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(CO-)GOVERNING AFTER MAASTRICHT:

THE EUROPEAN PARLIAMENT'S

INSTITUTIONAL PERFORMANCE 1994 - 1999

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Author**:** Andreas MAURER
(Research Associate, University of Cologne)

Editor: Saverio BAVIERA
Directorate General for Research
Division for International and
Constitutional Affairs
Tel.: (00352) 4300- 22538
Fax: (00352) 4300- 27724
Email: sbaviera@europarl.eu.int

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Lessons for the implementation of the Treaty of Amsterdam

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Directorate-General for Research

WORKING PAPER

(Co-)Governing after Maastricht:

The European Parliament's institutional performance 1994 - 1999

Lessons for the implementation of the Treaty of Amsterdam

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By:

Author:

Andreas **MAURER** (Research Associate, University of Cologne)

Responsible:

Dr. Mathias **JOPP** (Director, Institut für Europäische Politik, Bonn)
Prof. Dr. Wolfgang **WESSELS** (Jean-Monnet-Chair, University of Cologne)

Statistical Data compilation and analysis: Andreas MAURER

Institut für Europäische Politik
Bachstraße 32
D – 53115 Bonn

Tel: -49 228 729 00 50
Fax: -49 228 69 84 37
e-mail:
iep_bonn@compuserve.com
iepam_bonn@compuserve.com

University of Cologne
Forschungsinstitut für Politische Wissenschaft und Europäische Fragen
Jean-Monnet-Chair for Political Science
Gottfried-Keller Str. 6
D –50931 Köln

Tel: 49 221 470 4131 or 49 221 940 2540
Fax: 49 221 940 2542
e-mail: wessels@uni-koeln.de
e-mail: maurer_andre@yahoo.com

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Executive Summary

The Amsterdam Treaty empowers the European Parliament (EP) with additional rights and duties which strengthen its role as co-legislator. The EP has modified its Rules of Procedure (RoP) to take account of these changes. This report seeks to assess the role of the EP in the legislative process since Maastricht, so that the Parliament draw lessons from the past and make the best use of the powers conferred on it by Amsterdam. Using a wide selection of empirical data (chapter 1), the study analyses the enforcement and implementation of Parliament's competencies in the following areas (chapter 2):

- The participation of Parliament in the **preparation and making of EC legislation as well as in budgetary matters** (*the legislative function of the European Parliament*).
- The execution of Parliament's rights with regard to the **political control of other Community institutions** (*the control function of the European Parliament*).
- Parliament's involvement in **appointment procedures** with regard to other Community institutions (*the elective function of the European Parliament*).
- The **participation** of Parliament **in the institutional development** of the European Union (*the system development function*).

In assessing these different functions of the EP, this study deduces - after looking at the historical development of the EP - the following major findings.

The evolution of the European Parliament **from a primarily consultative to a legislative body** (chapter 4) is, in many ways, impressive. The proportion of policy areas where the EP is not at all involved in policy-making ("legislative exclusion") has declined from 72.09% in the original EEC to 37% in the "post-Amsterdam" EC. Many core and politically sensitive issues of European integration **are now subject** to new **decision-making procedures where the EP is involved to a greater extent**. Even though the Parliament remains excluded from some policy areas such as trade or agricultural policy, we observe a **long-term and constant trend of extending the EP's legislative involvement**. From this overall trend we can distinguish different tendencies in the various legislative procedures. Despite the fact that **codecision** was only provided for in 9.25% of all ECT provisions (containing procedural specifications), about 25% of the European Commission's legislative proposals addressed to the European Parliament until December 1998 fell under this procedure. On the other hand, given that both procedures - **cooperation and codecision** - were provided for in 19.12% of all ECT provisions, the **share of these two procedures** in relation to the **total of the Council's secondary legislation output** is - with nearly 13,2% in 1998 - **at a fairly low level**. If we reduce the Council's legislative output to all acts except those adopted in the fields of agriculture, fisheries and executive trade politics, the share of cooperation/codecision rises towards nearly 35%.

In contrast to judgements that the EP is lacking true legislative capabilities, our evaluation indicates that with Maastricht the European Parliament became able to co-legislate with the Council not just on less binding action programs but also on a very significant amount (**80%**) of **binding secondary EC legislation directly affecting the citizens way of living**.

Regarding the **efficiency of decision-making** (chapter 5), it can be concluded that, contrary to popular belief, the codecision procedure **does not lead to serious delays** in the final adoption of EC legislation.

Naturally, the procedure appears to be cumbersome, but until the end of its legislative term 1994-1999 Parliament progressed quicker to adopt its first reading resolutions than the Council in adopting its common positions. The difference between the time taken by the European Parliament for the adoption of its first reading resolutions took half of the time taken by the Council to adopt Common Positions. If we pay close attention to the date on which the legislative acts were initiated, two findings become clear. On the one hand, **legislative procedures based on old Commission proposals** submitted prior to the entry into force of the Maastricht Treaty **take longer to be concluded once they become** subject to codecision. On the other hand, it can be concluded that the shorter the time period between the Commission's legislative proposal and the adoption of a common position by the Council, the quicker the case can be concluded with the EP. Similarly, the longer the EP takes to adopt its first reading resolution, the longer it takes to move to the final stages of codecision.

Another pattern is that the use of codecision has to date been concentrated on legislative acts which have Art 95 as their legal base: there has been much less use made of the new articles (and EP competencies) introduced with Maastricht.

In terms of the **legislative influence** of the European Parliament (chapter 6), it can be concluded that, where codecision was used in drafting legislation, the Parliament obtained **additional rights** and was often able to restrict **the Council**. Moreover, the financial arrangements made under codecision show that such interinstitutional solutions may prove relevant for other procedures (e.g. cooperation). In other words, the codecision procedure has led **to a procedural spill-over**. **The institutional aspects** of the cooperation procedure can be seen as having transformed the Council-Commission dialogue (established under the consultation procedure) into a trialogue. **Codecision in turn leads to an equalization** of these institutions at the expense of the negotiation powers of the Commission (at least during conciliation). **With codecision, Parliament's influence has shifted towards real power.** With the right to press the Council into conciliation or to reject the Council's common position, and thus the whole proposal, Parliament obtained real bargaining powers to change substantive issues of directives, regulations and decisions.

The **control function** (chapter 7) is also analyzed as one of the functions of the European Parliament. It can be said that questioning the original instrument of the European Parliament's control over the Commission and the Council is losing **its appeal**. Given the fact that the EP has been granted more far-reaching powers in the field of EC legislation, this relative decline is understandable. On the other hand, the use of Article 193 ECT which provided a new legal basis for the European Parliament to set up temporary **Committees of Inquiry** has been successful in several ways. Perhaps most significantly, the BSE inquiry had a considerable impact on the outcome of the 1996/1997 IGC. It led to a change in the legal basis for EC secondary legislation in the field of veterinary medicine. Despite some shortcomings, the two committees of inquiry proved overall to be an **effective additional means** for the European Parliament's supervisory powers.

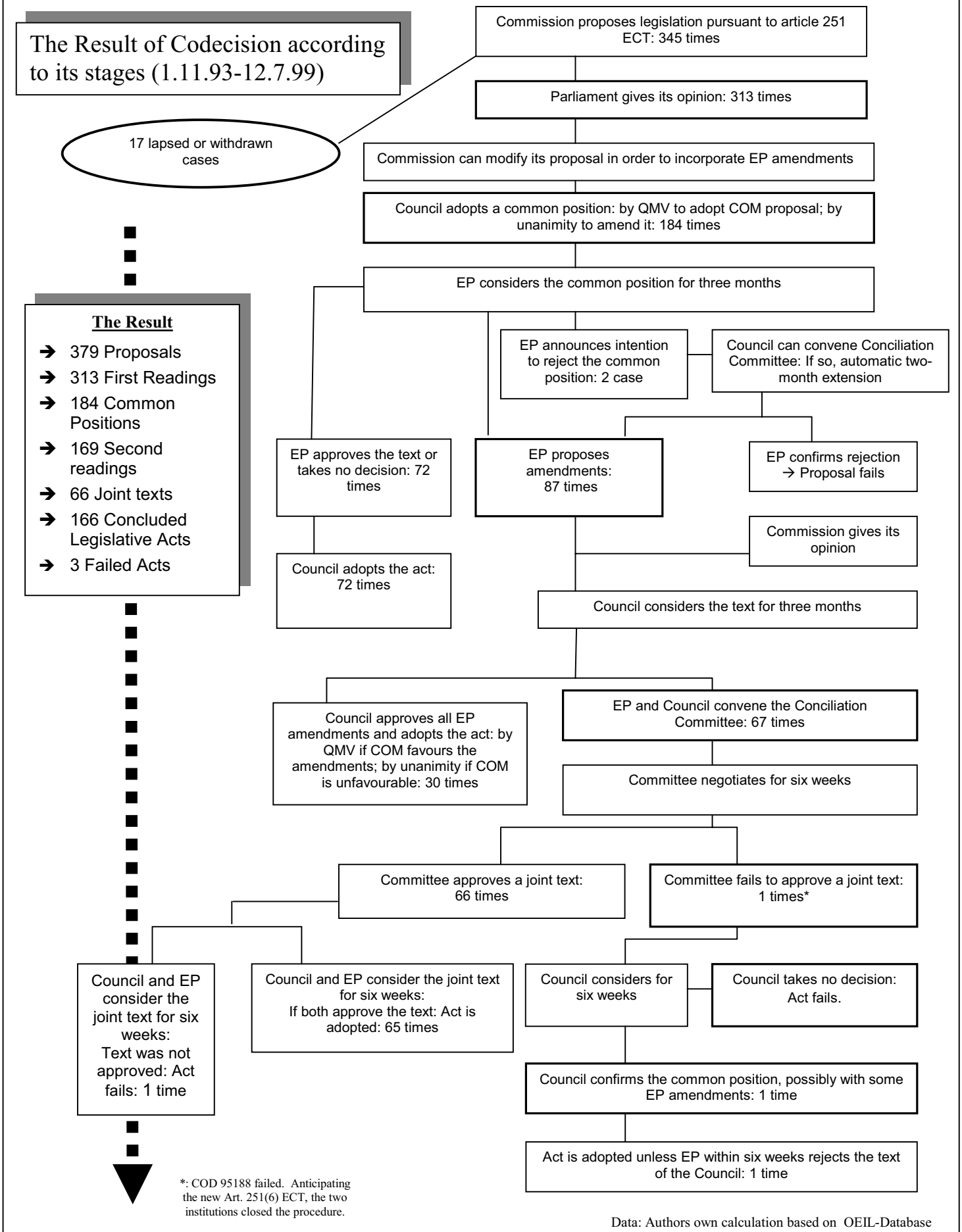
In terms of the Parliament's involvement in **appointment procedures** (chapter 8), it can be seen that the "Commission investiture" procedure (introduced for the nomination of the Santer Commission in 1995 and fine-tuned for the appointment of the Prodi Commission) has worked effectively. The fact that Parliament in 1994 nearly succeeded in denying approval of the Member States' nominee for Commission President showed how Parliament has been able to change an internal procedure into a

political tool. The organization of hearings has been a **successful experiment** as the Commission has accepted them without being legally bound to do so.
System development (chapter 9) appears to be the most laborious task/function of the EP, considering that Parliament has to both improve its situation within the institutional framework and advance the Community's policies. In this way, system development is an ongoing and long term project for the EP. The EP still has to use its strategy of **small steps** and **compromises** with powerful partners, constantly careful not to overstep the limit. An overly rigid and inflexible position could obstruct further improvements in the EP's position. On the other hand, failing to take a strong stance could prevent major reforms or constitutional decisions. To date, the Parliament has shown a constructive attitude.

Summarizing the different aspects of the European Parliament's competencies, it can be concluded (chapter 10) that although the Parliament may not appear at first glance to have been successful in implementing provisions made by the Maastricht Treaty, several other factors need to be taken into consideration. We have considered the European Union as a "polity in the making" and seen the development of both the EU and the EP as organic and evolutionary. Using this perspective in assessing the European Parliament's contribution to the production of binding legislation, we **can see the EP as an increasingly important component of the EU's political system.** The Parliament's performance in the codecision procedure as well as in the implementation of the newly introduced appointment procedures indicates that, by building on precedent, the Parliament has steered the geometry of institutional relations from a two-sided debate to a triangular discussion. The European Parliament has grown considerably in importance.

Of course, codecision is a complex procedure, but the MEPs have become acquainted with it. Naturally, it has its shortcomings, but three failed procedures out of a total of 169 do not indicate a massive defeat of this new legislative instrument. It has often been argued that codecision will not work effectively. By contrast, this research indicates that the codecision procedure is - in terms of efficiency – as long as the cooperation procedure, and that it enables the EP to set the EC policy agenda on an equal footing with the Council. Moreover, contrary to frequent suggestions, codecision and the **unanimity requirement in the Council have had no negative impact on the efficiency of the procedure.**

Compounding the achievements of the EP within the codecision procedure, the Parliament's performance, in both the new appointment procedures and the operation of the temporary committees of inquiry, reveals that in addition to the formal arrangements agreed at the Maastricht IGC, **informal, non-Treaty based and, therefore, non-binding arrangements can also be an effective means of building a parliamentary democracy in the European Union.**


The Result of Codecision according to its stages (1.11.93-12.7.99)
Commission proposes legislation pursuant to article 251 ECT: 345 times
Parliament gives its opinion: 313 times
17 lapsed or withdrawn cases
Commission can modify its proposal in order to incorporate EP amendments
Council adopts a common position: by QMV to adopt COM proposal; by unanimity to amend it: 184 times
EP considers the common position for three months
The Result
379 Proposals
313 First Readings
184 Common Positions
169 Second readings
66 Joint texts
166 Concluded Legislative Acts
3 Failed Acts
EP announces intention to reject the common position: 2 case
Council can convene Conciliation Committee: If so, automatic two-month extension
EP approves the text or takes no decision: 72 times
EP proposes amendments: 87 times
EP confirms rejection → Proposal fails
Commission gives its opinion
Council adopts the act: 72 times
Council considers the text for three months
Council approves all EP amendments and adopts the act: by QMV if COM favours the amendments; by unanimity if COM is unfavourable: 30 times
EP and Council convene the Conciliation Committee: 67 times
Committee negotiates for six weeks
Committee approves a joint text: 66 times
Committee fails to approve a joint text: 1 times*
Council and EP consider the joint text for six weeks: Text was not approved: Act fails: 1 time
Council and EP consider the joint text for six weeks: If both approve the text: Act is adopted: 65 times
Council considers for six weeks
Council takes no decision: Act fails.
Council confirms the common position, possibly with some EP amendments: 1 time
Act is adopted unless EP within six weeks rejects the text of the Council: 1 time
*: COD 95188 failed. Anticipating the new Art. 251(6) ECT, the two institutions closed the procedure.
Data: Authors own calculation based on OEIL-Database

1. Introduction: The European Parliament's role - a quantitative approach

For the European Parliament, both the Maastricht Treaty on European Union and the Treaty of Amsterdam on the revision of the Maastricht Treaty have brought significant changes. The Amsterdam Treaty widens again the scope of application of the European Parliament's legislative, elective and scrutiny powers. The European Parliament becomes fully recognized as a „Co-legislator", which will - together with the Council of Ministers – frame nearly 65 % of all legislative acts in the socio-economic realm of the Union. In order to take full advantage of the new powers conferred upon Parliament, this study analyses the implementation of those powers of the European Parliament which were introduced by the Maastricht Treaty. The study evaluates the evolution of the European Parliament's role since the coming into force of the Maastricht Treaty. It focuses on four analytical parts:

- The participation of Parliament in the preparation and making of EC legislation;
- The political control of other Community institutions;
- The participation in the appointment of other Community institutions; and
- The participation of Parliament in the institutional and system development of the European Union.

The aim of the study is to draw lessons and to provide empirically grounded options for action of the European Parliament in the light of the implementation of the Amsterdam Treaty.

The **Maastricht Treaty had a major impact on the European Parliament by increasing its powers in several different ways**. The Treaty established the so-called **codecision procedure (Article 251 ECT)** which gave the European Parliament the right to participate in the EC legislative process as an **equal** partner with the Council. Moreover, the **assent procedure** introduced with the Single European Act was extended to a wider range of legislation, including international agreements. In terms of its elective function, Parliament was given the **right to approve the new Commission** and to **elect the European Ombudsman**. In the field of parliamentary scrutiny, the EP gained the right to **set up temporary Committees of Inquiry** in order to investigate instances of maladministration in the implementation of EC law. Additionally, the Maastricht Treaty 'constitutionalised' the EP's role as an addressee of citizens' complaints in the form of petitions. Finally, Parliament gained the **right to request** the European Commission to **submit legislative proposals**. Summarizing these changes, it could be argued that the Maastricht Treaty has considerably strengthened the position of the EP within the political system of the EC.

