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Strengthened, sidelined, and caught in compromise

The 7th European Parliament from a German
perspective

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Strengthened, sidelined, and caught in compromise: The 7th European Parliament from a German perspective

Daniela Kietz / Nicolai von Ondarza

The 2009-2014 legislature of the European Parliament (EP) has been marked by profound changes to European integration that both enhanced and constrained the power of Parliament.¹ On the one hand, the Lisbon Treaty came into force shortly after the Parliament was elected. The EP was significantly strengthened as an actor in all phases of EU policy making. In consequence, the EP started its 7th term with renewed confidence and regularly confronted the Council and/or the Commission, in particular on questions of its institutional self-interest.

On the other hand, the past legislature was dominated politically by the European sovereign debt crisis, starting with the financial assistance granted to Greece in early 2010. Unlike ordinary EU legislation, in these crises measures and the further development of the economic and monetary union, intergovernmental decision-making took the centre stage. Thus, while the public concentrated on high-stake bargaining in the European Council, the Parliament was sidelined on the most crucial crisis management decisions such as the setting up of the European Stability Mechanism (ESM). Only as the EU shifted towards long-term reform based on EU legislation, as in the case of the Banking Union, the EP was able to leave its mark.

In May 2014, European citizens are therefore for the first time able to cast their votes on a new, more powerful 'Lisbonised' Parliament and against the background of the experiences of the European sovereign debt crisis. To raise awareness of the profound changes to EU policy making, in particular to the EP's role, and the issues at stake in the elections, the *German Institute for International and Security Affairs (SWP)* has contributed this report to the project "15 European Parliament votes that shaped EU and national politics 2009-2014" coordinated by *VoteWatch Europe* and *Notre Europe – Jacques Delors Institute* as one of 21 national partners.

The main aim of this project was to answer three linked sets of questions: First, do MEPs, in this case in

particular German MEPs, vote mainly according to national preferences or do they vote along European party group lines in the EP? Do, for example, member state governments push their MEPs towards voting along national lines as the EP becomes an ever more powerful actor? Have the enlargements of 2004, 2007 and 2013 led to a stronger fragmentation of the EP or lower cohesion of the political groups? Second, how have the EP decisions and MEPs voting behaviour impacted on EU decision-making? Put differently, how powerful is this "Lisbonised" EP in practise? Through which strategies and instruments does it further its impact on EU decisions? And third, how was the EP perceived in the respective political debates in Germany? What promotes its visibility and what role does Parliament play in the politicisation of issues?

In order to answer these questions, 15 key political topics – on which the EP expressed its position in 21 distinct votes – were chosen by *VoteWatch Europe* and *Notre Europe* for in-depth analysis in this report. These case studies cover the full spectrum of EU policy areas, legal instruments, and procedures. They range from areas with full co-decision and consent powers such as international trade (e.g. ACTA, TTIP) over budget procedures (e.g. MFF) to foreign affair issues, where the EP is formally only consulted but can in practice wield considerable powers (e.g. EEAS), or, finally, to own initiative reports without any legal binding power (e.g. Eurobonds).

The case studies are based on the one hand on the quantitative analysis of the voting behaviour of all MEPs as well as the German MEPs. In most cases, the identified vote was, however, only part of a larger decision-making process, so that the research was on the other hand complemented by a qualitative analysis of the conflict lines and priorities of MEPs in the respective decision making process and the corresponding impact of the EP on the final outcome. Finally, each case study includes an analysis of the salience of the issue in German politics and how the role of the EP in the relevant decision-making process was perceived in the German public debates.

¹ We are very grateful to Till Weyers for his support in laying out and editing this report.

The changing role of the European Parliament

The impact of the Lisbon reforms is evident across all researched policy areas, albeit to a differing degree. Two reforms altered the EP's role in particular: Firstly, the co-decision procedure, now formally called ordinary legislative procedure, has become the standard decision-making procedure in the EU and the number of policy areas decided via this procedure was greatly increased. In 2012, for example, 63 per cent of all legislative procedures were decided with full and equal participation of the EP.² The EP was thereby clearly put on equal footing with the Council when adopting most EU legislation. Secondly, the Lisbon Treaty gave the EP the tools to become a strong player in the EU's external relations. Above all, the EP's consent is now needed for most international agreements, which the EP used very strategically to establish itself as an actor in international negotiations with third states. Beyond these central reforms in the legislative sphere, the Treaty also strengthened the EP's budgetary as well as control rights vis-à-vis the Commission.

Between a new self-confidence and the Brussels' consensus machine

These increased powers did not only legally enhance the role of the European Parliament, but also led to an increased self-confidence of MEPs willing to directly take on the European Commission and the EU member states in the Council of Ministers.³ Right at the beginning of the legislature, Parliament as a first demonstration of power forced the member states to change one of the candidates designated for the post of Commissioner and rejected the EU-US SWIFT agreement. Shortly thereafter, the EP assumed a leading role in the negotiations on the European External Action Service (EEAS). Despite having only marginal decision-making in this regard, it was able to press substantial concessions from the High Representative for Foreign and Security Policy due to its budgetary rights.

² Own research based on European Commission, *General Report on the Activities of the European Union 2012*, Brussels, 2013.

³ Cf. Daniela Kietz/Nicolai von Ondarza, *Parliamentary Dawn: The New Self-confidence of the European Parliament*, SWP Comments 2010/C20, Berlin 2010.

This trend continued throughout the whole legislative period during which the Parliament in several cases took a very confrontative stance in decision-making processes and was even prepared to resort to worst case instruments, i.e. to reject agreements or to completely halt controversial decisions. For instance, following the huge public pressure against the Anti-Counterfeiting Trade Agreement (ACTA) across Europe in 2012, a large majority of MEPs was willing to stop the ratification process despite a clear commitment by the Commission and most EU member states. In other important legislative dossiers, like the establishment of a Single Supervisory Mechanism (SSM) for the eurozone Banking Union, the Parliament threatened to block agreement and went into hard negotiations with the Council, overall establishing itself as full co-legislator. The main condition for such strong opposition from Parliament was in most cases a very large majority backing the EP's position, which thus spoke with more or less one voice. Such super majorities were, naturally, easiest to achieve when the EP pursued a distinct institutional self-interest and/or fought with governments over the allocation of competences and tasks between the member states and the supranational institutions as in the case of the establishment of the EEAS or in the Schengen governance reform.

However, this is only one face of the "Lisbonised" Parliament. Several cases under scrutiny in this report also show the EP's very pragmatic side. The widespread talk about the EP's new confidence and its confrontational stance in inter-institutional negotiations cannot hide the fact that the Parliament becomes part of the Brussels' consensus machine as soon as it turns into a co-legislator under the co-decision procedure. The social effects of the intense inter-institutional contacts in co-decision negotiations and the responsibility for the policy results that come with the co-decision powers naturally go hand in hand with a much stronger inclination on the part of MEPs to compromise than under the consultation procedure. When Parliament is met by strong resistance and pressure from member states in the Council and European Council, as for example in the Schengen governance reform, the negotiations on the Multiannual Financial Framework, or the reform of the EU's own-resource system, 'realpolitik' usually prevails. In many cases, a pragmatic deal outweighs the alternative of no reform and sustained harm to the relations with member states in the Council.

Legislating effectively behind closed doors – the rise of the trialogue

A distinctive feature of the “Lisbonised” Parliament from 2009-2014 was the large increase in informal negotiations with the Commission and the Council in the so called trialogue to conclude decision-making procedures in the first reading. Formally, the ordinary legislative procedure allows for three readings, where in cases of disagreement between Council and Parliament a conciliatory committee composed of MEPs and Council representatives has to find an agreement before the third reading. However, in order to speed up decision-making in the EU, in most cases the EP, the Commission and the Council enter trilateral negotiations directly from the start so as to circumvent the lengthy formal process. In 2013, therefore, 101 of 114 co-decision dossiers were adopted by Parliament and Council already in first reading.⁴ First reading agreements and the trialogues have become the de facto decision-making procedure of EU legislation.⁵

On the one hand, this development enables the Parliament to become an effective player in the complex institutional structure of the EU. It allows Parliament to shoulder the largely increased work load that comes in particular with the extended co-decision powers. Represented only by a small group of rapporteurs and shadow rapporteurs, the Parliament is able to engage the Commission and the Council Presidency head on and go into detail in difficult legislative negotiations. In cases like the negotiations on EU economic governance, the EEAS or the SSM, the Parliament’s negotiators were able to change the initial drafts from the Commission significantly to find agreement with the Council over the respective legislation. In consequence, the Commission’s initiatives have become less important, as the real legislative negotiations take place between the Council and the Parliament.

On the other hand, the practice of the informal trialogues has a negative impact on the transparency of the legislative process. Of the final votes analysed here, most were supported by large majorities despite the fact that the individual parties went into the negotiations with very different political positions.

⁴ Information provided by the European Parliament.

⁵ Cf. Katrin Huber/Michael Shackleton, “Codecision: A practitioner’s view from inside the Parliament”, in: *Journal of European Public Policy* 20(7), 2013, pp. 1040-1055.

From the outside it is, however, next to impossible to identify on which policy issues individual political groups or even the whole Parliament prevailed as only the compromise of the trialogue is presented to the public. Faced with this balancing act between efficiency and transparency in the legislative process, the European Parliament during its 7th term clearly opted for efficiency and influence, at the cost of transparency.

The power of the package deal and long term strategies

A particularly prominent strategy of the EP to further extend its influence over the course of the 7th legislature was to use package deals. In this way Parliament often wielded considerable influence in decision-making processes where it did not formally enjoy full co-decision powers. Two of the case studies of this report prove as a case in point:

First, regarding the creation of the EEAS, the pivotal element of the new EU foreign policy structures, the EP only needed to be consulted by the High Representative before a Council decision. In practice, however, the creation of the EEAS required changes to the EU budget and staff regulations, both of which are only possible with EP consent. MEPs were therefore able to push the High Representative, the Member States and the Commission into a package deal, giving it in practice full co-decision also on the EEAS decision. A second example was the deal on the single supervisory mechanism (SSM) granting the European Central Bank full supervisory powers over banks in the eurozone, which was arguably one of the most far-reaching steps of integration in the past five years. This decision legally also required only a consultation of the EP. In practice, however, the EU Directive on the European Banking Authority (EBA) also had to be adapted, in this case in co-decision, which gave the EP the legal hook it needed to once again demand full participation rights via a package deal.

What these cases also illustrate, however, is that the EP needs some kind of legal hook in order to push for such a package deal. Lacking this, its own-initiative reports or consultations can – at least in the short term – prove to be of little importance to the Council or the Commission. This is for instance exemplified by the EP’s push for Eurobonds, which has so far been fruitless in face of staunch opposition from some member states. However, the EP’s perseverance in

pushing for certain issues can keep these on the reform agenda in the long term. This is the case, for example, in the debate on the reform of the EU's own-resources system, where Parliament had member states agree to shifting negotiations into a high level group to further discuss options for future reform (instead of burying them completely). Similarly, the EP's insistence has helped the Commission to keep the debate on Eurobonds going. More generally, the EP's strong institutional memory and its long breath as regards EU reform processes have in the long term often proven to be an advantage vis-à-vis member states in the development of the EU.

The European Parliament becomes a player in EU external relations

Finally, one policy area where the EP's role changed profoundly is external relations. Traditionally, both on the national and even more on the European level, foreign, security and defence policy has been dominated by the executive. In consequence, member states explicitly kept the Common Foreign and Security Policy (CFSP) and in particular the Common Security and Defence Policy (CSDP) completely intergovernmental, going as far as financing CSDP military operations out of a separate budget in order to limit the EP's ability to influence it. Nevertheless, over the 7th legislative period the EP was able to significantly enhance its role in EU external relations. Two factors contributed to this:

Firstly, the Lisbon Treaty set the goal of bringing the economic aspects of EU external relations (e.g. development aid, trade etc.) and CFSP/CSDP closer together, most notably by creating the double-hatted office of the High Representative (HR/VP). The HR/VP is not only responsible for the conduct of CFSP/CSDP, but as Vice-President of the Commission also accountable to the Parliament. The EP used this as well as its decision-making power over the EEAS to significantly enhance its regular exchange with the HR/VP, including on crucial issues like upheavals in Northern Africa (Tunisia, Egypt, Libya), the war in Syria or the struggle over Ukraine. In all of these cases, the Union's response involved not only CFSP diplomacy or CSDP action, but also a mixture of external economic policies.

Secondly, the Parliament has successfully used its new power to veto international agreements to enhance its influence on EU external relations. Not

only in international trade but also in policy areas with a strong external dimension like justice and home affairs, the EP can now follow and scrutinize numerous negotiations. When the Lisbon Treaty came into force, the EP made very clear that it does not regard its veto power as a "rubber stamping exercise" of already finalized agreements. Instead, Parliament makes its approval to the final agreement conditional on having a say during the entire negotiation process, from the drafting of the negotiation mandate by the Commission to the signing of the agreement. These demands were fixed in the 2010 "Framework Agreement on the Relations between the Commission and the Parliament",⁶ which is concluded at the beginning of every legislative term and which fleshes out the Commission's political accountability vis-à-vis Parliament at all levels of policy making. With the rejection of the EU-US SWIFT agreement in February 2010, the 7th EP demonstrated its readiness to accede to worst case instruments when it is not included in the process. This rejection was a strategic demonstration of its new powers in order to establish itself on the political radar of both member states and the US administration. Its rejection of ACTA in 2012 further backed up the EP's strong position as well as its general demand for enhanced transparency and co-decision on international agreements. In the case of ACTA, this enhanced role also allowed civil society to impact EU negotiations on international agreements through the EP, which may well become a central factor in the on-going negotiations on the transatlantic free trade agreement TTIP.

Loyally European and cohesive: Voting behaviour of German MEPs

As second major focus, this project put special emphasis on analyzing the voting behavior of parliamentarians from different member states, with this study focusing on the German MEPs. Overall, Germany as the most populous country sends with 99 the largest number of representatives to the EP. In the next legislature, these will be reduced to 96 MEPS, but remain the largest national delegation. In 2009-2014, the 99 German MEPs divided into six national party delegations: The CDU (34 MEPs) and CSU (8) delegations sit with the European People's Party (EPP), the SPD (23) with the Socialist & Democrats (S&D) group,

⁶ OJ 2010, L 304/47.

Bündnis 90/Die Grünen (14) with the European Greens/EFA, the FDP (12) with the Alliance of Liberals and Democrats for Europe (ALDE) and finally DIE LINKE (8) with the European United Left/Nordic Green Left (GUE/NGL). There were no German MEPs in the European Conservatives and Reformists group (ECR), the far-right Europe of Freedom and Democracy (EFD), or among the independents in the 2009-2014 EP.⁷ Due to their sheer size, as for instance the CDU delegation is larger than the whole national delegation of most member states, German MEPs also play an important role in many of their EP party groups and more broadly in the internal working structures of the EP. They act for instance as heads of the political group (Greens, GUE/NGL), as chairs of powerful committees such as the Foreign Affairs Committee or the Environment, Public Health and Food Safety Committee,⁸ or as current President of the European Parliament (Martin Schulz, S&D).

For the 15 key topics under scrutiny in this report, on which the EP expressed its position in 21 distinct votes, the voting behavior is analyzed in terms three aspects: First the report looks at the winning coalitions, i.e. which political groups and which national delegations from Germany were on the winning side in the given vote. This also gives an indication on the cleavages within the European Parliament, in particular whether proposals were carried by a grand coalition of the two large groups of the centre, i.e. EPP and S&D, or a majority either left or right of the centre. Second it considers the cohesion rate of party groups again both of the European party groups in the EP and the national delegations to them, meaning to what extent parliamentarians of a political group voted together (100% cohesion) or were divided over an issue (0% cohesion on a full split).⁹ Finally, the loyalty of German MEPs towards their European political group is analyzed in order to answer the question whether they vote along national preferences or follow the joint European political preference.

⁷ After the German Constitutional Court ruled both a 5% and 3% hurdle unconstitutional for the European elections, it can be expected that several smaller parties will be able to field MEPs which may end up in the independent group.

⁸ There are currently four German chairs and ten vice-chairs of standing committees. Another two German MEPs chaired the influential special committees for policy planning and on the financial, economic, and social crisis.

⁹ The cohesion rate is calculated by Vote Watch Europe based on the Hix-Noury-Roland formula. For a full explanation on how the cohesion of European political groups is calculated see: <http://www.votewatch.eu>.

The tendency towards a grand coalition

The election of the European Parliament for 2009-2014 did not give a clear majority to any party, as seats were spread among seven European parliamentary groups. Coalition forming in the EP thus remained complex. With seven political groups and no need to support a government, changing coalitions form for each vote and coalition patterns vary issue-by-issue. Although the EPP was by far the largest group, it needed the support of both ALDE and the moderately Eurosceptic ECR to secure a centre-right majority among the 766 parliamentarians (see table 1). The Socialists (S&D) even needed three partners – ALDE plus the Greens/EFA and GUE/NGL – to form a majority left of the centre. This constellation made ALDE the king-maker, as it was the decisive factor for either winning coalition left or right of the centre. Generally, however, majorities left or right of the centre were hard to achieve with the given allocation of seats, especially as not all MEPs attend the plenary sessions.

Table 1: Composition of the 7th European Parliament

Party Group	MEPs	German Parties	MEPs
EPP	273	CDU	34
		CSU	8
S&D	196	SPD	23
ALDE	83	FDP	12
Greens/EFA	57	Bündnis 90/ Die Grünen	14
ECR	57	--	0
GUE-NGL	35	DIE LINKE	8
EFD	31	--	0
NI	33	--	0
Total	765		99

Source: Own compilation based on information by the European Parliament as of May 2014.

Due to this complex constellation, the voting between 2009-2014 among all MEPs was dominated by a grand coalition of EPP and S&D, who together carried about 70 per cent of the votes.¹⁰ In many cases, this grand coalition was supported by the Greens, ALDE and sometimes even the GUE/NGL, making it a 'super grand coalition'. Only 15 per cent of votes each were

¹⁰ VoteWatch Europe, "20 Years of Co-decision: A More (Party) Political Parliament, a Less Consensual Council", *Special Policy Brief*, December 2013.

won either by centre-left or a centre-right coalition. In this context, the analysis also underlined that the far-right EFD and independent MEPs from the far-right do not play a role in the formation of coalitions in the EP. In fact, they are consciously excluded by the other groups from this process. Although they wield little to no influence in the EP, the case study on the Schengen governance reform has illustrated the immense impact that these parties have on EU politics based on their strong position in the domestic politics of some member states such as France or the Netherlands.¹¹

The voting pattern is slightly different for the German national delegations. Of the 21 votes analyzed in this study, among the German MEPs 15 were won by a grand coalition, 12 of which fell into the category of ‘super grand coalitions’ with at least the FDP or the Greens in support as well. However, on four of the 21 votes a centre right coalition of CDU/CSU and FDP formed the majority among German MEPs, while there were two cases – e.g. Eurobonds – in which a split of either the CDU/CSU or the FDP allowed the SPD, the Greens and sometimes even DIE LINKE to form a centre-left majority. This is particular interesting as in the period covered in this report the CDU/CSU and FDP formed a coalition government in Berlin. In these instances the delegations in the EP were torn between the opposing positions of their national parties and their European political groups (see below). Overall, however, the cleavages within the voting behavior of German national party delegations were similar to those in the EP.

High cohesion among German party delegations

For a parliament made up of over 180 national party delegations, the seven political groups in the EP display a remarkably high degree of internal cohesion.¹² In other words, voting along national lines happens, but it happens very seldom. National party delegations first and foremost vote along the (European) preferences of their European political group in the EP. Even the enlargements of 2004, 2007, and 2013, which took diversity in the EP’s composition onto a whole new level, neither led to a fragmentation of the EP nor to a lower cohesion of the political

¹¹ Cf. Daniela Kietz/Nicolai von Ondarza, *Eurosceptics in the European Parliament. Isolated and Divided in Brussels But Driving National Debates*, SWP Comments 13, February 2014.

¹² Data on the cohesion of the political groups in the EP can be retrieved at: <http://www.votewatch.eu>, see Fn. 9.

groups. On the contrary, the cohesion of the EP political groups is currently at its highest level in 20 years,¹³ which underlines their strong integrative force.¹⁴ The cohesion rate between 2009 and 2014 was extremely high for the four groups in the political mainstream, reaching from almost 95 per cent for the Greens/EFA to roughly 92 per cent for both EPP and S&D down to still 88 per cent for ALDE. The moderately Eurosceptic ECR also reaches a high degree of cohesion with 87 per cent, while the GUE/NGL is more often divided with 79 per cent. Finally, the fundamentally Eurosceptic EFD only reaches cohesion of 49 per cent, signifying the high degree of fragmentation and competing national interests within this far-right political group led by the UK Independence Party.

The German national party delegations in the EP displayed an equally high degree of party cohesion (see Table 2).¹⁵ On all of the analyzed 21 votes here, the average cohesion rate for all six German delegations was above 85 per cent. Very often the German party delegations even displayed a cohesion rate of 100 per cent, only in very exceptional cases did cohesion drop below 80 per cent. The most “cohesive” delegation was Bündnis 90/Die Grünen, which achieved 100% cohesion in 19 out of 21 votes (in all but the votes on TTIP and FTT). A notable case of high contestation within national German delegations was the vote on Eurobonds, in which the CDU delegation was completely split between the supporting view of the EPP and the strict opposition by the German CDU. For the same reason the CDU, CSU and the FDP delegations were also deeply divided in the vote on ACTA.

Astonishing loyalty with European political groups

Similar to their elevated internal cohesion, the loyalty of the German national party delegations to their European party groups was very high. Over the full course of the 2009-2014 legislature all six of the German national delegations had a loyalty of over 92 per cent.¹⁶ This is also the case for the 21 selected

¹³ VoteWatch Europe, “20 Years of Co-decision” [as Fn.10].

¹⁴ For details Simon Hix/Abdul G. Noury, “After Enlargement: Voting Patterns in the Sixth European Parliament”, *Legislative Studies Quarterly* 32(2), 2009, pp. 159-174.

¹⁵ The data on the cohesion of national party delegations was calculated by the editors on the basis of the Hix-Noury-Roland formula, see Fn.9.

¹⁶ The data on loyalty of party delegations can be retrieved at: <http://www.votewatch.eu>.

votes, where the national party delegations in general voted with their European counterparts. Both the Greens and Die LINKE even reached 100 per cent alignment with their party groups, which might be promoted by the fact that both are the largest national delegations within their respective party group and were not in government on the national level.

As already the analysis of the internal group cohesion has revealed, more political pressure hefted on the German delegations whose parties were in government at the national level and thus directly confronted with how the Government took a stance on these issues in the Council of Ministers. For the time under scrutiny in this report this was the case for the CDU, CSU, and FDP delegations in the EP. Unsurprisingly, the most divisive vote in this regard was the one on Eurobonds, where a large majority of the European Parliament was in favour of the introduction of bonds, while the German government parties as well as the German public at large were extremely critical. In consequence, both CSU within the EPP and the FDP within ALDE voted against party lines while the CDU was heavily split.

The counter examples to this were the two votes on nuclear energy and the emission trading scheme/back loading. Regarding these issues, the German government and its parties enacted a major policy change in 2011, when Chancellor Merkel – against some reluctance in her party and the previous position of the government – reacted to the events in Fukushima with the announcement that Germany would phase out all nuclear energy by 2022 and invest heavily in renewable energy (*Energiewende*). Nevertheless, within the European Parliament MEPs from CDU/CSU as well as the FDP voted along with their European party groups in favour of nuclear energy and against the Commission proposal to increase the cost of trading emissions in order to safeguard European (and German) industry. In sum, the analysis of the internal cohesion and loyalty reveals an astonishing alignment of German national delegations with their political groups in the EP.

Politicization and visibility of the EP in German public debates

A large number of the 15 topics selected for the report received significant press coverage and were considerably politicized in the German political and public debates, in particular the question of Eurobonds, TTIP,

FTT, ACTA, and the Schengen governance reform.¹⁷ However, such politicization was not necessarily linked to the power of the EP or the level of party polarization within the EP. Rather, it mainly followed three different patterns.

