be-

¹⁰⁹ Interestingly, we should note that the EP reversely served the EU as a bargaining leverage in the name of legitimacy whenever the negotiations between the Commission and the US got stuck (Interview 15).

¹¹⁰ The first stage of negotiations concerns the mandate. TFEU obliged the Commission to regularly inform the EP at all stages of the negotiations, and Annex III of the Inter-institutional Agreement specified that the Commission has to inform the EP about the intention to start negotiations at the time it informs the Council.

tween these two dates, in November 2007, Commissioner Mandelson announced the Commission's intention to start negotiations to the INTA Committee of the EP (Commission 2012).

In 2008, the MEP Sophie In'tVeld asked the Commission for access to all documents on the ACTA negotiations (ECJ 2013), which she based on the Regulation between the EP and the Council regarding public access to EP, Council, and Commission documents.¹¹¹ Later, in 2010, she brought the disclosure of relevant documents to the ECJ based on the same legal grounds. Furthermore, in its resolution, the EP expressed its concern that the Commission had not shared the negotiation mandate with the EP and that it had not waited for parliamentary approval for the directives. However, the EP did give its approval in 2010, when the negotiations had already been ongoing, and not in 2008, when the Council authorized the mandate. In the EP's resolution, it communicated literally that it was "deeply concerned that no legal base was established before the start of the ACTA negotiations and that parliamentary approval for the negotiating mandate was not sought" (EP 2010). Thereby, the EP used two strategies to gain more influence in the negotiations: bringing the case to the ECJ based on the Regulation regarding public access to documents, and releasing the resolution on the negotiations. Eventually, the Commission made the mandate public, but only after the EP had rejected ACTA (Curtin 2013).

*The second stage*¹¹²

The negotiation rounds started in June 2008 before the Lisbon Treaty entered into force. From the beginning, the Commission had technical briefings with the INTA Committee (Interview 8), but nevertheless there was not much contact between the Commission and the EP until 2009 (Interview 7). After two rounds of negotiations, the Commission shared an information fiche with the EP explaining the issues at stake and a document on the future institutional structure of ACTA (Commission 2012). The first meeting took place in October 2008, when Director General David O'Sullivan reported to the INTA Committee on ACTA as part of an 'in camera discussion' (Commission 2012). Its first written report filed the Commission in January 2009 on the fourth round of negotiations (Commission 2012).

The EP started to become active on ACTA in 2009, when in March it submitted a report to the Commission where it demanded that the latter "immediately make all documents related to the ongoing international negotiations on [...] (ACTA) publicly available" (EP 2010). This demand was based on the earlier version of the Inter-institutional Agreement of 2006 and on the Lisbon Treaty (signed in 2007), which came into force later the same year. In December 2009, the MEP Sophie In'tVeld requested that the Commission give the EP access to all new documents on ACTA since 2008. Because the Commission only shared some documents with her, In'tVeld filed a complaint and an action for an annulment to the ECJ (Eckes, Fahey, and Kanetake 2012). She based her complaint on the earlier mentioned regulation regarding public access to all documents of the EP, the Council, and the Commission. In 2013 the ECJ announced its judgment to give the MEP only a partial right to access the documents, thus assuring the Commission the right to keep some documents secret.

As of 2009, the EP has demanded more information from the Commission and from the Council. The MEPs requested nearly all the documents (Interview 8), and the minutes of the meetings in the Council (Interview 4). Furthermore, some MEPs asked for debriefings before each round of negotiations and demanded to sit at the negotiation table (Interview 3). One of the EP's main achievements was that the Commission shared an interim report on the ACTA negotiations after the EP's request for more information (Interview 6).

¹¹¹ Regulation (EC) No 1049/2001 of the European Parliament and the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents. In: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:145:0043:0048:EN:PDF>. Access: 09-03-2015.

¹¹² The second stage of negotiations covers the negotiation rounds between the Commission and third actors.

In March 2010, the EP made a resolution on the ACTA negotiations (EP 2010). In this resolution, the EP criticized the lack of transparency and “call[ed] on the Commission and the Council to grant public and parliamentary access to ACTA negotiation texts and summaries” (EP 2010). Furthermore, it “expect[ed] the Commission to make proposals prior to the next negotiation round in New Zealand in April 2010” (EP 2010) to increase transparency and to reveal documents from all negotiation partners to all MEPs and to the public (and not only the involved Committees of the EP). Thus, the EP required access not only to the Commission’s documents on ACTA but even to those of the negotiating partners.

The EP also emphasized that it “reserves its right to take suitable action [...] in order to safeguard its prerogatives” (EP 2010) if the Commission fails to inform the EP immediately and fully about all stages of the negotiations. Among its major new rights was the possibility to ask the ECJ for an opinion on international agreements. Thereby, the EP could ask the ECJ whether or not an agreement complies with EU rights. This is a strong instrument because if the ECJ doubted the agreement’s compliance with EU rights, it would be almost annulled. The MEP Jan Albrecht demanded the ECJ’s opinion in 2011 (Tatje 2012), but this time he was not successful (Interview 6). Another novelty for the EP was that the LIBE Committee could express an opinion on the compliance of agreements with fundamental rights, which is what the committee did on ACTA (Interview 5).