Nevertheless, more than seven years after the signature of the Treaty on European Union (TEU), the powers and the role of the European Parliament in the European Community's policy-making process remain a matter of **controversial dispute** (Scully 1997). During the ratification of the Maastricht Treaty, some still held that the European Parliament lacked "true legislative capabilities" (Thomas 1992: 4) or that the EP could be "regarded as a somewhat ineffective institution" (Nugent 1994: 174). Others argued, in this context, that "while Maastricht has upgraded the role of the [European] Parliament to some extent, it still remains in many, if not all, ways less esteemed and influential than most national parliaments" (Church/Phinnemore 1994: 253). Referring to the German Constitutional Court's Maastricht ruling some authors even argued that the European Parliament would not become a "real parliament" - Vollparlament (Lübbe 1994: 147; Schröder 1994: 318). Against these judgements (Kohler-Koch 1997 and Wessels 1995), it was argued, that "unlike national parliaments, it [the European Parliament] is not in decline" and that in fact, "the European Parliament is arguably one of the most vital EC institutions" (Lodge 1993: 21).

For others the TEU indicated major implications for the EP (Maurer 1996; Raworth 1994). They conclude that the European Parliament "was perhaps the largest net beneficiary of the institutional changes in the TEU" (Wallace 1996: 63) and that "Maastricht marks the point in the Community´s development at which the Parliament became the first chamber of a real legislature; and the Council is obliged to act from time to time like a second legislative chamber rather than a ministerial

directorate" (Duff 1995: 253-254). Hence, through the introduction of the codecision procedure, the European Parliament gained more control in the legislative process (it can prevent the adoption of legislation) and acquired more means of input into binding EC legislation (the final text requires EP approval).

However, there has been much debate on the impact of article 251 ECT on the EU's legislative efficiency, with several authors noting that **the new procedure for shuttling draft acts between the institutions is complex, lengthy, cumbersome and protracted** (Duff 1995: 254; Gosalbo Bono 1995: 22; Judge/Earnshaw 1996: 109, Westlake 1994; Corbett/Jacobs/Shackleton 1995; Nugent 1998: 119). Moreover, those policy areas where the codecision procedure originally applied were considered to be rather limited (Gosalbo Bono 1995; Tsinisizelis/Chryssochoou 1996). More specifically, it has been argued, that "the granting of codecision rights regarding internal market legislation is only of limited significance, given that such legislation should have been adopted by 1992 and that [ex-]Articles 100a and 100b [ECT] would no longer serve a purpose after that date" (Corbett 1994: 209). With Maastricht the codecision procedure has been provided for only fifteen out of 162 EC and 11 EU articles containing procedural arrangements (in approximately 140 possible cases these articles dealt with original binding secondary legislation). Thus, at first glance, it may appear that even after Maastricht the Parliament's role in the EC legislative process is meager in general and inconsequential in comparison with the powers conferred on the Council. On the other hand, one must bear in mind that codecision is used to adopt legislative acts aimed at establishing the internal market, one of the most significant and broad ranging policies developed by the EU.

In assessing the potential role of the EP 1999-2004, it does not suffice to look only at the procedures formally applied for (codecision versus e.g. consultation). It is also necessary to take into consideration the **majority requirement in the Council**, because the EP's influence on the legislative act in question clearly also depends on the voting procedure used in the Council of Ministers: If the Council has to decide by unanimity from the very beginning of a legislative procedure, the European Parliament will have hardly any chance of influencing subsequent readings because it is unlikely that Member States will threaten a consensus once it has been achieved.

From this brief overview it becomes clear that there is a **distinct lack of agreement in assessments of the role of the European Parliament after Maastricht**. As with the European Union as a whole, the Parliament is subject to different political and academic interpretations, inspired by various strategies and interests.

In view of these different schools of thought (Wessels 1995, Kohler-Koch 1997, Corbett 1998, Hix 1999), this study presents an assessment of the functioning of the European Parliament within the institutional framework of the European Union. It intends to assess the Parliament's influence in framing the content of both EC and EU policies. It will focus on the period between the enacting of the Maastricht Treaty (1.11.1993) and the end of legislative term in June 1999.

In view of the controversy of the subject matter, this report offers a different approach. In a **systematic** way, based on a wide spread of **empirical** data, the study analyses the implementation of the TEU with regard to the role of the EP. It is based on quantitative (statistical) data derived from the databases CELEX and the Directory of Community Legislation in force – DCL (for the European Commission), TECOM and especially OEIL (for the European Parliament) [1]. Regarding the implementation of the decision-making procedures and their impact on the European Parliament, we have analyzed:

- the **importance of different legislative procedures** involving the European Parliament as a consultative and/or legislative body,
- the **use/exploitation of different policy fields** (with regard to the legal bases), the **internal division of work** between the committees of the European Parliament, the **duration** of specific

1. The study covers all cooperation and codecision procedures of the fourth legislative term. The last concluded procedures of this period were published on 12 July 1999. In practical terms, we first collected, sorted and structured the information sources according to the existing interinstitutional codes and indicators for access to these databases. Secondly, we transformed the encoded data into a new database, which then served as the main basis for answering our questions on the European Parliament in the legislative policy-making process of the EC. Apart from the quantitative analysis of the EP's new legislative and consultative powers, this study also addresses the qualitative impact of the Parliament's participation in EC decision-making. Since the Amsterdam Treaty widely extends the scope of application of the codecision procedure, we focus on the implementation of this procedure since Maastricht.

decision-making procedures, the **periods-of-time** which elapse between the different stages of various decision-making procedures,
- the **relationship between,** on the one hand, the different decision-making rules concerning **all actors and, on the other,** the different internal decision-making rules and practices in the **European Parliament**.

Apart from the use of the codecision procedure, several other developments illustrate the European Parliament's performance in the implementation of its new powers, inter alia:
- the participation and role of the European Parliament with regard to the **EC's budget**;
- the **appointment and investiture** of the European Commission and of the European Ombudsman and its role with regard to the nomination of the European Monetary Institute, the European Central Bank and other institutions; and
- the proceedings and findings of the European Parliament's temporary **Committees of Inquiry** regarding the BSE crisis and the EC Transit system.

Finally, we look at Parliament's performance with regard to the EU's **institutional and constitutional** development.

1. The various roles of the European Parliament: a range of functions

This study focuses on the development of the European Parliament's institutional role during the legislature 1994-1999 [2]. Due to the unique political system of the EC/EU, the European Parliament cannot simply be compared with parliaments in the Member States of the Union. Drawing on earlier works by Bourguignon-Wittke et al. (1985), Grabitz et al. (1988) and Steppat (1988), the TEPSA-study on the "search for a new Leitbild/Idée directrice" for the European Parliament (Schmuck/Wessels 1989: 31ff.) and subsequent studies on the role of the European Parliament (European Parliament 1992; Louis/Rometsch 1994; Louis 1996; Maurer 1996; Wessels 1996) identified and further developed four main functions of the European Parliament:

The policy-making function refers to the participation of the EP in the EC/EU policy cycle in relation to the Council and the Commission. It derives from Parliament's rights and obligations to initiate, scrutinize and (co) decide on European politics. Although the EP has no formal power of initiative, it can ask the Commission to submit proposals for legislation. The policy-making function reflects the EP's influence in the preparation, adoption, implementation and control of binding legislative acts, elections, the budget of the EC, treaties with third parties etc. **The control function** refers to Parliament's rights and obligations to call other institutions of the Union to account. In addition to its role in granting the budgetary discharge to the European Commission, the Parliament is involved in other, less spectacular, scrutiny activities. It may put oral and written questions to the Commission and the Council, hear Commission officials and national ministers in parliamentary committees, hold public hearings, set up temporary committees of inquiry and discuss the EU's performance with the Council's Presidency. **The elective function**: in the analytical framework originally developed by Schmuck and Wessels, the policy-making function also included the elective function of Parliament regarding

2. As this paper is concerned with the EP's implementation of the Maastricht Treaty provisions, we also refer to the phase from 1 November 1993 to May 1998.

Investiture of the European Commission and appointments within other institutions such as the Court of Auditors. Since Maastricht, the EP has had the right to give its assent on the Commission as a college. Moreover, a new Article 138e provides the EP with the right to appoint a European Ombudsman or Mediator. Thus, as studies previously carried out on the EP considered the elective function only to a limited extent, this function has since been significantly developed. As it is likely to become more crucial in the future, we should investigate the different appointment procedures with regard to the European Central Bank and other institutions. **The system-development function** refers to the participation of the EP in the development of the EU's constitutional system (such as institutional reforms and the division of competencies). Making full use of this function also relies on instruments such as the creation of new budget lines and the use of internal (soft) law such as the RoP. Thus, the system-development function refers to the EP's ability to present, promote and defend proposals for institutional reform especially during IGC's and treaty amendments in view of EU enlargement with but also via other methods such as interinstitutional agreements.

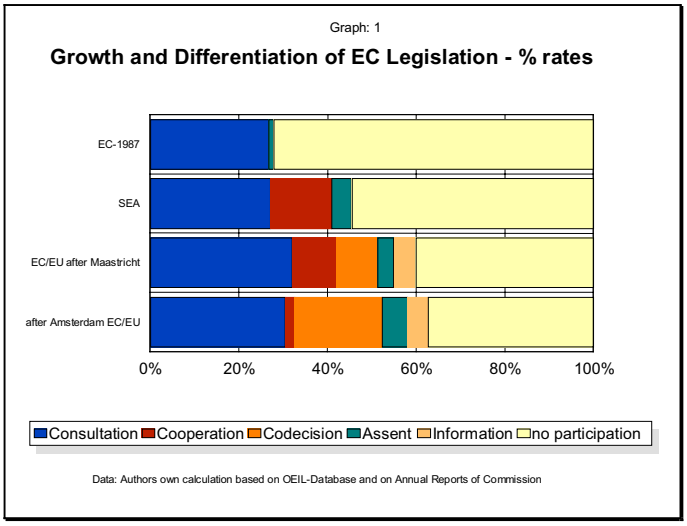
3. A long but constant path towards parliamentary democracy in a two-chamber system: The European Parliament on its way

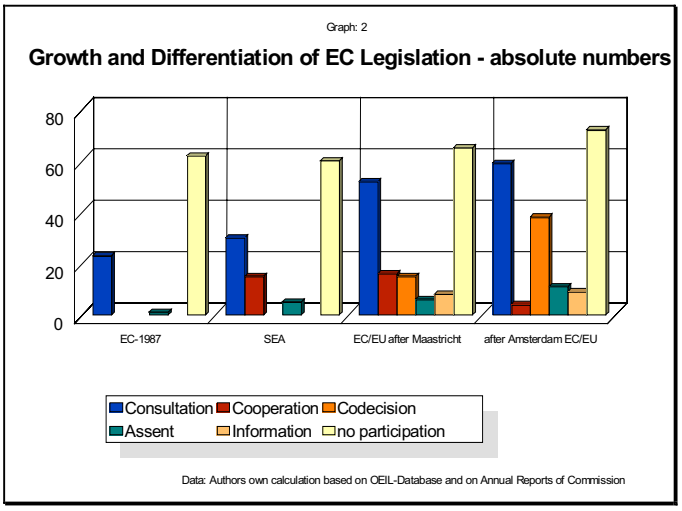
With its current structure, **the EU is comparable neither to national constitutional systems nor to international organizations or associations**. Its autonomous development stems from the process of growth and differentiation of European integration which has not yet reached its final stage and may not do so in the near future.

The nature of the EU has been characterized by a gradual extension of responsibilities and authority leading to an enlarged scope of action at EC level (Wessels 1997). Simultaneously, more and more competencies have been transferred from the national to the supranational level. Finally, in order to reconcile the management of increasing responsibilities with demands for real participation by the different political actors, the existing institutional framework has been altered and supplemented by new bodies. This increasingly intricate system was constantly criticized for being too complex and undemocratic. This criticism reached its peak during the ratification process of the Maastricht Treaty (Maurer 1996; Maurer 1997). **The revived notion of the 'democratic deficit'** (Laprat 1991; Lodge 1996; Pliakos 1995; Reich 1991) **holds that legislative competencies have constantly been shifted from a national parliamentary level towards the Council of Ministers without at the same time including the European Parliament as an equal partner in the legislative process.** Of course, those who seek to preserve national sovereignty argue that decision-making in the European Union rests primarily with the Member States, the Council of Ministers and, since Maastricht, the European Council. Accordingly, they ascribe only a minor role to the European Parliament. However, since Maastricht, the real distribution of powers goes far beyond this simple conceptualization of the Union. Within the sphere of the European Communities, the Treaty revealed a tendency towards a multi-level polity where competencies are not only shared between the Members of the Council but also between the Council and the European Parliament. Therefore, it is not just federalist rhetoric to argue that the participation of the European Parliament has been strengthened far beyond its previous rights and competencies.

In order to give a first impression of the development of Parliament's participation in EC policy-making, the following charts indicate that Parliament's access to the decision-making system of the EC has been a slow but unrelenting process of Treaty reforms. Graph 1 shows that the proportion of Parliament's exclusion from the European policy-making process has diminished considerably (from 72.09% in 1958 to 40.12% in 1999 [Entry into force of the Amsterdam Treaty]). However, if we focus on the rates of the treaty-based decision-making procedures (Graph 2), we have to recognize that the growth in consultation, cooperation and codecision procedures has been offset by an incessant increase in Parliament's 'non-participation' (from 62 procedures in 1958 to 72 in 1999) [3].

[3]. In addition the proportion of Parliament's 'non participation' in the two intergovernmental pillars shifted from 100% (for Maastricht) to 68,9% (for Amsterdam).





The 'parliamentarisation' of the EC's decision-making system did not follow an original blueprint. The ECSC Treaty did not provide for the then Assembly as a potential partner of the Commission and the Council at all. 'Non-participation' was the general rule. Even within the original EEC Treaty, the European Parliament was instituted as a consultative rather than a legislative body. Its main function was the scrutiny of the work of the European Commission [4].

Table 1: Parliament and Council decision-making powers (1958 - 1987 [SEA])

Participation of the EP	Unanimity in the Council		QMV in the Council		Simple majority in the Council		Special majorities > QMV		Sum	
		%		%		%		%		%
Consultation	10	11.62	11	12.79	2	2.32	0	0	23	26.74
Assent (a. similar rights	0	0	0	0	0	0	1 (no Council	1.16	1	1.16
No Participation	32	37.20	24	27.90	5	5.81	1	1.16	62	72.09
Sum	42	48.83	35	40.69	7	8.13	2	2.32	86	

Author's own calculation; Source: EEC-T

During this period, most legislation was adopted following a single reading under the **consultation** procedure. The **Single European Act (SEA)** established the **cooperation** procedure, consisting of two readings. This procedure covered 15 out of 110 possible legal-procedural bases of EC legislation. The SEA also introduced the **assent or consent procedure, which gives the EP a strong role**.

Table 2: European Parliament and Council decision-making powers (1.7.1987 - 1.11.1993)

Participation of the EP	Unanimity		QMV		Simple majority		Special majorities > QMV		Sum	
		%		%		%		%		%
Consultation	17	15.45	8	7.27	5	4.54	0	0	30	27.27
Cooperation	0	0	15	13.63	0	0	0	0	15	13.63
Assent	3	2.72	1	0	0	0	1	0.9	5	4.54
No participation	29	26.36	27	24.54	3	2.72	1	0.9	60	54.54
Sum	49	44.54	51	46.36	8	7.27	2	1.81	110	

Author's own calculation; Source: SEA

4. Besides consultation, the original EEC Treaty - on the basis of the ECSC Treaty - empowered the Parliament to censure the Commission (Art. 144 ECT). The possibility of a motion of censure forged a close relationship between the two institutions.

On the basis of positive experience with the cooperation procedure, the Treaty on European Union widened its scope of application and in addition created the so-called **codecision procedure**, consisting of a maximum of three readings. From this point on, the EP had the right to block a proposed legislative act and the Council could not override this decision at the end of the process (as had been the case with other procedures).

Table 3: European Parliament and Council decision-making powers (1.11.1993 – 30.4.1999)

Participation of EP	Unanimity in Council		QMV in Council		Simple majority in Council		Special majorities > QMV		Sum	
		%		%		%		%		%
Information	1	0.617	7	4.32	0	0	0	0	8	4.93
Consultation	27	16.66	21	12.96	0	0	4	2.46	52	32.09
Cooperation	0	0	16	9.87	0	0	0	0	16	9.87
Codecision	2	1.23	13	8.02	0	0	0	0	15	9.25
Assent	3	1.85	2	1.23	0	0	1	0.617	6	3.70
No participation	24 EC 8 EU	14.81 72.72	37 3	22.82 27.27	1	0.617	3	1.85	65 EC 11 EU	40.12 100.00
Sum	57 EC 8 EU	35.18 72.72	96 EC 3 EU	59.26 27.27	1	0.617	8	4.93	162 EC 11 EU	

Author's own calculation; Source: TEU

The **Conciliation Committee** was the major new element and nucleus of the codecision procedure. It is composed of an equal number of representatives of the Council and the Parliament, having the task of reaching an agreement on a **joint compromise text within six weeks after being convened**. With codecision, the EP has gained almost equal say, at least in terms of vetoing a legislative act.