First, politicization occurred when national party polarization was high as in the case of ACTA, which was contested both within the government coalition and between government and opposition parties, or the Eurobonds dossier, which was highly contested between the German government and parliamentary opposition. Second, the highly contentious public debate on topics like TTIP and ACTA were fueled and driven by dynamics outside the narrow parliamentary framework, i.e. by an intense participation of civil society actors such as NGOs, unions, or employers' associations. Third, politicization occurred when member states and supranational institutions fought loud and hard over competences as in the Schengen governance reform.

As regards the EP's visibility as an actor in the political negotiations, it comes as no surprise that Parliament's votes received little attention when it held limited decision-making power. The votes on nuclear energy or the reform of the own resources system prove a case in point. Even in the debates on Eurobonds, which were extremely politicized in the Germany, the EP's vote played absolutely no role as Parliament was no decisive player in the game.

In contrast, the EP gathered significant media attention when it wielded real decision-making powers and used these to push through controversial decisions, as in the case of ACTA, the MFF, the EEAS, or the Schengen governance reform. In all of these cases the EP's position was supported by a broad coalition of EPP, S&D, ALDE, and sometimes the Greens/EFA and GUE-NGL. The EP thus more or less spoke with one voice and thereby enhanced its visibility (and power). The EP's visibility in the German debates was further enhanced when German MEPs held central positions

¹⁷ Following the definition of Pieter de Wilde and Michael Zürn, politicization is here understood as an increase in the polarization of opinions, interests, or values and in the extent to which these are publically fed into the policy-making process. In other words, politicization is about contestation in policy making. It can be traced along three lines, public attention for an issue, the mobilization of political actors (political parties, civil society groups, etc.), and the formation of clearly distinguishable counter positions, see Pieter de Wilde and Michael Zürn, "Can the Politicization of European Integration be Reversed?", in: *JCMS* 50 (1), 2012, pp. 137–153.

in the negotiations (e.g. the rapporteur for the MFF negotiations Reimer Böge, or the chair of the EP Foreign Affairs Committee Elmar Brok in the EEAS case) or figured prominently in the debates qua position (e.g. the EP President Martin Schulz in the TTIP case). Here, again, the EP's visibility as a whole was enhanced rather than that of the different political parties.

A high level of party polarization within the EP along the classical left-right continuum, as in the vote on maternity leave, was barely transported into the German debates, at least not as regards the broader public away from small expert communities. The maternity leave vote gained some attention by the German media and public because the EP took a confrontative stance with member states in the Council. However, the negotiations within the EP, the positions of German party delegations or the national parties etc. did not figure in the coverage as the topic as such was barely politicized in the German context.

In sum, the analysis of the 15 cases in this report teaches us to be cautious as regards the widespread expectation among academics and policy makers, that more party polarization in the EP quasi-automatically leads to higher levels of public attention and politicization of EU politics at the national level or even promotes the development of a European public as such.

Conclusion: A legislature of many paradoxes

The 7th legislature of the European Parliament was most heavily marked by two contrary developments: its strong increase in power incurred by the Lisbon Treaty and the pressure for intergovernmental solutions during the European debt crisis. As this study shows, this resulted in a legislature of many paradoxes: On the one hand, the Parliament was *strengthened* and emboldened vis-à-vis the Commission and the Council of Ministers. This is most evident in the ordinary legislative procedure, but increasingly also in the field of external relations, in particular regarding international agreements. The case studies in this report (and many other examples beyond its reach) show that the Parliament did not shy away from severe conflict with the Commission or member states in the Council. To the contrary, Parliament in practice often even extended its formal powers very strategically through the frequent recourse to legislative package deals, or, as regards international

agreements, by tying its consent to extensive information and consideration of its position during the negotiations. On the other hand, it is still a parliament often *sidelined* by intergovernmental decision-making such as during the European debt crisis or when it lacks the necessary competences, e.g. in the question of Eurobonds or energy policy. Finally, the strong role of the Parliament in legislative process most often played out behind closed doors in the trialogue format in negotiations with the Commission and the Council. In these, Parliament has proven to be an effective negotiator, but was also drawn into the *Brussels' consensus machine* where MEPs regularly chose to wield pragmatic influence through large majorities over transparent and politicised party contest.

German MEPs played an important part in this development. Due to the allocation of seats and power in the Parliament, the most prominent winning coalition not only within the EP, but also among German MEPs was a grand coalition of the Christian Democrats and the Social Democrats. Additionally, German MEPs displayed a generally very high coherence within German party delegations and an astonishing loyalty to the position of their European party groups. Only in one case of all the 15 dossiers analysed in this report – the vote on Eurobonds – there was a clear clash of national political preferences and the European party group preference. In consequence a large group of German MEPs deviated from the position of their European party group in this exceptional vote. In addition to the fact that German MEPs form the largest national delegation within the EP, this high cohesion and loyalty has enabled German MEPs to play an influential role within their European party groups.

The paradox roles of the European Parliament have also impacted on its perception in the German political debates. Here, decisions of the Parliament can still be completely overlooked, in particular if they do not carry any legal or political force, such as its vote on the reform of the own resources system. In the cases where Parliament does have legislative power and used it to considerable effect, such as in the case of ACTA, the EEAS or the Schengen governance reform, it quickly but often also only briefly rises up on the public's radar. In short, the European Parliament has become an effective and influential player in the Brussels game, but continues to struggle to connect to the citizens and public media on a sustainable basis.

Table 2: Cohesion of German party groups in the analyzed EP votes

Party Group	1	2	3	4a	4b	5	6a	6b	6c	6d	7	8	9a	9b
CDU (EPP)	100,00%	100,00%	20,00%	100,00%	86,36%	67,19%	95,45%	81,82%	90,91%	100,00%	100,00%	81,82%	90,91%	90,63%
SPD (S&D)	59,09%	91,67%	100,00%	100,00%	100,00%	100,00%	100,00%	100,00%	100,00%	100,00%	60,53%	100,00%	100,00%	100,00%
Bündnis 90/ Die Grünen (Greens/EFA)	100,00%	100,00%	100,00%	89,29%	100,00%	100,00%	100,00%	100,00%	100,00%	100,00%	100,00%	100,00%	100,00%	100,00%
FDP (ALDE)	100,00%	85,00%	72,73%	87,50%	100,00%	62,50%	100,00%	100,00%	100,00%	87,50%	100,00%	70,00%	100,00%	100,00%
DIE LINKE (GUE-NGL)	100,00%	100,00%	100,00%	62,50%	100,00%	100,00%	43,75%	100,00%	100,00%	100,00%	100,00%	81,25%	100,00%	100,00%
CSU	100,00%	100,00%	81,25%	100,00%	100,00%	6,25%	100,00%	100,00%	100,00%	100,00%	100,00%	100,00%	100,00%	78,57%

Party Group	10a	10b	11	12	13	14	15	Average
CDU (EPP)	100,00%	90,32%	95,31%	75,81%	95,16%	95,31%	100,00%	88,43%
SPD (S&D)	100,00%	100,00%	100,00%	100,00%	100,00%	72,73%	66,67%	92,89%
Bündnis 90/ Die Grünen (Greens/EFA)	100,00%	100,00%	100,00%	100,00%	100,00%	86,36%	100,00%	98,84%
FDP (ALDE)	100,00%	100,00%	100,00%	100,00%	86,36%	100,00%	83,33%	92,14%
DIE LINKE (GUE-NGL)	100,00%	35,71%	100,00%	100,00%	57,14%	100,00%	100,00%	89,54%
CSU	100,00%	100,00%	81,25%	100,00%	100,00%	100,00%	100,00%	92,73%

Source: Own calculation based on voting data provided by VoteWatch.EU. Grey marks votes with coherence below 80 %. For a legend of the votes see the following page.

Legend: List of analysed votes of the European Parliament

1. Vote on maternity leave, 10 October 2010.
2. Vote on “Amendment 36” of the legislative resolution on the EURATOM research framework programme, 17 November 2011.
3. Vote on Eurobonds, 6 December 2012.
- 4a. Vote on the introduction of a European FTT, 23 May 2012.
- 4b. Vote on the implementation of an FTT within the enhanced cooperation of 11 member states, 3 July 2013.
5. Vote on ACTA, 4 July 2012.
- 6a. Vote on the multi-annual financial framework (MFF), 23 October 2012.
- 6b. Vote on the European Council compromise on the MFF, 13 March 2013.
- 6c. Vote on the MFF trilogue compromise, 3 July 2013.
- 6d. Vote on the final MFF regulation, 19 November 2013.
7. Vote on agricultural subsidies, 20 November 2013.
8. Vote on the “backloading” proposal for the Emissions Trading Scheme, 3 July 2013.
- 9a. Vote on draft regulation (EU) N0. 472/2013 (Two Pack), 21 May 2013.
- 9b. Vote on draft regulation (EU) N0. 473/2013 (Two Pack), 21 May 2013.
- 10a. Vote on the single supervisory mechanism (Giegold report), 3 December 2012.
- 10b. Vote on the single supervisory mechanism (Thyssen report), 3 December 2012.
11. Vote on the internal market for services, 11 September 2013.
12. Vote on the European External Action Service, 6 July 2010.
13. Vote on the general guidelines for the preparation of the 2014 budget, Section III (referring to the question of EU own resources), 13 March 2013.
14. Vote on the resolution on the Transatlantic Trade and Investment Partnership, 14 May 2015.
15. Vote on the reform of the rules on the temporary reintroduction of border controls in the Schengen area, 11 July 2013.

Safety first: The European Parliament and the reform of maternity leave

Anna-Lena Kirch

In the negotiations on the Directive aiming to improve “the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding”¹⁸ the co-legislators – the European Parliament and the Council – argue mainly about the duration of obligatory maternity leave in the member states and the level of warranted remuneration during this period. The Commission proposal envisaged an extension of maternity leave from currently 14 to 18 weeks on full pay. In first reading, the European Parliament adopted the amended report of the Committee for Women's Rights and Gender Equality (FEMM) with a narrow centre-left majority, extending maternity leave from 14 to 20 weeks, with six compulsory weeks on full pay after childbirth. The Council of Ministers has been blocking the Parliament's report so far (as of March 2014), arguing that the ongoing economic crisis does not allow rising financial obligations burdening European businesses. It is currently not clear whether the Council will put the issue back on the agenda to complete the first reading of the ordinary legislative procedure.

Co-decision procedure on hold

Due to its legal basis in Article 153 TFEU (workers' health and safety) and Article 157 TFEU (equal treatment between women and men) the Directive falls in the scope of the ordinary legislative procedure. The European Parliament and the Council act as co-legislators. Accordingly, the EP holds a strong bargaining position.

Health and safety at work is one of the areas of European social policy where the EU has had the biggest impact. The TFEU stipulates that the European Parliament, together with the Council, has the power

to pass obligatory minimum standards to protect employees in the field of health and safety. The legal basis was provided in 1989 by a Council Directive on the protection of health and safety at work¹⁹, paving the way for a collection of single directives. These establish minimum standards on the prevention of accidents, rules on working time or the protection of special groups like self-employed or under aged workers, in order to guarantee health and safety at the workplace. Other fields of social policy, by contrast, are still very much a competence of the member states.

The relevant Directive on the protection of pregnant workers to be amended by the new proposal dates back to 1992.²⁰ It provides for measures to protect pregnant workers from risks resulting from chemical or biological agents, stress and working processes. Moreover, it sets minimum standards on night work, employment rights and protection against dismissal due to pregnancy. Finally, it stipulates that maternity leave is to be granted for at least 14 weeks including two obligatory weeks before delivery.

The European Commission presented its proposal to amend the pregnant workers Directive in October 2008. Prior to that, the Council and the Parliament had called on the Commission to evaluate possibilities to guarantee a better work-life balance and to improve existing maternity leave regulation.²¹ The Commission proposal finally envisaged an extension of maternity leave from 14 to 18 weeks as well as further elements

¹⁹ Council of the European Communities, *Council Directive of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work*, Council Directive 89/391/EEC, 12 June 1989.

²⁰ Council of the European Communities, *Council Directive of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)*, Council Directive 92/85/EEC, 19 October 1992.

²¹ Council of the European Union, *European Pact for Gender Equality*, Council (2006) 7775/1/06 REV 1, 18 May 2006; European Parliament, *Legislative proposal*, 2008/0193(COD), 03 March 2008.

¹⁸ European Commission, *Proposal for a Directive of the European Parliament and of the Council amending Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding*, COM (2008) 637 final, 3 October 2008.

to strengthen the position of mothers in the working field.

In October 2010, the European Parliament voted in first reading on the FEMM committee's report, drafted by Edite Estrela (S&D), the rapporteur on the file. The report passed with a majority of 390 MEPs against 192 negative votes and 59 abstentions.²² The Parliament amended the Commission report rather extensively.²³ It agreed on an amendment stretching maternity leave to 20 weeks²⁴ on full salary with six obligatory weeks after childbirth and included the entitlement to paternity and adoption leave into the directive. So far, the Council hasn't concluded its first reading due to a large opposition to the EP position, mainly driven by Germany and the UK.

Left-right division within the Parliament on the extension of maternity leave

Deciding on further financial obligations on the economic sector resulting from an extended maternity leave, the pregnant workers Directive touches on very controversial issues. There are several conflict lines to be observed in the debates and votes related to the Directive. The main conflict line, dividing the European Parliament in two camps, mirrors the traditional left-right divide – social security versus economic flexibility.²⁵ Centre-left groups like S&D, the Greens/EFA and GUE/NGL argue strongly for the need to guarantee better social protection for workers and, in the specific case of maternity leave, for a more favourable environment to pregnant women and (breastfeeding) mothers. In debates they refer mainly to workers' health but also to the argument of gender equality and the necessity to provide incentives for women to have children, in the context of an increasingly aging population. Several MEPs from the Greens/EFA and the GUE/NGL group even demanded a maternity leave of 24 weeks or longer.²⁶

²² See VoteWatch.EU, *Improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding*, final vote, 20 October 2010.

²³ European Parliament, *Improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding* ***I, P7_TA(2010)0373, 20 October 2010.

²⁴ European Parliament, *Amendment 12*, A7-0032/2010.

²⁵ Gary Marks/Marco Steenbergen, "Understanding Political Contestation in the European Union", in: *Comparative Political Studies* 35(8), 2002, pp. 879-892.

²⁶ For instance Raul Romeva I Rueda (Greens/EFA), Ilda Figueiredo (GUE/NGL).

Centre-right political groups like ALDE, EPP and ECR, on the contrary, focus on the need for flexible labour markets in order to safeguard the competitiveness of the European economy. According to their reasoning, rising labour costs through extended, paid maternity leave constrain companies and especially *small* and medium-sized enterprises in their adaptation mechanisms to global competition – especially in the current European economic crisis. They oppose the extension of maternity leave because they conceive it as a contradiction to the targets of the Europe 2020 strategy to foster growth, employment and global competitiveness.²⁷ Besides, the EPP, ECR and ALDE groups argue that obligatory extended maternity leave is not in the interest of women as it compromises not only their chances of returning to the labour markets after birth but also the probability of being employed in the first place.

A second conflict, also following a left-right logic to a certain extent, is linked to the conception of subsidiarity in contrast to the support for further European regulation in order to strengthen the social dimension of European integration.²⁸ Most delegates from EPP, ALDE and ECR stress the need to respect the values of choice and subsidiarity: the necessity to leave sufficient leeway to member states and social partners when implementing standards in the field of health and safety for pregnant women and mothers, according to their own national traditions. They criticize the obligatory extension of maternity leave as well as the detailed propositions how to organize maternity leave and especially the initiative to include provisions on paternity leave in the report, mainly promoted from the left-party spectrum.

This left-right divide is strongly related to the conflict between the European Parliament and the Council, which was, in late 2010/2011, predominantly composed of Christian democratic and conservative governments – among them large member states like Germany (Merkel), France (Sarkozy), Italy (Berlusconi) and the UK (Cameron) – that opposed the idea of extensive and fully paid maternity leave. What is more, many European member states felt great pressure caused by the effects of the financial and

²⁷ European Commission, *Communication from the Commission, Europe 2020: A strategy for smart, sustainable and inclusive growth, COM (2010) 2020*.

²⁸ Andreas Wimmel/Erica E. Edwards, "The Return of 'Social Europe': Ideas and Positions of German Parties towards the Future of European Integration", in: *German Politics* 20(2), 2011, pp. 293-314.

economic crisis and pursued a strategy of disburdening the economic sector as far as possible (in the period after 2010 partly also under the pressure of the Troika of ECB, Commission and IMF). The Commission generally welcomed Parliament's amendments but criticized the inclusion of provisions on parental and adoption leave, which modify the scope of the Directive.

National interests prevailing over party lines

The amendment on the extension of maternity leave to 20 weeks was adopted by a very narrow majority of 327 MEPs. A relative minority of 320 MEPs voted against the amendment, 30 MEPs abstained. The winning coalition was formed by a centre-left majority comprising S&D, Greens/EFA, GUE/NGL as well as 82 MEPs from the EPP and 12 MEPs from the EFD group (see Table 1). The notion of social security thus prevailed over the defence of flexible employment structures.

Looking at the party cohesion within the political groups, this left-right distinction becomes blurred. While the average cohesion rates for the five largest parties in the EP range around 90 per cent²⁹, the political groups in this particular vote display very incoherent voting patterns, which shows the high level of contestation of the topic not just between the political groups in the EP but also between the national and European level. In the case of the EPP the cohesion rate is extremely low at 40 per cent. The Portuguese, Hungarian and Lithuanian EPP delegations voted unanimously in favour of the amendment and thus against the EPP party line as did most Italian EPP delegates. The voting pattern of S&D was a bit more consistent (a cohesion rate of almost 70 per cent). Rebels came mainly from Austria, Germany and the UK.

In the smaller groups, except for the EFD, the voting behaviour was more coherent. The GUE/NGL group voted unanimously for the extension of maternity leave, arguing exclusively from a social security perspective and holding a very strong preference to fight a purely neoliberal perspective compromising health and safety for the benefit of enterprises. With a cohesion of 97 per cent the ECR

ranks only slightly below GUE/NGL, representing the opposite extreme position of an extended maternity leave endangering economic growth and employment – especially on the part of young women. The more moderate groups of ALDE (cohesion of 73 per cent) and the Greens (cohesion of 86 per cent) presented themselves a bit less united, providing more balanced arguments on the matter.

Table 1: Voting behaviour and party cohesion in the vote on maternity leave

Party Group	For	Against	Abstentions	Cohesion
EPP	82	147	15	40,37%
S&D	137	30	5	69,48%
ALDE	13	67	2	72,56%
Greens/EFA	47	2	3	85,58%
ECR	0	47	1	96,88%
GUE-NGL	30	0	0	100,00%
EFD	12	10	2	25,00%
NI	6	17	2	52,00%
Total	327 (48,3%)	320 (47,3%)	30 (4,4%)	

Table 2: Voting behaviour and party cohesion among German MEPs

Party Group	For	Against	Abstentions	Cohesion
CDU (EPP)	0	33	0	100,00%
SPD (S&D)	2	16	4	59,09%
Bündnis 90/ Die Grünen (Greens/EFA)	12	0	0	100,00%
FDP (ALDE)	0	12	0	100,00%
DIE LINKE (GUE-NGL)	8	0	0	100,00%
CSU	0	8	0	100,00%
Total	22	69	4	

Source: Own compilation based on data provided by Vote-Watch.EU. (Accessed on 20 January 2014)

Looking at the German delegations, the voting pattern of the SPD is most interesting (see Table 2). Its mainly negative votes do not fit the party line of S&D. Only two MEPs from the SPD delegation voted in favour of the amendment to extend maternity leave to 20 weeks. As a result, there was no majority voting in favour of the amendment within the German delegation. The other German MEPs reproduced the voting behaviour of their European political groups.

²⁹ VoteWatch Europe, "20 Years of Co-decision: A More (Party) Political Parliament, a Less Consensual Council", *Special Policy Brief*, December 2013, p.4.

CDU, CSU and FDP voted against the amendment. Bündnis 90/Die Grünen and DIE LINKE supported it.

Generally, the cohesion within the German delegations was higher than in the European parties. CDU, FDP, Bündnis 90/Die Grünen and DIE LINKE voted unanimously. Only the SPD didn't manage to impose total group discipline on its members. This high cohesion combined with the mostly negative vote of the SPD delegation – contrary to the S&D position – reveals a pattern of national voting. It can be partly explained by the particularities of the German system of maternity leave. The latter envisages 14 weeks for maternity health and recovery and an additional, optional parental leave for child education up to 14 months on pay plus three years unpaid. Most SPD, CDU, CSU and FDP members were concerned that an extended maternity leave might endanger the flexibility and generosity of the German system.³⁰ Many MEPs didn't see medical reasons to extend the period of maternity leave to 20 weeks and were afraid that such an extension combined with the detailed guidelines for the temporal organization of maternity leave (six obligatory weeks after childbirth) would not benefit but harm the compatibility of family and work. Besides, they anticipated that a combination of an extended maternity leave and parental leave in its current form would be too expensive and thus not sustainable.

Strong impact and visibility of the EP

The European Parliament has exerted its role as a co-legislator extensively and has amended the Commission proposal in the sensitive question of the duration of maternity leave on full pay. It also broadened the original scope of the proposal by including stipulations on paternity and adoption leave. These changes triggered distinct and ongoing opposition on the part of the Council and especially the centre-right governments represented in the Council which have refused to take a decision on the amended EP report.

The EP vote triggered significant media coverage in Germany. The quality media covered the negotiations on the pregnant workers directive with a clear time reference to the vote in the Parliament. Next to the German government and the Council, the EP was

perceived as a distinct political actor – despite of its internal left-right divide and thus the absence of a grand coalition. However, the stance of single political groups or single (non-German) MEPs inside the EP didn't play a role. Among German parties the issue was hardly politicized. Media coverage focused therefore on the opposition between the EP and the German government. Overall, the German government perspective prevailed in the debate in line with the national voting pattern.

³⁰ „EU-Parlament will 20 Wochen Mutterschutz: Abgeordnete lassen den Mitgliedsstaaten aber viel Spielraum bei der Umsetzung“, in: *Süddeutsche Zeitung*, 21 October 2010.

The European Parliament and the future role of nuclear power in EU energy policies: Different views from “Energiewende”-land

Severin Fischer

The role of nuclear power in EU energy policies is a constant topic for heated debates in the European Parliament. Ironically, the question of nuclear energy in the EU is one of the hottest non-topics in EU politics. The Treaty says very clearly that the decision to use different technologies and energy sources is up to the member states (Art. 194 TFEU). As a consequence, the EU cannot decide whether its member states should allow the use of nuclear energy or not. Consequently, the European Parliament has no legally binding powers in this issue. In addition to that, the perspectives on nuclear differ widely between the member states. While the UK and France still operate large nuclear fleets, many smaller countries have decided not to use nuclear power or to phase out their reactors over time. Among them are Denmark, Italy or Austria. Germany has a special role in this context. Nuclear power has always been the main topic in energy policy debates over the last 20 to 30 years. Only in 2011, a cross-party agreement was achieved to phase out nuclear power plants until 2022, while immediately switching off around one third of the capacity in 2011.

Although the EU has no right to directly interfere in the energy mix of the member states, the Euratom Treaty gives nuclear energy a privileged role, compared to other technologies. The EU has been running a multi-billion Euro research framework programme for decades, which is dedicated to research on nuclear fusion (ITER), fission and radiation as well as nuclear safety. Compared to the general EU research framework programme, the Euratom programme has some special provisions. First, it runs for only five years, while the regular research programme is seven years long. This requires an additional budget line for the missing two years of the general research program, dedicated to Euratom issues. Second, the European Parliament has no direct say on the volume and structure of the programme, but is limited to formulating an opinion.

On 17 November 2011 the EP voted on its opinion on the draft Euratom research framework program

2012-2013,³¹ At the centre of the Commission’s proposal for the Council decision under the Euratom Treaty was the research budget and its use for different purposes. However, the Greens/EFA, which is the political group most critical of nuclear energy, tried to politicize the vote. They drafted an amendment directed at changing a paragraph in Annex 1 part II of the decision, in which the Commission argued for keeping financial support to nuclear research, because nuclear energy “will play a strategic role in the Union’s energy mix for at least the next half century”. Contrary to this phrasing, the authors of the amendment wanted to make the Parliament speak out for a resolute move “towards a non-nuclear economy”.³² As said before, this was rather a symbolic act due to the fact that, first, there is no EU policy for structuring the national energy mix and, second, there is no direct Parliament influence on the decision of the Council.