The MEPs that were critical of ACTA became active with certain strategies to mobilize against the agreement. First, they tried to build a coalition within the EP against the Commission mainly on the grounds of non-transparency of negotiations. Second, the MEPs asked DG Expo for an in-depth study on ACTA, which they hoped would be critical of the agreement to use the study against the Commission. Third, some MEPs collaborated closely with external actors. For instance, they organized events within the EP, talked to experts on IPR, and worked closely with like-minded NGOs (Interview 6). The latter was a strategy to create a public against ACTA, and to retrieve information on the content of the agreement (Interview 6). Moreover, some MEPs asked the WTO for a statement on the ACTA negotiations, to which Pascal Lamy replied. The MEPs wanted to obtain a sceptical statement by the WTO based on the grounds that IPR should be discussed transparently in the WTO and not in a separate multilateral agreement. Although Pascal Lamy replied, his answer was not as sceptical as MEPs had wished.

*The third stage*¹¹³

After the conclusion of the negotiation rounds there was a heated debate in the EP on ACTA. During this time MEPs discussed the content of the agreement, and many of them were actually in favour of the agreement (EP 2010; Interview 6). ACTA was much disputed, so that there were very different views within the EP on the final text of the agreement (Interview 3). Whereas the Greens had been against the agreement from the start, other groups such as the Liberals or the Conservatives were supportive of the content. The views on ACTA that were raised by MEPs were addressed by the Commission in written replies (Commission 2012).

The mass demonstrations in Poland in January 2012 changed the because they brought ACTA to the public’s attention (Interview 6). After mass protests had started, all MEPs (not just the Greens, or those of the INTA Committee) became active. Some of the MEPs who were initially supportive of the agreement, shifted to a more critical position (Interview 3) given the public’s scepticism. In this sense, it was the mass demonstrations that mobilized MEPs against the agreement, although earlier it was the Greens who had tried to establish a public front against ACTA. At this stage MEPs repeated their

¹¹³ The third stage describes the ratification process of the agreement, and encompasses the time between the existence of the final agreement and the ratification.

demands for more information before they could eventually vote on ACTA (Lauenroth 2014), and requested clarification as to whether or not ACTA was compatible with the *acquis communautaire*.

Given the rising criticism of ACTA from the public and MEPs, the Commission was 'panicking' (Interview 6), and asked the ECJ for its view on ACTA. This was because the Commission realized that the mass demonstrations in Poland and other countries, had changed the position of liberal and conservative MEPs on ACTA. As a last minute action to rescue ACTA, the Commission asked the ECJ whether the agreement complied with EU rights. The Commission hoped to win time before the ECJ gave its opinion and before the EP voted on the agreement, giving the public demonstrations time to calm down, and it hoped that a positive opinion of the ECJ would convince some MEPs to sign the agreement.

Despite the EP's critical view on ACTA, 22 EU member states and the EU signed the agreement. In response to this, the MEP Kader Arif resigned as ACTA rapporteur in January 2012 (Lauenroth 2012). The mass protests had suddenly changed the EP's view on ACTA so that the majority of MEPs did not want to wait for the ECJ's opinion on the agreement but vote on it immediately. In July 2012, a large majority of the EP eventually rejected the agreement. The EP had, however, not asked for amendments of the text before rejecting the agreement, and even the 2010 resolution was quite in favour of the negotiations (Interview 6). Thus, it did not take the opportunity to influence the agreement substantially by demanding certain provisions (Armanoviča and Bendini 2014).

7.3 The Transatlantic Trade and Investment Partnership (TTIP)

TTIP is a comprehensive and ambitious FTA between the EU and the US launched in 2013 to enhance market access through the elimination of barriers to trade and investment in goods, services and agriculture, and, to develop regulatory cooperation (Akhtar and Jones 2014). The negotiations started in July 2013, and, so far, the TTIP talks have been the most challenging trade negotiations which the EU has ever conducted (Interview 11). An EU-US High Level Working Group on Jobs and Growth (Schott and Cimino 2013) had preceded the very complex negotiations (EP 2013a) since 2011, and in June 2013, the Council authorized the negotiation mandate for the TTIP talks.

7.3.1 Assessment of the EP's role in the TTIP negotiations

Since the TTIP talks started in July 2013, the EU and the US have had eight rounds of negotiation. The latest round took place in February 2015 in Brussels, Belgium. Already before the TTIP, the EP managed to expand its role in the negotiations of the EU's international agreements. Nevertheless, the TTIP negotiations have fundamentally changed the EP's involvement in international agreements and the collaboration between the EP and the Commission on negotiations (Interview 11).

The first stage

Although the EP does not have a formal role in approving the negotiation mandate, it has been active in the TTIP talks since the very beginning. In May 2013, before the Council authorized the negotiation mandate, the EP released a resolution, with which it supported the aim of creating a "deep and comprehensive" and "ambitious and binding" TTIP agreement (EP 2013a). The EP made the resolution public even before the High Level Working Group on the TTIP negotiations published its recommendations for the agreement (Interview 13). In practice, this means that the EP was active and made its position known already before the Council discussed the negotiation directives (Interview 11).

With the resolution, the EP was also able to influence the substance of the negotiation mandate. The EP supported some EU member states, which wanted to exclude audiovisual services from the negotiation directives. The MEPs included this point in their resolution, so that, in the end, the mandate

did not cover audiovisual services. Thereby, the EP clearly went beyond the provisions as laid out in the Lisbon Treaty because it used the instrument of a resolution to influence the content of the negotiation mandate (Van den Putt, de Ville and Orbie 2014).

In TTIP, the EP's resolution, which it released prior to the Council's authorization of the mandate, served as a *de facto* negotiation mandate by the EP (Interview 13). When the Commission launched the TTIP negotiations, it took into account the EP's position on the mandate (Interview 13). The Commission and the Council preferred to coordinate with the EP already in the stage of defining the negotiation directives in order to avoid an eventual rejection of TTIP, which would be politically delicate and which would cost a lot of time and resources (Interview 14).