The **Amsterdam Treaty** widens the EP's scope of activity considerably (Duff 1997, Maurer 1999). Important innovations are: the extension of the areas where the co-decision and the assent procedure apply, the stream-lined co-decision procedure which equalizes the powers of the EP with the Council, the recognition of Parliament as a potential legislative co-player within the field of home and judicial affairs, and the changes made to the procedure for the nomination of the President of the Commission and the other Commissioners. Amsterdam essentially widens the scope of application of the co-decision procedure both with respect to those policy areas which it newly introduces into the EC sphere ("first pillar") and with respect to policy areas which were already covered by the co-operation procedure or simple consultation.

Table 4: Coverage of Co-decision after Amsterdam

Treaty articles on co-decision between the European and the Council		Council decides by:	Comment
Art. 12.2	Prohibition of discrimination	QM	Previously co-operation procedure
Art. 18.2	Citizens rights	U	Previously co-operation procedure
Art. 40	Free movement of workers	QM	Co-decision since Maastricht
Art. 42	Social security for migrant workers	U	Previously co-operation procedure
Art. 44	Right of establishment	QM	Co-decision since Maastricht
Art. 46	Provisions concerning treatment of foreign nationals	QM	Co-decision since Maastricht
Art. 47.1	Mutual recognition of diplomas	QM	Co-decision since Maastricht
Art. 47.2	Provisions for the self-employed	U	Co-decision since Maastricht
Art. 55	Provision of services	QM	Co-decision since Maastricht
Art. 62.2bii	Visa procedures and conditions	U → QM automatically	Co-decision five years after entry into force of Amsterdam
Art. 62.2biv	Visa uniformity rules	U → QM automatically	Co-decision five years after entry into force of Amsterdam
Art. 71	Transport policy	QM	Previously co-operation procedure
Art. 80.2	Sea- and Air Transport	QM	Previously co-operation procedure
Art. 95	Internal market – Harmonization measures	QM	Co-decision since Maastricht
Ex-Art. 100b	Internal market –Mutual recognition	Deleted	Co-decision since Maastricht; never applied

Art. 129	Incentive measures in the field of employment	QM	New
Art. 135	Customs co-operation	QM	New
Art. 137.2	Equal opportunities Women/Men	QM	Previously co-operation procedure
Art. 141.3	Equal treatment Women/Men	QM	New
Art. 148	European Social Fund – Operation	QM	Previously co-operation procedure
Art. 149	Education and Youth policy	QM	Co-decision since Maastricht
Art. 150	Vocational training policy	QM	Previously co-operation procedure
Art. 151	Cultural policy	U	Co-decision since Maastricht
Art. 152.4	Health policy	QM	Co-decision since Maastricht
Art. 152.4.a	Minimum requirements regarding quality and safety of organs	QM	New: previously treated under ex-Art. 43: Agricultural policy
Art. 152.4.b	Veterinary/phytosanitary health policy	QM	New: previously treated under ex-Art. 43: Agricultural policy
Art. 153.4	Consumer protection	QM	Co-decision since Maastricht
Art. 156	Trans-European Networks – Guidelines	QM	Co-decision since Maastricht
Art. 156	Trans-European Networks – Actions	QM	Previously co-operation procedure
Art. 162	European Regional Funds – Operation	QM	Previously co-operation procedure
Art. 166	Research and Technology framework program	QM	Co-decision since Maastricht; previously treated by unanimity in the Council
Art. 172.2	Joint undertakings in RTD	QM	Previously co-operation procedure
Art. 175.1	Environment policy-Actions	QM	Previously co-operation procedure
Art. 175.3	Environment policy-Action programs	QM	Co-decision since Maastricht
Art. 179	Development policy	QM	Previously co-operation procedure
Art. 255	Right of access to EU documents	QM	New
Art. 280	Combating fraud	QM	New
Art. 285	Statistics	QM	New
Art. 286	Creation of Data protection unit	QM	New

QMV: Qualified majority voting in the Council; U: Unanimity in the Council; ex-Art. = former Article of the Maastricht Treaty

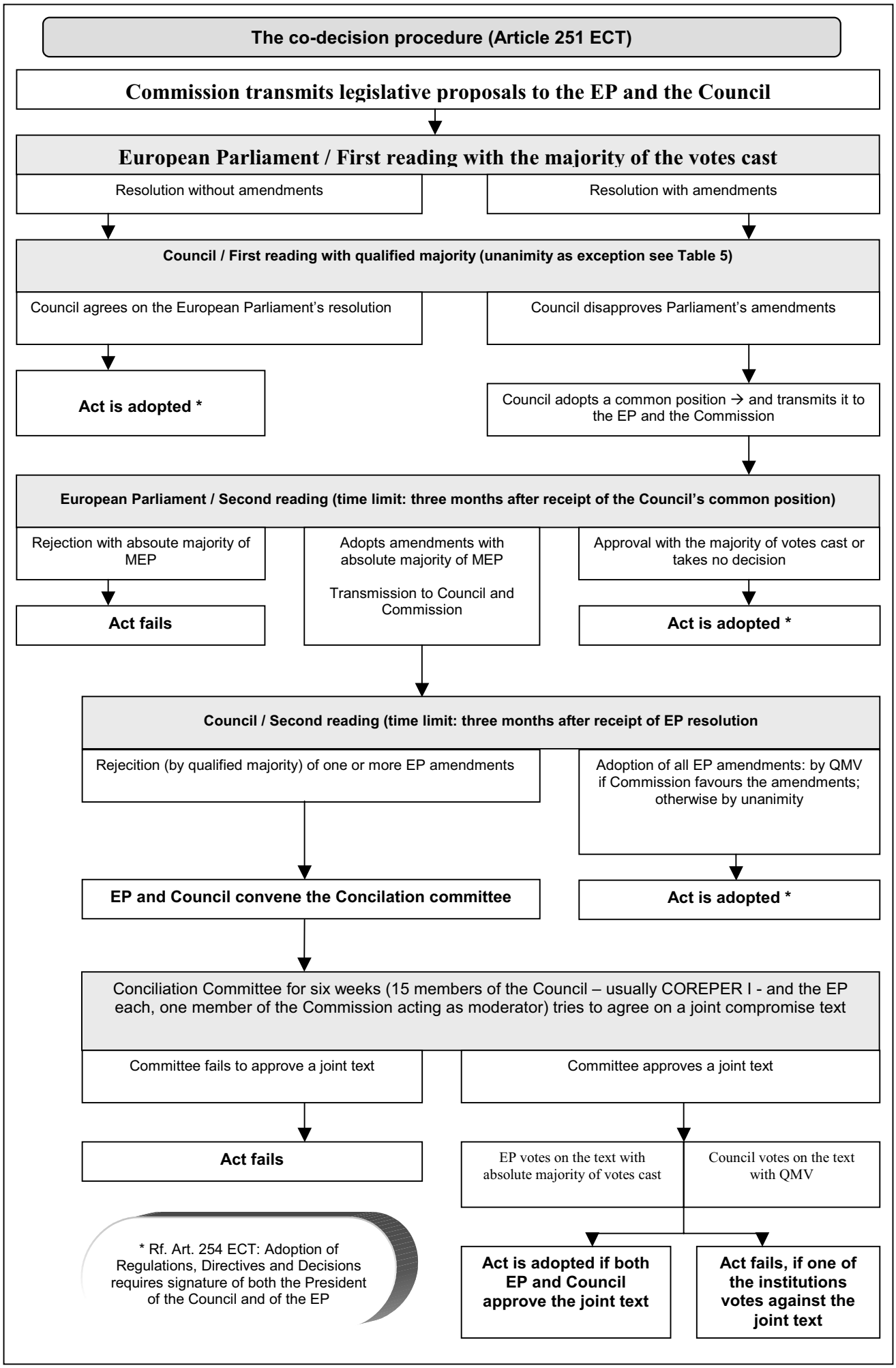
Since the Amsterdam IGC ruled out any amendment to the Treaty relating to Economic and Monetary Union, the co-operation procedure has been retained for four competencies in title VII ECT (on EMU). The assent procedure was spread out to the new TEU provision on sanctions in the event of a serious and persistent breach of fundamental rights by a Member State. However, the 1996/1997 IGC failed to extend it to cover all international agreements (Arts. 133, 300 and 301 ECT), decisions over the EC's own financial resources (Art. 269 ECT), the extension of the authority of the institutions in pursuit of Treaty objectives ("implied powers"-Article 308 ECT) and finally the amendment to TEU itself (Art. 48 TEU). Finally, the scope of application of the consultation procedure has been expanded by nine treaty provisions. As a result, this procedure will cover an overall of 59 EC and 9 EU cases after the entry into force of the Amsterdam Treaty (see Table 5).

Table 5: European Parliament and Council decision making powers after the entry into force of the Amsterdam treaty

Participation of the EP	Unanimity in Council		QMV in Council		Simple Majority in Council		Special majorities other than QMV		Sum	
		%		%		%		%		%
Consultation	33 EC 4 EU	17,09 13,79	23 EC 1 EU	11,91 3,44	1 EC 1 EU	0,518 3,44	2 EC 1 EU	1,03 3,44	59 EC 7 EU	30,57 24,13
Co-operation	0 EC	0	4 EC	2,07	0 EC	0	0 EC	0	4 EC	2,07
Co-decision	5 EC	2,59	33 EC	17,14	0 EC	0	0 EC	0	38 EC	19,67
Assent	6 EC 2 EU	3,10 6,89	2 EC	1,03	1 EC	0,518	2 EC	1,03	11 EC 2 EU	5,69 6,89
Information	1 EC	0,518	8 EC	4,14	0 EC	0	0 EC	0	9 EC	4,66
Parliamentary exclusion	31 EC 9 EU	16,06 31,03	31 EC 3 EU	16,06 10,34	4 EC 3 EU	2,07 10,34	6 EC 5 EU	3,10 17,24	72 EC 20 EU	37,30 68,96
Sum	76 EC 15 EU	39,38 51,72	101 EC 4 EU	52,33 13,79	6 EC 4 EU	3,10 13,79	10 EC 6 EU	5,18 20,68	193 EC 29 EU	100,00 100,00

Own calculation; Source: Treaty of Amsterdam 1997

Even after Amsterdam the European Parliament will maintain to be excluded from „costly" policy areas for original legislation such as agriculture, tax harmonization and trade policy. Consequently, the effects of Amsterdam will be less visible than Table 5 suggests. Apart form the extension of co-decision, the procedure itself has been considerably simplified in four ways.


The co-decision procedure (Article 251 ECT)
Commission transmits legislative proposals to the EP and the Council
European Parliament / First reading with the majority of the votes cast
Resolution without amendments
Resolution with amendments
Council / First reading with qualified majority (unanimity as exception see Table 5)
Council agrees on the European Parliament's resolution
Council disapproves Parliament's amendments
Act is adopted *
Council adopts a common position → and transmits it to the EP and the Commission
European Parliament / Second reading (time limit: three months after receipt of the Council's common position)
Rejection with absoute majority of MEP
Adopts amendments with absolute majority of MEP
Transmission to Council and Commission
Approval with the majority of votes cast or takes no decision
Act fails
Act is adopted *
Council / Second reading (time limit: three months after receipt of EP resolution
Rejecition (by qualified majority) of one or more EP amendments
Adoption of all EP amendments: by QMV if Commission favours the amendments; otherwise by unanimity
EP and Council convene the Concilation committee
Act is adopted *
Conciliation Committee for six weeks (15 members of the Council – usually COREPER I - and the EP each, one member of the Commission acting as moderator) tries to agree on a joint compromise text
Committee fails to approve a joint text
Committee approves a joint text
Act fails
EP votes on the text with absolute majority of votes cast
Council votes on the text with QMV
* Rf. Art. 254 ECT: Adoption of Regulations, Directives and Decisions requires signature of both the President of the Council and of the EP
Act is adopted if both EP and Council approve the joint text
Act fails, if one of the institutions votes against the joint text

The reformed procedure provides for the adoption of a legislative text at first reading phase if the EP does not propose any amendments to the Commission's draft or if the Council agrees with all of the European Parliament's first reading amendments. The importance of this reform becomes clear when looking into the practice of co-decision. Of all procedures closed until June 1999, about 56 per cent (93 cases) could have been sealed after the first reading stage, either because the Council accepted all first reading amendments of the EP, or because Parliament approved the common position of the Council, or because both Parliament and Council adopted the original Commission's proposal as final text. The new first reading phase may lead to accelerated, rationalized and simplified legislative processes. Given the enlarged scope of co-decision, the possibility of conclusion after this stage may lead to saving time for the higher number of legislative proposals. Secondly, the phase whereby the EP could vote on its intention to reject the Council's common position has been dropped. This part of the procedure's reform largely corresponds to the practice of co-decision. Until July 1999, Parliament referred only two times to this option. Thirdly, the so-called third reading whereby the Council could seek to impose the common position after the failure of conciliation, unless the EP could overrule it by an absolute majority of its members, has been dropped too. Fourthly, the new procedure provides for the proposal to have failed in the absence of agreement in conciliation. This deletion of the third-reading phase finally puts the Parliament on an equal footing with the Council in every stage of the procedure. The 'total equalization' of both legislative branches implies a balanced set of veto powers. The provision will therefore imply important effects for how the Parliament is seen from the outside world: **Under the Maastricht rules, the Council could 'scapegoat' the Parliament for the failure of legislation. With Amsterdam, both the Council and the Parliament have to take the shared responsibility for the adoption as well as for the failure of a proposed legislative act.** Both institutions anticipated this reform in March 1998, when no agreement on the Comitology issue could be found within the conciliation committee on the draft directives 93/6/EEC and 93/22/EEC. Instead of reshuffling the draft according to the Maastricht Treaty provisions, the two institutions declared the failure of the procedure after conciliation. In addition to these reforms, Article 251(4) intends to prevent too much flexibility in the consideration of EP amendments in conciliation by stating that "in fulfilling this task, the Conciliation Committee should address the common position on the basis of the amendments proposed by the European Parliament". This provision leads to a higher degree of programming amendments before conciliation takes place. Finally, the new procedure also provides stricter time limits than at present. The non-binding declaration No. 34 (Amsterdam Treaty) states that "in no case should the actual period between the second reading by the European Parliament and the outcome of the Conciliation Committee exceed 9 months".

This brief overview shows that, from the original EEC Treaty to the Amsterdam Treaty, many core issues of European integration became subject to decision-making procedures providing the European Parliament with considerable powers vis-à-vis the Council of Ministers and the European Commission. Even if Parliament continues to be excluded from 'costly' policy areas such as fiscal policy, trade policy etc., **we can distinguish a long-term trend whereby Parliament's legislative involvement has been continuously widened.**

Since the Maastricht IGC considered the codecision procedure as a partial solution to the EU's democratic deficit, it merits closer examination. The next chapter will explore both the practice of codecision and, to a lesser extent, that of the cooperation and the assent procedure.

4. The policy-making function of the EP - the functioning of codecision and cooperation

To assess whether the introduction of codecision has constituted a real step forward for the policy-making role of the EP, we have to look firstly at the scope of application of codecision in relation to other legislative decision-making procedures, secondly, at the exploitation of EC Treaty provisions relevant for codecision, thirdly, at the efficiency of the procedure, and fourthly at the influence of the EP on the EC's legislative output.

4.1. The record of codecision and cooperation

With the introduction of the **cooperation procedure**, the Parliament gained the right to two readings in order to agree, reject or amend a proposed legislative act. The internal market program led to a great increase in the volume of Community legislation in general. Thus, cooperation included the bulk of

legislative harmonization in the following areas: the single market, specific research programs, regional fund decisions and - to a lesser extent - social policy matters. Until 1995 "some two-thirds of the Commission's 1985 White Paper on the completion of the internal market fell under the cooperation procedure, and about one-third of all legislation considered by Parliament was covered by cooperation" (Earnshaw/Judge 1995: 2).

From the entry into force of the Maastricht Treaty to the end of the 1994-1999 legislative term, the EP was involved in:

- 379 Codecision procedures (166 concluded, 21 lapsed, 3 failed, 179 under way),
- 116 Cooperation procedures (all concluded),
- 87 Assent procedures (49 concluded, 29 under way),
- 1113 Consultation procedures (948 concluded, 165 under way), and
- 102 Budgetary procedures (84 concluded, 18 under way).