The amendment was finally rejected by a narrow majority of 356 MEPs (60%). The winning coalition consisted of the EPP and ECR groups as well as large parts of ALDE and EFD (see Table 1). However, the cohesion of the political groups was partly extremely low due to differences along the national lines. While EPP and ECR managed to keep their groups sticking together in rejecting the amendment, the Greens/EFA were the only group in the anti-nuclear camp to achieve a similarly high cohesion. ALDE was almost evenly split between pro and contra. S&D and GUE-NGL showed a majority in the anti-nuclear camp, while still having a significant number of members voting in against the amendment. Strong national voting can be observed among Austrian MEPs, voting across party-lines for the amendment, or Czech MEPs, voting nearly coherently against the amendment.

³¹ European Parliament, *Legislative resolution on the proposal for a Council decision concerning the Framework Programme of the European Atomic Community for nuclear research and training activities (2012 – 2013)*, Strasbourg, 17 November 2011.

³² Amendment 36 by Michèle Rivasi on behalf of the Greens/EFA Group to the resolution (in previous Fn.).

Especially the S&D group seemed to be largely influenced by the origin of MEPs.

Table 1: Voting behaviour and party cohesion in the vote on “Amendment 36”

Party Group	For	Against	Abstentions	Cohesion
EPP	7	203	2	93,63%
S&D	96	43	19	41,14%
ALDE	30	37	2	30,43%
Greens/EFA	49	1	0	97,00%
ECR	0	41	0	100,00%
GUE-NGL	18	6	3	50,00%
EFD	3	15	2	62,50%
NI	7	10	1	33,33%
Total	210 (35%)	356 (60%)	29 (5%)	

Table 2: Voting behaviour and party cohesion among German MEPs

Party Group	For	Against	Abstentions	Cohesion
CDU (EPP)	0	29	0	100,00%
SPD (S&D)	17	1	0	91,67%
Bündnis 90/ Die Grünen (Greens/EFA)	12	0	0	100,00%
FDP (ALDE)	1	9	0	85,00%
DIE LINKE (GUE-NGL)	8	0	0	100,00%
CSU (EPP)	0	7	0	100,00%
Total	38	46	0	

Source: Own compilation based on data provided by Vote-Watch.EU. (Accessed on 22 January 2014)

The German MEPs voted clearly along the lines of their political groups (see Table 2). The CDU/CSU and FDP parliamentarians rejected the amendment, while SPD, Bündnis 90/Die Grünen and DIE LINKE voted for changing the paragraph. Although this voting behaviour was somehow traditional for the German MEPs, it seems somewhat surprising in the context of the decision on national level in June 2011, when all parties were committed to an early exit from nuclear energy. Obviously, the MEPs from CDU/CSU and FDP advocated a different approach in the EU than in the national context.

One should, however, not overestimate the importance of this vote. As said earlier, the EP’s decision did not have an influence on the final vote on the Euratom research framework in the Council. In

addition, even the nuclear-critical MEPs who voted for the resolution could argue that there would be a national interest in supporting research activities in the area of nuclear safety or independent regulatory control. In contrast to Austria, the behaviour of German MEPs in this policy field was not watched as closely by domestic media. The Parliament’s resolution did not find its way into German newspapers. More generally, the EP is not perceived as a political actor on this issue.

The European Parliament and Eurobonds: Keeping the debate going

Daniela Schwarzer

In the course of the reform of economic governance of the euro area, the European Parliament took various initiatives to push for the introduction of Eurobonds. The vote analysed here took place on 16 January 2013. Having no legislative powers in this field, the European Parliament adopted an Own-Initiative Report drafted by MEP Sylvie Goulard which was the last of several initiatives of the EP to ask the European Commission to accelerate work on exploring the possibilities for Eurobonds.³³

The Report suggests several steps towards Eurobonds (tagged “Stability Bonds” here) in the euro area.³⁴ Firstly, a temporary European redemption fund should be set up to reduce debt to sustainable levels at affordable interest rates. Secondly, Eurobills should be introduced to protect member states from illiquidity runs. Thirdly, a partial common issuance should be started by introducing so-called Blue bonds up to 60 % of GDP to be issued without an EU Treaty change. Fourthly, there should be a full common issuance of national debt which would require a prior Treaty change. Finally, there should be a common issuance of a genuine European debt in conjunction with an enhanced European budget, likewise requiring a Treaty change.

Background

In November 2011, the European Commission issued a Green Paper with three main options for the creation of the so-called stability bonds with various degrees of sharing of debt, risks and benefits.³⁵ In reaction to the Green Paper, the Parliament adopted a resolution “Feasibility of introducing stability bonds” on 15 February 2012, demanding the Commission to present a roadmap of necessary steps towards a common bond

market.³⁶ The EP pointed out that this commitment “is an integral part of the agreement between Parliament and the Council on the economic governance package.” Indeed, in summer 2011, the EP had already introduced the idea of “Eurobonds” into the so-called “Six Pack”, a legislative package on the fiscal and economic governance of the eurozone. It then insisted that the Commission presents a report on Eurobonds.

In its resolution of early 2012 and the Own-Initiative Report of early 2013, the Parliament, moreover, pointed out that its Report builds on the two reports of the President of the European Council entitled “Towards a Genuine Economic and Monetary Union” issued on 26 June 2012³⁷ and 12 October 2012³⁸ respectively. So while lacking legislative competence in this field and, more generally, a right for legislative initiative, the EP decided to build its case of engaging for Eurobonds on initiatives by other actors (the Commission and the President of the European Council). In the overall euro area governance debate that had evolved since summer 2010 the EP found various ways to reiterate the political claim that work on pooling national debt in the euro area should continue – despite the very strong resistance of some governments such as Germany.

The controversy over Eurobonds

The idea to issue Eurobonds and hence to pool at least part of the public debt of EU or euro area member states was debated very controversially in a number of member states. Those in defence of Eurobonds, be it in the EP or in the Commission, argue as follows. Firstly, if constructed in a way that moral hazard problems are avoided, Eurobonds would help to ensure budgetary discipline, founded on liquid markets, which would still reflect the respective situations of

³³ European Parliament, *Report on the feasibility of introducing Stability Bonds*, Brussels, 6.12.2012.

³⁴ Stijn Claessens/Ashoka Mody/Shahin Vallée, “Paths to Eurobonds”, *Bruegel Working Paper*, 2012/10.

³⁵ European Commission, *Green Paper on the feasibility of introducing Stability Bonds*, COM (2011) 818 final, Brussels, 23.11.2011.

³⁶ European Parliament, *Resolution of 15 February 2012 on the feasibility of introducing Stability Bonds*, P7_TA(2012)0046, Brussels, 15.2.2012.

³⁷ European Council President, *Towards a Genuine Economic and Monetary Union*, EUCO 120/12, Brussels, 26.6.2012.

³⁸ European Council President, *Towards a Genuine Economic and Monetary Union – Interim Report*, Brussels, 12.10.2012.

the member states. Eurobonds would provide liquid and safe assets for investors, drawing on the benefits of the Euro's potential on the world markets. They would also help protect the European Central Bank (ECB) by allowing it to focus on monetary policy as Eurobonds would improve financial market stability and would improve the functioning of monetary policy transmission mechanisms.

The strongest opponents to the introduction of Eurobonds come from “non-crisis countries”, i.e. states with rather competitive economies with comparatively low public and private debt levels seen as sustainable. The arguments against debt mutualisation can broadly be organized along four lines of reasoning. Firstly, a pooling of sovereign debt would create moral hazard. The argument that well-constructed Eurobonds would actually help to ensure more budgetary discipline is not shared. Rather, the fact that Eurobonds would take away market pressure at least on a share of national debt is seen as changing incentive structures in such a way that governments would likely resort to fiscal indiscipline.

Secondly, in particular EPP and ALDE MEPs stressed that certain preconditions for the issuance of bonds were not yet met. In this regard, a sustainable fiscal framework first had to be put in place in order to ensure that moral hazard and free-riding could be avoided. The “fit” of Eurobonds with the overall fiscal governance framework was in fact very controversially debated. The Own-Initiative Report takes this criticism into account and proposes ways how Eurobonds could be embedded in the overall economic and fiscal policy coordination framework. Already the resolution of February 2012 states that “stability bonds could be an additional means of incentivising compliance with the Stability and Growth Pact, provided that they address the moral hazard and joint liability issues.” The resolution also notes that Eurobonds must be sufficiently attractive to investors, while containing or avoiding over collateralisation and redistribution of risks across countries.

This takes into account a third concern of the “non-crisis countries”, namely that a higher Eurobond interest rate (compared to e.g. the historically low Bund yields) would actually amount to a redistributive system. Countries like Germany would accept higher interest rates on Eurobonds, while other countries, with high yields for national bonds, would benefit from lower Eurobond interest rates.

Fourthly, issues of democratic accountability were raised. If Eurobonds indeed consist in a transfer of

fiscal sovereignty, this must be done in a democratic and legitimate way. In particular German MEPs highlighted that the introduction of Eurobonds would require a Treaty change – given Germany's Constitutional Court rulings which had outlined the limits of competence transfers and shared liabilities under the current EU Treaty and German Basic Law. So in its resolution, the EP calls on the Commission to examine the necessary changes both to EU treaties and where applicable, to national constitutions.

Broad coalition in favour of Eurobonds

The motion on Eurobonds of January 2013 gained support from a broad winning coalition of four political groups – the EPP, S&D, ALDE and the Greens/EFA. Among the supporters, cohesion was highest among MEPs of S&D and the Greens/EFA whereas the EPP had an acceptable cohesion rate and ALDE was very split over the issue (see Table 1).

Table 1: Voting behaviour and party cohesion in the vote on Eurobonds

Party Group	For	Against	Abstentions	Cohesion
EPP	219	29	6	79,33%
S&D	174	0	1	99,14%
ALDE	54	4	20	53,85%
Greens/EFA	52	0	3	91,82%
ECR	0	45	0	100,00%
GUE-NGL	0	13	18	37,10%
EFD	10	15	1	36,54%
NI	6	19	3	51,79%
Total	515 (74%)	125 (18%)	52 (8%)	

Table 2: Voting behaviour and party cohesion among German MEPs

Party Group	For	Against	Abstentions	Cohesion
CDU (EPP)	12	14	4	20,00%
SPD (S&D)	20	0	0	100,00%
Bündnis 90/ Die Grünen (Greens/EFA)	13	0	0	100,00%
FDP (ALDE)	0	2	9	72,73%
DIE LINKE (GUE-NGL)	0	0	7	100,00%
CSU (EPP)	0	7	1	81,25%
Total	45	16	20	

Source: Own compilation based on data provided by Vote-Watch.EU. (Accessed on 20 January 2014)

The German MEPs show a 100% degree of cohesion for the Social Democrats (SPD) and the Greens (Bündnis 90/Die Grünen, see Table 2). This reflects both parties stance on debt mutualisation in the national debate. At the time of the sovereign debt crisis opposition parties in the German Bundestag, both the Greens and, a bit less decidedly the SPD, had argued for the introduction of Eurobonds or at least some kind of debt mutualisation through a debt redemption fund.³⁹ The CDU is entirely divided over the issue of introducing Eurobonds. CDU party-leader and German chancellor Angela Merkel had excluded the introduction of Eurobonds at the height of the crisis in summer 2012. So the split vote of CDU members clearly shows the competing influences of the domestic party and the EPP which largely supported the idea of debt mutualisation in the form of stability bonds. DIE LINKE entirely abstained from the decision, which reflects the party's reservations to engage in the euro area economic governance debate at the national level.

The EP's impact on the move towards Eurobonds

The EP played a crucial role in keeping the Commission's Green Paper, which proposed ways towards Eurobonds, up in the debate. The impact of this initiative, however, was mostly felt in Brussels itself and in euro area expert circles. The Own-Initiative Report of the Parliament had hardly any media or policy repercussions in Germany. Given the strong resistance in Germany on economic, political and legal grounds, it is highly unlikely that the political initiatives of the EP to push for Eurobonds will increase the likelihood of their introduction. However, the Initiative Report takes into account the strong reservations, formulated in particular by German, Austrian and Dutch MEPs and hence puts forward design proposals which actually accommodate the interests of non-crisis countries to a large degree. This, however, still cannot overcome the principled concerns that have led to an outright rejection of Eurobonds in a number of member states.

³⁹ See for instance Sozialdemokratische Partei Deutschlands, *Krise in der Eurozone – Was wir wollen*, 5.6.2012, available at: <http://www.spd.de/aktuelles/72902/20120605_eurokrise_was_wir_wollen_spd.html> (Accessed on 5 March 2014).

Upholding political pressure: The European Parliament and the Financial Transaction Tax

Peter Becker/Anne Lauenroth

The debate to introduce a European financial transaction tax (FTT) is closely connected with the discussion on the reform of the European system of own resources and hence the question of how to finance the European budget and how much budgetary autonomy the EU should have from its member states (see the chapter on own resources, p. 48). Although a FTT or Tobin tax had already been discussed in the 1990s, in the last four years the idea became the dominant proposal as a way to involve the financial markets for financing the costs to tackle the financial and public debt crisis.⁴⁰

However, there are three main obstacles: First, the legal basis to harmonise taxation (Art. 113 TFEU) foresees a special legislative procedure, i.e. unanimity in the Council after consultation of the European Parliament. Second, the Commission linked its FTT-Proposal with the idea to introduce a new own resource and to use the revenues of this new tax to finance the EU budget. The idea of an autonomous own resource, i.e. a European tax, is, however, strongly opposed by several member states. A third obstacle is the UK's complaint (supported by Luxembourg) before the European Court of Justice against the FTT that could further limit the FTT's scope.

In a first attempt to introduce a European FTT, on 28 September 2011 the Commission tabled a proposal for a Council Directive on a common system of financial transaction tax.⁴¹ According to this proposal all member states should tax their financial sector. To prevent the fragmentation of the single market for financial products, the FTT should harmonise the indirect taxation on financial transactions. The Commission estimated that the tax would deliver €57 billion in revenues each year, and thereby ensure a

fair contribution from the financial sector to public finances, contribute to more responsible trading and enable a coherent approach to taxing this sector in the single market.⁴²

From a European FTT to enhanced cooperation

After intense debates in the Council in June and July 2012 it became clear that the necessary unanimity within the Council would not be reached. Nevertheless, a group of member states wanted to proceed with the FTT and asked the Commission to examine the option of an enhanced cooperation. Between September and October 2012 eleven governments – France, Germany, Austria, Belgium, Greece, Italy, Portugal, Slovakia, Slovenia, Estonia and Spain – signalled their support for a FTT to the Commission and hence exceeded the threshold of minimum 9 member states that are needed to start an enhanced cooperation. The Commission consequently tabled a proposal for an enhanced cooperation in October 2012 – the exact design of this FTT, however, remains open to this day.

According to Article 329 (1) TFEU not only the Council but also the EP has to authorise the enhanced cooperation and on tax matters the EP has a consultative role. The EP had already discussed the Commission's first proposal and supported it with a large majority in a first opinion on 23 May 2012 (see Table 1).⁴³ Based on this first opinion the MEPs gave their consent to the enhanced cooperation on 12 December 2012 and a second favourable opinion on its implementation on 3 July 2013 (see Table 2).

⁴⁰ In 2011, 40 countries in the world had one of the various forms of FTT in operation, among which as of today figure Belgium, Finland, France, Greece, Italy, Poland and the UK. Cf. "Why critics are wrong about a financial-transaction tax", in: *European Voice*, 12 March 2012.

⁴¹ European Commission, *Proposal for a Council Directive on a common system of financial transaction tax and amending Directive 2008/7/EC*, COM(2011) 594 final, Brussels, 28.9.2011.

⁴² See also John Grahl/Photis Lysandrou, "The European Commission's Proposal for a Financial Transaction Tax: A Critical Assessment", in: *Journal of Common Market Studies*, 2012, Vol. 52, No. 2, pp. 234-249.

⁴³ The vote must however be seen in the context of several parliamentary activities beforehand. On 10 March 2010 and 8 March 2011 the EP released resolutions for the assessment of a form of European FTT and later its implementation at European level as a first step to a global approach.

Large majority in favour of a FTT

Overall, MEPs from the EPP, S&D, Greens/EFA and the GUE-NGL agreed that first, the EU should move forward with a FTT while at the same time pushing for a global solution. Secondly, they declared that the financial sector was under-taxed in comparison to other economic sectors and thus needed to be equally taxed. Thirdly, in their view a FTT could help slow down some of the high-frequency financial transactions that they considered as potentially very damaging.⁴⁴ Fourthly, they underlined that there are already successful models of transaction taxes on national level in some member states. Supporters argued that a well-designed FTT “minimizes negative distortions, is hard to avoid, but nevertheless raises significant sums”.⁴⁵ On the other side, opposition against a FTT came mostly from ECR, ALDE and small parts of the EPP which claimed that a FTT could only work within global scope. In their view, a FTT only in the EU (or the eurozone) would risk fragmenting European financial markets. Furthermore, too many questions with regard to the practical implementation of FTT still remained open, e.g. which financial transactions should be taxed.

Table 1: Voting behaviour and party cohesion in the vote on FTT - May 2012

Party Group	For	Against	Abstentions	Cohesion
EPP	221	20	10	82,07%
S&D	151	6	14	82,46%
ALDE	25	54	2	50,00%
Greens/EFA	52	3	1	89,29%
ECR	0	40	1	96,34%
GUE-NGL	23	0	5	73,21%
EFD	3	14	10	27,78%
NI	12	15	3	25,00%
Total	487 (71%)	152 (52%)	46 (7%)	

⁴⁴ See also “Financial Transaction Tax: Small is beautiful”, ECON study authored by Zsolt Darvas and Jakob von Weizsäcker, Bruegel, available at: <[http://www.europarl.europa.eu/RegData/etudes/note/join/2010/429989/IPOL-ECON_NT\(2010\)429989_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2010/429989/IPOL-ECON_NT(2010)429989_EN.pdf)> (last access on 27 February 2014).

⁴⁵ Stephany Griffith-Jones/Avinash Persaud, Financial Transaction Taxes, paper presented to the European Parliament in 2012, available at: <<http://stephanygj.net/papers/FTT.pdf>> (last access on 27 February 2014).

Table 2: Voting behaviour and party cohesion in the vote on FTT - July 2013

Party Group	For	Against	Abstentions	Cohesion
EPP	225	21	7	83,40%
S&D	158	2	17	83,90%
ALDE	36	32	9	20,13%
Greens/EFA	52	0	3	91,82%
ECR	2	49	0	94,12%
GUE-NGL	25	4	3	67,19%
EFD	7	21	2	55,00%
NI	17	12	1	35,00%
Total	522 (74%)	141 (20%)	42 (6%)	

Source of tables: Own compilation based on data provided by VoteWatch.EU. (Accessed on 20 January 2014)

On the three occasions that the EP voted on the issue of a FTT the overall voting behaviour remained rather stable (see Tables 1 and 2). Continuously, a large majority formed by EPP, S&D, the Greens/EFA and GUE/NGL was in favour – both for the proposal as such and for the enhanced cooperation. The last resolution passed by 522 votes to 141, with 42 abstentions. The ALDE group was extremely split over the issue, with cohesion rates as low as 20 per cent. It is interesting, however, that a narrow ALDE majority joined the winning coalition in both the consent procedure in December 2012 and the last opinion in July 2013. ALDE-MEPs changed their majority line within one year from mostly negative to slightly positive. The Liberals had been split in May 2012 with 25 votes in favour of the first Commission’s proposal and 54 against. The third vote in July 2013 showed 36 Liberals in favour and 32 against the Commission’s proposal for an enhanced cooperation.

In contrast, the ECR group overwhelmingly voted against a FTT having the highest cohesion rate of all political groups. Cohesion rates of the other main groups ranged mostly between 80 and 90%

Table 3: Voting behaviour and party cohesion among German MEPs in the vote on FTT – May 2012

Party Group	For	Against	Abstentions	Cohesion
CDU (EPP)	32	0	0	100,00%
SPD (S&D)	21	0	0	100,00%
Bündnis 90/ Die Grünen (Greens/EFA)	13	1	0	89,92%
FDP (ALDE)	1	11	0	87,50%
DIE LINKE (GUE-NGL)	6	0	2	62,50%
CSU (EPP)	8	0	0	100,00%
Total	81	12	2	

Table 4: Voting behaviour and party cohesion among German MEPs in the vote on FTT – July 2013

Party Group	For	Against	Abstentions	Cohesion
CDU (EPP)	30	2	1	86,36%
SPD (S&D)	21	0	0	100,00%
Bündnis 90/ Die Grünen (Greens/EFA)	13	0	0	100,00%
FDP (ALDE)	0	11	0	100,00%
DIE LINKE (GUE-NGL)	7	0	0	100,00%
CSU (EPP)	8	0	0	100,00%
Total	79	13	1	

Source of tables: Own compilation based on data provided by VoteWatch.EU. (Accessed on 20 January 2014)

Looking at the votes of German MEPs, all groups display high internal cohesion rates. Apart from the Liberals, they voted in favour of the Commission's proposal in line with the position of their political groups in the EP (see Tables 3 and 4). While the German Liberals in May 2012 rejected a FTT, they voted in favour of an enhanced cooperation on FTT in December 2012. In July 2013, on the second Commission's proposal for a FTT the FDP members voted again against. This intermediary shift of the German Liberals from opposition to support and back again was caused by the change of mind of the party in Berlin as part of the German federal government. The FDP first blocked the FTT, arguing a tax on financial products should only be introduced globally, at least in all EU member states. However, from late 2011 onwards, the German government including the FDP promised the SPD to

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pursue an FTT at the EU level in order to get the Social Democrats support for the ratification of the Fiscal Compact and the ESM Treaty.⁴⁶ The voting behaviour of the German ALDE MEPs in the EP obviously followed this course of domestic policy making only when the EP's position had been decisive – namely when authorizing the enhanced cooperation in December 2012 as required by Article 329 (1) TFEU.

Limited impact, limited debate

To estimate the impact of the EP on the FTT proposal is difficult, though one can argue that it was also due to the activities of the EP (resolutions, public hearings etc.) that the Commission presented a legislative proposal and that political pressure was upheld for the negotiations in the Council.

However, because the EP has only a consultation role in European tax policies the votes in Strasbourg could not really influence the negotiations between the member states and gathered only little interest in the German public discourse. Consequently, the domestic debates – i.e. the conflicts inside the ruling coalition between CDU/CSU and FDP and the tactics of the German Social Democrats using their approval needed in the ratification of the ESM Treaty and the Fiscal Compact to commit the federal government to vote for an enhanced cooperation inside the Council – had been of prior interest. The debates in the EP and the consent to the enhanced cooperation in Strasbourg, in contrast, did not find any coverage in German newspapers.⁴⁷

⁴⁶ E.g. Gemeinsames Papier der Bundesregierung und der Fraktionen im Deutschen Bundestag, 21. Juni 2012, Pressemitteilung Nummer 212/12.

⁴⁷ At that time, in May 2012, newspapers reported about the idea of Eurobonds, the disputes between Berlin and Paris and scenarios like a Greek or a German eurozone exit.

Public protests changed the game: The European Parliament and ACTA

Anne Lauenroth

The Anti-Counterfeiting Trade Agreement (ACTA) is a multinational treaty with the aim of establishing common standards for intellectual property rights (IPR) enforcement in the area of trade in counterfeit goods and generic medicines as well as with regard to copyright infringement on the internet.⁴⁸ As of today, the treaty is not in force because, while almost all negotiating countries⁴⁹ including the EU and most of its member states have signed the treaty, only Japan has ratified it. The European Parliament played a major role in stopping the ratification of ACTA. Though not involved from the beginning of the negotiations that started in June 2008, the EP gained the right to approve or reject international agreements with the Lisbon Treaty in December 2009. On 4 July 2012, a clear majority of MEPs rejected ACTA. On the one hand, the rejection was another example of the EP demonstrating its new powers to the other EU institutions. On the other hand, it were mainly the mass demonstrations on the streets and online as well as the articulated concerns raised by a majority of MEPs, both about the way ACTA was negotiated and about the digital IPR-related aspects, that influenced Parliament's final vote.