Furthermore, the EP was successful in getting the Commission to make the negotiation mandate public. The EP and the Commission agreed that, since the TTIP negotiations started, the Commission would make public every negotiation directive – even if this meant that the negotiation partner would know the EU's priorities and thereby have an advantage in trade talks (Interview 14). The Commission's decision to concede to the EP on this point is certainly also inspired by the fact that TTIP is a politically extremely important agreement for the Commission and the Council. Thus, the Commission wants to avoid a situation where the EP could turn down the agreement on the grounds of a lack of transparency.

Some MEPs demanded an even greater expansion of the EP's power in the first stage of negotiating international agreements. They requested the right to consent to the negotiation mandate and the right to give formally acknowledged directives (Interview 13). Some MEPs raised this suggestion because the EP has limited capacity in influencing the negotiation mandate in cases where it disagrees with the Council's position (Interview 11; Interview 12). In the case of TTIP, the EP was successful in influencing the negotiation mandate because it could team up with some EU member states. If the EP acquired the right to give mandatory negotiation directives, this would formally put the EP on an equal footing with the Council in conducting international agreements. The EP and the Council would both be responsible for authorising the negotiation mandate and for consenting to the final text of the agreement.

The second stage

President Juncker, as soon as appointed in November 2014, and trade commissioner Malmström put a great deal of effort into making the TTIP negotiations more transparent than earlier trade negotiations and into conducting TTIP closely together with the EP (Webb 2015). In November 2014, President Juncker presented a Communication to the Commission concerning transparency in TTIP negotiations (Commission 2014c), in order to make the talks more transparent. Among these provisions are: to make public negotiation texts which the Commission shares with the EP and the Council; to provide access to TTIP texts to all EU member states and all MEPs; to classify less negotiation documents; and to publish and update regularly a list of TTIP documents, which the Commission shares with the Council and the EP (Commission 2014c).

Despite the Commission's efforts to make negotiations transparent and to convince the public about the benefits of TTIP¹¹⁴, the negotiations with the US are highly controversial in public. Civil society groups have voiced their concern about the inclusion of issues such as IPR, regulatory issues, consumers' interests, workers' rights, and the environment (Akhtar and Jones 2014). These are issues, which obviously resonate in the EP, and which MEPs put forward to the Commission.

¹¹⁴ The European Commission set up a webpage, on which it provides massive information on TTIP and what its benefits are: <http://ec.europa.eu/trade/policy/in-focus/ttip/>, access: March 25, 2015. The Commission clearly learned from the failed ACTA negotiations, which were also due to their lack of transparency and misinformation circulating on the web.

One of the most important concerns raised in public and among MEPs is the lack of transparency of TTIP. EP committees and MEPs demanded access to all negotiation documents. Trade negotiations contain three types of documents. First, public documents to which everyone has access. Second, limited documents to which people have access who work on the specific issue (e.g. the INTA Committee). Third, a selected number of people can access restricted documents (the chair and vice-chairs of the committee, the coordinators of the political groups, and the rapporteur). Documents where the US is a co-author are not accessible for the EP, but it formally requested access to these documents as well (Interview 13).

On the issue of transparency, the European Ombudsman opened two investigations on the Council and the Commission after complaints by MEPs and civil society in 2014 (Crisp 2014). MEPs and civil society pressured the Commission into making the TTIP negotiations even more transparent. Civil society, for instance, send automated emails, in which citizens complained about the lack of information on TTIP (Interview 11). The EP joined in with this demand for more information also because the TTIP negotiations are highly salient in public.

In fact, the EP has never been so well informed as in the TTIP negotiations. The EP receives the same negotiation documents as the Council. Furthermore, the Commission agreed to make more documents accessible and to declassify more documents. In the case of TTIP, all members of the EP's monitoring group can access documents that the INTA Committee receives, if they fall within the competence of their respective committee (Interview 13). In due time, the Commission will set up a database allowing all MEPs to access limited documents. All MEPs and the staff of committees can consult classified documents in a particular reading room for a restricted period. This means that the Commission has widely extended access to information and documents (Interview 11). In addition, the Commission neatly listed all documents, which it shared with the EP and the Council (last updated in March 2015) (Commission 2015).

Besides the sharing of written documents, the EP demanded to increase the frequency of oral debriefings by the Commission. In earlier negotiations, the Commission briefed the EP only irregularly on the negotiation rounds. This happened sometimes before and sometimes after the respective negotiation round, but it was the EP, which set the agenda for these meetings. In the TTIP negotiations, the EP requested debriefings before and after each round of negotiation (Interview 11) so that it is constantly informed. This facilitates the EP's monitoring of TTIP.

To enable a feasible monitoring of the TTIP negotiations, the EP set up working and monitoring groups. The members of these groups are the front liners in following sector-specific issues and in reporting to the EP (Webb 2015; Interview #11). The number of members in these monitoring groups also increased with TTIP mainly because of the broad scope of this eventual agreement. Additionally, the committees cooperate more closely with each other. For instance, all relevant committees are invited to meetings of the monitoring groups (Interview 11). TTIP also involves more committees of the EP because the agreement tackles very different issue areas (Interview 12).

Furthermore, the EP's President created a coordination group for TTIP to debate political issues whenever necessary (Interview 11). This coordination group unites the chairs of different committees (Interview 12) in order to coordinate their work with each other (Interview 13). Other measures have been taken by the EP to monitor the negotiations in detail such as inviting guests from the US delegation to speak about TTIP, and individual hearings by political groups (Interview 12). MEPs have also had a number of direct meetings in Washington on TTIP (Interview 12), which were mainly to gather more information on the negotiations (Interview 13).