Table 6: Parliamentary activity 1987 – 1998: Completed procedures and resolutions of the EP

Year	Council secondary legislation	Commission secondary legislation and executive acts	Commission legislative proposal (co-decision in brackets)	European Parliament Consultation	Parliament: Co-operation			Parliament: Co-decision					EP Assent	EP Budget	Initiative Resolutions, Urgencies
					1st reading	2nd reading	Adopted	1st reading	2nd reading	3rd reading	Adopted	Failed, Lapsed withdrawn			
1987	623	8212	699	152	13	9	7						20	21	290
1988	628	6799	696	131	45	45	44						14	39	316
1989	634	5793	624	128	55	71	63						3	19	319
1990	614	6298	726	159	70	49	56						2	27	282
1991	581	6130	652	209	62	37	50						3	26	271
1992	738	6591	650	243	70	66	62						11	28	257
1993	546	7335	619(92)	199	50	46	52	5	-	-	-	9	8	25	345
1994	468	7034	558(32)	168	33	21	21	18	34	8	23	3	11	31	298
1995	456	No data	600(30)	164	26	12	10	35	19	7	16	2	17	25	253
1996	484	5343	524(35)	164	31	34	25	34	37	9	31	-	8	27	231
1997	410	1435	555(36)	154	19	15	17	34	27	21	32	1	15	24	188
1998	461	1367	576(52)	215	38	24	24	41	43	11	36	1	4	16	168

Own compilation. Source: European Commission: Annual report of the European Commission 1986-1998.

Table 7: Proportion of co-operation and co-decision in relation to the total legislative output of the Council

Year	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998
Proportion	1,12 %	7,00 %	9,93 %	9,12 %	8,60 %	8,40 %	9,52 %	9,40 %	5,70 %	11,57 %	11,95 %	13,2 %

Own compilation. Source: European Commission: Annual report of the European Commission 1986-1998.

The impact of the **codecision procedure** on EP participation in the production of binding secondary EC legislation is impressive. The following figures indicate the Parliament's performance with its newly gained legislative powers for the period between 1 November 1993 and June 1999.

Table 8: Breakdown of the codecision procedures (1993-7/1999)

Proposals submitted	Proposals	1st readings (concluded proced.)		Common positions (concluded proced.)		2nd readings	Joint Texts	Concluded	Lapsed, Withdrawn or Rejected
			Cumulative %		Cumulative %				
Until December 1993	90	70	**77,7**	13	**18,6**	0	0	0	20
January - December 1994	35	18	**70,4**	21	**38,6**	31	8	23	2
January - December 1995	36	35	**76,4**	28	**50,4**	19	5	16	1
January - December 1996	45	43	**80,6**	35	**58,4**	35	12	31	0
January - December 1997	50	33	**77,5**	27	**62,3**	27	20	32	1
January - December 1998	72	49	**75,6**	45	**68,1**	44	12	39	0
January - June 1999	17	45	**72,1**	12	**61,5**	10	8	25	0
Sum	345	294		181		166	65	166	24

Source: OEIL Data Archive; and European Commission: Annual report of the European Commission 1986-1998 and Bulletin of the EC/EU 1972-1998.

Up until **the end of the 1994-1999 legislative term,** a total of **379 legislative proposals** had been forwarded to the European Parliament pursuant to the codecision procedure [5]., of which **200 (52.7%) have been concluded**. In **166 cases (43,8%)**, the Commission's initiatives have resulted in **secondary binding legislation decided jointly by the European Parliament and the Council**. Until the end of the EP's 1994-99 legislature, there have been **24 cases** in which the proposal of the Commission has **failed**. In **17 of these**, the procedure **lapsed** because the Council was unable to adopt a common position. In **four** cases, **the Commission withdrew** the proposal prior to Parliament's first reading. Only three cases failed due to unsuccessful conciliation (twice) or after the EP voted against the agreement reached in the conciliation committee (once). Apart from these failures, the codecision procedure has led to satisfactory outcomes.

Of the **169 approved and failed acts**, **101 cases (61.44%)** were reached **without convening the Conciliation committee out of which 72** (**70.58%**) were **approved by Parliament without amending the common position** of the Council. In the remaining **30 (29.41%)** cases, **the Council accepted all of the second reading amendments proposed by the EP. 67 common positions (38.55%) were subject to conciliation** and joint compromise texts of both the Parliament and the Council.

Three proposals **failed after conciliation**. In two cases no agreement could be found on the type of committee which would help the Commission in implementing the directives. **One** proposal reached the stage of a **joint legislative text** (directive on the legal protection of bio-technological inventions) but the result **was repudiated by a majority of the European Parliament**.

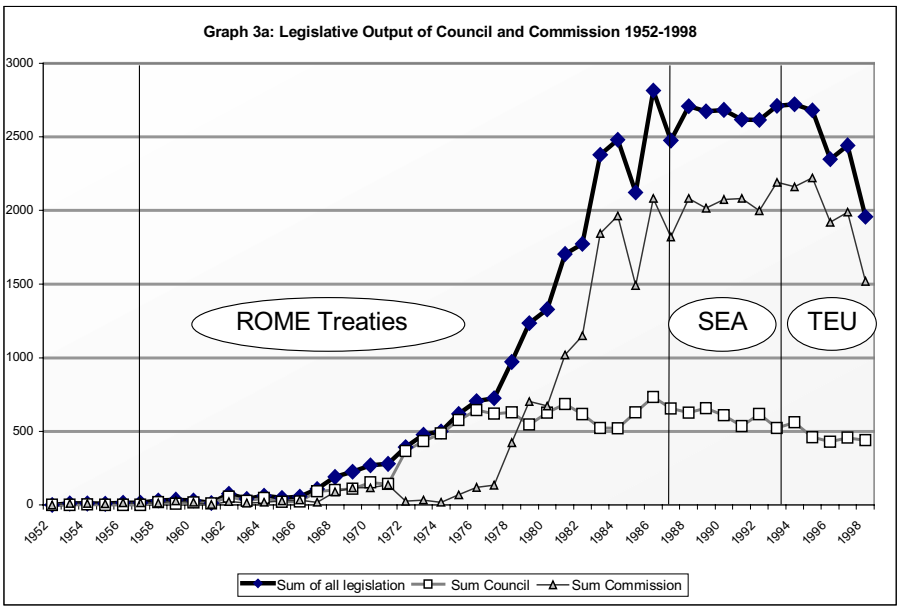
179 cases were still pending before the Council, the European Parliament or the two institutions. 49 proposals were awaiting the 1st reading in Parliament, 116 1st reading resolutions were pending before the Council for adoption of its common position, 10 common positions were awaiting the 2nd reading in the EP, and 4 draft acts are awaiting the convening of the conciliation committee) [6].

5 . Up to the entry into force of the Amsterdam Treaty on 1st May 1999, a total of 278 legislative proposals had been transmitted to the European Parliament.

6 . Note that the Commission in its Communication on the effects of the entry into force of the Amsterdam Treaty on current legislative procedures (SEC(99)581), identified 88 procedures underway which were due to shift to co-decision on 1 May 1999.

4.2. Codecision in context

Altogether, we can list a total sum of 52.799 legal acts adopted between 1952 and December 1998. Of course, the 52.799 legal acts listed in CELEX are not of equal ranking in terms of their legal relevance. Besides regulations, directives, decisions and recommendations authorized by the Council, the European Parliament and the Council or the Commission, CELEX also includes a set of acts which are less binding (conclusions of the Council of a political nature etc.). Moreover, 'CELEX' accounts for all acts irrespective if they are still in force or having been abolished or replaced by a new legal event.



Source: Maurer/Wessels 1999, based on CELEX

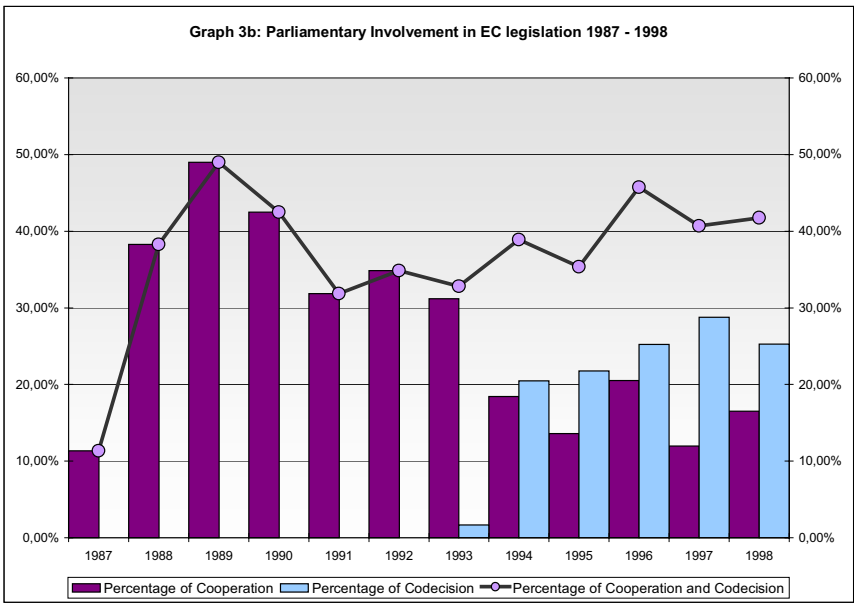
Graph 3a indicates a quasi-linear growth in original secondary legislation from 1961 onwards until 1987 with significant drops from 1964 to 1965, 1971 to 1972 and 1983 to 1984, but a constant step-by-step decrease from 1987 onwards. The Council's output shows a steady decline from 1986/87 onwards. The legal acts which arose from the new Maastricht pillars - CFSP and Home and Justice affairs - have not changed the overall trend. Commission output started to grow from 1976 onwards, although the relative growth maintained stable between 1980 and 1993. With the coming into force of Maastricht, it decreased dramatically; reflecting the decline in Council legislation from 1986/1987 onwards. Our interpretation for the shrinkage in the output by the Council from 1987 onwards is based on looking into three major policy areas of the EC - that of the CAP and Fisheries policy, external trade policy and customs policy which constitute 41.886 legal acts or 79,3 per cent of all decisions produced until December 1998. Given their 'age' one can assume a saturation of these policies. In fact, the decline in the production of EC legislation is almost exclusively due to these policy areas. Commission activities reflect prior-legislation of the Council. There is a significant gap from 1952 to 1979 which suggests that the relative small amount of Council acts needed less Commission executive acts than from the eighties onwards.

Table 8a: Legal output 1952 – 1998 according to policy areas

	1952-1986	Acts per year	% of Legal output	1987-1993	Acts per year	% of Legal output	1994-1998	Acts per year	% of Legal output	Legal acts: total	% of Legal output
General, Financial a. Institutional affairs	610	17,42	2,8	476	68	2,57	693	138,6	5,51	1779	3,36
Customs policy	4347	124,2	19,97	2496	356,57	13,50	1021	204,2	8,12	7864	14,89
Agriculture	9274	264,97	42,62	8435	1205	45,63	5310	1062	42,28	23019	43,59
Fisheries	798	22,8	3,67	1325	189,28	7,16	800	160	6,36	2923	5,53
External Relations	3549	101,4	16,31	2963	423,28	16,03	1568	313,6	12,48	8080	15,30
Competition	384	10,97	1,76	474	67,71	2,56	854	170,8	6,79	1712	3,24
Industry and Internal market	1004	28,68	4,61	528	75,42	2,85	582	116,4	4,63	2114	4,00
Taxation	80	2,28	0,36	84	12	0,45	63	12,6	0,51	227	0,042
EPC/CFSP	0	0	0	6	0,85	0,03	161	32,2	1,28	167	0,031
Justice and Home affairs	0	0	0	1	0,14	0,005	119	23,8	0,94	120	0,022
Freedom of Movement and Social policy	397	11,34	1,82	237	33,85	1,28	143	28,6	1,13	777	1,47
Right of Establishment	119	3,4	0,54	89	12,71	0,40	67	13,4	0,53	275	0,52
Transport Policy	258	7,37	1,18	186	26,57	1,01	139	27,8	1,10	583	1,10
Economic and Monetary Affairs	130	3,71	0,59	32	4,57	0,17	56	11,2	0,44	218	0,41
Regional and Structural policy	126	3,6	0,57	439	62,71	2,37	256	51,2	2,03	821	1,55
Environment, Consumer, Health	248	7,08	1,13	379	54,14	2,05	358	71,6	2,85	985	1,86
Energy Policy	284	8,11	1,30	116	16,57	0,62	118	23,6	0,93	518	0,98
Education, Science, Information	119	3,4	0,54	177	25,28	0,95	206	41,2	1,64	502	0,95
Law relating to Undertakings	25	0,71	0,11	35	5	0,18	39	7,8	0,31	99	0,18
People's Europe	5	0,14	0,02	5	0,71	0,027	6	1,2	0,047	16	0,030
Sum	21757	621,62	100	18483	2640,42	100	12559	2511.8	100	52799	100

As mentioned above one of the features of EC legislation is the difference with regard to the binding nature of legal acts. In this regard, the nature of Council legislation is characterized by a degeneration of regulations outside the fields of CAP and trade policy since 1987. On the other hand, the SEA had apparently an effect insofar as the number of directives per year increased since 1987 until 1993, i.e. the later stages for the single market program. Since 1993, the use of directives decreased slightly until 1996. Subsequently, the number remained rather stable. Interestingly, one can also witness an increase in decisions from 1961 onwards to 1982 and then again, from 1986 to 1998. The first phase concerns Council's regulatory decisions in the sense of the then Article 149. The second phase comprises another format of incentive decisions – so-called "legislative decisions" in the framework of policy programs (ERASMUS, SOCRATES, RTD framework programs, KAROLUS etc.).

If we look at those legislative acts where the EP has been involved by either the consultation, the cooperation, the codecision or the assent procedure, we observe **a trend towards the use of the codecision procedure at the expense of the cooperation procedure.** Indeed, we must bear in mind that the increase in proposals and resolutions adopted under the codecision procedure has to be interpreted in comparison with the relative decrease in legislation produced through the cooperation procedure. Between 1987 and December 1993, 34.14% of the Commission's legislative proposals provided for use of the cooperation procedure. Since Maastricht, the share of proposals providing for the cooperation procedure has fallen to 11.93% (1997) whereas the share of those providing for codecision has increased to 28.77% in 1997. **The main reason for the shift from cooperation to codecision consists in the procedural change applied to Article 100a which is the general legal basis for harmonization measures in the framework of the internal market.** With Maastricht, the procedure to be applied for Article 100a shifted from cooperation to codecision. Hence 63.3% of the codecision procedures concluded between November 1993 and June 1999 fell under Article 95.



Author's calculation based on OEIL, CELEX and DCL.

What proves impressive is the fact that **since 1996 nearly one quarter of EC legislation considered by the European Parliament was adopted under the codecision procedure.** In this way, the Treaty on European Union strengthened the position and legislative role of Parliament regarding the internal market, including the areas of environment, health and consumer protection, research and education

policy. Moreover, if we take into account the total legislation passed since 1986/87 by adding together the percentages of both cooperation and codecision, graph 3b indicates that the scope of their application has been significantly extended (from 11.34% in 1987 to 41.8% in 1998) [7]. However, if we take into account the **overall output of binding secondary legislation adopted either by the Council of Ministers or by the EP and the Council**, we have to qualify this assessment: legislative acts concluded **in 1998** pursuant to both the **cooperation and codecision procedure represented only 13.2% of the total secondary legislation adopted by the Council**. Nevertheless, tables 6 and 7 reveal that codecision had an impact on the increase of the proportion of the EP's legislative involvement, given that the cooperation procedure in 1993 only covered 9.52% of the overall secondary legislation adopted by the Council [8].

Given these rough figures we may formulate our first conclusions:

1. In spite of the fact that codecision was only provided for in 9.25% of all ECT provisions containing procedural specifications, nearly 25% of the European Commission's legislative proposals submitted to Council and Parliament until June 1998 came under this procedure.
2. Given that, taken together, both **cooperation** and **codecision** were originally provided for in 19.12% of all ECT provisions containing procedural specifications, **the share of these two procedures in relation to the total of the Council's secondary legislation output is -** with about 13% in 1998 - **at a rather low level**.
3. Considering that socio-economic legislation (including environment, health and consumer policies) in the European Community concerns only 26 % of the total volume of the EU institution's legal output, the share of **Parliament's involvement through cooperation and codecision is – with nearly 65 %** - much higher than argument No. 2 would suggest.