The EP enters late in the game

In legal terms the EP's involvement in ACTA was based on Articles 207 and 218 TFEU that require the consent of the EP for international agreements by simple majority. That means that the EP was formally not able to make any changes to ACTA but could either approve or reject it.⁵⁰ Additionally, when the EP

formally received the power to reject international agreements in late 2009, the ACTA negotiations were already in their final stages (round 7 of 11). Nevertheless, the EP followed the negotiations from the start. Even before the large public protests, the EP had released two resolutions and a declaration on ACTA that demanded more transparency and expressed some first concerns regarding the implementation of ACTA, especially with regard to enforcement measures in the digital environment. In parallel, the Commission formally initiated the consent procedure with the support of the December 2011 Fishery Council adopting ACTA without much public notice.

It was only in 2012 that things suddenly moved. While the EU and 22 member states⁵¹ signed ACTA in Tokyo on 26 January 2012, protests had begun to spread, first in Poland and then in other EU member states. In response to that most of the latter announced to suspend the ratification process. Interestingly, protests in Europe were inspired by those against similar IPR legislation in the US, called SOPA (*Stop Online Piracy Act*) and PIPA (*Protect IP Act*). As a reaction to the signature of ACTA by the EU member states, MEP Kader Arif (S&D) resigned as ACTA rapporteur in January 2012.

It was in that environment of protests and a petition against ACTA signed by 2.5 million people worldwide that the first debate on the final ACTA text in the framework of the consent procedure took place in the responsible International Trade Committee (INTA). Led by the new British rapporteur David Martin (S&D), MEPs from all political groups stressed that they wanted to know more about how ACTA would be enforced before advising Parliament as a whole on whether or not to approve it. In reaction, the Commission announced on 22 February 2012 that it would ask the European Court of Justice (ECJ) for an opinion on ACTA's compatibility with EU law. However, the

is no formal deadline the EP can furthermore delay its vote.

⁵¹ Cyprus, Estonia, Germany, Netherlands and Slovakia were expected to sign ACTA on the completion of their domestic procedures. In the case of Germany it officially declared on 10 February 2012 to uphold its signature of ACTA.

⁴⁸ As far as the EU is concerned, ACTA is a mixed agreement – it contains different sets of provisions, which fall partly under EU exclusive competence and partly under shared EU/member state competence (e.g. criminal sanctions).

⁴⁹ These were Australia, Canada, the EU and its member states, Mexico, Morocco, New Zealand, Singapore and South Korea. Switzerland took part in the negotiations, but did not sign the agreement.

⁵⁰ In practice the EP can try to influence the text by forms of resolutions, own-initiative reports, questions, etc. Since there

proposal by Martin to prepare the EP's own questions for the ECJ opinion was overwhelmingly rejected on 27 March, mainly on grounds of being ready to vote.⁵²

Consequently, on 12 April 2012 Martin recommended to reject ACTA. With four more committees (DEVE, LIBE, JURI, ITRE) giving negative opinions on ACTA the stage was set for the negative vote on ACTA on 21 June 2012 in the INTA Committee. The major concerns against ACTA being a suitable instrument for guaranteeing copyright protection and preventing counterfeiting had narrowed to two main arguments: First, that rules from the analogue area of counterfeiting had been transferred into the digital world and, as a result, the wrong rules are being imposed on consumers who behave differently in a digital environment. Thus, it was a fault to put counterfeiting goods and internet content in one agreement and it would have been better to have two agreements, one on physical goods and one on virtual ones. Second, that the question of enforcing intellectual property rights on the Internet, in the digital environment, has not even been resolved within the EU. It should consequently first be debated and legislated at European level before going to the international level.⁵³

Large majority against ACTA

When ACTA was finally scheduled for a plenary vote on 4 July 2012, the concerns raised already in 2010 were strengthened not only by academic opinion but most importantly by tremendous public pressure. One after the other, the EP's political groups decided to vote against ACTA: first the Greens/EFA and GUE/NGL, then S&D and finally most of ALDE as well as some Eastern European EPP members. The conflict line at that point in time was between those that wanted to wait for the ECJ's opinion on the conformity of ACTA with EU law (most of EPP, ECR, the INTA Chair Moreira

⁵²The majority of MEPs argued that a referral to the ECJ should have been done in the framework of the Commission's impact assessment, thus much earlier in the process. For them to do it at this stage was a tactic of the supporters of ACTA to delay things while at the same time, in their view, the EP already had enough information and legal expertise (e.g. from the EP's own legal service) to decide.

⁵³ Cf. EP plenary debate in Strasbourg on 3 July 2012, available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20120703&secondRef=ITEM-010&language=EN&ring=A7-2012-0204> (last access on 28 February 2014).

(S&D) and Trade Commissioner De Gucht) – in order to buy time for eventually adapting ACTA – and the majority in the EP that argued for an immediate vote. A last minute attempt from the EPP and ECR groups to transfer the dossier back to INTA was rejected. The final outcome was 478 no-votes, 39 yes-votes and 165 abstentions (see Table 1). The winning coalition was formed by S&D, ALDE, Greens/EFA, GUE/NGL and EFD.

Table 1: Voting behaviour and party cohesion in the vote on ACTA

Party Group	For	Against	Abstentions	Cohesion
EPP	33	96	109	18,70%
S&D	1	166	6	93,93%
ALDE	2	66	12	73,75%
Greens/EFA	0	57	0	100,00%
ECR	0	11	35	64,13%
GUE-NGL	0	30	0	100,00%
EFD	3	27	3	72,73%
NI	0	25	0	100,00%
Total	39 (6%)	478 (70%)	165 (24%)	

Table 2: Voting behaviour and party cohesion among German MEPs

Party Group	For	Against	Abstentions	Cohesion
CDU (EPP)	5	2	25	67,19%
SPD (S&D)	0	22	0	100,00%
Bündnis 90/ Die Grünen (Greens/EFA)	0	13	0	100,00%
FDP (ALDE)	0	3	9	62,50%
DIE LINKE (GUE-NGL)	0	7	0	100,00%
CSU (EPP)	3	2	3	6,25%
Total	8	49	37	

Source: Own compilation based on data provided by Vote-Watch.EU. (Accessed on 20 January 2014)

The cohesion rates show clearly how split the centre-right groups of the EP were over ACTA. While the Greens/EFA, GUE-NGL and S&D had no or very few rebel votes, the ECR, ALDE and EFD groups display a much lower cohesion. However, it was the EPP that was completely divided. Analysing the most prominent rebels one can see some clear national voting patterns among the centre-right groups: the Bulgarian, Hungarian and Polish ECR and EPP members voted entirely against ACTA; 21 out of 26 French EPP

members voted in favour; and 9 out of 12 German ALDE members abstained. Most of the rebel behaviour of MEPs from the aforementioned countries can be attributed to the mass demonstrations against ACTA, especially in Poland where they had begun.

A somewhat similar picture emerges when looking at the cohesion of German parties in the EP. The centre-left groups SPD, Bündnis 90/Die Grünen and DIE LINKE unanimously rejected ACTA. The centre-right in contrast was very divided, in particular the CSU. Herbert Reul, the Chair of the CDU/CSU group in the EPP explained that his group believed ACTA to be, in principle, appropriate, thus voted in favour of postponing the vote and abstained in the vote on the report.⁵⁴ The “rebel” votes inside CDU, CSU and FDP reflected the domestic debate in Germany where the FDP and CSU in view of the protests in Germany began to speak out against ACTA, especially the digital IPR-related parts. This led to frictions with their coalition-partner CDU who judged ACTA to be a tool to harmonise the status quo that is important for Germany's export-oriented economy affected by counterfeiting.⁵⁵

Strong EP impact and protest-fuelled debates

The impact of the EP on ACTA was obviously significant in the sense that its rejection hindered the agreement from coming into force, at least until now and most probably also in the future. Although the EP was not able to influence the first negotiation rounds and in the end was only allowed to vote in favour or against, it is plausible that the watering-down of some of the early drafts especially in the area of enforcement measures in the digital environment and the pushing through of some core European interests such as the geographical indications⁵⁶ can be partly attributed to the demands of the EP.⁵⁷

⁵⁴ Herbert Reul, *written explanation of votes*, 4 July, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20120704+ITEM-008+DOC+XML+V0//EN> (last access on 28 February 2014).

⁵⁵ See “Widerstand gegen ACTA-Abkommen auch in CDU/CSU”, in: *AFP*, 15.02.2012; “EU legt Acta-Vertrag ad acta; Handelsausschuss stimmt gegen Abkommen”, in: *Frankfurter Rundschau*, 22.06.2012.

⁵⁶ They aimed e.g. at protecting the strong reputation of EU agro-food names in non-EU markets, cf. *Does ACTA still matter? Protecting intellectual property rights in international trade*, policy briefing, EP DG EXPO Policy Department, 14 January 2013.

⁵⁷ Cf. Robert Uerpmann-Wittzack, “Das Anti-Counterfeiting

While the Bundestag did not deal much with the ACTA dossier⁵⁸ it was the protests in Germany and Europe-wide at the beginning of 2012 that fuelled the German public debate around ACTA. Peaks of the discussions were registered around three events: mid-February 2012, when the German government decided to uphold its signature of ACTA and the first Europe-wide ACTA protests took place; end of February 2012, when the European Commission sent the ACTA file to the ECJ and a second Europe-wide protest took place; beginning of July 2012, when ACTA was rejected by the EP.⁵⁹ In the numerous comments on the EP and ACTA in the German and European quality press debate there are four aspects worth mentioning:

First, ACTA illustrated that MEPs' decisions can be heavily influenced by new forms of participation via the internet. While some commentators criticised the protests as partly anonymous, non-representative for the majority and consequently a danger for the democratic process, others celebrated ACTA as an identity building moment for an international internet public or even European demos that showed its ability to influence political decisions.⁶⁰ In contrast, a third group of commentators argued that net activists are lobbyists and therefore also work with exaggerations, assumptions and false statements.⁶¹ Finally, the ACTA protests demonstrated that especially younger people can be mobilised with the help of social media around issues of net politics and

Trade Agreement (ACTA) als Prüfstein für die Demokratie in Europa”, in: *Archiv des Völkerrechts* 49 (2011), pp. 103-123, here p.120.

⁵⁸ Before 2012 there were two parliamentary questions of the opposition parties *Die Linke* and Bündnis 90/Die Grünen in the Bundestag. That the Bundestag did not do much about ACTA is on the one hand not a problem since trade policy is harmonised, thus managed by the European Commission being accountable to the EP. On the other hand the Bundestag's inactiveness is questionable since ACTA is a mixed agreement. It illustrates the continuing dominance of the executive in international negotiations.

⁵⁹ Cf. „Framing“: Wie sich die ACTA-Gegner durchsetzten, 11 March 2014, available at: <https://netzpolitik.org/2014/framing-wie-sich-die-acta-gegner-durchsetzten/> (last access on 28 February 2014).

⁶⁰ Cf. press reviews of *presseurop* and *eurotopics*, 5 July 2012, available at: <http://www.presseurop.eu/en/content/press-review/2302101-victory-over-acta-comes-price> and http://www.eurotopics.net/en/home/presseschau/archiv/result/s/archiv_article/DOSSIER107673-Civil-society-wins-out-over-Acta (last access on 28 February 2014).

⁶¹ At times, Polish MEPs got up to 9.000 protest e-mails per week.

that protests often generate around interconnected events; in the ACTA case around the parallel debate and protests in the US against SOPA and PIPA. The EP's rejection of ACTA itself had an impact on the EU's trade negotiations with Canada and other ACTA negotiating parties' domestic discussions (e.g. in Switzerland).

Second, ACTA illustrated the increased demand for communication and transparency with regard to international negotiations and for participation in policy-making in general. Some commentators therefore argued that ACTA never stood a real chance to be accepted since its negotiations began at a time when it was beyond dispute that negotiated agreements simply got pushed through. Whereas secrecy per se is not a problem, it is the inclusiveness of the process that needs to be guaranteed so that affected interests have equal access to information and equal possibilities to make their preferences known.⁶² According to MEP Sophie in't Veld in the future new modes of negotiating agreements should be developed, so that first there is a debate, then the EP co-decides with the Council on the negotiating mandate and only then a treaty is closed.⁶³

Third, the ACTA rejection was another example of the Parliament's new self-consciousness vis-à-vis the other European institutions. It showed that the EP is able and willing to veto an agreement also in the area of trade policy. Thus ACTA was another episode of the more and more conflict-prone relationship between the EP and member states in the Council of Ministers. Furthermore, in contrast to mainstream thinking, the EP showed itself to be a relevant actor. This is mainly, because it had real decision-making powers in the area of trade policy and could thus act as a forum for debate between conflicting (party political) views.

⁶² Cf. also Luciano Floridi, ACTA – The Ethical Analysis of a Failure, and its Lessons, ECIPE Occasional Paper 4/2012. It is also arguable if IPR law enforcement is properly dealt with in a (plurilateral) trade agreement, even if multilateral regulation is blocked. Cf. Comparing international trade policies: the EU, US, EFTA and Japanese PTA strategies, study requested by the EP's INTA Committee, February 2014.

⁶³ Cf. "Ad Acta; Das EU-Parlament will heute den Piraterievertrag kippen - Erfolg der Generation Youtube", in: *Frankfurter Rundschau*, 4 July 2012. The inclusion of the EP on equal terms with the Council directly from the beginning could reconcile the legitimate demands for more transparency and public debate with the confidential character of international negotiations. Cf. Andreas Maurer, "Europäisches Parlament", in: *Jahrbuch der Europäischen Integration 2012*, pp. 53-64.

Fourth, the ACTA rejection served as a starting point for a debate on intellectual property rights (IPR) in the digital environment. According to most commentators this debate has to move away from focussing on unilateral IPR enforcement and instead answer the question how to guarantee a decent remuneration for those who live from their intellectual property, such as the creative sector, and at the same time gaining the acceptance of internet users.⁶⁴ At EU level the EP plays an important role since existing IPR legislation is harmonised and thus EU law would need to be updated in the framework of the ordinary legislative procedure where the EP is an equal co-legislator.⁶⁵

In conclusion, one can say that the ACTA case figured only in the German political and public debate after the beginning of protests in February 2012, thus at a time when negotiations had already been finalised. The protests even made the coalition parties FDP and CSU acknowledge some of the critical aspects formulated by the protest movement on digital IPR-related aspects and confront their partner in government CDU. Parts of FDP and CSU joined the winning coalition of SPD, Bündnis 90/Die Grünen and DIE LINKE against the majority line of their political groups.⁶⁶ Due to its power to reject ACTA the EP figured prominently in the German debate from the moment that it became clear that it might actually use this power, especially around the final plenary vote on July 4th 2012.

⁶⁴ Updated IPR regulation could e.g. promote shorter copyright terms, a narrower scope and rules in favor of education, research, remix and new online-user practises such as cultural flatrates. It would thereby aim to balance the existing law (e.g. TRIPS) being in favour of IPR holders with consumer rights.

⁶⁵ On 5 March 2014 the Commission closed the deadline for its public consultation on the review of the EU copyright rules. In Germany, according to the coalition agreement, CDU/CSU and SPD plan to adapt the IPR law to the new digital environment with the aim of balancing the interests of IPR holders, collecting societies and users. Internationally, though, updated European IPR legislation might get in conflict with WTO's TRIPS agreement and US IPR norms.

⁶⁶ It is plausible to argue that the final vote would have been different without the significant public pressure both in Germany and other European countries since the EPP, ECR and ALDE groups would have been able to form a majority in favour of ACTA against S&D, the Greens/EFA and GUE-NGL as had been the case in the EP's resolution of 24 November 2010.

Far-reaching demands meet European realpolitik: The European Parliament and the Multiannual Financial Framework

Peter Becker

The Lisbon Treaty significantly enhanced the European Parliament's role in European budgetary politics. The multiannual financial framework (MFF) became part of the budgetary acquis and had been incorporated into the European Treaties. According to the new Article 312 TFEU the regulation on the MFF has to be approved by the Parliament with the majority of its members. European budgetary politics, however, is divided into three pillars: the annual budgets, the MFF, and the decision on own resources. All three pillars are interconnected and each institutional player tries to use its powers in one pillar to enhance its role in the others. This power game is a long term game, i.e. the game is not about the decision-making process on one annual budget or MFF, but on preparing the ground with the decision today for the decision-making processes in budgetary politics in the future. The decision-making process on the MFF is in addition linked to the legislative procedures on the European spending programmes, especially the legislation on the structural funds. Since the 1970s all budgetary conflicts and decisions had been and still are part of deeper institutional fights between the two pillars of European budget authority, the Council and the EP. Hence, budgetary questions are always about the institutional design and part of a larger power game.⁶⁷

Therefore, the votes of the Parliament on the MFF 2014-2020 stand in a long row of budgetary decisions and attempts to enhance the Parliament's role in European budgetary policy. Already in June 2010 the EP set up a special committee (SURE) on the policy challenges and budgetary resources for a sustainable European Union after 2013 which had the task to define the Parliament's political priorities for the MFF 2014-2020, both in legislative terms and budgetary terms.⁶⁸ The SURE committee was chaired by the

German MEP Jutta Haug (S&D) and delivered its report in 2011.⁶⁹ In a strategic and self-confident move the newly empowered EP thus launched the negotiations on a new financial framework and set its position ahead of the publication of the European Commission's official proposal. The latter was expected to take Parliament's demands and proposals into account. The MEPs asked the Commission to focus the next MFF on the priorities of the EU's growth strategy "Europe 2020", as in previous years they asked for an increase of funds by at least 5% compared to the status quo in 2013, more flexibility in spending, and the introduction of a genuine own resource (see below).

To bolster its position before the start of negotiations with member states in the Council and European Council, the EP confirmed its demands in several resolutions, especially in October 2012.⁷⁰ In these resolutions the Parliamentarians in particular criticized very harshly the aspirations of the net payers to reduce the total volume of the next MFF.

The official negotiations between the Council and the EP started after the European Council found its compromise on the MFF on 8 February 2013. In a joint statement just the day after the European Council summit, the chairmen of the major political groups in the European Parliament, Joseph Daul (EPP), Hannes Swoboda (S&D), Guy Verhofstadt (ALDE), Rebecca Harms and Daniel Cohn-Bendit (Greens/EFA) strongly criticized the compromise of Heads of State and Government and denied to subscribe to this deal.⁷¹

office, Decision of 16 June 2010, P7_TA-PROV(2010)0225.

⁶⁹ European Parliament, *Investing in the future: a new Multiannual Financial Framework (MFF) for a competitive, sustainable and inclusive Europe*, European Parliament resolution of 8 June 2011, Europe P7_TA-PROV(2011)0266.

⁷⁰ European Parliament, *Multiannual financial framework for the years 2014-2020*, Resolution of 23 October 2012 in the interests of achieving a positive outcome of the Multiannual Financial Framework 2014-2020 approval procedure, P7_TA(2012)0360.

⁷¹ Joint Statement to the Press by Joseph Daul, on behalf of the EPP Group, Hannes Swoboda, on behalf of the S&D Group, and Guy Verhofstadt, on behalf of the ALDE Group and on behalf of the Greens/EFA Group Rebecca Harms and Daniel Cohn-Bendit: *MFF: The real negotiations will start now with the European Parliament*, Brussels 8.2.2013, available at:

⁶⁷ Brigid Laffan, *The Finances of the European Union*, New York 1997; Johannes Lindner, *Conflict and Change in EU Budgetary Politics*, Abingdon 2006.

⁶⁸ European Parliament, *Setting up a special committee on the policy challenges and budgetary resources for a sustainable European Union after 2013, its powers, numerical composition and term of*

The chairmen argued that the member states' deal provided no answer to the challenges of deep economic and social crisis in the EU. The EP therefore should not accept the agreement and should insist on its core demands:

- 1) a higher total volume and greater flexibility within the MFF between the headings and budget years;
- 2) the introduction of a review clause which should allow approximately after 3 years, a review and adjustment of the financial framework and finally
- 3) a new "real" own resource, i.e. a European tax.

On 13 March 2013 the Parliament mandated its negotiating team for the trilogue meetings with the Council and the Commission in the form of another resolution, in which it dropped the criticism about the reduced total MFF volume. It did so, because the majority of the MEPs did not expect the Council to modify the compromise hammered out by the Heads of State and Government on 8 February at this crucial point. In addition, the EP insisted on a supplementary budget to the annual budget 2013 to cover the increased spending as a precondition for its consent on the MFF.⁷²

It was this combination of negotiations on the financial framework with the demand to increase the annual budget in 2013, which delayed the start of the usual trilogue negotiations. Only at a meeting on the highest political level the three presidents of the Council, Commission and EP on 6 May 2013 could hammer out a compromise on the link between MFF trilogue and the negotiations on the annual budget.

The MFF trilogues meanwhile remained very difficult and for several times had been close to a break down. The German rapporteur and long-term budget expert Reimer Böge (EPP) resigned from the EP negotiation team in protest against the Irish Presidency that led the negotiations for the Council. Finally and once again the final deal could only be found on the highest political level of the presidents of the three institutions on 27 June 2013. At the end of these long and difficult negotiations with more than ten trilogue meetings from May to June 2013, the compromise of the European Council from 8 February 2013 had not been questioned in substance. The

<http://arc.eppgroup.eu/press/showpr.asp?prcontroldoctypeid=1&prcontrolid=11680&prcontentid=19398&prcontentlg=en> (last accessed on 15 March 2014)

⁷² European Parliament, resolution of 13 March 2013 on the European Council conclusions of 7/8 February concerning the Multiannual Financial Framework, P7_TA-PROV(2013)0078.

institutions compromised on three key points, which were central to the EP:

- 1) The compromise on more flexibility includes the option that unused funds in one year can be transferred into the following year. However, member states were able to fix annual ceilings for these transferred funds, which may total not more than 26 billion Euros. The Parliament could push through in addition, that in the year 2017 unused funds of the previous three years can be used for measures to boost growth and jobs.
- 2) The Council agreed to review the functioning of the MFF until the end of 2016 and if necessary to adjust the budget to the economic development. The Parliament had fought for this review clause to give the next MEPs to be elected in May 2014 the chance to open up the MFF and to assess the spending priorities.
- 3) The EP had demanded the introduction of a new own resource. However, while the member states could not agree unanimously on this proposal, the Council agreed on a non-binding joint declaration that puts forward a roadmap for considerations and a taskforce of experts to discuss the possibility of a new own resource (see the chapter on the system of own resources, pp. 48).

Hence, the EP did achieve some of its goals in the negotiations. It is clear, however, that the Parliament is only forceful when it is negotiating with a single voice and with a strong backing of a large majority of its members. The real negotiations took place in confidential trilogue meetings. The votes in the plenum are more or less votes to mandate and to strengthen the Parliament's negotiation team. The tactical momentum is immense.

Having this special process and tactics in mind, the EP votes on the MFF negotiations in 2012/2013 confirm this analysis (see Tables 1, 3, 5, 7). The grand coalition of EPP and S&D, supported by ALDE and the Greens/EFA, stood together to endorse the Parliament's negotiation position in October 2012 and to strengthen this position in March 2013 before the start of the trilogue meetings. Thus, an overwhelming majority of 75% and 73% MEPs voted in favour of the respective resolutions with generally high cohesion rates. An exception is the EPP group in the March 2013 vote with a cohesion rate of 68%. Rebel votes in the EPP and S&D in this vote came in particular from the United Kingdom, Sweden and Denmark. These MEPs voted along national lines. Given the sensitivity of budgetary questions for

member states and the highly politicised debates in many member states, these high cohesion levels in the Parliament are impressive and underline the strengths of political groups in the EP.