During the negotiation of TTIP, the EP also tried to assert its right of consent several times, reminding the Commission regularly that in the end the EP will have to ratify the agreement. Thereby, the EP pressures the Commission to consider the EP's views when negotiating TTIP (Interview 12). The EP also insisted that the Commission would have to work more closely with the public and that the Commission would need to make public statements about its position in the negotiations (Interview 13).

Overall, the EP has massively increased its involvement in the TTIP negotiations as opposed to earlier trade negotiations. In particular, the EP's activity has risen in TTIP compared to other agreements, which is mostly due to TTIP's political salience. Earlier agreements such as SWIFT or ACTA have facilitated the EP's achievements to gain more rights in particular regarding access to information and documents on TTIP.

7.4 EU Singapore Free Trade Agreement (EUSFTA)

In September 2013, the EU and Singapore initialed the text of a comprehensive FTA, which awaits ratification by the EP. The EU and Singapore launched these negotiations in March 2010 after a region-to-region approach with ASEAN had failed (Commission 2014a). In 2011, the Council modified the Commission's mandate to include investment issues, which negotiations concluded in October 2014 (Commission 2014b). The ratification of the agreement is still pending because the Commission awaiting an ECJ opinion. The opinion will clarify whether the EUSFTA is a mixed agreement, requiring ratification by national parliaments, or if it contains exclusive competences only for which the EP's vote would suffice.

7.4.1 The EP's role in EUSFTA negotiations

The launching of talks on a EUSFTA was peculiar because the Commission had already started to negotiate an FTA with ASEAN, of which Singapore is the economically most important member. The negotiation directives for the EUSFTA rested on the earlier mandate for an interregional FTA (2007), so that the Council had just renewed its authorization for the bilateral EUSFTA in 2010.

The first stage

Overall, the cooperation between the EP and the Commission on the EUSFTA went very smoothly. The EP was not involved in shaping the negotiation directives on the region-to-region talks with ASEAN in 2007 because the Lisbon Treaty was not yet in force at the time (Interview 2). This mandate included a footnote, which provided for its amendment in bilateral talks (Interview 2). When the Commission switched to a bilateral approach, it consulted the EP and the latter could express its views (Interview 10). The majority of MEPs had supported the negotiations.

The INTA Committee of the EP was involved in the negotiations from the outset (Interview 1) and had followed the key issues of the talks (Interview 8). However, MEPs only started to be active about the negotiations in 2011, and it had only been active from the outset in the added-on investment talks (Interview 7). This was due to organizational matters because the parliamentary monitoring groups set themselves up in 2011 as an informal solution to facilitate the work of the MEPs given the new responsibilities of the Lisbon Treaty (Interview 7).

The second stage

The EUSFTA negotiations were not difficult and had developed well (Interview 1; Interview 8). This was because of three factors. First, the Commission had already carried out a scoping exercise with ASEAN before the EUSFTA talks, so that it was aware of Singapore's position. Second, Singapore was

very advanced and was ready for an agreement from the start (Interview 8). Third, neither the EP nor the Council had major vested concerns regarding the negotiations (Interview 2).

In the period when the Commission carried out the negotiation rounds, the EP followed them through their usual procedure. The EP showed interest in the talks, asked questions, had discussions, and increased their knowledge of the issues at stake (Interview 2). The Commission constantly debriefed the EP on the negotiations (Interview 4), and kept the INTA Committee informed (Interview 7), and it was upon the EP to set the agenda for these meetings. In fact, the EP had not requested any further information or documents than the Commission would have been willing to give (Interview 7).

In much the same way as for the ACTA negotiations, the EP talked to third actors by organizing a workshop with experts and by working with stakeholders (Interview 4; Interview 7). What was new in the EUSFTA negotiations was that the EP had several meetings with ambassadors from Singapore (Interview 7) to clarify issues. In May 2013, for instance, the INTA Committee invited the Ambassador of Singapore to the EU to exchange views on the agreement (INTA 2013).

However, the EP used these channels to increase its knowledge and to gain more expertise on the negotiations. Unlike the ACTA negotiations, where the EP used workshops and collaborated with NGOs to establish a critical public against the agreement and the Commission, the MEPs were much more supportive of the EUSFTA talks. Simple interaction and open discussions between the Commission and the EP were sufficient, and the EP did not use any particular strategies to increase its influence (Interview 2).

This was although the EP was aware that the cooperation of the Commission with the Council was completely different from the cooperation with the EP. With the EP, the Commission generally shares information orally and on a less frequent basis. With the Council, instead, the Commission has weekly meetings in the TPC and technical meetings sometimes even on a daily basis (Interview 4). This means that the Commission discusses negotiations in much greater detail with the Council than with the EP. The cooperation between the EP and the Council was close to zero in the EUSFTA talks (Interview 7).

As regards the substance of the negotiations, the political core groups of the EP were supportive, which the rapporteur transmitted to the Commission (Interview 2). Some political groups voiced concerns about issues such as human rights, civil society, and animal welfare (Interview 2), and the only aspect that the EP discussed widely was the death penalty in Singapore (Interview 7). The human rights clause, which the Commission inserts in its agreements with third-party actors, nevertheless remained vague. It merely emphasized that the EUSFTA "shall be an integral part of the overall bilateral relations as governed by the Partnership and Cooperation Agreement" (as cited and compared to other human rights clauses by Bartels 2014).