4.3. The scope of application of codecision.

The Maastricht Treaty foresaw 15 policy area articles where the codecision procedure should apply. Regarding the exploitation of these articles, **63.3% of the procedures concluded up to the end of June 1999 were based on Article 100a (harmonization measures concerning the internal market).** Conversely ex-Article 100b was never used for the adoption of mutual recognition measures in the field of the internal market [9]. Similarly, the legal basis for the adoption of environmental programs, Article 130s, was used only once for the adoption of the Environment program "towards sustainability" (final act on 29.9.1998). The institutions preferred the cooperation procedure for adopting the ALTENER II program (promotion of renewable energy sources) and the SAVE II program (Improving energy efficiency in the Community) [10]. Moreover, **only 18.67% (31) of the procedures were based on articles incorporated into the Maastricht Treaty** together with the codecision procedure (Articles 149 - Education and Youth; 151 - Culture; 152 - Health; 153 - Consumer Protection; 156 - Trans European Networks). The exploitation of legal bases dealing with Title II ECT on the **free movement**

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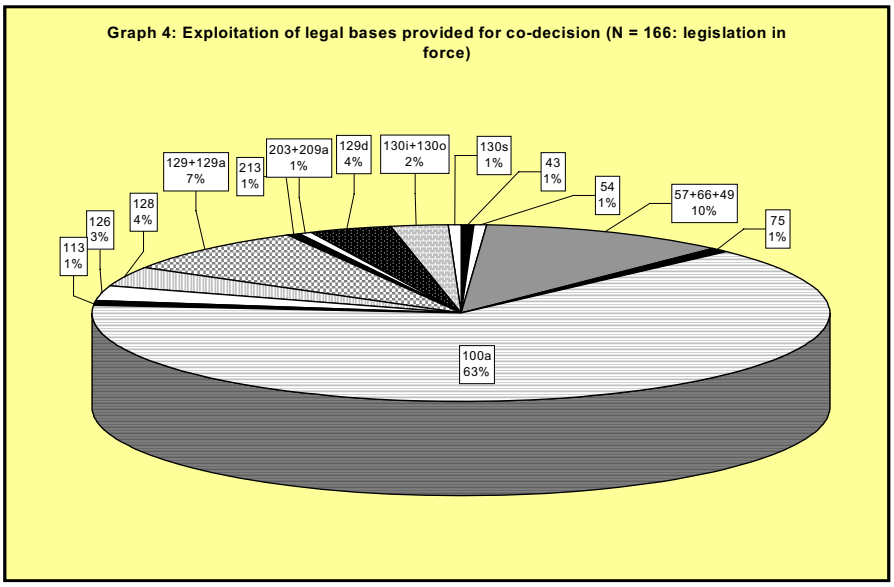
7. We also observed a relative increase in Parliament's legislative involvement in the overall total of Council's decisions. However, not all of the Council decisions and resolutions mentioned in the Commission's Annual Reports correspond to Community legislation.
8. A high proportion of the Council's output concerns non-legislative acts, i.e. executive or administrative acts. If one concentrates, for example, exclusively on the Council's output in the field of environment policy, the EP's participation through cooperation and codecision is much more significant than table 6 would suggest (around 60-65% instead of 9-13%!). Note also that 38.963 out of a total of 52.799 legal events adopted between 1952 and December 1998 concerned agriculture (23.019 acts), customs and trade policy.
9. Consequently, the Amsterdam Treaty deleted Article 100b in the consolidated version of the ECT.
10. In addition to the ESDP, the action program for groundwater protection (COD 96181), ALTENER II (COD 97370), SAVE II (COD 97371) and the new regulation on LIFE 2000 (COD 98336) are still underway.

of persons, services and capital (relevant codecision articles 40, 44, 46, 47[1], 47[2] and 55) was less significant: 11 (6.62%) of all codecision procedures in force were based on one of these articles.



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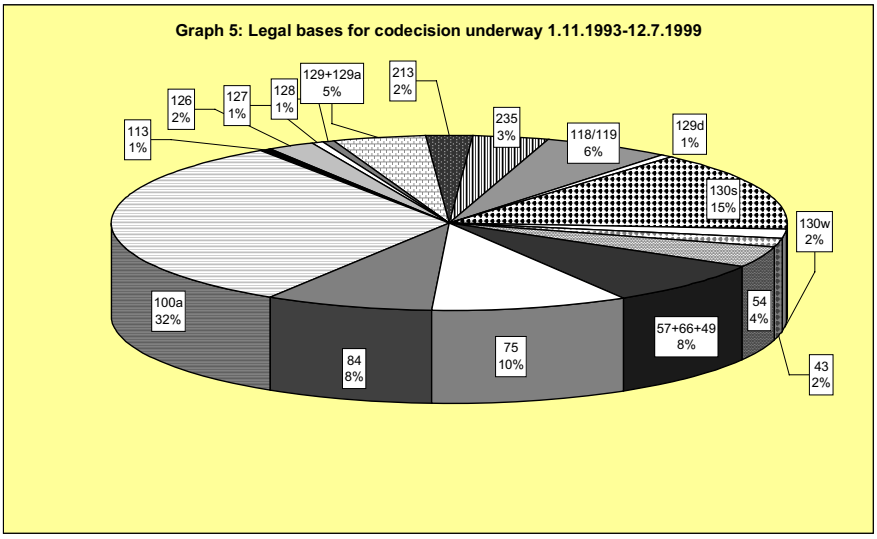
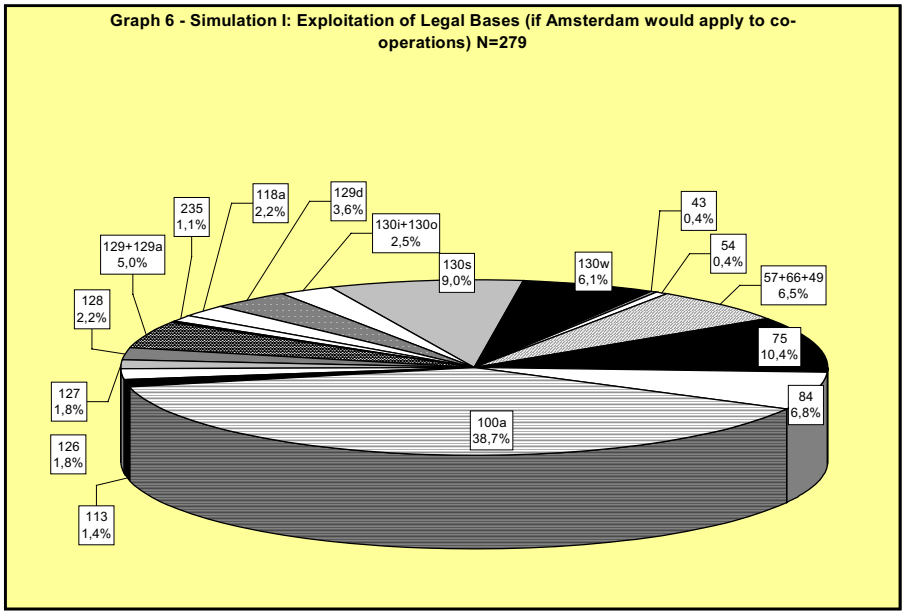


Author's own calculation, Source: OEIL

Legend: Art. 49 (40 new): Free movement of workers; Art. 54 (44 new): Right of establishment; Art. 56 (46 new): Treatment of foreign nationals; Art. 57(1) (47.1 new): Mutual recognition of diplomas; Art. 57(2) (47.2 new): Provisions for the self-employed; Art. 66 (55 new): Services; Art. 100a (95 new): Internal market harmonization; ex-Art. 100b: Internal market mutual recognition; Art. 126 (149 new): Education and Youth; Art. 128 (151 new): Culture; Art. 129 (152 new): Incentive measures for public health; Art. 129a (152 new): Consumer protection; Art. 129d (156 new): Trans-European Network guidelines; Art. 130i (166 new): Multi-annual Framework Program for Research & Technology; Art. 130s (175 new): Environment programs.

In sum, the exploitation of the newly introduced articles remains rather feeble. The trend towards concentration on Article 95 would be less dramatic if one simulates the entry into force of the Amsterdam treaty on 1 November 1993 instead of May 1999 (Assumption: all cooperation procedures – except EMU – become codecision): 67 (38.7%) would have been based on Article 95 but 25 % (52 out

of 208) would have been founded on legal bases newly introduced with the Maastricht Treaty. In other words, it is the Amsterdam Treaty which will probably induce a wider exploitation of competencies which were composed in 1993. Hence graph 5 indicates that concentration on internal market measures based on Article 95 falls by nearly 100% for codecision procedures underway at the end of June 1999. In contrast, procedures based on articles dealing with social and environmental affairs are becoming more and more important.



Author's own calculation, Source: OEIL

Interestingly, **in some cases, codecision went beyond the legal bases introduced by the Maastricht Treaty – political deals between Parliament and Council to refer to codecision by allowing Member States to seal their joint positions by unanimity**. Regarding those procedures completed before the end of June 1999, four cases referred to Art. 37 - agriculture (in combination with Art. 95), four to Art. 133 - trade policy (in combination with Art. 95) and four cases to Art. 308 - (in combination with articles providing for codecision).

However the failure rate of these atypical procedures is 56.8% higher than is the case for procedures based on the formally agreed codecision articles. Thus, given the experiences to date with Art. 308-proposals in connection with codecision, it seems likely that they will be withdrawn by the Commission in the near future.

Concerning the 'quality' of the legislative output, codecision was used mainly for the adoption of directives by the European Parliament and the Council. Only 5 procedures (3.13%) resulted in the adoption of a **regulation**. Another set of 30 (18.07%) legislative acts concluded until June 1999 were dealing with action programs - including decisions establishing action programs - in the fields of education and youth (Art. 149), culture (Art. 151), health (Art. 152), research and technology (Art. 166) and the internal market (Art. 95 for the SCHUMAN, FISCALIS and the KAROLUS program; Art. 100a in combination with Art. 133 for the Customs 2000 program). The **directives and regulations added together cover 81.1% of the legislative output** of Parliament and Council acting under the codecision procedure. Thus, **in contrast to those judgements that the EP is lacking 'true legislative capabilities' noted at the beginning of this study, our evaluation of the scope of the codecision procedure indicates that with Maastricht the European Parliament became able to co-legislate with the Council not just on less-binding action programs but also on a very large amount of binding secondary EC legislation.**

4.4. The institutional impact of codecision on the European Parliament

The introduction of the codecision procedure has had far-reaching effects on the functioning and the internal management of the European Parliament.

In order to give effect to its new powers, the Parliament changed its Rules of Procedures (RoP). Rule 82 (ex-75) deals with the composition of Parliament's delegation. According to Rule 82(3) RoP, the political groups are required to appoint members of Parliament's delegation to the Conciliation Committee. The delegation comprises 15 members. Three MEPs are chosen from among Parliament's vice-presidents. These constitute the permanent members to all Conciliation Committees. Moreover, the chairman and the rapporteur of the committee dealing with a specific Conciliation item are automatically part of the delegation. As for the other 10 Members, they are to be appointed "preferably from among the members of the committee concerned" (Rule 82(3) of RoP). This composition has proved to work satisfactorily (Progress report of the EP delegations to the Conciliation Committee [EPDCC] 1994-1997) [11]. In practice, the three "permanent members" have become specialists of all the **horizontal aspects of codecision**. These are political issues concerning the implementation of legislative acts **(Comitology)** and the budget (with regard to the conflicts on entering so-called 'amounts deemed necessary - **ADN'**) as well as more practical ones concerning the preparation of Parliament's delegation. After early experiences with Conciliation Committees, the President of the Parliament asked the Committee on the Rules of Procedure, on 1 February 1995, to consider the possibility of systematically including one representative of the Committee on Budgets and one of the Committee on Institutional Affairs.

Codecision had a significant impact on the 'professionalisation' and 'specialization' of a rather small number of MEP. They are now required to become experts in technically complex matters. Of course, expertise is not a new feature for MEP, and it is not exclusively relevant to the existence of the codecision procedure. However, unlike other procedures, codecision provides room for maneuver, where Parliament and Council are obliged to settle technical issues, face to face, and on an equal footing. If Parliament amends the common position of the Council and the latter is not willing to accept them, Parliament has the right - and the duty - to bargain with the Council on a joint compromise text. Formal negotiations take place within the Conciliation Committee. Up until 31 May 1999 the Conciliation Committee held 71 meetings on a total of 61 legislative proposals [12]. Member States were rarely represented by a Minister but by members of COREPER. As regards the attendance rate, the Council delegation always contained at least one representative from each Member State. In contrast, **the attendance of MEP varied considerably (prior to the 1994 elections between 58.33% (7/12 MEPs) and 91.6% (11/12 MEPs) [on average 75%]; after the 1994 elections between 26.6% and 113.3% [on average 81.3% [13].])**.

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11. In order to secure continuity in the delegations to the Conciliation Committee, in January 1998 the EP adopted the Ford report on Rule 75 of the RoP. The following three amendments to the former text were adopted:

Former text	New text (retained in Rule 82 new)
Rule 75(4): The political groups represented on the delegation may appoint substitutes who may only participate in the work of the Conciliation Committee if the full member is absent for the whole meeting.	75(4): The political groups represented on the delegation shall appoint substitutes.
Rule 75(7), first subparagraph: The delegation shall decide by a majority of its members. Its deliberations shall be held in camera.	75(7), first subparagraph: The delegation shall decide by a majority of its members. Its deliberations shall not be public.
Rule 75(7), second subparagraph: The Conference of Presidents may lay down further procedural guidelines for the work of the delegation to the Conciliation Committee.	75(7), second subparagraph: The Conference of Presidents shall lay down further procedural guidelines for the work of the delegation to the Conciliation Committee.

12. See: EPDCC Activity report 1 November 1993 – 30 April 1999, Doc. PE 230.998, 6 May 1999.

13. For the conciliation meetings of 29.9.1994 to 13.12.1994 (average attendance of 86.1%) we counted X/12 MEPs. For the remaining conciliations until June 1999 we counted X/15 MEPs.

At first glance, we observe that the average attendance of MEP slightly increased after the June 1994 elections. In fact, according to the EPDCC report on codecision between 1.8.1996 and 31.7.1997, the decline in attendance by MEP from 91% for the first conciliation meeting held on 4 March 1994 to 58.33% for the sixth one held on 26 April 1994 was mainly due to the EP direct elections in June 1994. However, the election campaign does not sufficiently explain the ups and downs in MEPs' attendance after June 1994, because the variation for this period (V = 82.32) is more than twice that for the period prior to the elections (V = 33.3).

High and low attendance rates may also be explained by the substance of a given issue. In this regard, it could be argued that unlike political/horizontal (Comitology and budgetary-related) issues, technical conciliation meetings may attract MEPs to a lesser extent. However, we could not observe a correlation based on this hypothesis: whereas both the KALEIDOSCOPE and the ARIANE/RAPHAEL conciliations with mainly political issues had rather low attendance rates of just 8/15 (53.33%) and 9/15 (60%) MEPs, the technically complex conciliations on the directive on 'gasoline losses due to evaporation in distribution - reduction of VOC emissions' (three conciliation meetings with 13, 7 and 12 MEPs of possibly 15 each), the decision of the European Parliament and the Council on Community guidelines for the development of the trans-european transport network (four meetings with 15, 15, 14 and 13 MEPs of possibly 15 each) and the meetings on the V. RTD Framework Program (four meetings with 14, 13, 17 and 21 MEPs) attracted an average of 71.1%, 95% and 108,3% MEPs respectively.

With the introduction of the codecision procedure, Parliament developed further its internal management. Following the inter-institutional agreement of 21 October 1993 between Parliament, Council and Commission on the modalities of codecision, the Parliament set up a secretariat for its delegations to the conciliations committee (conciliation unit) comprising four administrators and secretarial as well as technical/logistical assistance staff. The conciliation unit works closely with the reinforced legislative planning units in both DG I and DG II and with the EP's legal service. Since public(shed) opinion considers that codecision is a complex and unfathomable procedure, both the conciliation unit and DG I have arranged means for easier access to the relevant documentation concerning the different stages and outcomes of the decision-making process. Apart from DG I press notices, the conciliation unit publishes 'Conciliation Procedures Stop Press', a monthly briefing containing information on every codecision item in process. Unfortunately, 'Conciliation procedures Stop Press' is available only in French and English.

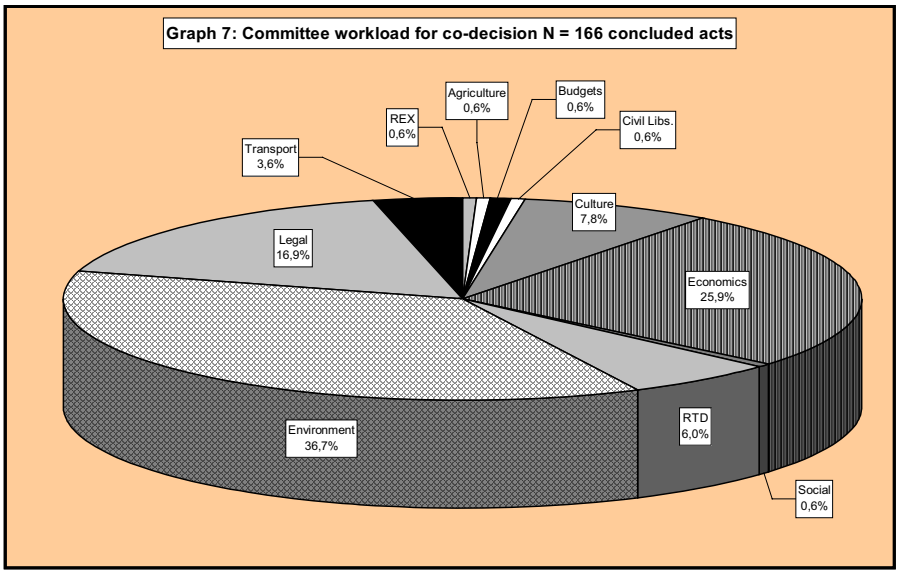
Even before codecision came into force, the cooperation procedure had led to a "better organization and voting discipline within the Parliament. The need to obtain an absolute majority of Parliament's membership in order to reject or amend a common position in second reading led to better concertation between the political groups, [...] and was also a stimulus for reorganizing voting time (by bunching key votes at central moments of the week) and for improving group whipping systems in order to increase attendance" (Jacobs 1997: 5).