The votes in July and November 2013, too, saw a high level of cohesion. In the final November vote cohesion was highest in the EPP and S&D (above 90%), underlining the large political support within the grand coalition for the compromise. Meanwhile the Greens/EFA opposed the political agreement as, in their opinion, it diverged significantly from the original EP position of October 2012. Opposition came also from the Left (GUE-NGL), which was disappointed about the overall amount of the MFF and the first “austerity budget”, which in German MEP Gabi Zimmer’s words “has a structure that can give no real answer to the huge problems caused by the crisis”.⁷³

The German MEPs, in all votes, showed an extraordinarily high level of loyalty with their political group in the EP, with barely any rebel votes (see Tables 2, 4, 6, and 8). The German EPP, S&D and ALDE group members thus voted in favour, the German Greens and DIE LINKE voted against the compromise. The voting behaviour of the German MEPs also corresponded to the political line of party groups in the German Bundestag. On the national level the CDU/CSU, the FDP and the SPD backed the federal government’s initiative together with some other net paying member states. This “better spending”-initiative aimed at enhancing the efficiency of European spending policies and to achieve better policy results with the same amount of money. Hence the net payer’s approach to limit the total MFF volume at 1% EU-GNI had been accepted basically by these political groups in the Bundestag. The MEPs could follow a different approach in the EP until the final and crucial decision to accept the European Council’s compromise. At this time the Realpolitik by the Chairmen of the major political groups in the EP and especially of the German EP President, Martin Schulz, dominated over the loud and demanding attitude of the German head of SURE, the Social Democrat Jutta Haug.

The various negotiation rounds of the MFF were widely covered by European and German media. The strong role of the European Parliament was clearly

visible in the German press. Although it could not achieve its goal of increasing the volume of the MFF, the EP was portrayed as fighting hard for its position. The press focused on the division between Parliament and member states over the overall budget. After the EP had agreed to the total amount of the MFF in a first compromise, attention shifted to conditions that the EP imposed before agreeing on the MFF – such as more flexibility for the annual budgets and the establishment of a high-level group on own resources. In the end, reports made clear that the EP could push through some of its demands although the member states were described as the overall winners.

With the Lisbon Treaty the European Parliament received new rights in European budgetary politics, but the MEPs also received new and higher responsibility. In this institutional power game the MEPs had to decide between a total blocking of the legislation and negotiating a compromise with the Council. The Council was bound by the deal of February 2013 in the European Council and hence had only a limited room for manoeuvre and to meet the Parliament’s demands, which nevertheless achieved some of its goals.

⁷³ GUE-NGL, *Resolution on MFF: vote result bodes badly for September MFF final negotiations*, statement on 3 July 2013, available at: <<http://www.guengl.eu/news/article/gue-ngl-news/resolution-on-mff-vote-result-bodes-badly-for-september-mff-final-negotiati>> (Accessed on 16 April 2014).

Table 1: Voting behaviour and party cohesion in the vote on the MFF – 23 October 2012

Party Group	For	Against	Abstentions	Cohesion
EPP	229	6	16	86,85%
S&D	148	16	8	79,07%
ALDE	63	2	10	76,00%
Greens/EFA	53	2	2	89,47%
ECR	12	35	1	59,38%
GUE-NGL	1	17	14	26,69%
EFD	4	11	12	16,67%
NI	7	16	0	54,35%
Total	517 (75%)	105 (15%)	63 (9%)	

Table 3: Voting behaviour and party cohesion in the vote on the European Council compromise on the MFF – 13 March 2013

Party Group	For	Against	Abstentions	Cohesion
EPP	196	46	7	68,07%
S&D	151	20	0	82,46%
ALDE	70	5	3	84,62%
Greens/EFA	46	2	8	73,21%
ECR	1	50	0	97,06%
GUE-NGL	24	3	3	70,00%
EFD	12	18	2	34,38%
NI	6	17	0	60,87%
Total	506 (73%)	161 (23%)	23 (3%)	

Table 5: Voting behaviour and party cohesion in the vote on the MFF trialogue compromise – 3 July 2013

Party Group	For	Against	Abstentions	Cohesion
EPP	242	2	14	90,70%
S&D	146	19	12	73,73%
ALDE	59	5	12	66,45%
Greens/EFA	2	52	1	91,82%
ECR	11	37	2	61,00%
GUE-NGL	0	34	0	100,00%
EFD	7	22	1	60,00%
NI	7	22	0	63,79%
Total	474 (67%)	193 (27%)	42 (6%)	

Table 2: Voting behaviour and party cohesion among German MEPs in the vote on the MFF – 23 October 2012

Party Group	For	Against	Abstentions	Cohesion
CDU (EPP)	32	1	0	95,45%
SPD (S&D)	22	0	0	100,00%
Bündnis 90/ Die Grünen (Greens/EFA)	14	0	0	100,00%
FDP (ALDE)	11	0	0	100,00%
DIE LINKE (GUE-NGL)	1	2	5	43,75%
CSU (EPP)	8	0	0	100,00%
Total	88	3	5	

Table 4: Voting behaviour and party cohesion among German MEPs in the vote on the European Council compromise on the MFF – 13 March 2013

Party Group	For	Against	Abstentions	Cohesion
CDU (EPP)	29	1	3	81,82%
SPD (S&D)	22	0	0	100,00%
Bündnis 90/ Die Grünen (Greens/EFA)	13	0	0	100,00%
FDP (ALDE)	11	0	0	100,00%
DIE LINKE (GUE-NGL)	7	0	0	100,00%
CSU (EPP)	7	0	0	100,00%
Total	89	1	3	

Table 6: Voting behaviour and party cohesion among German MEPs in the vote on the MFF trialogue compromise – 3 July 2013

Party Group	For	Against	Abstentions	Cohesion
CDU/CSU (EPP)	31	1	1	90,91%
SPD (S&D)	21	0	0	100,00%
Bündnis 90/ Die Grünen (Greens/EFA)	0	13	0	100,00%
FDP (ALDE)	10	0	0	100,00%
DIE LINKE (GUE-NGL)	0	8	0	100,00%
CSU (EPP)	8	0	0	100,00%
Total	70	22	1	

Table 7: Voting behaviour and party cohesion in the vote on the final MFF regulation – 19 November 2013

Party Group	For	Against	Abstentions	Cohesion
EPP	243	0	6	96,39%
S&D	158	2	8	91,07%
ALDE	64	8	4	76,32%
Greens/EFA	3	49	0	91,35%
ECR	51	0	0	100,00%
GUE-NGL	0	29	1	95,00%
EFD	10	18	0	46,43%
NI	8	20	0	57,14%
Total	537 (79%)	126 (18%)	19 (3%)	

Table 8: Voting behaviour and party cohesion among German MEPs in the vote on the final MFF regulation – 19 November 2013

Party Group	For	Against	Abstentions	Cohesion
CDU (EPP)	30	0	0	100,00%
SPD (S&D)	21	0	0	100,00%
Bündnis 90/ Die Grünen (Greens/EFA)	0	12	0	100,00%
FDP (ALDE)	11	0	1	87,50%
DIE LINKE (GUE-NGL)	0	7	0	100,00%
CSU (EPP)	7	0	0	100,00%
Total	69	19	1	

Source of all tables: Own compilation based on data provided by VoteWatch.EU. (Accessed on 20 January 2014)

SOS from ETS: The European Parliament and the reform of the EU Emissions Trading Scheme

Severin Fischer

The EU Emissions Trading Scheme (EU ETS) is the most important climate policy instrument in Europe. It covers nearly 50 percent of all greenhouse gas (GHG) emissions in the EU. More than 11.000 installations from the electricity and industry sector are participating in the world's largest cap-and-trade system. This market-based instrument is meant to reduce the EU's emissions by 1.74% per year, introducing an EU wide price for GHG emissions and by doing so, incentivizing electricity producers and industry, to move towards a low-carbon economy. With the Directive 2009/29/EC, the EU has restructured and improved the EU ETS for the time period 2013-2020.⁷⁴

When the Directive was negotiated in 2008, the impact of the economic crisis was not fully recognized. During the years 2008 and 2010, industrial production and electricity demand in the EU dropped significantly. This also led to emission reductions, and, at the same time, created an oversupply of certificates in the EU ETS. In 2012, the EU had already reached a reduction of GHG emissions of around 18% below 1990 levels, while the target for 2020 was only 20%. This coincided with an oversupply of certificates in the system from emission credits, resulting from mitigation efforts in developing countries, leading to a certificate price in the EU ETS of only around 4-5 Euros per ton. Originally, the Commission had calculated with a price of 20-30 Euros.⁷⁵

In this context, two arguments appeared, approaching the situation from a different angle. A first group of actors argued that it would be necessary to increase the emission reduction target, in order to restructure the European economy earlier. Among these are environmental NGOs, Green parties and environment

ministries from the UK, Germany and some other member states. According to this point of view, a stricter target would raise the price for certificates and therefore bring new low-carbon technologies into the market. The other group of actors, such as Business Europe, the Polish government and many economic ministers of the member state governments, argued that reaching the original target at low costs would be the best solution possible. Doing climate policy for reduced costs would set an example rather than require an additional reform.

Although the Commission had an interest to follow the first line of arguments, it was clear that it would not be possible to raise the reduction target, because a consensual decision in the European Council would be required. Therefore the Commission proposed a minimal invasive solution, only touching the price of certificates in the EU ETS. Thus the Commission tabled a proposal, called "backloading", to delay auctions in the EU ETS from the years 2013 and 2014 to 2019 and 2020, in order to create an artificial demand and by doing so, helping to push the price up – at least temporarily.

The Commission drafted a decision that would change the original ETS directive and give the Commission the right to delay the auctions in the EU ETS for a couple of years.⁷⁶ This decision was dealt with in the ordinary legislative procedure. However, the agreement of the Council was not certain, because Poland opposed the proposal and the German government was divided, having a ministry for economics in opposition and an environmental ministry in favour of the Commission initiative. While gaining the consent of the European Parliament was necessary, it didn't seem to be as difficult as the agreement in the Council. At the end, however, the vote in the European Parliament was not as clear as

⁷⁴ European Community, *Directive 2009/29/EC of the European Parliament and of the Council amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emissions allowance trading scheme of the Community*, 23 April 2009.

⁷⁵ European Commission, *Commission Staff Working Document. Accompanying document to the proposal for a Directive of the of the European Parliament and of the Council amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emissions allowance trading scheme of the Community*, Impact Assessment, SEC(2008)52, 23 January 2008.

⁷⁶ European Commission, *Proposal for a Decision of the European Parliament and the Council amending the Directive 2003/87/EC clarifying provisions on the timing of auctions of greenhouse gas allowances*, 25.07.2012, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012PC0416&from=EN> (Accessed on 21 February 2014).

most observers had expected. After the proposal was rejected by the plenary in April 2013 and sent back to the Environment Committee (ENVI) for reconsideration, an amended version was accepted by the plenary in July 2013. 49% of MEPs voted in favour, 44% against and 7% abstained (see Table 1).

In the end, a relatively coherent voting behaviour of S&D and Greens/EFA combined with large support from ALDE and some MEPs from EPP was decisive for the adoption of the proposal in plenary. Without the split in the EPP group the decision would have been rejected by the Parliament. There was also a strong line of national voting. MEPs from Nordic countries, such as Sweden or Denmark, were much more positive, compared to MEPs from Central and Eastern European countries, especially from Poland, who were much more sceptical. Not a single Polish MEP voted for the “backloading”, while not a single Danish MEP opposed.

Table 1: Voting behaviour and party cohesion in the vote on the “backloading” proposal – July 2013

Party Group	For	Against	Abstentions	Cohesion
EPP	59	170	25	50,39%
S&D	146	16	12	75,86%
ALDE	58	17	0	66,00%
Greens/EFA	55	0	0	100,00%
ECR	3	46	1	88,00%
GUE-NGL	13	17	3	27,27%
EFD	1	25	4	75,00%
NI	9	20	1	50,00%
Total	344 (49%)	311 (44%)	46 (7%)	

Table 2: Voting behaviour and party cohesion among German MEPs – July 2013

Party Group	For	Against	Abstentions	Cohesion
CDU (EPP)	3	29	1	81,82%
SPD (S&D)	18	0	0	100,00%
Bündis 90/ Die Grünen (Greens/EFA)	13	0	0	100,00%
FDP (ALDE)	2	8	0	70,00%
DIE LINKE (GUE-NGL)	7	1	0	81,25%
CSU (EPP)	0	8	0	100,00%
Total	43	46	1	

Source: Own compilation based on data provided by Vote-Watch.EU. (Accessed on 20 January 2014)

The voting behaviour of German MEPs was quite surprising (see Table 2). A majority of MEPs rejected the proposal. CDU/CSU and FDP voted cohesively against the compromise, although the German environment minister from the CDU was supporting it in public. In addition, the national climate and energy program, the “Energiewende”, set a national emissions target that could not be fulfilled without action on EU level. Only three CDU/CSU and two FDP MEPs were supportive for the “backloading” proposal.

The EP’s decision of July 2013 to allow a rescheduling of auctions in the EU ETS was an important signal for launching at least a small reform of the system. Although it took the Council until the German federal elections in September 2013 to form an opinion among member states, the EP’s early ‘yes’ was a necessary precondition. When the German parties started the coalition talks after the elections, one of the first agreements was to support the “backloading” proposal. Thus, on 16 December 2013 the Council formally agreed on the compromise with Poland being the only country voting against it.⁷⁷

The voting behaviour of German MEPs in the context of the “backloading” decision received some media attention at home and caused some irritation. It remained unclear why representatives of the same parties that agreed on the “Energiewende” targets would vote against steps towards implementing them at EU level. However, overall media attention towards this complex interaction of EU and member state level instruments remained limited and did not cause a long-lasting debate in the German public.

⁷⁷ European Union, Decision No 1359/2013/EU of the European Parliament and of the Council of 17 December 2013 amending Directive 2003/87/EC clarifying provisions on the timing of the auctions of greenhouse gas allowances, 19 December 2013.

The European Parliament and the Two Pack: Strengthening economic and fiscal policy surveillance and coordination

Daniela Schwarzer

As part of the governance reform of the euro area, two important legislative packages were adopted under the co-decision procedure⁷⁸, the so called ‘Six Pack’ on 16 November 2011 and the ‘Two Pack’ on 21 May 2013 (see Table 1). Both aimed at strengthening the surveillance of the economic and fiscal policies of euro area member states as part of the response to the sovereign debt crisis in the euro area. The Six Pack consists of six legislative acts which strengthen the surveillance and coordination of national budgetary policy by enhancing the preventive and corrective arm of the Stability and Growth Pact, tightening sanctions and setting formalized rules for debt reduction. In addition, the Macroeconomic Imbalance Procedure was introduced.

The EP votes looked at in this chapter establish the Parliament’s position on the Two Pack, which two years later complemented the important deepening of budgetary and economic policy coordination and supervision. It consists of two regulations, on which the EP had full co-decision power as they fell under the ordinary legislative procedure. The first regulation lays down tougher rules concerning the economic and budgetary surveillance of euro area member states experiencing or threatened with serious difficulties with respect to their financial stability. This applies especially to member states already receiving financial assistance from the European Financial Stability Facility (EFSF) or the European Stability Mechanism (ESM). Member states under enhanced surveillance face extended information duties towards the Commission, the ECB and the European Supervisory Authorities (ESAs) and are obliged to conduct stress tests under the supervision of the ECB and the relevant ESA(s) to evaluate the resilience of the banking sector to macroeconomic or financial shocks. Where regarded necessary in order to secure the stability of the euro area as a whole, a qualified

majority of the Council can recommend corrective policy measures or macroeconomic adjustment programmes to the respective member states. The second regulation of the Two Pack concerns the monitoring and assessment of national draft budgetary plans and the correction of excessive deficit of the member states in the euro area. It focuses on the establishment of common provisions for monitoring and assessing draft budgetary plans, so that all euro area member states have to send their draft national budgets to the Commission at the same time. It sets out rules to ensure that national budgets are consistent with the economic policy guidance issued in the context of the European semester for economic and budgetary policy surveillance. This includes the option for the Commission to comment on national draft budgets, but does not give the EU the competence to veto or change these budgets.

Table 1: The Six Pack and Two Pack legislation

Six Pack
<ul style="list-style-type: none"> • Council Regulation (EU) No 1177/2011 of 8 November 2011 amending Regulation (EC) No 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure • Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States • Regulation (EU) No 1173/2011 of the European Parliament and of the Council of 16 November 2011 on the effective enforcement of budgetary surveillance in the euro area • 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 • Regulation (EU) No 1175/2011 of the European Parliament and of the Council of 16 November 2011 amending Council Regulation (EC) No 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies

⁷⁸ Two of the six legislative acts of the Six Pack legally did not fall under co-decision and could be decided by the Council alone. The Parliament, however, successfully pushed for a package deal so that it was involved in the negotiations of all legislative acts of both Six and Two Pack.

<ul style="list-style-type: none"> • Regulation (EU) No 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macro-economic imbalances
Two Pack
<ul style="list-style-type: none"> • Regulation (EU) No 472/2013 of the European Parliament and of the Council of 21 May 2013 on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability • Regulation (EU) No 473/2013 of the European Parliament and of the Council of 21 May 2013 on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area

Source: Own compilation.

Background

The discussion about closer economic and budgetary policy coordination accelerated since a sovereign debt crisis hit Greece in early 2010 and spread to other euro area member states subsequently. From spring 2010 onwards, the debate on crisis management in the euro area became closely intertwined with the discussion on improved policy surveillance and coordination. While the focus was initially put on public debt and deficits, the debate broadened to economic policy coordination and the surveillance of imbalances in 2010 as the complex root causes of the debt crisis in countries like Spain, Ireland and Portugal became better and more broadly understood. In particular the German government pushed for stronger surveillance and policy coordination in exchange for its willingness to act as the largest lender and guarantor in the newly established rescue mechanisms, the temporary EFSF and the ESM. The Six and the Two Pack were part of a broader approach to reform the economic governance structures of the euro area. Parts of the Two Pack and the Six Pack served to strengthen the Stability and Growth Pact which had not delivered the fiscal discipline it was supposed to bring about. The Fiscal Compact, an intergovernmental treaty among euro area and non-

euro area member states further strengthened the framework for fiscal policy making of EU member states, notably by obliging member states to enshrine fiscal rules into their national constitutions. Rules on procedures and prescriptions for the substance for economic policy coordination, the second pillar of the Six and the Two Pack, had meanwhile largely been absent from the euro area governance framework. Economic policy coordination was sought to be brought about by means of the Open Method of Coordination (OMC) – which despite all declaration of intent neither brought about policy change at the national level, nor did it actually identify the macro-economic risks that had been building up in the euro area.

Controversies

The legislative processes related to both the Six and the Two Pack were accompanied by strong controversies as the question of designing budgetary and economic policy coordination mechanisms re-surfaced fundamentally different visions of what kind of policy surveillance and coordination was needed in a monetary union. Moreover, the coordination mechanisms are not neutral – they promote budgetary consolidation and supply-sided policies. Hence, the controversies were as much about policies as they were about coordination mechanisms. Three lines of conflict can be identified.

There was firstly a controversy about the question whether there should be a high degree of automatism – or rather more political discretion in the application of the rules in the Ecofin/Eurogroup. Secondly, there was a debate about the role of the Commission and to which degree it should have the possibility to intervene in domestic decisions and hence sovereignty. Thirdly, the substance of policy coordination is a matter of ongoing debate – with regards to economic policy coordination, this concerns for instance the question whether economic imbalances should be reduced by a symmetric adjustment involving both deficit and surplus countries, or by an asymmetric effort which would build mostly on the deficit countries' adjustment efforts. In this context, the question of social parameters was raised as well.

Table 2: Voting behaviour and party cohesion in the vote on draft Regulation (EU) No 472/2013

Party Group	For	Against	Abstentions	Cohesion
EPP	236	0	10	93,90%
S&D	162	5	3	92,94%
ALDE	70	3	1	91,89%
Greens/EFA	44	4	5	74,53%
ECR	6	3	43	74,04%
GUE-NGL	0	28	2	90,00%
EFD	5	21	5	51,61%
NI	5	17	2	56,25%
Total	528 (78%)	81 (12%)	71 (10%)	

Table 4: Voting behaviour and party cohesion in the vote on draft Regulation (EU) No 473/2013

Party Group	For	Against	Abstentions	Cohesion
EPP	238	1	7	95,12%
S&D	164	5	1	94,71%
ALDE	69	3	2	89,86%
Greens/EFA	44	4	3	79,41%
ECR	3	6	42	73,53%
GUE-NGL	0	29	1	95,00%
EFD	3	21	8	48,44%
NI	5	17	2	56,25%
Total	526 (78%)	86 (13%)	66 (10%)	

Voting behaviour

Both EP resolutions on the Commission's legislative proposal were supported by a centrist coalition of EPP, S&D, ALDE and Greens/EFA. In the debate, the EPP focussed strongly on the need for austerity and responsibility of governments. On several occasions, MEPs mentioned their reservations with regards to debt mutualisation. The S&D supported the reports with a very high cohesion rate (see Tables 2 and 4). Despite their general support for stronger economic and budgetary policy coordination, some S&D MEPs criticized the strategy as short sighted given the fact that the approach could actually reduce investment and did not take into account the root-causes of high public debt levels. S&D MEPs argued for a move towards debt mutualisation, a stronger social dimension and pointed towards problems of democratic legitimacy. The Greens/EFA likewise supported

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Table 3: Voting behaviour and party cohesion among German MEPs on draft Regulation (EU) No 472/2013

Party Group	For	Against	Abstentions	Cohesion
CDU (EPP)	31	0	2	90,91%
SPD (S&D)	20	0	0	100,00%
Bündnis 90/ Die Grünen (Greens/EFA)	11	0	0	100,00%
FDP (ALDE)	10	0	0	100,00%
DIE LINKE (GUE-NGL)	0	7	0	100,00%
CSU (EPP)	7	0	0	100,00%
Total	79	7	2	

Table 5: Voting behaviour and party cohesion among German MEPs on draft Regulation (EU) No 473/2013

Party Group	For	Against	Abstentions	Cohesion
CDU(EPP)	30	0	2	90,63%
SPD (S&D)	20	0	0	100,00%
Bündnis 90/ Die Grünen (Greens/EFA)	11	0	0	100,00%
FDP (ALDE)	10	0	0	100,00%
DIE LINKE (GUE-NGL)	0	7	0	100,00%
CSU (EPP)	6	0	1	78,57%
Total	77	7	3	

Source of all tables: Own compilation based on data provided by VoteWatch.EU. (Accessed on 20 January 2014)

debt mutualisation, argued for more transparency in the coordination process and a stronger involvement of the social partners. Finally, ALDE also argued for a debt redemption fund. In sum, all parliamentary supporters of the Two Pack except the EPP used the vote on closer coordination mechanism to push for another topic – the creation of a debt redemption fund or even a mutualisation of debt (see also the chapter on Eurobonds in this report, pp. 19).

The only opposition stemmed from the EFD and GUE-NGL groups and some independents, who argued the process was undemocratic and implemented wrong economic and budgetary policies, while most ECR Members abstained from the final votes.

The German parties show very high degrees of cohesion in both votes with 100% for all parties in favour except the CDU and CSU, which still score very high (see Tables 3 and 5). Only DIE LINKE voted against the two draft legislative resolutions – in line with

their party group which was likewise sceptical. The generally very strong support for the Two Pack resolutions shows that German MEPs strongly support the hardening of the rules-based policy coordination approach. In fact, both the Six Pack and the Two Pack strongly reflect German cross-party preferences (except for DIE LINKE) for tougher rules and sanctions and the possibility to take binding corrective action against a member state.

The Impact of the EP on the Two Pack and the debate in Germany

The German public debate on the Two Pack was not particularly developed – if the Two Pack was at all mentioned this was in the context of broader governance reform efforts such as the European semester, the Fiscal Compact and, of course, the Six Pack. The President of the EP, Martin Schulz, was the only MEP which was present in the media on this issue. He mainly criticized the focus on merely economic and too little social parameters.

The Parliament was able to impact the legislative process in several regards: First of all, it included the notion that in case of a strong cyclical downturn, a euro area member state should have more time for fiscal consolidation. Moreover, the EP has introduced wording to make sure that consolidation should not occur at the expense of investment. Furthermore, sufficient public funding should be supplied for schools and hospitals, even if a member government is asked to consolidate further. The EP also tried to enshrine the adoption of a debt redemption fund into the Two Pact. Although it did not succeed to do so, it achieved that the Commission has to explore possible options which might lead to further political debates on this highly contentious topic in the future. In particular in Germany, there are very strong reservations with regards to any kind of debt mutualisation.