The main concerns were about the added-on investment agreement, which the MEPs raised recently. Some MEPs were calling for transparency on state-investor dispute settlement. On this issue, the EP had many meetings with the chief negotiator, who took the concerns seriously (Interview 7). Here, the Commission tries to consider the critique as much as possible in order not to run the risk of the agreement being shot down (Interview 2). Nevertheless, the majority of MEPs supported the negotiations (Interview 2; Interview 7).

It is also interesting what the EP did not do on the EUSFTA negotiations. It only became active on the talks in 2011, and it has not requested more information or documents than the Commission would have been willing to give. Furthermore, it has not made use of its three new formal rights: it has not launched a study on the agreement, which it did on ACTA (Interview 9); the LIBE Committee has not

issued an opinion; and the EP has not made a resolution on the EUSFTA negotiations.¹¹⁵ This is although the resolution is the EP's strongest instrument to influence the content of ongoing negotiations. Neither has the EP created any kind of critical public on the negotiations.

The reason why the EP was considerably less active in the EUSFTA negotiations than on ACTA or TTIP was mainly due to the varying salience of the agreements. While ACTA and TTIP were highly salient agreements, where the negotiations attracted and still attract massive public and media interest, the EUSFTA received very little attention. The ACTA negotiations showed how salience influences the activity of MEPs, when the majority of them only became active once it had already been a hot topic for the European population. Furthermore, when the Commission negotiated the EUSFTA, the EP had not yet voted on ACTA so that the MEPs were caught in reflecting and commenting on the final text of the ACTA agreement. The workload of monitoring closely two agreements would have been very high for the few MEPs involved in the INTA Committee. Thus, the lack of salience of the EUSFTA negotiations coupled with the EP-internal organization of MEPs explains why they were less active on the EUSFTA.

The third stage

What is even more interesting is that the Commission asked the ECJ for an opinion on the EUSFTA. The Commission only informed the EP about this (Interview 7). Thus, it was not the EP, which used this new right to clarify the agreement's compatibility with EU law and its character of being an exclusive or mixed agreement. The Commission now awaits the ECJ's opinion before submitting it for ratification to the EP, and, depending on the opinion, to national parliaments.

Moreover, the EP has not used its power of ratification to ensure certain substantial amendments to the agreement. On the contrary, the rapporteur requested that the ratification of the EUSFTA be split into two parts: the investment agreement and the FTA. If the EP votes on the whole agreement this could endanger the consent because of the concern about the state-investor dispute settlement procedure. The rapporteur tried to use his/her personal influence in individual meetings to get this idea through. Thereby the EP, through the rapporteur, tried to use an agenda-setting strategy in splitting the ratification, but it used this to support the agreement. It is DG Trade which opposed this suggestion and insisted on a ratification as one agreement (Interview 7).

For the EP, the main achievement in the EUSFTA negotiations was being able to reach a conclusion and that it was a comprehensive agreement (Interview 7). Thereby, the MEPs were a lot less critical than in the ACTA case, and they did not try to push their role beyond the provisions as laid out in the Lisbon Treaty. In contrast, they have not even used their main rights such as releasing an opinion or a resolution, launching a study, or asking the ECJ for an opinion on the agreement. The EP itself confirmed that there was a lot less activity in the EUSFTA negotiations because of organizational issues and because the MEPs considered it less relevant than ACTA for example (Interview 7).

7.5 Additional cases

The EP has become active in other international agreements, too. On some occasions, it was able to push beyond its role as laid out in the Lisbon Treaty and the Inter-institutional Agreement.

EU-South Korea FTA

In the EU-South Korea FTA negotiations, the EP became active during the rounds of negotiation. It was particularly successful in the third stage of negotiations, when it managed to suspend the provi-

¹¹⁵ The EP released a resolution on trade and economic relations with ASEAN in 2008 (EP 2008), and one on the future EU-ASEAN relations in 2014 (EP 2014).

sional application of agreements. In the time between the when the agreement was signed and its ratification, the EU used to implement a provisional agreement. After the Commission had negotiated the FTA with South Korea though, it set the date for the provisional application only after the EP ratified it (Interview 1). Neither the Commission nor the Council wanted to risk the rejection of the FTA by the EP, although they would have already implemented it (Armanoviča and Bendini 2014). Thereby, the EP practically suspended the provisional application.

EU-Japan FTA

The agreement with Japan was the first time that the EP became active before the Council authorized the Commission's negotiation mandate. Although this was an organizational challenge to the EP (Interview 7), MEPs managed to reach a resolution in October 2012 on the negotiation directives even before their authorization. The EP asked the Council not to adopt the authorization of the mandate before the MEPs had issued the resolution. The Council indeed awaited the EP's resolution (Interview 1).

Textile protocol between the EU and Uzbekistan

In 2011 the Commission asked the EP to vote on a textile protocol, which would have amended the Partnership and Cooperation Agreement between the EU and Uzbekistan. On this occasion, the EP made its ratification of the protocol conditional on certain amendments. More specifically, it rejected the textile agreement until Uzbekistan would have cooperated with the International Labor Organization (ILO) (Interview 1). Due to the use of child labor in Uzbekistan, the EP directly addressed the country, and urged its government to allow the ILO to access and report on the issue (Fitzpatrick 2011). The EP thus increased its role in two directions. First, the EP addressed Uzbekistan, the negotiation partner, directly. Second, the EP made its ratification of the agreement conditional to certain amendments, namely the cooperation between Uzbekistan and the ILO.