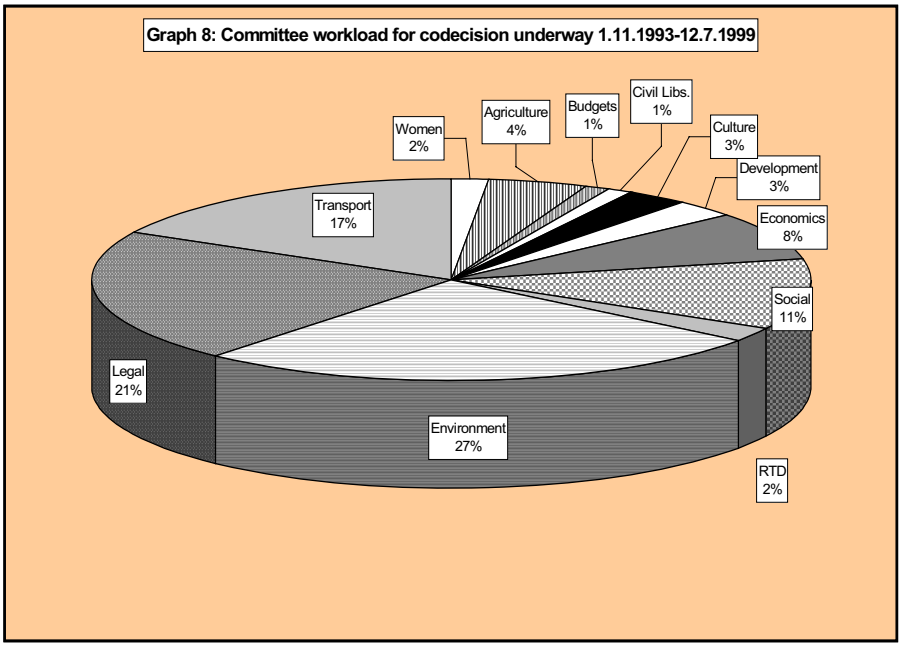
In order to prevent Parliament from legislative failure and duplication of work, Parliament's RoP (Rule 72) ensure that second reading amendments have to be based on amendments adopted by Parliament in its first reading. Amendments should only be admissible if they are aimed at restoring Parliament's first-reading position. However, if the Council's common position departs from the Commission's initial proposal, Parliament is required to focus on specific and partially new amendments for its second reading. In this regard, the EPDCC report on codecision between 1.3.1995 and 31.7.1996 notes that "there have been some problems regarding the quality and quantity of amendments" and that "simply retabling first reading amendments has not been effective" (p. 6).

Consequently, the EP's conciliation unit organized regular meetings with the committees involved in order to ensure consistent sets of second reading amendments. In order to assist the conciliation unit, the EP also set up a working party in 1996 on the quality of editing amendments. **Thus, whereas the EC Treaty did not formally press the European Parliament into streamlining the process between the first and second reading, the EP demonstrated that it has become a self-disciplined and reliable partner in shaping binding European law.**

Similarly to what we can observe with regard to the scope of the procedure, **codecision has led to a structural concentration of workload in only three out of the 20 permanent committees**. Hence,

the bulk of the procedures concerned the Committee on the Environment, Public Health and Consumer Protection, the Committee on Economic and Monetary Affairs and Industrial Policy and the Committee on Legal Affairs. In fact, the new procedure proves to be very time-consuming for MEPs in those committees with a heavy codecision burden. **The three committees concerned shared nearly 80% of all procedures concluded until the end of June 1999.**





Author's own calculation, Source: OEIL

The concentration of codecision on these three committees was primarily due to the exploitation of the legal bases concerned. Since most of the procedures were based on Art. 95, the majority of concluded codecision procedures engaged the three committees mentioned above. Concerning the distribution of these 'Art.-95-codecisions', the Committee on the Environment, Public Health and Consumer Protection was engaged 46 times, the Committee on Economic and Monetary Affairs and Industrial Policy 29 times and the Committee on Legal Affairs 13 times. **Thus, 53.01% of the 166 concluded**

codecision procedures covered both Art. 95 and one of these three committees.

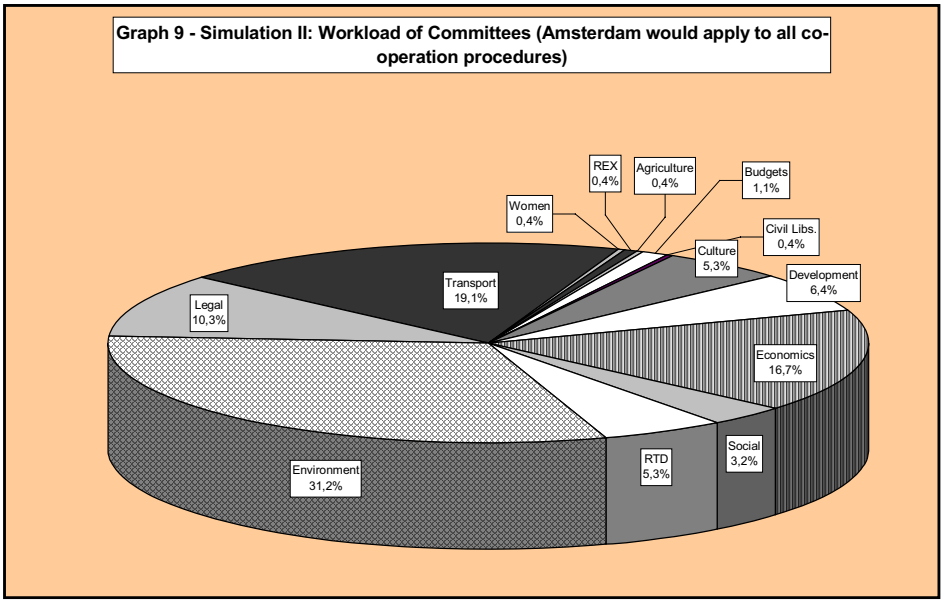
The consequence of the shift towards legislative power and its effective execution is a strong decrease in the number of non-legislative resolutions, own initiative reports and resolutions after statements or urgencies (from 455 in 1986 to 168 in 1998!).

The number of these activities fell sharply from 2,41 per MEP in 1979 to 0,26 per MEP in 1998! Own initiative and urgency resolutions reflect the **individual and political** awareness and interest of MEP in making an issue public to the outside world – towards the Union's citizenry and electorate. MEP and political groups use the instrument of own initiatives or urgency resolutions to give evidence of their general interests, their attention paid to a given issue or of their willingness to shape the policy agenda. **For political groups, these resolutions are one of the core instruments which allow them to present their original point of view on a given issue.** Of course, own initiatives do not necessarily result in the adoption of new regulatory or distributive legislation. But they allow MEP and political groups to make prove of their collective – denationalized but transnationally politicized – interest in EU politics. Hence, in contrast to co-decision (or co-operation in EMU), where action against the Council (amendments to or rejection of its common position) requires the approval of an absolute majority (actually at least 314 votes), own initiative resolutions pass with the simple majority of votes cast. Accordingly, whereas co-decision condemns the EP's two major political groups to reach agreement on parliamentary amendments which in consequence move the left-right cleavage apart from the agenda, own initiatives and similar resolutions provide each political group the opportunity to present their original socio-economic argument before the public.

The Maastricht Treaty also introduced an offer providing Parliament the right to request the Commission to submit legislative proposals. The basic idea behind article 192 was to equalize Parliament with the Council of Ministers, which obtained, from the outset of the EEC Treaty a similar right of requesting the Commission "to undertake any studies the Council considers desirable for the attainment of the common objectives, and to submit to it any appropriate proposals". Unlike own initiative resolutions, requests under article 192 need an absolute majority of Parliament's member to be adopted. Moreover, Parliament's Rules of Procedure (Rule 50) introduced another condition for the referral to article 192 in that it is admissible only if the envisaged proposal is not included in the Annual Legislative Program. In fact, the Parliament referred to this new prerogative only three times [14]. Requests are not binding and the 1994-1999 Parliament did not want to tie the Commission by these requests. According to the Plenary majority view, neither article 192 nor article 208 (granting the Council with a similar right to request the Commission policy initiation) should be transformed in a way which would undermine the Commission's role as the EC's exclusive policy initiator. The formal "request"-Article did not have a significant impact on the institutional relationship between the EP and Commission in setting the EC's policy-making agenda. However, given the pressure of Member States on the Commission not to develop further green and white papers or other preparatory drafts mentioned in the legislative program, it is not unrealistic to imagine the European Commission informally inviting Parliament for outside pressure for policy-initiation and thus to vote for a request pursuant to Article 192 in the future (Smith/Kelemen 1997: 4).

Both the introduction of codecision itself and the internal re-organization of the European Parliament's services with regard to the implementation of the procedure had important impacts on MEPs. With regard to their involvement in the procedure, we observe a **growing nucleus of members** who are becoming **familiar** not only **with the technical details** and problems of codecision, but also with **horizontal issues such as 'Comitology' and the budgetary powers of the EP**. The enlargement of the scope of application provided for co-decision by the Amsterdam Treaty will alter this concentration only to a limited extent and, as a consequence, the differentiation of Parliament into "legislative", "consultative" and "non-legislative" committees. If we apply the scenario of the Amsterdam Treaty having been in force since November 1993, Graph 9 indicates that besides the three above-mentioned Committees (which would still cover 55 % of all concluded procedures), the Transport Committee, the Committee on Development and Co-operation and the Committee on Employment and Social Affairs would have been introduced quiet earlier into the club of co-decision.

14. In January 1997 it asked the Commission to submit a legislative proposal concerning a general EC strategy for the forestry sector, in April 1996 it asked the Commission to present a proposal for a EP and Council decision concerning a European health card, and in October 1995 it invited the Commission to propose a directive on the regulation of claims resulting from traffic accidents occurring in another member state.

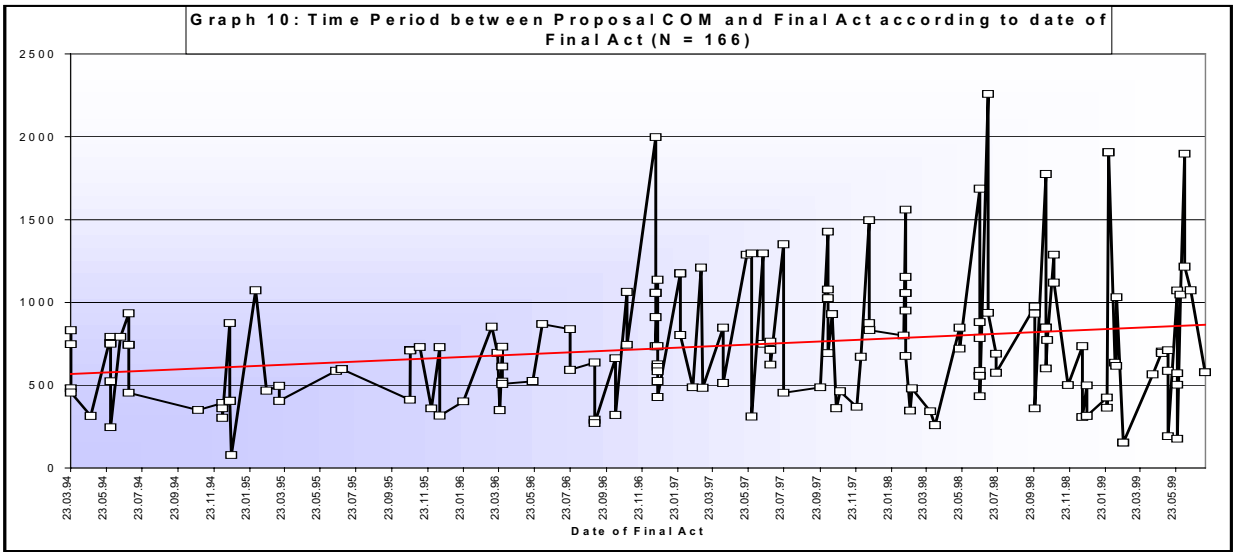


Author's own calculation, Source: OEIL

Codecision also had a major impact on the Council: its Ministers, COREPER representatives and other relevant bodies recognize that they are now working in an **institutional triangle** with the European Parliament and the Commission as equal partners for negotiating compromises. Closer European Parliament/Council contacts at all stages of legislation become a more and more useful means for preparing formalized conciliation meetings. Francis Jacobs notes that '"here have even been a couple of occasions at which a Parliament rapporteur [...] has convened meetings with the chairman of the relevant Council working group, with other Council staff and the Commission, and with representatives of industry and of user groups" (Jacobs 1997: 18, cf. EPDCC report, 31.7.1997, pp. 4-7). As a result of the increasing 'familiarization' of both MEPs and Council representatives with codecision, more and more informal working mechanisms have been established. This is understandable for those directly involved, but setting up informal negotiation mechanisms risks a negative impact on public opinion, which responds better to more open methods of decision-making.

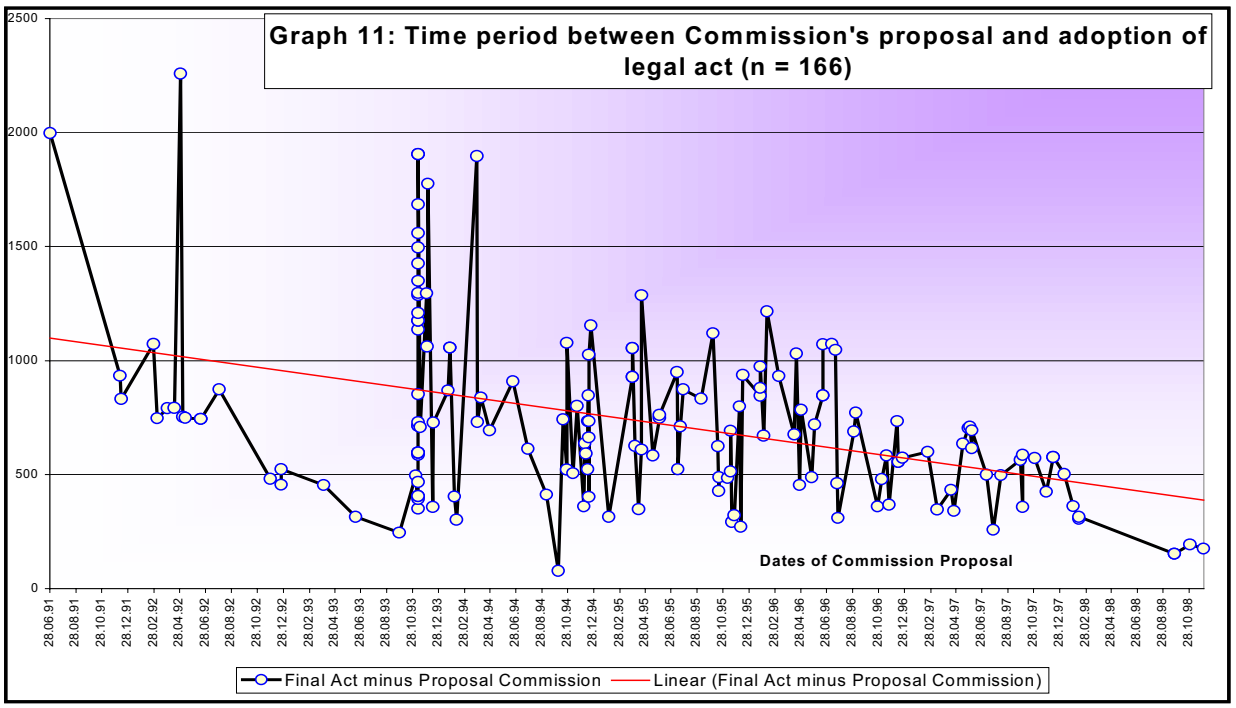
5. The efficiency of decision-making: an analysis of the periods-of- time in the different stages of decision-making

Contrary to popular perceptions of the procedure, codecision does not appear to have led to serious delays in the final adoption of EC legislation. The procedure appears cumbersome. Indeed, graph 10 gives the impression that the time period between a legislative proposal of the Commission and the conclusion of the procedure is lasting longer and longer, oscillating between 500 and 2000 days.