A pragmatic deal: The European Parliament and the Single Supervisory Mechanism

Anne Lauenroth

The discussions about a common European banking supervisory system began in the aftermath of the global financial crisis and the following eurozone sovereign debt crisis. By 2011, the EU had therefore established the European System of Financial Supervision (ESFS) consisting of the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA). Due to member state reservation, however, their powers were mainly limited to coordination. As the debt crisis intensified (e.g. in Spain or Cyprus), the Euro Summit in June 2012 agreed to create a real Banking Union for the eurozone, including a direct European banking supervision carried out by the European Central Bank (ECB). The European Parliament was from the beginning a strong supporter of creating a central European supervisory authority and providing it with strong implementing powers, however, preferably at the EBA. Parliament's role and impact on the dossier was influenced by two major facts: *First*, though the EP needed to be only consulted as regards the granting of supervisory powers to the ECB, it used its co-legislating powers in the negotiations on the so-called Single Supervisory Mechanism (SSM) with regard to the reform of the EBA – insisting that the two dossiers be handled together – to successfully demand extensive accountability and transparency from the ECB in its role as banking supervisor towards the EP. *Second*, the EP was confronted with heavy and diverging opposition from the member states and therefore nevertheless needed to make some concessions. In consequence the EP was able to achieve some of its goals, though more in institutional than political terms.

Building the SSM under time pressure and political constraints

The involvement of the EP in the decisions on the SSM had two different legal bases: On the one hand Article 114 TFEU involved the EP via the ordinary legislative

procedure for the rules amending the EBA structure, on the other hand Article 127 TFEU foresaw only the consultation of the EP for the rules conferring supervisory tasks to the ECB. After the Euro Area Summit Statement of 29 June 2012 had described the provision of a SSM 'as a matter of urgency', the Commission issued its legislative proposals on the dossier on 12 September 2012.⁷⁹ They foresaw to establish the SSM legal framework over the course of 2013 so that the ECB could be completely operational from 2014. In view of this very tight deadline the two EP reports by German MEP Sven Giegold (Greens/EFA) and Belgian MEP Marianne Thyssen (EPP) were already voted in the EP Committee on Economic and Monetary Affairs (ECON) on 29 November 2012 and called for an inclusive SSM with strong democratic accountability.

In parallel, the member states formed a compromise at the 13 December Council (2012) around three main points: *First*, as regards the scope of supervision, the ECB shall be responsible to supervise banks that are defined as “significant”⁸⁰ while all other “less significant” banks be supervised by national authorities – albeit the ECB retains final supervisory authority⁸¹; *second*, in order to meet concerns of non-eurozone members⁸², in the EBA a system of double-majority voting shall be installed⁸³ and several

⁷⁹ COM/2012/0511 final, COM/2012/0512 final, COM/2012/0510 final.

⁸⁰ A bank is deemed “significant” when it meets one of the following five conditions: 1) The value of its assets exceeds € 30 billion. 2) The value of its assets exceeds both € 5 billion and 20% of the Gross Domestic Product of the member state in which it is located. 3) The bank is among the three most significant banks of the country in which it is located. 4) The bank has large cross-border activities. 5) The bank receives assistance from a eurozone bailout fund.

⁸¹ I.e. the ECB can decide at any time to also supervise a specific „less significant“ bank directly. In the end the day-to-day division of labour between the ECB and national supervisory authorities is decisive.

⁸² See also Zsolt Darvas and Guntram B. Wolff, “Should non-euro area countries join the single supervisory mechanism?”, In: *Bruegel Policy Contribution Issue 6*, March 2013.

⁸³ The double majority rule implies that a decision needs to be approved by both a majority of SSM-countries and a

safeguards for non-eurozone countries that want to participate in the SSM via the 'close cooperation agreement' with the ECB were granted⁸⁴; and *third* the ECB shall provide for a clear separation between its monetary and supervisory tasks.⁸⁵ A trilogue agreement between the Council Presidency, the Commission and the EP that was reached on 19 March 2013, complemented the deal with some institutional aims of the EP: a greater say for the EP in the appointment (and impeachment) of the Supervisory Board's chair and vice-chair and a reinforced EBA (with regard to stress testing and data collection and in its relations to the ECB which was bound to a future single banking supervisory handbook and EBA's mediation structures). With regard to the ECB's supervisory tasks the EP demanded clear and extensive accountability and transparency rights from the ECB. Since negotiations between the EP and the ECB on an interinstitutional agreement that was supposed to operationalise these demands were not finished, Parliament's vote on the SSM dossier scheduled for 22 May 2013 was postponed. With an agreement reached on 11 September 2013⁸⁶, the EP gave its green light to the SSM legislation on 12 September 2013.

majority of non-SSM countries.

⁸⁴ Non-eurozone countries that want to participate in the SSM will have a seat in the ECB's new Supervisory Board that drafts the decisions for the ECB Governing Council. Though not being able to vote in the latter it is very unlikely that the Governing Council vetoes a draft of the Supervisory Board. Even if so, non-eurozone countries participating in the SSM can ask the Supervisory Board to make another draft, to appeal to the Mediation Panel, opt-out of a decision of the Governing Council or even exit from the SSM altogether after a period of three years.

⁸⁵ This aspect was a major concern for Germany since the German system, in contrast to most eurozone countries, splits monetary policy and banking supervision between the Bundesbank and the BAFIN. While German Finance Minister Schäuble wanted to install a „Chinese wall“ between the two branches the legal basis for the SSM constrained the negotiators so that the ECB Governing Council now decides both on monetary policy as well as decisions on supervision. On the other hand there are many safeguards installed such as separate staff and decision-making arrangements. Some also argue that the German fear is exaggerated and demand coordination instead of separation – albeit with clear communication - in view of cross-cutting issues. Cf. Stijn Verhelst, "Assessing the Single Supervisory Mechanism: Passing the Point of No Return for Europe's Banking Union", *Egmont Paper* 58, June 2013.

⁸⁶ The IIA increases the EP's oversight powers over the ECB, as MEPs will have more access to information, will be entitled to hold hearings with representatives of the Supervisory Board and will have to approve the head of the SSM.

Large majority in favour of SSM deal

The atmosphere in the EP around the SSM dossier was characterised by a strong will to work together. The conflict lines were not between the different main political groups in the EP (except for parts of GUE/NGL) but between the EP and the member states in the Council. The decision of the Heads of State and Government of the eurozone to confer the supervision of banks to the ECB (and not the EBA) and therefore the Commission basing the corresponding legislation on Article 127 TFEU, i.e. outside the community method, built a strong cross-party institutional opposition in the EP that was, however, willing to negotiate. MEPs of all main political groups (except parts of ECR) argued for more integration in the field of transborder banking activities not only as regards supervision but also resolution and deposit protection. The compromise reached reflected for most MEPs of EPP, S&D, ALDE and the Greens/EFA what was possible at that time and was seen better than the status quo – though most criticised the risk of fragmentation in the EU's internal market. For the ECR group on the other hand, especially its UK members, the deal with the protective measures for non-eurozone countries in the EBA was a "template for exactly how a renegotiated European Union could work".⁸⁷ Thus, a broad majority of MEPs voted in favour of the compromise, though with different reasoning. The only group that could not live with the compromise was the GUE/NGL. For them the decision to grant the supervision to the ECB instead of the EBA was not supportable.

When the MEPs finally voted on the two reports of Giegold and Thyssen on 12 September 2013 a large majority was formed by the EPP, S&D, ALDE, the Greens/EFA and ECR. For the Giegold report on "European Banking Authority and prudential supervision of credit institutions" 556 MEPs voted in favour, 54 against and 28 abstained (see Table 1). For the Thyssen report on "Specific tasks for the European Central Bank concerning policies relating to the prudential supervision of credit institutions" 559 MEPs voted in favour, 62 against and 18 abstained (see Table 3).

⁸⁷ British MEP Kay Swinburne (ECR) in EP plenary debate on the SSM in Strasbourg on 21 May 2013, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20130521+ITEM-010+DOC+XML+V0//EN&language=EN#top> (last access on 28 February 2014).

Table 1: Voting behaviour and party cohesion in the vote on the Giegold report

Party Group	For	Against	Abstentions	Cohesion
EPP	220	0	0	100,00%
S&D	173	0	0	100,00%
ALDE	69	1	1	95,77%
Greens/EFA	51	0	1	97,12%
ECR	25	13	4	39,29%
GUE-NGL	0	14	16	30,00%
EFD	10	14	1	34,00%
NI	8	12	5	22,00%
Total	556 (87%)	54 (8%)	28 (4%)	

Table 3: Voting behaviour and party cohesion in the vote on the Thyssen report

Party Group	For	Against	Abstentions	Cohesion
EPP	221	0	2	98,65%
S&D	173	0	0	100,00%
ALDE	69	1	0	97,86%
Greens/EFA	51	0	1	97,12%
ECR	27	10	4	48,78%
GUE-NGL	0	26	4	80,00%
EFD	10	12	3	22,00%
NI	8	13	4	28,00%
Total	559 (87%)	62 (10%)	18 (3%)	

In both cases the major political groups had a cohesion rate of 100 % or only slightly less. In contrast, the groups of ECR, GUE/NGL, EFD and the non-attached members especially in the vote on the Giegold report had poorer cohesion rates of 40% and lower with the most prominent rebels being the French and Greek delegation in GUE/NGL (voting against while the majority abstained), the Czech and Polish delegations in ECR as well as the Polish delegation in EFD. The votes of the Thyssen report were rather similar, only the GUE/NGL group changed its majority line from abstention to rejection. Also, some of the Czech and Polish ECR members that had voted against now voted in favour, abstained or were absent.

Whereas the German political groups in the EP all scored a 100 per cent cohesion rate in the Giegold vote

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Table 2: Voting behaviour and party cohesion among German MEPs in the vote on the Giegold report

Party Group	For	Against	Abstentions	Cohesion
CDU (EPP)	29	0	0	100,00%
SPD (S&D)	22	0	0	100,00%
Bündnis 90/ Die Grünen (Greens/EFA)	14	0	0	100,00%
FDP /ALDE)	8	0	0	100,00%
DIE LINKE (GUE-NGL)	0	0	7	100,00%
CSU (EPP)	6	0	0	100,00%
Total	79	0	7	

Table 4: Voting behaviour and party cohesion among German MEPs in the vote on the Thyssen report

Party Group	For	Against	Abstentions	Cohesion
CDU (EPP)	29	0	2	90,32%
SPD (S&D)	22	0	0	100,00%
Bündnis 90/ Die Grünen (Greens/EFA)	14	0	0	100,00%
FDP /ALDE)	8	0	0	100,00%
DIE LINKE (GUE-NGL)	0	3	4	35,71%
CSU (EPP)	6	0	0	100,00%
Total	79	3	6	

Source of all tables: Own compilation based on data provided by VoteWatch.EU. (Accessed on 20 January 2014)

(DIE LINKE abstaining while all others voted in favour), the picture changed a bit in the Thyssen vote. Two MEPs of CDU abstained and DIE LINKE only achieved a cohesion rate of 35.71% since four MEPs voted against the party line and abstained. One can relate from earlier statements that the two conservative MEPs were not completely satisfied with the compromise achieved⁸⁸ while the four members of DIE LINKE simply maintained their abstention position

⁸⁸ MEP Werner Langen (CDU) criticised - along the lines of the Bundesbank - the transfer of supervisory competences to the ECB as not only legally questionable in highlighting the ECB's lack of experience in banking supervision. Cf. press statement of 29.11.2012, available at: <http://www.werner-langen.de/presse/pressemitteilungen/single/article/statement-zu-ep-wirtschaftsausschuss-und-bankenaufsichtzb-29112012.html> (last access on 28 February 2014).

when their political group decided to change the majority line to rejection. Overall, the German votes reflected the domestic voting patterns in the Bundestag vote on 13 June 2013 approving the SSM-legislation. The German consent in the Council to the SSM-legislation, which transfers central tasks from the national to the EU level, required such approval in the shape of a national law.

Mixed results: Impact of the EP on the SSM and German debate

The impact of the EP on the compromise deal on the SSM was twofold: On the one hand, the EP had to make concessions to the member states in the Council mainly on governance issues, which in the view of the majority of MEPs risks to further fragment the EU's internal market and governance system. On the other hand the EP gained a say in the appointment (and impeachment) of the ECB supervisory board's chair and vice-chair, and a strengthening of the EBA. As regards the scope of the ECB's mandate, a majority both in the Council and the EP disagreed on the ambitious Commission proposal to supervise all eurozone banks, instead limiting it to those defined as "significant". They were keen to oblige the EBA and the ECB to respect different types and sizes of credit institutions. This was an important point for Germans MEPs from all main parties with regard to the specific German banking sector of small and medium-size cooperative and savings banks (*Sparkassen*). The EP furthermore successfully pushed for its own and the national parliaments' rights towards the ECB. While the latter have a right to question the ECB, the EP linked its final vote to the successful conclusion of an interinstitutional agreement with the ECB. Thus, whereas the EP was quick to negotiate its position vis-à-vis the Council it postponed its final vote in order to demand accountability and transparency from the ECB.

In the public debates it was especially this growing assertiveness of the EP that gathered most attention, in particular as in the end it was met by the ECB with concessions that grant the EP strong control mechanisms, beyond what national parliaments usually have.⁸⁹ The EP successfully used its co-decision powers

⁸⁹ Cf. German MEP Sven Giegold (Greens/EFA) in a statement of 10 September 2013, available at: <http://www.sven-giegold.de/2013/einigung-mit-der-ezb/> (last access on 28

of the legislative part of the dossier to demand more overall institutional competences. Also, the EP thereby had the chance to leave behind the supporting role that it played in the mainly intergovernmental rescue measures handled by European governments. In contrast, the demands of the EP are criticised as slightly too excessive in the sense that it remained questionable if MEPs need to know the details of sensitive banking data to effectively control the ECB's supervisory tasks.⁹⁰ If so, a mechanism of how to deal with such highly confidential information needs to be found.⁹¹

Apart from that there was not much debate about the EP in the national press which instead focused more on concerns of national MPs and the German Central Bank: Whereas Bundesbank Head Jens Weidmann criticised the SSM model as principally false in transferring supervisory tasks to a central bank that should only be responsible for price stability⁹², Member of the German Bundestag Carsten Schneider (SPD) warned that the German Parliament thereby lost its indirect control of banking supervision.⁹³ In the end, however, these concerns did not represent the majority opinion that deemed the compromise around the SSM if not ideal still necessary and the German Bundestag on 13 June 2013 with the votes of all parties except of DIE LINKE approved the SSM.⁹⁴

February 2014).

⁹⁰ Cf. „Grenzen der Kontrolle“, in: *Die Welt*, 7.09.2013.

⁹¹ The interinstitutional agreement between the ECB and the EP reads that the EP “shall implement safeguards and measures corresponding to the level of sensitivity of the ECB information or ECB documents”, available at: <http://www.europarl.europa.eu/document/activities/cont/201311/20131107ATT74064/20131107ATT74064EN.pdf> (last access on 28 February 2014).

⁹² Cf. „Weidmann macht Front gegen Bankenaufsicht unter Dach der EZB“, in: *Frankfurter Allgemeine Zeitung*, 27.09.2012.

⁹³ Cf. „Bundestag verliert Einfluss bei Banken-Kontrolle“, in: *Süddeutsche Zeitung*, 7.03.2013.

⁹⁴ The SPD approved the deal though they formulated concerns about the separation of monetary and supervisory tasks in the ECB and therefore for the future want an independent supervisory authority. The Greens, while also approving the deal, highlighted that the government had lost three years since it did not push for the EBA to have decisive supervisory competences and demanded more efforts on a banking resolution scheme. Cf. „Bundestag stimmt für Übertragung der Bankenaufsicht“, available at: http://www.bundestag.de/dokumente/textarchiv/2013/45282147_kw24_de_aufsicht_kreditinstitute/index.html (last access on 28 February 2014).

The European Parliament and the EEAS: Institutional leverage via a package deal

Nicolai von Ondarza

The European External Action Service (EEAS) is one of the main institutional innovations of the Lisbon Treaty that had to be implemented during the current legislature of the European Parliament. Although the EU's Common Foreign and Security Policy (CFSP) is a mainly intergovernmental policy area, the EP played a decisive role in putting the EEAS into place. Two developments were of particular importance – on the one hand, the Parliament's negotiating team was able to turn a consultation into full co-decision via a package deal. Here, German MEPs played an important role. On the other hand, the debates within the EP showed that consensus within party groups both on the national and the European level were at its highest when discussing institutional issues.

The 'quadrilogue' negotiation of the EEAS decision

The framework for the creation of the EEAS was a special procedure laid down in Article 27 (3) of the revised TEU. With the aim of supporting the new double-hatted office of the High Representative for Foreign and Security Affairs/Vice-President of the Commission (HR/VP), the EEAS was aimed to be an interlocutor between the units of the General Secretariat of the Council dealing with CFSP and the Common Security and Defence Policy (CSDP), the Directorate General (DG) for External Relations of the Commission plus delegated personnel from the member states. Other than that, the Treaty was quite vague on the exact tasks and structure of the EEAS. With this very open definition, from the onset the creation of the EEAS was characterised by institutional turf wars between the major players of EU Foreign Policy.⁹⁵

Thus, when the Lisbon Treaty entered into force in December 2009, the new HR/VP Catherine Ashton had

⁹⁵ Zuzana Murdoch, „Negotiating the European External Action Service (EEAS): Analyzing the External Effects of Internal (Dis)Agreement“, in: *Journal of Common Market Studies*, 50 (2012) 6, pp. 1011-1027.

to build up the EEAS from scratch. The procedure assigned the right of initiative to the HR/VP, while the final decision on the EEAS required assent by the European Commission, an unanimous decision by the Council of Ministers but only consultation of the Parliament (Art. 27 (3) TEU). This could have meant that the negotiating team of the HR/VP could have easily ignored the Parliament's stance on the EEAS. In practice, however, the EP was able to use an effective leverage: As the setup of the EEAS also required changes in the EU's budgetary provision and its staff regulation, both of which are decided in the co-decision procedure, the EP was able to force the other institutional actors into a package deal. In practice, it therefore gained full participation in the decision-making on the EEAS.⁹⁶

The negotiations on the EEAS were thus conducted in the so called 'quadrilogue', i.e. negotiations of the four major institutional parties, the HR/VP, the Commission, the member states represented by the Council presidency, and finally the EP represented by the rapporteurs. These were Guy Verhofstadt (ALDE), German MEP Elmar Brok (EPP), and Roberto Gualtiere (S&D). Additionally, among the shadow rapporteurs of the other parliamentary groups, the German Green MEP Franziska Brantner also played a particularly active role in the EP's participation in the quadrilogue.⁹⁷

As the HR/VP needed to establish the EEAS as quickly as possible, the negotiations within the quadrilogue took place under clear time pressure within the first half of 2010. Based on preparatory work, started as early as 2005 during the ratification of the Constitutional Treaty, HR/VP Ashton presented her draft for the institutional setup of the EEAS on 25 March 2010.⁹⁸ During the following negotiations, the

⁹⁶ Kolja Raube, „The European External Action Service and the European Parliament“, in: *The Hague Journal of Diplomacy*, 7 (2012), pp. 65-80.

⁹⁷ Almut Möller/Julian Rappold, *Deutschland und der Europäische Auswärtige Dienst. Perspektiven einer Europäisierung der Außenpolitik*. DGAPanalyse September 2012.

⁹⁸ Julia Lieb/Martin Kremer, „Der Aufbau des Europäischen

Parliament laid down its positions in a working document⁹⁹ and finalised its stance on the negotiations in its resolution on the EEAS on 6 July 2010.¹⁰⁰ Shortly after, on 26 July 2010, the Council adopted the decision after agreement was reached in the quadrilogue, but with substantial changes and additions.¹⁰¹

The Parliament's aims for the EEAS

In order to assess the EP's role in the negotiations on the EEAS, it is important to highlight that the main conflict lines over its establishment were not within the EP but rather between the Parliament and the other institutional actors. In general, the decision on the setup of the EEAS was seen by all EU actors as a way to lay down the institutional balance of power over EU foreign policy. In consequence, on the one hand the Commission aimed to retain as much of its tasks in external relations in-house, for instance by reorganising the European Neighbourhood Policy (ENP) away from its DG External Relations shortly before the EEAS negotiations started. On the other hand, the member states in the Council both aimed to keep full control of the intergovernmental CFSP/CSDP and also bargained between themselves on the most important leadership jobs within the EEAS.¹⁰²

Likewise, the negotiators of the European Parliament also worked for three largely institutional aims with the EEAS, all connected to increasing the Parliament's role in EU external relations. The first issue concerns the political accountability of the EEAS – and of the HR/VP – to the EP. Here, the MEPs called for access to confidential EEAS documents and to have a regular dialogue with the HR/VP or, crucially, designated deputies.¹⁰³ Closely linked to the question

of political accountability was the second major issue for the EP, its scrutiny powers over the EEAS budget. The original draft of the HR/VP proposed that the EEAS should be included in the general budget of the EU without its own budget line, which would have kept the EP from having a direct and explicit control via the discharge procedure.¹⁰⁴ In consequence, the parliamentarians called for more direct budgetary controls, preferably by including the EEAS budget into the Commission's budget.

The third major concern of the Parliament was the questions of staffing in the EEAS. This had two dimensions: On the one hand, the Treaty only laid down that the EEAS was to be composed of personnel from the Commission, the General Secretariat of the Council and the member states (Art. 27 (3) TEU). In order to protect the interests of the supranational institutions, the EP here pushed for recruiting a third of the staff equally from each group and ensure that the leading posts also go to former Commission officials. Furthermore, the Parliament called for measures like common training to create an 'esprit d'corps' within the EEAS. On the other hand, and more controversial within the EP, the Parliament stressed the need for adhering not only to merit, but also to a geographical and gender balance when staffing the EEAS.¹⁰⁵

Strong support for institutional self-interests in the European Parliament

All major political groups supported the creation of the EEAS in general and these institutional aims of the EP, so that the only opposition stemmed from those MEPs who are principally opposed to the current regime of EU external relations either out of Eurosceptic motives (e.g. parts of the ECR) or due to concerns regarding the military tools of CSDP (GUE-NGL). Following the compromise within the quadrilogue which took on most of Parliament's demands (see below), the resolution concluding the consultation on the EEAS gained a clear support of 549 MEPs (85 %) on 8 July 2010, with only 78 no-votes and 17 abstentions.

Auswärtigen Dienstes: Stand und Perspektiven“, in: *integration*, 3/2010, pp. 195-208.

⁹⁹ Elmar Brok/Guy Verhofstadt, *Proposal for the establishment of the EEAS*, Updated version 20.4.2010, Brussels: European Parliament.

¹⁰⁰ European Parliament, *Report on the proposal for a Council Decision establishing the organisation and functioning of the European External Action Service*, A07-0228/2010, 6.7.2010, Brussels: European Parliament.

¹⁰¹ Elisabeth Wisniewski, “The Influence of the European Parliament on the European External Action Service”, in: *European Foreign Affairs Review*, 18 (2013) 1, pp. 81-102.

¹⁰² Leendert Erkelens/Steven Blockmans, *Setting up the European External Action Service: An institutional act of balance*, CLEER Working Papers, 1/2012.

¹⁰³ European Parliament, *Report on the proposal for a Council*

Decision establishing the organisation and functioning of the European External Action Service [as Fn. 100].

¹⁰⁴ Art. 7 of the Draft Council Decision Establishing the European External Action Service, 25.3.2010.

¹⁰⁵ European Parliament, *Report on the proposal for a Council Decision establishing the organisation and functioning of the European External Action Service [as Fn. 100].*

Looking at the general voting behaviour in the EP (see Table 1), there is therefore a clear winning coalition of the five largest political groups – the EPP, S&D, ALDE, the Greens/EFA and, uncharacteristically, also parts of the ECR. Except the latter, all of the groups also had an extraordinarily high party cohesion of above 90 per cent.