EU-FTA with Colombia and Peru

Similar to the textile protocol with Uzbekistan, the EP addressed Colombia and Peru directly in FTA negotiations. The EP used its instrument of adopting a resolution in which it asked for improvements of the human, labour, and environmental rights situation (Interview 1). Thereafter, Colombia and Peru presented plans on how to improve these matters in their countries, and made a commitment to an annual human rights dialogue with the European External Action Service (Armanoviča and Bendini 2014). This secured the MEPs' eventual consent to the agreement with Colombia and Peru, so that the EP made its 'yes' to the FTA conditional to concessions of the negotiation partners (Interview 1).

7.6 Comparison

All these examples clearly show that the EP had two institutional objectives: the first was to increase the transparency of trade negotiations; and the second, and even more important, was to be involved throughout the negotiation process. In particular, the EP wanted to be regularly and fully informed about all stages of negotiations; at receiving, commenting, and approving the negotiation mandate; and influencing the content of the agreements – including through direct negotiations with the negotiating partners

This objective was met: Over time, the EP could expand its role considerably in the negotiation of international agreements. Whereas in the beginning, it was informed irregularly, and sometimes only became involved when the negotiation rounds had already been ongoing, this has been changing from SWIFT, ACTA, to TTIP (Table 3).

The EP is not yet involved in the Commission's scoping exercise (before the Commission asks the Council for authorization of the mandate). However, it managed to get involved in launching the negotiation directives. In the ACTA negotiations, the EP had requested, unsuccessfully, the negotiation mandate, and requested that the Commission await parliamentary approval. Later in the EUSFTA negotiations, the EP could voice its views on the switch to the bilateral mandate. In the EU-Japan FTA and the TTIP negotiations, the EP had already released a resolution before the Council authorized the mandate, so that the EP could influence the format of negotiations. In addition, the Commission made the mandate of the TTIP negotiations public, something that it has not done before.

Similarly, the EP's role has increased over time during the rounds of negotiations. In the SWIFT and ACTA negotiations, the EP requested more information, transparency, and access to all documents. During the talks on ACTA, some MEPs demanded to sit at the negotiation table, and requested a debriefing before and after each round of negotiations. For the SWIFT, MEPs negotiated directly with the American partners. Furthermore, the EP demanded negotiation documents not only from the Commission, but more transparency from negotiation partners such as the US. Now MEPs are regularly informed at all stages of the TTIP negotiations, and are debriefed before and after each round of negotiations. The MEPs have access to all documents: they receive the public documents via email; limited documents will be accessible through a database in the near future; and MEPs and the staff of the EP's Committees can consult classified documents in a reading room. Furthermore, the EP managed to influence the content of some agreements by addressing the negotiation partner directly, as it did in the SWIFT agreement and in the FTA with Colombia and Peru.

In the SWIFT and ACTA negotiations, the EP used its veto power to reject the agreement thus making clear that a threat to do so in the future would be credible. While in ACTA, it did not use it to impose certain conditions to the content of the agreement, in the SWIFT negotiations it managed to influence the outcome. In the textile protocol with Uzbekistan, the EP made its ratification conditional to amendments of the agreement. Moreover, it managed to suspend informally the practice of provisional application when the EU negotiated an FTA with South Korea. In the case of SWIFT, the EP also released a resolution on the agreement's implementation, in which it requested the suspension of the SWIFT programme. This demonstrates that the EP has even become active in the phase of implementing agreements.

Table 3: EP's formal and informal role in international agreements

Phase	Role
Scoping exercise	-
Negotiation mandate	Access to negotiation mandate Resolution on negotiation mandate Comments on negotiation mandate Influence on format of negotiation mandate
Negotiation rounds	Access to all documents Debriefing before and after each round of negotiations Influence on content of agreement Influence on concessions from negotiation partner
Ratification	Option to reject an agreement (De facto) conditional ratification of agreement

Phase	Role
Implementation	Suspension of provisional application Resolution on implementation

Reference: Own illustration

MEPs have used different kinds of strategies to expand the EP’s role in international agreements and to influence the content of the agreements. Some of these were formal instruments, whereas others were informal (Table 4).

Formal instruments, which the MEPs used in the first stage of a negotiation mandate, were to release a resolution even before the mandate’s authorization, as it did in the EU-Japan FTA and TTIP, and the request for documents based on the Regulation between the EP and the Council regarding public access to EP, Council, and Commission documents. In addition, the EP voiced its views in regular meetings with the Commission on the mandate for the EUSFTA.

During rounds of negotiation, the EP used more strategies. It had some formal instruments with which to request more information and access to documents: producing a report on the negotiations; releasing a resolution; bringing the case to the ECJ based on the Regulation regarding public access to EU documents; and filing a complaint with the European Ombudsman. Furthermore, the EP had formal instruments to indirectly influence the content of or mobilize against an agreement. The two most important instruments were to ask for an ECJ opinion on whether an agreement complies with EU rights, and the opinion by the LIBE Committee on whether an agreement is compatible with fundamental rights of the EU. One further instrument was to launch an in-depth study on the agreement and its consequences by DG Expo. In addition, the EP can invite the Commission to Committee meetings or plenary sittings, as well as asking it specific questions in writing or orally, and talking to the chief negotiator.

Of course, the ultimate formal instrument available to the EP to influence an agreement is the denial of its consent. The EP, indeed, rejected two agreements: the SWIFT interim agreement and the ACTA agreement. However, the EP also uses the threat of a negative vote to influence the content of agreements. In the case of the FTA with Colombia and Peru, it made its ratification conditional on specific amendments by releasing a resolution. In the EU-South Korea FTA, it managed to suspend the provisional application.