Author's own calculation, Source: OEIL

However, if we focus **on the dates of proposal by the Commission** as the independent variable for calculation, we observe that since **10 November 1993 the duration of codecision procedures has constantly diminished** (graph 11). This was the date when the Commission presented 34 modified proposals originally founded on the cooperation procedure (Art. 149 ECT - SEA version) which then became - due to the entry into force of the TEU on 1 November 1993 - subject to the codecision procedure. Whereas modified 'cooperation proposals' transmitted both to the EP and the Council lasted on average 918 days, original 'codecision proposals' lasted only 669 days! **A more detailed analysis even indicates that the average duration of codecision fell dramatically from 769 days (for the period 11.11.1993-31.12.1994) to 344 days for proposals published in 1997 and to 269 days for those issued in 1998.**



Author's own calculation, Source: OEIL

Criticism of codecision also holds that the addition of 'a further stage (conciliation) and Parliament's

exercise of its new powers have made the legislative procedure too long' (EPDCC report 1.8.1996-31.7.1997; Annexes, p. 5). In fact, the average length of time taken for legislative acts adopted under the **codecision** procedure (1.11.1993 [15]. - 12.7.1999) was as follows:

for all acts without conciliation: **639 days**
for all acts in which conciliation took place: **892 days**
Total average (122 procedures count): **738 days**

According to the reply to Question No. 39/97 by Richard Corbett, MEP, the average length of time taken for acts adopted under the cooperation procedure was as follows:

for acts completed before the entry into force of the TEU: **647 days**
for acts proposed before, and continued after, the entry into force of the TEU: **1020 days**
for acts proposed pursuant to the cooperation procedure, and continued after,
the entry into force of the TEU pursuant to the codecision procedure:
c1) 1001 days without conciliation
c2) 1084 days with conciliation
for acts proposed and completed after the entry into force of the TEU: **536 days.**
Total average of a + b + d: 734 days.

Thus, at first glance, it seems that the codecision procedure leads to lengthier delays than cooperation. In fact, the total duration of all legislative acts adopted under the codecision procedures exceeds the total duration of all legislative acts adopted under the cooperation before the entry into force of the Maastricht Treaty by 91 days. However, the average duration for all legislative acts **adopted under the codecision procedure is 738 days – four days longer** than the total average duration for all the acts hitherto **adopted under the cooperation procedure**.

5.1. Codecision after the first reading of the EP and the common position of the Council

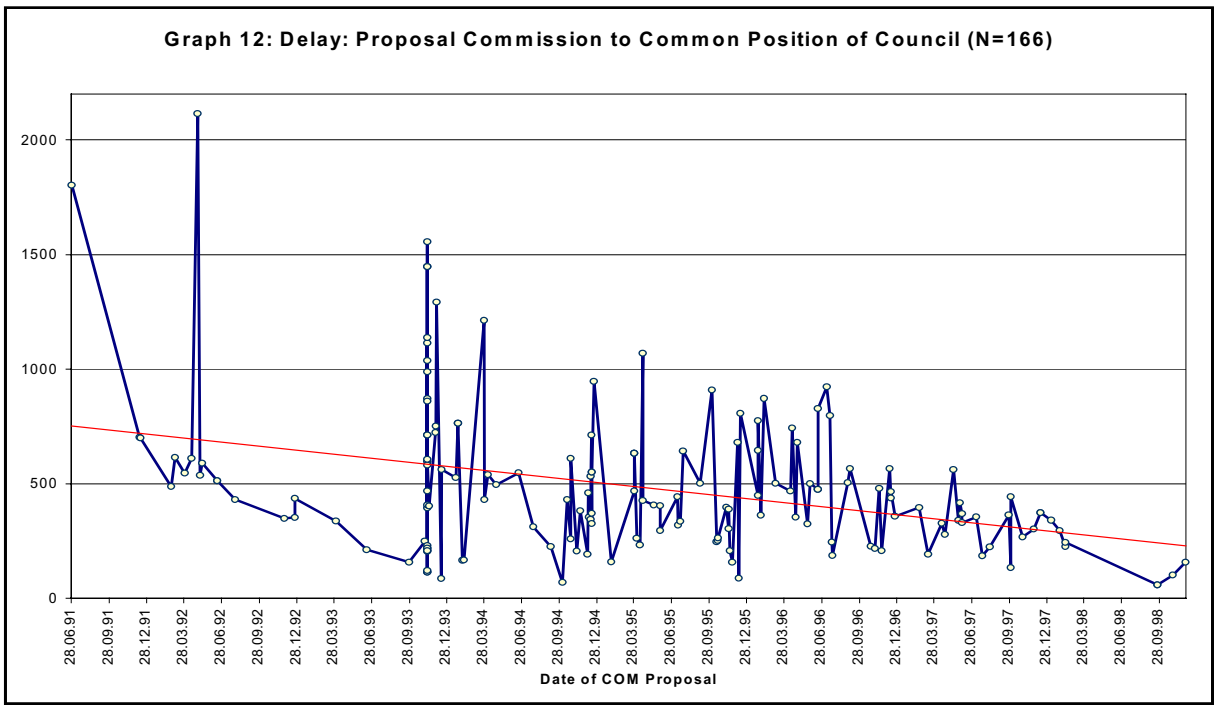
Considerable delays generally occurred due to lengthy procedures before the adoption of a common position by the Council where no deadlines are applicable.

Table 9: Average of time COM proposal - Council common positions exceeding the total duration for codecision procedures (= 738 days)

Short title	Legal Basis	COM Proposal	Common position	Final act to proposal (days)	Common position to proposal (days)	Final act to Common Position (days)
Flavouring substances in Foodstuffs	95	01.12.93	22.12.1995	1062	751	311
Textile names	95	24.01.94	26.02.1996	1057	763	294
Binary textile fibre mixtures	95	24.01.94	26.02.1996	1057	763	294
Solvency Ratio (Credit Institutions)	47	24.01.96	09.03.1998	880	775	105
Misleading advertising	95	10.11.93	19.03.1996	1426	860	566
Pressure equipment	95	10.11.93	29.03.1996	1296	870	426
Profession d'avocat	40 + 47	21.12.94	24.07.1997	1153	946	207
Rules for the internal market in electricity	95	10.11.93	25.07.1996	1135	988	147
Data protection ISDN	95	10.11.93	12.09.1996	1496	1037	459
Masses of vehicles	95	10.11.93	28.11.1996	1350	1114	236
Biocidal products	95	10.11.93	20.12.1996	1559	1136	423
Natural Gasmarket	95	10.11.93	12.02.1998	1685	1555	130
Position of workers in prov. Of services	55	28.06.91	03.06.1996	1998	1802	196

[15]. As for the completed codecision procedures (on 30.6.1999) 46 started prior to the entry into force of the TEU.

However, even in those cases where the delay of Council's common position exceeded the total duration of all codecision procedures, the time period for the conclusion of the legislative acts was fairly short (average: 292 days).



Author's own calculation, Source: OEIL

Once the Council has adopted its common position, the longest case scenario of the old codecision procedure would have involved three Council and three parliamentary readings, plus two conciliation procedures. If all possible additional months and weeks were agreed throughout, the procedure could take up to 15 months from the date of transmission of the Council's common position (= approx. 475.5 days). The following figures show that the periods **between the adoption of Council's common position and the adoption (or rejection) of a draft legislative act were quite short**.

We first looked at the average period of time **according to the date of the conclusion of the procedures** (= independent variable for calculation). Until June 1994 Parliament and Council concluded 11 out of then 69 proposals subject to codecision. The procedures lasted on average 158 days. This period of time could have lead to the expectation that the new procedure for which Parliament fought at the IGC on Political Union functioned very well. Only four of these procedures involved the Conciliation committee. **However, for the second half of 1994 (the first cases for the newly elected Parliament), Council and Parliament needed 232 days (on average) to adopt legislation according to codecision. For 1995, 1996, 1997, 1998 and the first half of 1999 the time periods were respectively 326; 239; 352, 222 and 236 days between the common position and the conclusion of the final act (on average).** One explanation for the variation in the average time periods could be the delay, which occurs when conciliation becomes necessary. However, after calculating the ratio between the average time periods and the number of conciliation meetings held, we have to discard this argument: **The calculated ratio for 1997 with an average time period of 351,8 days with 20 conciliations (1:17,59) was more than two times smaller than for the first half of 1994 with an average time period of 157,8 and four conciliations (1:39.25)!**

Since we could not find any correlation between the **dates of the conclusion** of codecision procedures as the independent variable for calculation on the one hand and the **period of time** on the other, we went on to compare the periods according to the dates of the Commission's legislative proposals and the dates of the adoption of Council's common position: for those procedures where Council had adopted its **common position in 1993**, the rest of the procedure lasted on average **232 days**. Common positions adopted in **1994** and **1995** that were subject to codecision procedures lasted on average **238** and **309** days respectively. Then, from **1996 onwards** the average delay fell to periods of **295**, **285** and **175** days (on average).

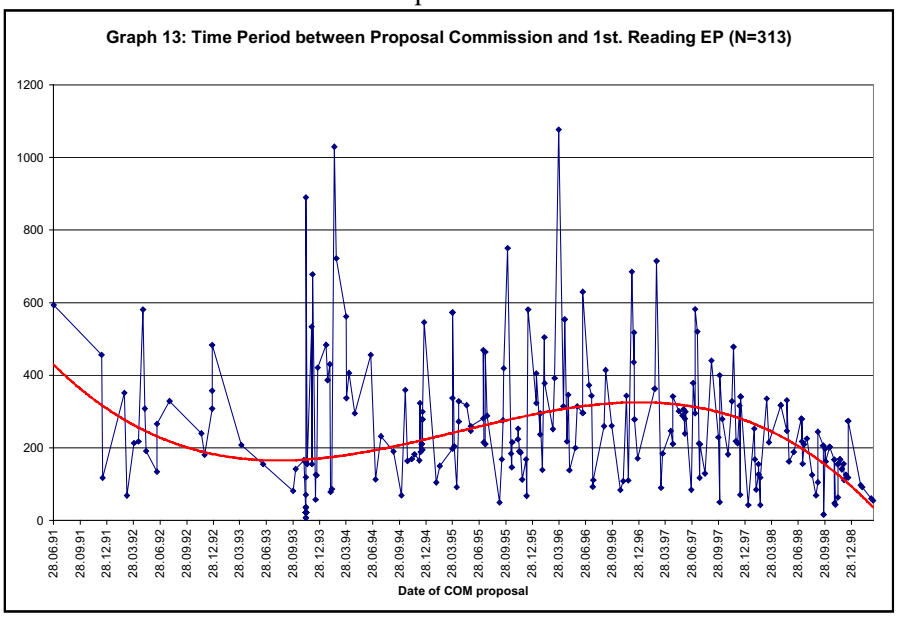
The EP is also responsible for delays. The average duration for first readings was 229 days – for 166 procedures sealed during 1994-99; the duration remains at 229 days for the procedures underway - varying between 7 days for a directive on the natural gas market and 890 days for a directive on Biocidal products. **Similarly to the Council, institutional adaptation to the codecision procedure also took place in the European Parliament.** We sorted all Parliament's first readings according to the date they were approved. The average duration for first readings **until December 1993 was 228 days**. It then fell to **88,93 days (prior to the elections in June 1994**). The newly elected Parliament started with only one first reading resolution (duration: 69 days). In **1995**, the average duration **increased to 283 days**. However, the average delay fell to **268 in 1996** and **250 days in 1998**.

If we compare the two bodies within the EC's legislative branch, **we note that, until 1998, Parliament needed less time to adopt its first reading resolution than the Council.** This observation can be confirmed if the codecision procedures are grouped according to the dates of the Commission's proposal as an independent variable for calculation (Table 8). **The difference between the time the European Parliament took for the adoption of its first reading resolutions was always about one 40-60 % of the time needed in the Council for the adoption of its common positions.**

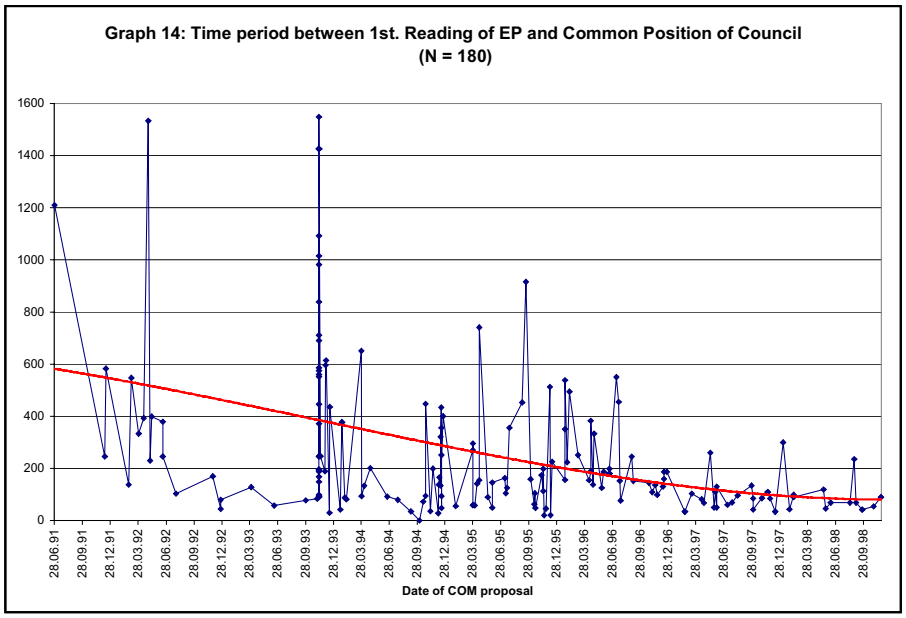
Table 10: Average duration for common positions and first reading resolutions according to the date of the Commission's proposal

Date of COMMISSION proposal	COUNCIL: Average duration of Common positions	EUROPEAN PARLIAMENT: Average duration of first reading
	Concluded procedures	Concluded procedures
Until 10.11.1993	612	263
Until 31.12.1993	636	115
1994	463	275
1995	432	260
1996	504	281
1997	327	243
1998	185	101

Since September 1994 we observe a decrease in the average time required for first reading resolutions. Similarly to the Parliament, it seems that the Council also became acquainted with the new decision-making procedure during 1994, after the newly elected European Parliament voted its first reading resolutions on matters relevant to the codecision procedure.



Author's own calculation, Source: OEIL



Author's own calculation, Source: OEIL

As for the time-periods taken by the different stages in the codecision procedure after the adoption of a common position by the Council, we observe a slight decrease in the periods of time depending on the 'age' of draft legislation subject to conciliation and joint compromise texts. In contrast, we observe a slight increase in the duration between the second reading and the adoption of the final act. Comparing the two kinds of second reading follow up, it should be noted that the average duration of codecision procedures, especially where conciliation is not necessary, was slightly increasing.

As for the average time period between the adoption of a joint compromise text after conciliation and the approval - or rejection - by the European Parliament, we did not observe any patterns at all. Apart from the directive on consumer protection in distance contracts, an average of 27 days was necessary for the final approval of codecision procedures without conciliation and 36 days for those procedures where a third reading in Parliament was necessary. In conclusion, our findings may be generalized in two arguments:

First: **The earlier Commission proposals were submitted (i.e. submitted prior to the entry into force of the Maastricht Treaty pursuant to the cooperation procedure - then 'transformed' into codecision procedures), the longer it took to conclude a case.**

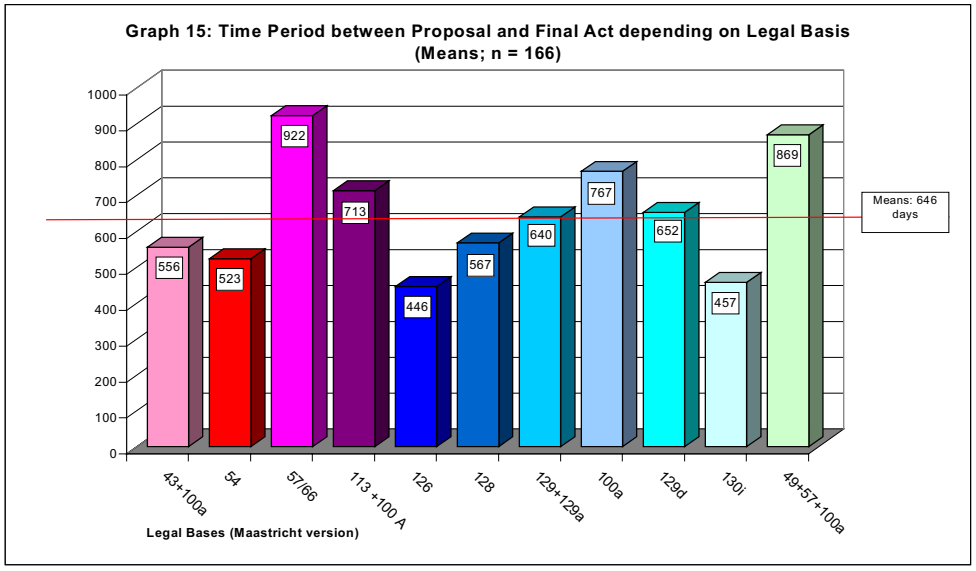
Second: **The shorter the delay between the Commission legislative proposal and the adoption of a common position by the Council, the less time is required to conclude the case with the EP. Similarly, the longer the EP takes to adopt its first reading resolution, the longer it takes to shift into the final stages of codecision.**

5.2. 'Institutions learn' - A look into the legal bases and codecision

At first glance, the extension of the EP's legislative competencies can be characterized as successfully reducing the parliamentary "democratic deficit". However, with regard to the **time efficiency** of the codecision procedure, this success may be limited because codecision is not, as is the cooperation procedure, always governed by **majority voting** in the Council of Ministers. According to Article 151 (Culture) and Article 166 (Multi-annual framework programs in the areas of research and technological development), the Council is required to decide unanimously on its common position. Since the extension of the field of application of those matters for codecision where the Council is required to vote by unanimity was heavily criticized as one of the failures of the Amsterdam Treaty, we analyzed the average duration of codecision procedures within the legal bases in question. Was there any relationship between the voting rules of the Council on the one hand, and the duration of co-decision on the other (comparison between co-decision based on Articles 151 and 166 TEC and co-decision based on the other Articles where qualified majority voting may be applied.)?