Table 1: Voting behaviour and party cohesion in the vote on the EEAS resolution

Party Group	For	Against	Abstentions	Cohesion
EPP	228	6	0	96,15%
S&D	166	1	0	99,10%
ALDE	74	0	0	100,00%
Greens/EFA	45	1	1	93,62%
ECR	29	7	8	48,86%
GUE-NGL	0	30	2	90,63%
EFD	2	18	2	72,73%
NI	5	15	4	43,75%
Total	549 (85%)	78 (12%)	17 (3%)	

Table 2: Voting behaviour and party cohesion among German MEPs

Party Group	For	Against	Abstentions	Cohesion
CDU (EPP)	26	5	0	75,81%
SPD (S&D)	21	0	0	100,00%
Bündnis 90/ Die Grünen (Greens/EFA)	11	0	0	100,00%
FDP (ALDE)	10	0	0	100,00%
DIE LINKE (GUE-NGL)	0	8	0	100,00%
CSU (EPP)	7	0	0	100,00%
Total	75	13	0	

Source: Own compilation based on data provided by Vote-Watch.EU. (Accessed on 20 January 2014)

Looking at the German MEPs, a similar voting pattern emerges (see Table 2). All of the German party delegations voted with their political groups, i.e. in support of the EEAS decisions in case of the CDU/CSU, SPD, Bündnis 90/Die Grünen and the FDP, with only DIE LINKE voting against the resolution along with its GUE/NGL group. Among the German MEPs, party cohesion was even higher than overall in the EP, with all but one delegation reaching a 100 per cent party coherence. The notable exception was the CDU group,

which even accounted for 5 of the 6 rebels within the EPP.¹⁰⁶ Their reasoning for voting against the resolution was not, however, motivated by a principal rejection of the EEAS compromise, but rather a protest vote against the decision not to vote on the EEAS decision and the staff regulation as well as budgetary changes *en block*.¹⁰⁷ Overall, there is therefore a clear pattern of German MEPs voting along the lines of their political groups.

The EP's impact on the EEAS decision

When the Council of the EU approved the EEAS decision on 26 July 2010, it was considerably revised in comparison to the original proposal by the HR/VP.¹⁰⁸ Among these changes, most of the demands of the Parliament were met. First, regarding the question of accountability, the EEAS resolution in Parliament was accompanied by a 'Declaration by the High Representative on political accountability'. In this, the HR/VP for instance confirmed specific rights of MEPs to access confidential data and committed to regular and full consultation of the EP in all matters of external relations. She also committed to designating deputies for the EP on a case by case basis and responding positively to requests for hearings of newly appointed heads of missions. This, however, fell short of the demands for a permanent political deputy and full EP scrutiny for heads of missions before their appointments. On the second issue, the EP equally prevailed as the EEAS got its own institutional budget rather than being subsumed under the general budget of the EU, which means that the EP has full control of the budget. Finally, in terms of staffing, the EEAS decision also both included a clear reference to the need for geographical and gender balance (Art. 6 (6) EEAS-Decision) as well as the aim that when staffing is complete, permanent officials of the Union (that is, non-member states personnel) should represent at least 60 per cent of the management level (Art. 6 (9) EEAS-Decision).

In conclusion, although the Parliament did not achieve its aim on all levels, for a legally mere consultation it is fair to assess that the EP carried

¹⁰⁶ Own research based on data provided by VoteWatch.EU.

¹⁰⁷ Ingrid Gräße, *Europäischer Auswärtiger Dienst erfordert ein ordentliches Parlamentsverfahren*, Pressemitteilung, 22.6.2010.

¹⁰⁸ Elisabeth Wisniewski, "The Influence of the European Parliament on the European External Action Service", in: *European Foreign Affairs Review*, 18 (2013) 1, pp. 81-102.

considerable influence on the EEAS and was able to significantly increase its role in EU foreign affairs. This influential role in the negotiations can also be attributed to the grand coalition within the Parliament. The impact of the German MEPs, however, is harder to assess. Individually, MEP Elmar Brok played a substantial role as rapporteur and one of three of the parliament's negotiators within the quadrilogue. On a political group level, German MEPs clearly supported the institutional aims of the EP negotiating team, with only a handful of rebels within the CDU party. The only major complaint by the German government regarding the EEAS setup, the decision not to include German as a third official language, was not pushed for as a priority by German MEPs.

This effective negotiation did to a limited extent also transfer into the German political debate on the EEAS. The main negotiations on behalf of the German government were carried out by the Foreign Ministry. The Bundestag did not get heavily involved in the German EEAS debate despite its increased participation rights in European Affairs. There were, however, limited exchanges between German MEPs and their respective political groups in the Bundestag. This contributed to a resolution passed by the Bundestag in June 2010 in support of a strong EEAS, which largely mirrored the demands of the EP for a strong parliamentary control by the European Parliament.¹⁰⁹ Finally, although the creation of the EEAS was not a high politics issue in the German media, most of the articles in the quality press did highlight the strong role the Parliament played in the negotiation of the EEAS and its new found powers of scrutiny of EU foreign affairs.

¹⁰⁹ Deutscher Bundestag, „Einen effizienten und schlagkräftigen Europäischen Auswärtigen Dienst schaffen“, Beschluss vom 10.6.2010 (Antrag von CDU/CSU und FDP - Drucksache 17/1981 vom 9.6.2010).

Forever postponing reform: The European Parliament and the own resources system

Peter Becker

The European Parliament has called for a comprehensive reform of the European system of own resources for more than twenty years. It aims at a more transparent, simple and equitable system of own resources that provides appropriate resources and more autonomy from the member states. Therefore the EP welcomed the Commission's proposals of 2011 to introduce a real European own resource by using the revenues of a European FTT and a European VAT for the budget.¹¹⁰

Already in March 2007 the EP had adopted a resolution, written by Alain Lamassoure, the chairman of the Parliament's Budget Committee, on the future of the European Union's own resources by a large majority.¹¹¹ This report proposed a two-stage reform, with the first step being to abolish all exceptions and rebates by 2013 and to fund the EU budget through a uniform percentage of the gross national income of each member state. The second stage, starting in 2014, should introduce a system of genuine own resources. The EP resolution of March 2009 on the mid-term review of the Multiannual Financial Framework (MFF) 2007-2013 confirmed the Parliament's position to reform the European system of own resources in 2016/17 at the latest.¹¹²

Fighting for reform – in theory

It is thus little surprising that at the beginning of the negotiations on the MFF 2014-2020 the EP again underlined its long standing demand for reform. In a

¹¹⁰ European Commission, *Proposal for a Council Regulation on the methods and procedure for making available the own resource based on the financial transaction tax*, COM(2011)738 ; European Commission, *Proposal for a Council Regulation on the methods and procedure for making available the own resource based on the value added tax*, COM(2011)737.

¹¹¹ European Parliament resolution of 29 March 2007 on the future of the European Union's own resources, P6_TA-Prov(2007)0098.

¹¹² European Parliament resolution of 25 March 2009 on the Mid-Term Review of the 2007-2013 Financial Framework, P6_TA(2009)0174.

resolution on the MFF of 8 June 2011 it argued “for an ending of existing rebates, exceptions and correction mechanisms; is convinced that the introduction of one or several genuine own resources for the Union, in order to replace the GNI-based system, is indispensable if the Union is ever to get the budget it needs to significantly contribute to financial stability and economic recovery; recalls that any change on own resources should be implemented in compliance with fiscal sovereignty of Member States; insists, in this context, that the Union should be able to collect directly its own resources independently from the national budgets”.¹¹³ This resolution had been adopted with a broad majority of 468 MEPs (71%) from the four largest parliamentary groups EPP, S&D, ALDE and the Greens/EFA.

According to Article 311 TFEU the Council decides by unanimity the system of European own resources and this decision has to be ratified by their national parliaments. The European Parliament will merely be consulted by the Council, which means that the EP's influence in the legislative process is rather limited. However, the option to reform the European system of own resources is inextricably linked to the negotiations on the MFF and the European spending policies. The Parliament has to agree to the legislation on the MFF and the spending policies (Art. 312 TFEU). Hence, the EP could, in theory, use this veto right on the MFF and the spending policies to negotiate a compromise with the member states on the system of own resources as well.

In practice – postponing reform yet again

In practice, however, the Parliament was not able to achieve the consent from the Council to fundamentally reform the system of own resources in the negotiations on the MFF 2014-2020. While the final compromise on the MFF accommodates a number of

¹¹³ European Parliament resolution of 8 June 2011 on Investing in the future: a new Multiannual Financial Framework for a competitive, sustainable and inclusive Europe, P7_TA(2011)0266, No. 167.

Parliament's demands, the reform of the own resources system is not one of them (for more details see the chapters on the MFF and the FITT in this report, pp. 29 and 22). The majority of the member states, including Germany, were opposed to any proposal that would provide the EU with more budgetary autonomy through a European tax. Only eleven member states supported the Commission's proposal to introduce such a tax during the MFF negotiations.¹¹⁴

In its resolution accepting the political agreement on the MFF 2014-2020, reached on 27 June 2013 between the presidents of the Parliament, the Council and the Commission, the Parliament regretted "the fact that the Council has not been able to make any progress on the reform of the own-resources system on the basis of the legislative proposals put forward by the Commission".¹¹⁵ The only concession the EP could achieve in the trilogue negotiations between the EP, the Council and the Commission had been a joint declaration attached to the MFF legislation. The three institutions agreed to establish a high-level group to further discuss options for reform of the system of own resources. The representatives of the EP in this group chaired by Mario Monti are Alain Lamassoure (EPP), Ivailo Kalfin (S&D) and Guy Verhofstadt (ALDE).

The idea to set up a group of experts discussing options to reform the system of own resources, however, is not a new idea and the mandate of this group is not really specific. The group shall study the current system and suggest possible improvements. A first assessment shall be presented at the end of 2014. In addition, national parliaments will be invited to an inter-parliamentary conference in 2016. The conclusions of the group will certainly influence the Commission's report for the midterm review of the MFF. The member states in the Council, however, will be free to follow or to ignore the group's recommendations.

The compromise package on the MFF 2014-2020 was passed by the Parliament on 3 July 2013 with a large majority of 67% (see Table 1). The conflict over a reform of the system of own resources and a European tax, which was temporarily solved or postponed with the establishment of the high-level group, had been only one element of this compromise. Despite being a

long standing demand of the Parliament, the political costs of turning down a compromise with member states on the MFF in order to push through a reform of the system of own resources, were considered too high by the winning coalition of EPP, S&D and ALDE. However, for the Greens/EFA, which voted against the compromise, the deadlock on the question of own resources was one of the main reasons for their rejection.¹¹⁶

This analysis can be confirmed when looking at the EP's vote on the future of the EU's own resources system in the larger framework of a discussion about the guidelines for the preparation of the 2014 budget. Here, a broad cross-party majority of 531 (78%) MEPs including the Greens/EFA again called for genuine reform and an EU tax (see Table 3).

Table 1: Voting behaviour and party cohesion in the vote on the MFF trilogue compromise, 3 July 2013

Party Group	For	Against	Abstentions	Cohesion
EPP	242	2	14	90,70%
S&D	146	19	12	73,73%
ALDE	59	5	12	66,45%
Greens/EFA	2	52	1	91,82%
ECR	11	37	2	61,00%
GUE-NGL	0	34	0	100,00%
EFD	7	22	1	60,00%
NI	7	22	0	63,79%
Total	474 (67%)	193 (27%)	42 (6%)	

Table 2: Voting behaviour and party cohesion among German MEPs

Party Group	For	Against	Abstentions	Cohesion
CDU (EPP)	31	1	1	90,91%
SPD (S&D)	21	0	0	100,00%
Bündnis 90/ Die Grünen (Greens/EFA)	0	13	0	100,00%
FDP (ALDE)	10	0	0	100,00%
DIE LINKE (GUE-NGL)	0	8	0	100,00%
CSU (EPP)	8	0	0	100,00%
Total	70	22	1	

¹¹⁴ AT, BE, EE, FI, FR, GR, HU, IT, LU, PL, PT, and RO.

¹¹⁵ European Parliament resolution of 3 July 2013 on the political agreement on the Multiannual Financial Framework 2014-2020, P7_TA(2013)0304.

¹¹⁶ Press statement by Greens/EFA, *Multiannual Financial Framework 2014-2020 – Greens vote against incoherent and backward-looking compromise*, available at: <http://www.greens-efa.eu/multiannual-financial-framework-2014-2020-10240.html> (Accessed on 15 April 2014).

Table 3: Voting behaviour and party cohesion in the vote on the general guidelines for the preparation of the 2014 budget, Section III – 13 March 2013

Party Group	For	Against	Abstentions	Cohesion
EPP	233	13	0	92,07%
S&D	151	18	0	84,02%
ALDE	69	2	7	82,69%
Greens/EFA	49	1	5	83,64%
ECR	0	50	0	100,00%
GUE-NGL	14	10	4	25,00%
EFD	8	20	4	43,75%
NI	7	15	1	47,83%
Total	531 (78%)	129 (19%)	21 (3%)	

Table 4: Voting behaviour and party cohesion among German MEPs

Party Group	For	Against	Abstentions	Cohesion
CDU (EPP)	30	1	0	95,16%
SPD (S&D)	21	0	0	100,00%
Bündnis 90/ Die Grünen (Greens/EFA)	12	0	0	100,00%
FDP (ALDE)	10	0	1	86,36%
DIE LINKE (GUE-NGL)	5	0	2	57,14%
CSU (EPP)	6	0	0	100,00%
Total	84	1	3	

Source of all tables: Own compilation based on data provided by VoteWatch.EU. (Accessed on 20 January 2014)

Broad support among German MEPs

The voting behaviour of the German delegations in the EP showed a high degree of loyalty with the line of their political group in the EP. For the Christian Democrats (CDU/CSU), Liberals (FDP) and the Social Democrats (SPD) in the EP this, however, meant voting against the line of their national parties. The debate in Germany on the MFF negotiations and the demand to introduce genuine own resources showed a majority against any additional European tax. The coalition of CDU/CSU and FDP ruling at that time had already strongly opposed this idea in their coalition treaty. The SPD had been undecided with some politicians backing this proposal and especially the members of the budget committee opposing it. It formulated: “An

EU tax in the sense of the EU's own tax collection competence are subject to regulatory and political hurdles, so at the time being this is no option as a source of financing”.¹¹⁷ Only the Greens (Bündnis 90/Die Grünen) were in favour of the idea to introduce genuine own resources.¹¹⁸

A side conflict gathering little media attention

In the media, the issue of own resources received some attention. It was, however, perceived more like a side conflict within the overall negotiations on the MFF and gathered little interest in the German public discourse. Of prior interest were domestic debates like the conflicts inside the ruling coalition of CDU/CSU and FDP or the tactics of the SPD, which successfully used their approval needed in the ratification of the ESM Treaty and the Fiscal Compact to commit the federal government to support a European FTT (the revenues of which would, however, flow into the national budgets). The discussion of the own resources reform within the EP did not spark a widespread debate in the media.

The debate about a genuine European own resource, i.e. an European tax, has a very long history and is closely linked to fundamental questions about the future and the finalité of the European integration process, the autonomy (also the financial and budgetary autonomy) of the EU from its member states, and institutional question of representation in the Parliament (“no taxation without representation”) and hence the statehood of the European Union. This political dimension makes the question so important and decisive for the member states, the national governments and their parliaments as well as the EP and the Commission. And because of this crucial importance the issue can and will only truly be settled by a fundamental decision on the future of Europe.

¹¹⁷ Deutscher Bundestag, Antrag der Fraktion der SPD, *Für einen progressiven europäischen Haushalt – Der Mehrjährige Finanzrahmen der EU 2014–2020*, Drs. 17/7808 vom 22. 11. 2011.

¹¹⁸ Deutscher Bundestag, Antrag der Fraktion Bündnis 90/Die Grünen, *Ein starker Haushalt für ein ökologisches und solidarisches Europa – Der Mehrjährige Finanzrahmen 2014–2020*, Drs. 17/7952 vom 30. 11. 2011.

Pushing for transparency: The European Parliament and TTIP

Anna-Lena Kirch

The Transatlantic Trade and Investment Partnership (TTIP) is currently being negotiated between the European Commission, represented by Karel De Gucht, and the Trade Representative of the United States of America, Ron Kirk. According to the Commission's impact assessment – based on a report conducted by the Centre for Economic Policy Research (CEPR) – the TTIP could increase EU exports to the US by 28 per cent and raise the EU's GDP by up to 0.5 per cent by 2027¹¹⁹, given its successful completion. The CEPR sees the main potential of TTIP in a reduction of non-tariff barriers (up to 80 per cent of the expected gains) and a liberalisation of market access in public procurement and on the service and agricultural markets.¹²⁰ Critics on the other hand fear a substantial lowering of EU standards in consumer, environmental or data protection.

The European Parliament's competences in the policy field of international trade were remarkably strengthened with the Treaty of Lisbon. While the EP practically was not engaged in negotiating international trade agreements before Lisbon, it now holds the right to be duly informed by the Commission on any progress achieved during the negotiation rounds and it has to consent on the final deal. This new procedural design challenges established legislative processes and the power equilibrium between the Commission, the Council and the Parliament which makes this analysis all the more interesting.

So far, the EP has been very active in raising public awareness to the negotiation process and in positioning itself towards the Commission and the Council. Thereby, it has been increasing the degree of transparency in the course of the bargaining process and has been contributing to the growing mobilisation of large parts of the European civil society around the pros and cons of TTIP. Since the positions of the

respective Council and the EP majority on TTIP have been very similar from the start, it is, however, difficult to assess the EP's specific impact on the negotiation mandate¹²¹ which covers many points discussed in the EP resolution.

Overcoming the stalemate in transatlantic trade relations

Article 207 TFEU stipulates that international trade agreements are negotiated by the European Commission on behalf of the EU member states, based on a mandate adopted by the Council. The Commission is obliged to duly inform the European Parliament on its progress – before and after negotiation rounds. The conclusive deal between the two trading parties finally needs to be confirmed by the EP and the Council respectively. In the Parliament a simple majority is sufficient whereas the Council has to assent unanimously. Since the legislative procedure does not ascribe any formal competences to the EP during the negotiation process, it is dependent on public proclamations and resolutions to position itself towards the Council and the Commission.

In case of successful completion the TTIP will complement a number of existing bilateral deals and multilateral agreements concluded in the WTO framework. Those agreements guarantee already rather low tariff levels (four per cent on average) in transatlantic trading activities.¹²² However, WTO negotiations have been stagnating for some time and the Doha Development Agenda has not been entirely implemented.¹²³ In the context of the economic and financial crisis, the EU and the US government thus

¹¹⁹ European Commission, *Transatlantic Trade and Investment Partnership: The Economic Analysis Explained*, September 2013, available at: <http://trade.ec.europa.eu/doclib/docs/2013/september/tradoc_151787.pdf> (accessed on 28.03.2014).

¹²⁰ Joseph Francois/Miriam Manchin/Hanna Norberg/Olga Pindyuk/Patrick Tomberger, *Reducing Transatlantic Barriers to Trade and Investment: An Economic Assessment*, Centre for Economic Policy Research, March 2013.

¹²¹ Council of the European Union, *Directives for the negotiation on the Transatlantic Trade and Investment Partnership between the European Union and United States of America*, 17 June 2013, available at: <<http://www.marietjeschaake.eu/wp-content/uploads/2013/06/TTIP-mandate.pdf>> (accessed on 28.03.2014).

¹²² Alasdair R. Young, "Trade Politics Ain't What It Used to Be: The European Union in the Doha Round", in: *Journal of Common Market Studies* 45 (4), 2007, pp. 789–811.

¹²³ Erik Andersson, "Who Needs Effective Doha Negotiations, and Why?", in: *International Negotiation* 17, 2012, pp. 189–209.

decided in 2011 to take up the idea of a transatlantic free trade agreement (formerly already discussed as Transatlantic Market Place (TRAMP) or Transatlantic Free Trade Agreement (TAFTA¹²⁴) covering also topics like investment, public procurement or social safeguards that go beyond sheer tariff reduction. They subsequently installed an EU-US “High Level Working Group on Growth and Jobs” to elaborate on barriers to and chances of a transatlantic free trade and investment agreement. The final report of the group was published in February 2013 and recommended the launch of negotiations.¹²⁵

On 23 May 2013 the European Parliament passed a resolution drafted by Vital Moreira (S&D) in the Committee on International Trade (INTA) confirming the Parliament’s support of the negotiation of a TTIP with the United States.¹²⁶ At the same time however, the resolution points out negative implications a transatlantic harmonisation of standards in data, environmental or consumer protection might have and demands an exclusion of audio-visual services from the negotiation mandate to guarantee cultural diversity within the EU. Negotiations were launched in July 2013 after the Council had provided its mandate to the Commission on 14 June 2013. The first four negotiation rounds took place in July, November and December 2013 as well as March 2014. The finalising of the agreement was originally foreseen for late 2014, a date which is very unlikely to be met due to the remaining unsolved conflicts in the negotiations and the appointment of a new European Commission after the European elections in May 2014.

Parliament’s concerns regarding a comprehensive negotiation mandate

The main conflict line concerns the scope of the mandate and can be located in the opposition between the European Commission on the one hand and the EP

¹²⁴ Gabriel J. Felbermayr/Mario Larch, *The Transatlantic Trade and Investment Partnership (TTIP): Potentials, Problems and Perspectives*, CESifo Forum 2, 2013.

¹²⁵ High Level Working Group on Jobs and Growth, *Final Report*, February 2013, available at: <http://trade.ec.europa.eu/doclib/docs/2013/february/tradoc_150519.pdf> (accessed on 28.03.2014).

¹²⁶ European Parliament, *Motion for Resolution to wind up the debate on the statements by the Council and the Commission pursuant to Rule 110(2) of the Rules of Procedure on EU trade and investment negotiations with the United States of America (2013/2558(RSP))*, 14.05.2013.

and the Council on the other hand. The Commission argued for a comprehensive free trade agreement and thus refused premature constraints of the mandate, reasoning they would endanger a positive overall outcome of the negotiations. The official EP and Council positions, however, were in favour of few exemptions from the negotiation mandate in single policy areas (like audiovisual services) in order to maintain high EU standards in this field.

Moreover, there was a visible left-right divide within the European Parliament on this issue. Political groups on the right spectrum generally followed the Commission position in favour of an unrestricted negotiation mandate. They argued in mainly economic terms referring to potential benefits of TTIP for wealth, growth and employment to overcome the economic crisis. Political groups on the left spectrum, however, tended to advocate a more cautious approach, being more sceptical towards potential negative consequences of TTIP. In their discourse, they ascribed high importance to European values, fundamental rights and standards. The final EP resolution, a compromise between left and right, thus supported an inherently comprehensive agreement that, at the same time, safeguards EU standards in sensible areas like environmental, consumer or data protection.

Critics of comprehensive TTIP negotiations – mainly from the political camp on the left – have repeatedly warned against different or lower US quality standards, referring to likely tensions between the European precautionary principle and the US system of litigation or the prospect of meat from animals fed with growth hormones, chlorine chicken or non-labelled genetically modified organisms (GMOs) from the US, flooding the EU market. MEPs from S&D, the Greens/EFA and generally most French MEPs – following the example of the French government – opted to exclude audio-visual services from the mandate altogether, against the opposition of most MEPs from the EPP, ECR and the ALDE group.¹²⁷ This exception was finally adopted by a broad parliamentary majority. The Greens/EFA, GUE/NGL, and several MEPs from the other political groups tabled further amendments to the resolution that aimed at further exceptions. The Greens/EFA questioned the economic

¹²⁷ European Parliament, *EU trade and investment agreement negotiations with the US (debate)*, 22 May 2013, available at: <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20130522+ITEM-017+DOC+XML+V0//EN>> (accessed on 28.03.2014).

gains expected by TTIP and demanded, among other things, to exempt the public sector from the range of TTIP. Some EPP and ALDE members had reservations against the liberalisation of the agricultural and defence sector. Those amendments, however, were voted down in favour of a broad negotiation mandate, giving sufficient leeway to the Commission.

A second conflict regarding the transparency of negotiations and the accountability of negotiators can be located between the Parliament and the European Commission. MEPs of all political groups – but especially the left spectrum – stressed the necessity of a transparent negotiation procedure whereas the Commission defended the need to secret negotiations in order to dispose of sufficient leeway to compromise with the US negotiators.