Informally, the EP used other strategies to influence the content of agreements or to mobilize against them. Collaboration with third actors were important such as like-minded NGOs, international institutions, the media, and experts. In the case of ACTA, the Greens worked closely with NGOs and tried to establish a public against the agreement. MEPs also asked for information on the negotiations from external actors such as NGOs, or organized events to collect input on ACTA from experts. Furthermore, some MEPs asked the WTO for a statement on ACTA, and they asked Uzbekistan to cooperate with the ILO regarding the textile protocol with the EU. Additionally, the EP started to address the negotiation partner directly by asking for concessions to ratify the agreement, as it did in the FTA with Colombia and Peru, or by inviting ambassadors to gather more information on the negotiations, as was the case in the EUSFTA or the TTIP negotiations. Another informal instrument is the EP-internal organization and cooperation between Committees. The MEPs established monitoring groups to facilitate the monitoring of negotiations, and, in the TTIP talks, the different Committees started to

collaborate. Furthermore, the EP’s president established a coordination group to discuss political aspects of the TTIP negotiations.

Finally, MEPs sometimes use their institutional position as rapporteurs strategically in order to influence negotiations: in the EUSFTA talks, the rapporteur suggested to split the ratification into two parts (in support of the agreement), and in the ACTA case, the rapporteur resigned from office due to the lack of transparency of negotiations.

Table 4: EP’s strategies in international agreements’ negotiations

Formal	Informal
text Complaint to ECJ Complaint to European Ombudsman In-depth study by DG Expo Meeting with Commission Opinion by ECJ Opinion by LIBE Committee Ratification Report Resolution	Addressing negotiation partner Agenda-setting Collaboration with third actors De facto conditional ratification Internal coordination Personal influence Withdrawal from office

Reference: Own illustration

7.7 Conclusion

This chapter analyzed to what extent the EP has used its role as laid out in the Lisbon Treaty and the Inter-institutional Agreement. The results showed that the EP has considerably increased its role in international agreements since the Lisbon Treaty came into force in 2009. From SWIFT, ACTA, the EUSFTA, to TTIP, the EP has expanded its involvement in four stages of negotiations: the mandate, the rounds of negotiation, ratification, and the implementation of agreements. To reach the overall goal of increasing the EP’s involvement, the MEPs used different While the Lisbon Treaty foresees that the Commission regularly informs the EP about negotiations, and that the EP votes on the final agreement, now the EP is already active when the Commission launches the negotiation mandate. Its resolution serves as a *de facto* authorization of the Commission’s mandate. In the bargaining process, the EP is now debriefed before and after each round, and has access to all documents; and in some cases even negotiates directly with the EU’s partners. With its resolutions, the EP has the power to make its ratification conditional on certain amendments of agreements, and it has managed to suspend the provisional application of agreements. In this way the EP has used its powers as stipulated in the Lisbon Treaty to a maximum, and, in some cases, it even went beyond these provisions. The importance of the Lisbon Treaty cannot be stressed enough because it gave the EP the opportunity to increase its role in international agreements.

The EP’s role in international agreements now goes even beyond the role of national parliaments.¹¹⁶ National parliaments are usually involved in the stage of ratifying agreements. The EP, however, acquired the right of informal access to negotiation directives and to influence them, the right to access documents, and to be debriefed before and after each round of negotiations, and entered into contact with negotiation partners and even gained concessions from them.

¹¹⁶ The authors are indebted to Paolo Ponzano for pointing this out.

Nevertheless, the results demonstrated that the EP was more active in some agreements than in others. The EUSFTA was a case in which the EP became less active than in the ACTA or TTIP negotiations. This was due to internal organizational aspects and the low salience of the agreement. In the ACTA and TTIP negotiations, on the other hand, the EP has become extremely active because these agreements were or are highly salient, politically extremely important, publicly controversial, and because the EP made an effort to coordinate internally. Thus, the EP was able to expand its role in international agreements also because it became aware of its new power it had acquired, and because it started to use this actively and to push its rights beyond the provisions as laid out in the Lisbon Treaty.

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8 CONCLUSION

KEY FINDINGS

- The EP's formal and informal powers in legislation, comitology, Commission investiture, the budgetary process, economic governance and international agreements have increased strikingly since the Treaty of Rome.
- This empowerment is partially explained by the concern for democratic legitimacy on the part of some member states' (and the Commission).
- To another important part the empowerment may be explained by the fact that treaties frequently contain ambiguous provisions and thus allow room for informal rules to emerge through bargaining specifying the details of treaty provisions.
- By using cross-arena linkage the EP in this bargaining process has often been willing to loose short-term policy benefits in exchange for longer-term institutional empowerment, thereby obtaining institutional gains.
- Most of these informal changes have been subsequently formalized, often because the formalisation of informal change appears to be a satisfactory compromise between less and more integrationist member states.

In this report, we have tried to explain how and why the EP has been empowered in a way that has 'parliamentarised' the European polity. We focused on six areas: legislation, comitology, Commission investiture, the budgetary process, economic governance and international agreements and show how EP competences have increased over time and now resemble (and sometimes outpace) those of the most powerful member-state parliaments. We have also illustrated the strategies used by the EP to influence policies and rules to its own advantage.

A first point to make is that the EP's formal and informal powers have increased over time in all six areas. As regards legislation, first, the EP's role has grown from that of mere consultation to co-legislation or veto in most areas. Second, the EP initially played no role in secondary legislation – i.e. the specification of how primary legislation should be implemented (in the TFEU, implementing acts); or even completed, amended or deleted (delegated acts). Since the Lisbon Treaty, the EP can – for delegated acts – revoke the delegation and/or cancel the acts (so can the Council). Third, while the role of EP as regards Commission nomination was inexistent under the Treaty of Rome, the Commission is now subject to a collective vote of investiture, held after individual hearings of candidate commissioners. Moreover, the Commission president must be approved by the EP before forming its team; and the current one has been chosen by member states amongst candidates put forward by the European political parties. Fourth, as regards the role of the EP in economic governance the Lisbon Treaty provides it with legislative co-decision rights; and in recent years it has managed to obtain information and sometimes consultation rights as regards the coordination and surveillance of national budgets. The Lisbon Treaty also gave the EP a veto on most international agreements; and today it is regularly and fully informed about all stages of negotiations and is able to influence the content of the agreements. Finally, the increase in the EP's competences in the budgetary processes as regards the expenditure side, although irregular, has improved markedly since the Treaty of Rome - from a very limited role to the power to co-decide budgets with the member states and the right of discharge. It, however, has not made headway as regards the revenue or own EU resources side.

The empowerment of the EP is something of a puzzle if we consider that a considerable number of member states – which have a veto on Treaty modifications- were initially opposed to this empowerment. The first reason for this empowerment (particularly in the early stage of the European project) is the concern of some member states’ (and the Commission) about democratic legitimacy. Over time, furthermore, there has been a process of normative socialization that has changed the preferences of, or made it difficult for, member states to deny an equal footing with the Council to the only directly elected political body in the European project. The principle that loss of control by national parliaments should be compensated by a corresponding empowerment of the EP was thus a powerful bargaining mechanism for both pro-integration member states and the EP.

However, the report clearly shows that changes can also take place against member states’ wishes. For example, there was the Commission’s and Council’s initial and vehement opposition to the idea of individual hearings. Our main finding in this report is that the Treaties allow room for informal rules to emerge through bargaining. This is because Treaty provisions are frequently ambiguous, i.e. they constitute incomplete contracts, and in some cases the EP has simply exploited the fact that a Treaty did not explicitly prohibit certain actions. As we have seen, the EP is often the winner in this bargaining process. This is mainly because the EP – especially — but not exclusively since the granting of budgetary and legislative veto powers — has the capacity to block or delay political processes. Unlike office holders in the Council and Commission, MEPs have often been willing to forgo short-term policy benefits in exchange for longer-term institutional empowerment. Two examples are worth mentioning here. First, the EP ‘tied its hands to the boat’ and unilaterally changed its rule of procedure prohibiting to accept the Council’s common position after a failed conciliation, thus making this option obsolete (a change subsequently formalized in Amsterdam) it put institutional gains before policy outcomes. Second, the EP agreed not to challenge budgetary deals which were agreed with difficulty amongst member states in the European Council in exchange of new budgetary prerogatives.

Moreover, the EP was skilful in linking areas, i.e. using its formal veto in one arena to create leverage in another in which it has no formal power (Héritier 2007). For instance, in economic governance, the EP exerted its influence in all six legislative acts of the six-pack, although its formal right as co-legislator only applied to four of them. Another example regards how the EP using its early budgetary powers to obtain influence in legislation or comitology. We also illustrate how the EP has made skilful alliances to increase its prerogatives, particularly with the Commission (as in the case of the vote of confirmation of its president) or with some member states in the Council (for instance, with Southern member states to increase its budgetary prerogatives). The EP also allied with national parliaments (particularly to convince the European Council to protect or increase the EP’s prerogatives in Treaty changes) or NGOs (in negotiations over international agreements). It often brought (or threatened to bring) actions to the ECJ when it considered that its rights had been violated. Additionally, the EP successfully sought to bring about a concurrence between the duration of budget plans as well as the duration of office (in the Commission) with the duration of the EP legislatures, which is an important feature of a parliamentary democracy.

Most of the informal changes which emerged between treaty revisions were subsequently formalized. For example, the Lisbon Treaty formalizes the multi-annual financial framework created in 1988 and abolishes the classification of expenditure into compulsory and non-compulsory. Another driving force for the expansion of the EP’s powers was thus *exogenous problem pressure* prompting actors to engage in redesigning the formal institutional rules. When this occurred, we observe that the formalization of informal change often appears as a compromise between less integrationist member states and those advocating [further] empowerment of the EP.

What do these formal and informal changes mean in the light of an increasing parliamentarisation of the EU polity? The report defines this as a process which allows a polity to develop increasingly in the direction of a government based on the support of a majority of members of a democratically elected parliament, where the government/executive is politically accountable to the legislature, and where the legislature holds the purse-strings for both revenues and expenditures. In legislative and budgetary matters the government/executive and its supporting majority in parliament has to face the critique of the opposition parties in parliament.

We may conclude that there are some features of parliamentarisation in the EU to the emergence of which EP contributed, but other features are absent:

- With the advent of co-decision-making as the ordinary legislative procedure, the EP together with the Council, is now responsible for legislation in almost all areas.
- However, there is no organized opposition in the EP to systematically criticize the Commission as would be the case in a parliamentary democracy with the opposition .
- Moreover, the Commission holds the formal right of legislative initiative, not the EP as would be the case in a parliamentary democracy.
- With an important role in the control of the implementing powers of the Commission (former comitology) the EP has carved out an important role for itself in specifying legislation.
- Parliamentary features in the sense of co-decision of the EP are missing in the budgetary process on the revenue side. In the decision on who supplies EU financial resources, the member states are still clearly in the driving seat.
- With the increasing role in the investiture of the Commission and the '*Spitzenkandidaten*' strategy it has taken steps in the direction of a government/an executive elected also by the EP, not only by the Council. However, the head of the executive does not have to be a member of the parliament as the prime minister is in a parliamentary democracy. Moreover, the executive does not solely depend on the support of a majority in the EP, but as well on the support of the European Council/member governments.

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