A third point of criticism, mainly raised by the left party spectrum, relates to the multilateral WTO framework. Several MEPs from the Greens/EFA Group and GUE/NGL were afraid that a far reaching preferential trade agreement between the EU and the US might hamper future multilateral trade agreements in the WTO Doha Round.¹²⁸

Strong parliamentary support for TTIP

In the vote on the resolution the EP gathered a clear majority of 460 MEPs (equivalent to 78 per cent of the votes) in favour of a comprehensive TTIP, built by EPP, S&D, ALDE, ECR and EFD (see Table 1). Only a relative minority of 105 MEPs (18 per cent), mainly GUE/NGL, the Greens/EFA and single members of S&D as well as most non-attached MEPs, voted against the resolution. A share of 28 MEPs (five per cent), mainly French MEPs from S&D and ALDE as well as Hungarian MEPs from EPP, abstained due to their reservations against agricultural liberalisation and the opening of the public services market to the US.

The winning coalition was thus formed by a grand coalition plus the right party spectrum which explains the large majority in favour of the resolution. Party cohesion was very high in all political groups – except for the EFD group and the non-affiliated MEPs. The ECR and GUE/NGL voted unanimously (cohesion of 100 per cent). The cohesion in the other groups ranged between 91 per cent (EPP) and 81 per cent (S&D). The 18 rebel votes in the S&D group mirrors the concerns

¹²⁸ Stormy-Annika Mildner/Claudia Schmucker, *Trade Agreement with Side-Effects?*, 2013, SWP Comments 8.

of some S&D members, including the whole French delegation, against negative repercussions of TTIP on the EU. Rebels in the EPP group were mainly based in the Hungarian delegation.

Table 1: Voting behaviour and party cohesion in the vote on the TTIP resolution

Party Group	For	Against	Abstentions	Cohesion
EPP	205	3	10	91,06%
S&D	125	9	9	81,12%
ALDE	59	2	5	84,09%
Greens/EFA	3	43	1	87,23%
ECR	42	0	0	100,00%
GUE-NGL	0	30	0	100,00%
EFD	18	2	3	67,39%
NI	8	16	0	50,00%
Total	460 (78%)	105 (18%)	28 (5%)	

Table 2: Voting behaviour and party cohesion among German MEPs

Party Group	For	Against	Abstentions	Cohesion
CDU (EPP)	31	1	0	95,31%
SPD (S&D)	9	1	1	72,73%
Bündnis 90/ Die Grünen (Greens/EFA)	0	10	1	86,36%
FDP (ALDE)	7	0	0	100,00%
DIE LINKE (GUE-NGL)	0	5	0	100,00%
CSU (EPP)	6	0	0	100,00%
Total	53	17	2	

Source: Own compilation based on data provided by Vote-Watch.EU. (Accessed on 20 January 2014)

The voting behaviour of the German MEPs was very loyal to their European political groups (see Table 2). The German delegations followed the course of their political groups and displayed an even more coherent voting behaviour than their European counterparts. CDU, CSU, SPD and FDP voted in favour of the resolution – the CSU and FDP delegation with a party cohesion of 100 per cent, the CDU with a slightly lower cohesion of 95 per cent. With two rebel votes the SPD ranges lowest in terms of party cohesion. Bündnis 90/Die Grünen and DIE LINKE almost unanimously opposed the idea of a comprehensive TTIP agreement and thereby the resolution.

The Bundestag also adapted the topic and debated the implications of a TTIP in its plenary session on 14 June 2013.¹²⁹ The positions represented in the discussion resembled very much those of the political parties in the EP. Bündnis 90/Die Grünen, the SPD and DIE LINKE respectively submitted resolutions to give recommendations to the Council concerning the elaboration of the negotiating mandate. The SPD and Bündnis 90/Die Grünen demanded an exclusion of audio-visual services as well as the maintenance of high EU standards and a transparent bargaining procedure, DIE LINKE declared its opposition against TTIP altogether. All resolutions were voted down by the governing coalition built by CDU/CSU and the FDP. The German government has positioned itself very positively towards the prospect of a transatlantic free trade agreement. The CDU/CSU and FDP factions accordingly spoke out against protectionism on behalf of the EU, manifesting for instance in the exclusion of single economic sectors from the mandate. The winning coalition at the German level was therefore the same one as at the European level.

Next to the Bundestag, the German Bundesrat also passed a resolution in favour of TTIP negotiations on 7 June 2013 – stressing the growth and employment potential of TTIP and demanding an exclusion of audio-visual services from the negotiation mandate as well as the safeguarding of European standards in several areas like environmental and consumer protection.

The impact of the European Parliament

As the negotiations on TTIP are still continuing it is impossible to finally assess the EP's overall impact on TTIP negotiations. Concerning the negotiating mandate the positions of the Council and the EP have been very similar from the beginning. It is likely that the EP further strengthened the Council in its decision to exclude audio-visual services from the mandate or to explicitly refer to the safeguarding of fundamental rights, sustainable development and cultural diversity. During the first negotiation rounds the EP has stressed repeatedly that a final deal requires its consent to be concluded to remind the Council and the Commission

that only a compromise deal taking into account the parliamentary position could finally succeed.

Strongly related to this self-confident position the MEPs' biggest achievement so far has been their constant effort to raise public awareness to potential gains and losses of TTIP and to increase transparency. Media coverage on the issue has been very high in the quality press. Especially Martin Schulz in his position as EP President but also several other German MEPs – for instance Helmut Scholz (shadow rapporteur on the report for GUE/NGL, DIE LINKE), Bernd Lange (SPD) or Alexander Graf Lambsdorff (FDP) – have been very actively involved in the public discourse and expressed themselves repeatedly on the TTIP negotiations to remind the Commission of the EP's scrutiny and final consent requirement. Furthermore, some MEPs (e.g. Marietje Schaake) have published confidential documents like the final negotiation mandate to raise transparency. By its concerted action against the secrecy of the negotiations the EP contributed to a mobilisation of large parts of the European civil society and the European public. Via social networks like facebook or twitter activists have been protesting against the lack of transparency and threatened to block the final TTIP agreement – like it happened with ACTA (see the chapter on ACTA, pp. 25). Karel de Gucht seems to be aware of what is at stake. In January 2014 he reacted to increasing protests against TTIP and announced to interrupt the negotiations with the US for three months, starting in March, in order to guarantee a comprehensive public consultation in the critical question of investor-state dispute settlement.¹³⁰

¹²⁹ Deutscher Bundestag, *Plenarprotokoll 17/247, Stenografischer Bericht*, 14. Juni 2013, available at: <<http://dip21.bundestag.de/dip21/btp/17/17247.pdf>> (accessed on 28.03.2014).

¹³⁰ European Commission, *The Transatlantic Trade and Investment Partnership: Where do we stand on the hottest topics in the current debate?*, 22 January 2014, available at: <http://trade.ec.europa.eu/doclib/docs/2014/january/tradoc_152075.pdf> (accessed on 28.03.2014)

An uneasy compromise: The European Parliament and the Schengen governance reform

Daniela Kietz

There are three good reasons for this report to look at the reform of the rules on temporary border controls in the Schengen area. First, it is one of the most prominent cases of rigorous inter-institutional conflict in the European Parliament's 7th legislature that led to heated debates in many member states. Second, it is also an example for the growing tensions between member states and the supranational institutions as well as within member states' societies about the level of integration reached in EU justice and home affairs, which touches on the very core of national sovereignty.¹³¹ Third, it is one of the central instances in the last years that show the growing influence of Eurosceptic far-right parties on EU politics, which they do not exercise from within the EP, but based on their strong position in the domestic politics of member states. The reform thus put on the agenda an explosive mix of questions regarding the limits of integration and the challenges posed to EU politics by a far right that effectively drives forward an anti-EU and anti-immigration (dis)course.

The reform was the result of increasingly politicized public debates on mass immigration and cross-border crime in the EU, often driven by powerful populist parties on the far right such as the Front National in France or the Danish Peoples Party. In 2011 the principle of free movement in the Schengen area became strongly challenged when in particular Greece struggled to manage migration flows over the Greek-Turkish border, the Arab Spring fuelled fears of irregular immigration across on the porous southern border of the EU, and the eurozone crisis contributed to a general climate of insecurity. In this situation the French government unilaterally introduced border controls along the French-Italian border to apprehend irregular immigrants from Northern Africa entering the EU via Italy. With similar arguments the Nether-

lands and Denmark justified security measures along their borders. Their demand to allow for temporary border controls in the Schengen area to more easily fight crime and regulate migration flows quickly found support among a large majority of European home affairs ministers. The European Council consequently called on the Commission to submit concrete proposals, which became known as the "Schengen governance reform".

A harsh inter-institutional battle

The reform comprised two related Commission proposals to be negotiated in co-decision between EP and Council. The first one was to revise the rules on temporary border controls within the Schengen area.¹³² The second proposal intended to enhance the so called "Schengen evaluations" – the procedures for monitoring that member states correctly apply the Schengen rules and in particular properly secure the EU's external borders.¹³³

There were two main points of contention in the negotiations. The debates on both of them quickly developed into an inter-institutional conflict that pitched a large majority in the Council against a broad coalition in the EP, which sided on most issues with the Commission.

The first controversial issue was a variation of the classic "freedom versus security" conflict. The central question was whether there should be a new exception from the principle of free movement of persons in the Schengen area, which is one of the central rights of EU citizens enshrined in the EU Treaties. The existing rules already allowed member states to conduct temporary border checks in case of a serious threat to public policy or internal security, for example related to terrorist attacks or major political events. Following governments' demands, the Commission proposed an additional, specific exception: if one or more member states failed to

¹³¹ For more detail see Daniela Kietz, "Policy making in policing and criminal justice under Lisbon rules: more democratic, more complex, and more conflict-prone", in: Hartmut Aden (ed.), *Police Cooperation in the European Union under the Treaty of Lisbon – Opportunities and Limitations*, Nomos 2014 (forthcoming).

¹³² Com(2011)560.

¹³³ Com(2011)559.

secure the EU's external borders and thereby put the functioning of the entire Schengen area at risk, other member states should be allowed to temporarily control their borders with those countries. Governments argued that the new mechanism would strengthen the acceptance of border free travel in Schengen because it allowed for protection if single member states struggle with a mass influx of irregular migrants or organized crime.

In the EP a broad cross-party majority of EPP, S&D, Greens/EFA, ALDE, and GUE-NGL was deeply opposed to such a reform.¹³⁴ They saw the initiative as a deliberate attempt to erode the principle of free movement. In their eyes, European governments buckled under the influence of far right parties or took advantage of the debate to deliberately roll back integration. MEPs pointed out that temporary internal border controls do not solve problems related to irregular immigration but increase the stigmatization of migrants and minorities. They accused governments of overstating the magnitude of immigration into the EU and abusing border measures for domestic political reasons (in particular in election times), consciously fuelling fear among the public.

Instead of introducing additional grounds for internal border controls, MEPs asked the Commission to more clearly define the existing rules for temporary controls and to enhance evaluations in a way that prevents the political instrumentalisation of controls in future. Member states also supported enhanced evaluation rules, but their primary aim here was to avoid situations as in Greece, where member states struggle to secure the EU's external borders.

The second contentious issue was a classic conflict of competences. At its heart was the question of who should have the lead role and final say in the Schengen evaluations and on whether a member state would be allowed to exceptionally introduce border controls. The existing rules foresaw intergovernmental procedures with large room for unilateral action of member states. In contrast, the Commission advanced a new, "EU-based" approach. It envisaged itself as the central decision maker in all procedures as well as enhanced information rights for the EP. While the move was warmly welcomed by MEPs, opposition in the Council was immense. From the governments' view such decisions ought to be unilateral choices by affected member states as they directly relate to their

internal security. As regards the Schengen evaluations, the Council majority supported a stronger role for the Commission, but one of coordination, not of decision-taking. Finally, the Council also challenged the legal base for the reform of the Schengen evaluation rules (Art. 77 TFEU) and argued for one that provided only for the consultation of the EP (Art. 70 TFEU).

Due to the sensitive nature of the reform, it took almost two years of political wrangling to find a compromise. From the beginning, debates were heated and unusually harsh in tone. The leaders of the political groups and the EP President, Martin Schulz, got involved from the start, which stressed the importance of the dossier that had already been underlined by the early intervention of the European Council. The conflict eventually escalated when the Council decided to change the legal base for the reform of the Schengen evaluations and thereby formally excluded the EP from co-decision in this leg of the reform. In practice this change did not play a major role as the EP could negotiate the reform as a package due to its co-decision power in the other leg of the reform. However, the symbolic importance of the decision was immense. In reaction, the EP set the negotiations in a number of other JHA dossiers on hold to increase pressure on member states and threatened to take the issue to the ECJ.

An uneasy compromise for Parliament

Some observers have called the final compromise a "subtle balance between Community method and intergovernmental approach"¹³⁵ and clearly, both sides made concessions. However, looking at the original positions, the compromise is closer to the Council's preferences than to the EP's. The EP had to accept the new, specific mechanism that allows for temporary internal border checks if the overall functioning of the Schengen area is put at risk by problems in the management of the EU's external borders. The text does not mention migration flows explicitly, but it is understood that these are covered by the new clause. The pill was, however, sweetened for the EP by the definition of criteria that raise the hurdles for the use of the new rule: such internal

¹³⁴ European Parliament, *Resolution of 7 July 2011 on changes to Schengen*, 2011/2753.

¹³⁵ For an in-depth analysis see Yves Pascouau, *The Schengen Governance Package: The subtle balance between Community method and intergovernmental approach*, *EPC Discussion Paper*, 12 December 2012.

border checks are to be measures of *last resort* in a multi-step procedure, if in *exceptional* circumstances serious problems persist after comprehensive *prior evaluations*, including a *proportionality* check, and only after *other support measures* have failed.

As regards the procedural side, the decision to introduce temporary border checks remains with the member states if it is related to the classic scenario of political events or terrorist attacks. The governments vetoed any decision-making right for the Commission, and did not even accept a compromise position according to which the Council as a whole would have decided. Only under the new mechanism related to deficiencies at the EU's external borders the Council may – at the end of the multi-staged evaluation process – recommend one or more member states to introduce temporary border checks on the basis of a Commission proposal. Thus, procedures are somewhat Europeanized as regards the new mechanism.

In the Schengen evaluations the Commission's role was significantly enhanced, and its importance will certainly further grow in practice. Nevertheless it is mainly limited to coordinating tasks. Jointly with experts from the member states the Commission can, for example, conduct unannounced evaluation visits on border sites and it can also recommend member states to take measures to remedy problems at the external EU borders such as the deployment of European Border Guard Teams. The EP meanwhile gets broader information rights under the new rules. In sum, the new rules introduce some supranational elements to the Schengen governance but they are far from establishing a truly EU-based approach as advanced by the Commission and the EP. The latter's most important achievement was to get a foot in the door as regards the Schengen evaluations and that in the new mechanism for border checks the Council can act only upon recommendation of the Commission.

There is a clear lesson to be learned from this case: The widespread talk about the EP's new post-Lisbon confidence and the vocal, cross-party outrage of MEPs over the Schengen reform do not hide that the Parliament becomes part of the Brussels' consensus machine as soon as it turns into a co-legislator under the co-decision procedure. The social effects of the intense inter-institutional contacts under co-decision and the responsibility for the policy result that come with co-decision powers naturally go hand in hand with a much stronger inclination on the part of MEPs to compromise than under the consultation procedure. This is even more the case in justice and home

affairs, where EU legislation often touches on sensitive matters of internal security and where resistance and pressure from member states can therefore be immense. For the political groups in the EP that voted for the final Schengen package, the progress achieved in the compromise simply outweighed the alternative of no reform and the sustained harm to the relations with member states in the Council.

A grand coalition in favour of compromising

The compromise was adopted by large majority of 506 votes composed of a 'grand coalition' of EPP and S&D with support of ALDE against 121 negatives votes cast mainly by members of the Greens/EFA, GUE-NGL and the far-right EFD (see Table 1).¹³⁶ Although the cohesion rates were as usual high for the large party groups, they nevertheless indicate the relative satisfaction within the winning coalition. The EPP, which was somewhat more open to the argument of member states' sovereignty in internal security matters, stood almost united behind the compromise. In contrast, there were a number of rebel votes within the S&D group. Some S&D members continued to share the criticism by the Greens/EFA and GUE-NGL and therefore voted against the compromise or abstained. For the Greens/EFA and GUE-NGL the compromise did not go far enough in Europeanizing decisions on border issues and in their eyes still undermined the border-free nature of Schengen area and increased the stigmatization of migrants. The ECR and EFD were split over the issue. As the UK is not part of the Schengen area most British Conservatives in the ECR group abstained. In contrast, many of their colleagues from the Czech Civic Democratic Party (ODS) supported the reform and particularly hoped that bolstered evaluations would put an end to intensive German controls at the Czech border, which are a frequent point of contention between the two countries. Most Eurosceptic, far-right parties like Lega Nord or Front National fully rejected the compromise. For them the compromise on the one hand it did not go far enough as they lobby for the complete abolition of free movement. On the other hand, it went too far, as it Europeanized parts of the processes.

¹³⁶ See the debate in the minutes of EP plenary meeting of 11 June 2013, item 17, p. 322, as well as the various press releases of the political groups between 2011 and 2013.

Table 1: Voting behaviour and party cohesion in the vote on the rules on the temporary reintroduction of border controls in the Schengen area

Party Group	For	Against	Abstentions	Cohesion
EPP	246	1	0	99,39%
S&D	156	3	10	88,46%
ALDE	71	3	2	90,13%
ECR	15	3	30	43,75%
Greens/EFA	2	54	0	94,64%
GUE-NGL	1	29	2	85,94%
EFD	6	12	10	14,29%
NI	9	16	1	42,31%
Total	506 (74%)	121 (18%)	55 (8%)	

Source: Own compilation based on data provided by Vote-Watch.EU. (Accessed on 20 January 2014)

The German political and public debate on the issue was highly charged from the beginning. In spring 2011 German politicians had in unison criticized the Danish government for installing border checks along the German-Danish border and warned of an erosion of the principle of free movement. In line with this criticism, the opposition parties in the Bundestag – Bündnis 90/ Die Grünen, Die LINKE and SPD – strongly supported the position of the EP in the negotiations. They harshly criticized the German Home Affairs Minister Hans-Peter Friedrich (CSU), who together with his French counterpart, Claude Guéant, had been a driving force in the Council.¹³⁷ His pronounced law and order position found support among hardliners in the CDU/CSU group in the Bundestag, but also led to frictions within the ruling coalition of CDU/CSU and the liberal FDP. In the end, however, the German government as a whole supported the final compromise.

In the EP, the cohesion among German delegations and the loyalty to their political group was very high (see Table 2). Die LINKE and Bündnis 90/ Die Grünen voted unanimously against the compromise in line with the position of their EP groups. Equally loyal to their groups, the CDU/CSU and FDP supported it. Only among the SPD members in the EP cohesion was unusually low (66%). Corresponding with the criticism of the SPD at the national level and the position of S&D at the beginning of negotiations, a number of German Social Democrats had kept up their criticism and abstained or rejected the compromise.

¹³⁷ See in particular the joint letter of both ministers to the Danish Council Presidency of 17 April 2012.

Table 2: Voting behaviour and party cohesion among German MEPs

Party Group	For	Against	Abstentions	Cohesion
CDU (EPP)	28	0	0	100,00%
SPD (S&D)	14	1	3	66,67%
Bündnis 90/ Die Grünen (Greens/EFA)	0	14	0	100,00%
FDP (ALDE)	8	0	1	83,33%
DIE LINKE (GUE-NGL)	0	8	0	100,00%
CSU (EPP)	8	0	0	100,00%
Total	58	23	4	

Source: Own compilation based on data provided by Vote-Watch.EU. (Accessed on 20 January 2014)

Broad media attention for the Parliament

The German quality media reported widely about the negotiations. The Danish and French border checks had launched a significant political and public debate about the value of free movement. The debates were dominated by criticism and fear of an erosion of the Schengen system. The developments were seen against a broader picture as both an indicator and a symbol for the slow dismantling of European integration.¹³⁸ Thus, the historical pro-European reflex in the German public and media obviously still works when it comes to the founding pillars of EU integration such as free movement. The EP – as a united actor speaking with one voice – was very visible in the debates and the media depicted the negotiations clearly in terms of an inter-institutional struggle between the supranational institutions and member states under the lead of German Home Affairs Minister Friedrich. The strong presence of leading German MEPs like EP President Martin Schulz, or Elmar Brok, Chair of the Foreign Affairs Committee, lent additional weight to the debate. The overall tone of the quality media was favourable to the EP, which was perceived as *the* institution that defends citizens' freedoms against populist and Eurosceptic law and order tendencies in member states.

¹³⁸ See for an illustration: "Angriff auf Europas Freiheit", in: *Die Zeit*, 20.4.2012, available at: <<http://www.zeit.de/politik/ausland/2012-04/schengen-grenzkontrollen-kommentar/komplettansicht>> (last access 23 April 2014).

Abbreviations

German parties

Bündnis 90/Die Grünen	German Green Party
DIE LINKE	German Left Party
CDU	Christlich Demokratische Union Deutschlands (Christian Democratic Union of Germany)
CSU	Christlich-Soziale Union in Bayern e.V. (Christian Social Union in Bavaria)
FDP	Freie Demokratische Partei (Free Democratic Party; German Liberal Party)
SPD	Sozialdemokratische Partei Deutschlands (Social Democratic Party of Germany)

European political groups

ALDE/ADLE	Alliance of Liberals and Democrats for Europe
EPP	European People's Party
ECR	European Conservatives and Reformists
EFD	Europe of Freedom and Democracy
Greens/EFA	The Greens/European Free Alliance
GUE-NGL	European United Left – Nordic Green Left
S&D	Progressive Alliance of Socialists and Democrats
NI	Non-attached Members (Independent)

Other abbreviations

ACTA	Anti-Counterfeiting Trade Agreement
AT	Austria
BE	Belgium
CEPR	Centre for Economic Policy Research
CFSP	Common Foreign and Security Policy
COM	European Commission
CSDP	Common Security and Defence Policy
DEVE	EP Committee on Development
DG	Directorate General
EBA	European Banking Authority
ECB	European Central Bank
ECJ	European Court of Justice
ECON	EP Committee on Economic and Monetary Affairs
EE	Estonia
EEAS	European External Action Service
EEC	European Economic Community
EESC	European Economic and Social Committee
EFSF	European Financial Stability Facility
EIOPA	European Insurance and Occupational Pensions Authority
ENP	European Neighbourhood Policy
EP	European Parliament
ESAs	European Supervisory Authorities
ESFS	European System of Financial Supervision
ESM	European Stability Mechanism
ESMA	European Securities and Markets Authority

EU	European Union
EU ETS	EU Emissions Trading Scheme
Euratom	European Atomic Energy Community
FEMM	Committee for Women 's Rights and Gender Equality
FI	Finland
FR	France
FTT	Financial Transaction Tax
GDP	Gross Domestic Product
GHG	Greenhouse gases
GMO	Genetically Modified Organism
GNI	Gross National Income
GR	Greece
HR/VP	High Representative for Foreign and Security Affairs/Vice-President of the Commission
HU	Hungary
IMF	International Monetary Fund
INTA	EP Committee on International Trade
IPR	Intellectual Property Rights
IT	Italy
ITER	International Thermonuclear Experimental Reactor
ITRE	EP Committee on Industry, Research and Energy
JHO	Justice and Home Affairs
JURI	EP Committee on Legal Affairs
LIBE	EP Committee on Civil Liberties, Justice and Home Affairs
LT	Lisbon Treaty
LU	Luxembourg
MEP	Member of the European Parliament
MFF	Multiannual financial framework
MIP	Macroeconomic Imbalance Procedure
NGO	Non-Governmental Organisation
OMC	Open Method of Coordination
PIPA	Protect IP Act
PL	Poland
PT	Portugal
RO	Romania
SOPA	Stop Online Piracy Act
SSM	Single Supervisory Mechanism
SURE	EP Committee on Policy Challenges
TAFTA	Transatlantic Free Trade Agreement
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TRAMP	Transatlantic Market Place
TTIP	Transatlantic Trade and Investment Partnership
UK	United Kingdom of Great Britain and Northern Ireland
VAT	Value Added Tax
WTO	World Trade Organisation

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