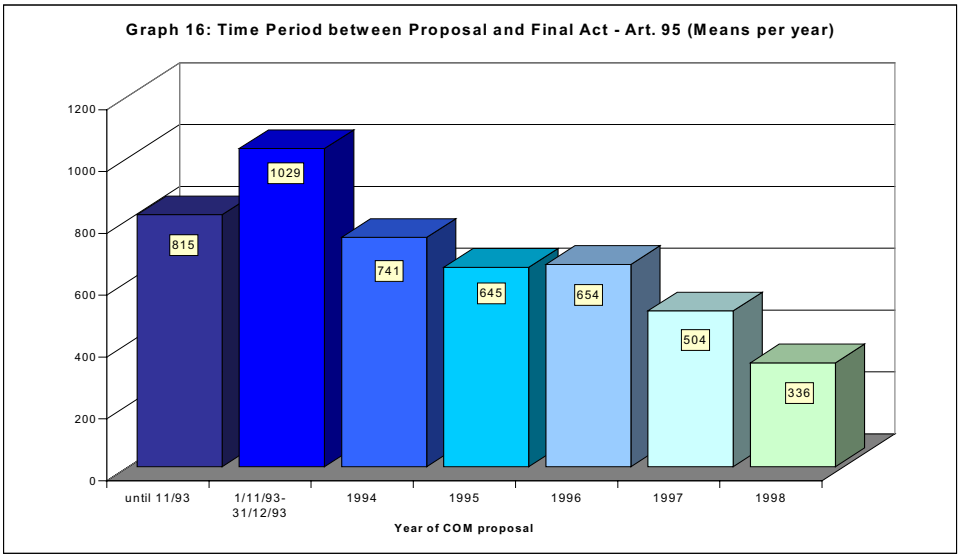
Graph 15 shows that the total average duration of codecision varied considerably depending on the legal bases applied for. Interestingly, the average duration for procedures based on Art. 166 (RTD) with 457 days and Art. 151 with an average duration of 567 were below the total mean of 646 days for 166 sealed procedures! In contrast, procedures based on Art. 55 and Art. 47 took the longest time to produce binding legislation for the Union's citizenry. However, the delay of Art. 55/47 directives is mainly due to one event which occurred on the directive on posting of workers in the framework of the provision of services on the basis of Art. 55. In fact, the duration the European Parliament needed 593 days for its first reading resolution - pursuant to the cooperation - but the Council needed 1802 days for adopting its common position (the UK voted against, Portugal abstained). Once the common position was tabled in Parliament, the latter approved it unamended and the procedure lasted another 196 days. For the remaining eight legislative acts where Art. 55 functioned as only one of two and more legal bases, the average duration was 728 days.

Thus, **the fact that the Council is obliged to vote unanimously on its common position does not seem to be the only reason for delay**. If the average duration of codecision varies independently from the voting requirements in the Council, the substance of a given proposal and the general interests, ideas and strategies followed by the member states in adopting secondary legislation with regard to certain policy fields, may also be a source for delaying the procedure.



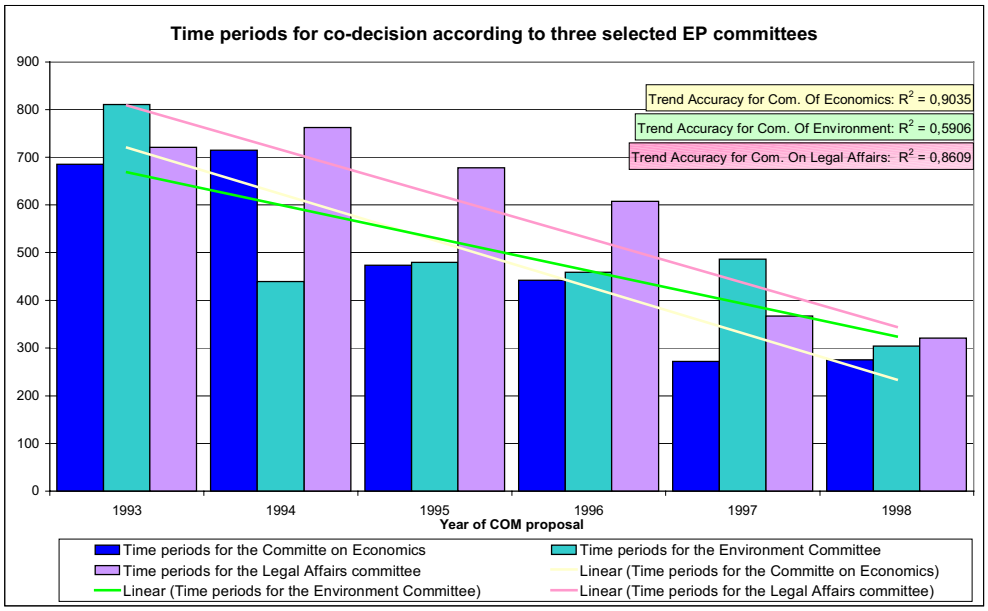
Author's own calculation, Source: OEIL

As noted above, Art. 95 is the most prominent legal basis for codecision. If we concentrate on procedures based on this article, our general findings on the relationship between the duration of legislative acts and the dates of the Commission's proposal are strongly confirmed.



Author's own calculation, Source: OEIL

Graph 16 shows that both **the Council and the European Parliament have undergone a considerable 'learning process' in adopting binding legislation on the basis of Art. 95.** The average duration for Art. 95 codecision procedures proposed in before the entry into force of the Maastricht Treaty was 815,57 days. Between November 1993 and 1998 then, the average duration was reduced by a factor of 2,4 to 336 days (for 1998 proposals)! This is all the more interesting since procedures based on Art. 95 covered nearly half of all legislative acts where conciliation between the Council and the EP was necessary (35 conciliations; average duration of those procedures: 1012 days). The 'learning effect' of codecision can also be witnessed when looking at the average time periods of the three main EP committees involved (graph 17).



Author's own calculation, Source: OEIL

Whereas the Environmental Affairs Committee – with the heaviest codecision burden of all committees – stabilized the delay for its relevant policies, the two other committees reduced the delay for the adoption of legislative act considerably.

6. The legislative influence of the European Parliament

In this chapter we give an overview of the percentage of successful parliamentary amendments during codecision. Moreover, we analyze the success of Parliament's amendments with regard to the budgetary aspects of legislative acts; the 'Comitology' aspects of legislative acts; and the substance of legislative acts in those areas where a direct comparison between Parliament's amendments and Council's or the Commission´s points of view seems to be possible.

As far as the cooperation procedure is concerned, the "success rate" of European Parliament amendments for the period 1987-1993 was impressive. Parliament adopted 4,572 first reading and 1074 second reading amendments. The Commission accepted 54.7% (2,499) of Parliament's first reading amendments and 44.2% (475) of its second reading amendments. The Council retained 43% (1,966) of Parliament's first reading amendments but only 23.6% (253) of its second reading amendments (European Parliament: Les Avis Législatifs du Parlement Européen et leur Impact, Bruxelles 1994). The quantitative success of the EP's amendments then diminished slightly for cooperation procedures that began before and were completed after 1 November 1993. Out of 1,440 first reading and 519 second reading amendments, the Commission accepted 54% (763) and the Council 35% (499) of Parliament's first reading amendments. As for the second reading amendments, the Commission included 41% (210) in its modified proposal and the Council was able to accept 16% (84) (European Parliament: Reply to Question No. 39/97 by Richard Corbett, Brussels 1997).As for those legislative acts which began as cooperation procedures and continued after 1 November 1993 (in fact, with the modified proposal of the Commission delivered on 10 November 1993) as codecision procedures, the success rates are as follows (European Parliament: Reply to Question No. 39/97 by Richard Corbett, Brussels 1997): The EP adopted 621 first reading amendments. The Commission included 44% completely and 1.6% partly in its modified proposal. The Council then accepted 40.6% (+ 1.6% in part). Whereas in the cooperation procedure second reading amendments of the EP were less successful than first reading ones, the acceptance rate with regard to codecision procedures originally proposed under the cooperation formula indicates a rather positive outcome: Both the Commission and the Council accepted 75% of all EP second reading amendments (+ 7.5% as joint compromise texts agreed between Parliament and Council).

Concerning the total proportion of EP amendments accepted in the framework of codecision, the last survey undertaken by the European Parliament's DG I-Directorate C (Suivi des actes parlementaires, Août 1997) for the period until the end of July 1997 revealed that, of the then 94 completed procedures:

- the rate of Commission acceptance in respect of first readings increased to 52.5% (+ 3.9% in part);

- the rate of Commission acceptance in respect of second readings of Parliament decreased from 75% to 61% (+ 1.9% in part);
- the rate of first reading amendments accepted by the Council increased from 40.6% to 42.7% (+3.7% in part);
- the rate of second reading amendments accepted by the Council fell from 75% to 46.9%(+ 12.5% **joint compromise texts** of both the EP and the Council).

However, if we compare **the total of all cooperation procedures with the total of all codecision procedures**, the success rates of Parliament's amendments are as follows:

Table 11: Success rates for cooperation and codecision procedures (until 7/1997)

Cooperation and codecision procedures published up to the end of July 1997	125 cooperation procedures 1987-1990	322 cooperation procedures 1987-1993	400 cooperation procedures 1987-1997	82 codecision procedures until 7/1997
	1987-1990	1990-1993	1993-1997	Until 1997
Amendments (Total)	**1367**	**3205**	**1436**	**1777**
Proportion of amendments accepted at first reading stage	Commission: 63%	Commission: 55%	Commission: 54% (+0.6% in part)	Commission: 52.5% (+3.9% in part)
	Council: 46%	Council: 44%	Council: 41% (+0.4% in part)	Council: 42.7% (+3.7 in part)
Amendments (Total)	**357**	**717**	**519**	**520**
Proportion of amendments accepted at second and third reading stage	Commission: 55%	Commission: 44%	Commission: 43% (+4% in part)	Commission: 61% (+1.9% in part)
	Council: 26%	Council: 24%	Council: 21% (+3% in part)	Council: 46.9% Joint compromises: 12.5%

Compilation based on: Westlake 1994: 265; European Parliament: Reply to Question No. 39/97 by Richard Corbett, Brussels 1997; Parlement européen: DG IV/Suivi des actes parlementaires: Tableau statistique récapitutaltif pour les 125 procédures achevées fin avril 1990; Kreppel 1999.

The number of successful 'codecision amendments' voted during the second (and third) reading were much higher in comparison with the first readings, whereas they are substantially lower in the case of cooperation. In fact, the proportion of successful second (and third reading) amendments doubled in the case of the Council (from 21% to 46%). Moreover, if one adds to the proportion of accepted second reading amendments by the Council the proportion of 12.5% of joint compromise texts, the total proportion increased to nearly two thirds. Finally the success rate of Parliament's second reading amendments increased more than a third in the case of the Commission (from 43% to 61%). **Given this quantitative data of successful amendments, it can safely be said that codecision had a positive impact with regard to Parliament's influence in the making of European binding legislation.** However, we should bear in mind, that the acceptance rate of cooperation amendments during the first 'experimental' phase of its application (1987-1990) was higher – at each stage - than during the 'routine' phase starting with the entry into force of the Maastricht treaty.

Unlike in the cooperation procedure, where Parliament is only able to make a final "take-it-or-leave-it offer" to the Council, the EP does not simply propose amendments, but it **approves** the draft texts at every stage of the procedure 'with Parliament's amendments'. Consequently, the **EP acts as a joint author** alongside the Council or - with regard to the first reading stage - the Commission. Thus, another way of measuring the degree of influence which the EP exerts on the substance of a legislative act dealt with under the codecision procedure is to compare the final texts with the different drafts prepared by

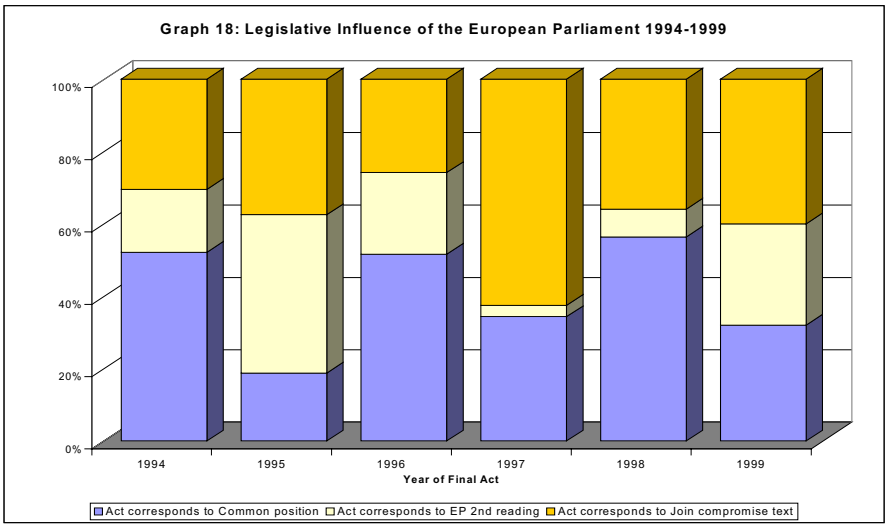
the Council and/or the European Parliament. We distinguish between the following four cases:

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

Of the 169 completed procedures (166 agreed + 3 failed cases) until the end of June 1999, there were:

- **65** cases in which the final text of the legislative act corresponds to the conciliation committee's **joint compromise text (38.4%** of the cases in comparison to **33%** for the time period from 1.11.1993 - **1.7.1997** and to **36.7%** for the time period from 1.11.1993 - **7/1996**);
- **71** cases in which the final text of the legislative act corresponds to the **common position of the Council (42.01%** of the cases in comparison to **33%** for the time period from 1.11.1993 - **31.7.1997** and to **36.7%** for the time period from 1.11.1993 - **7/1996**);
- **30** cases in which the final text of the legislative act corresponds to the **EP's second reading**; **(17,75%** of the cases in comparison to **24%** for the time period from 1.11.1993 **31.7.1997** and to **26.5%** for the time period from 1.11.1993 to **7/1996**);
- **3 failed acts**: in one case Parliament voted against the conciliation committee's compromise text **(1.75%** of the cases).

In comparing the period between 1 November 1993 and July 1996 with the period between July 1996 and July 1999 (Sources: Réponse à la question no. 22/96 de M. de Vries; EPDCC report: 5-6) we observe an increase in Council's influence on the outcome of the procedure and a slight increase in joint compromise texts. On the other hand, Parliament's substantial influence declined from 26.5% in 1996 to 17,75% in 1997, but increased towards 28% in the first half of 1999 (7 out of 25 acts corresponding to the EP's 2nd reading). We should not jump to conclusions in interpreting these figures as a failure of the European Parliament. Firstly, even a legislative act which corresponds to the Council's common position is an act concluded with Parliament's agreement. Secondly, a legislative act corresponding to the common position of the Council does not automatically represent a legislative act where Parliament had any influence. Hence, the Council in its common position may incorporate EP first reading amendments and consequently, the EP does not propose new amendments in the second reading stage. As noted above, the rate of **first reading amendments accepted by the Council** increased from 40.6% for 1996 to **42.7%** (+ 3.7% in part) for 1997.



Of course, "these figures take no account of the relative political weight of amendments, nor do they indicate the extent to which rejected amendments are eventually taken up in modified form in other, new proposals. In addition, it is not possible, from the figures, to distinguish between “substantive” amendments, designed to be accepted, and “propagandistic” amendments, designed to advance an issue up the policy agenda of Council and Commission (without any realistic expectation of inclusion in the final directive)" (Earnshaw/Judge 1996: 102). However, the analysis undertaken by the authors cited above also revealed that, under the cooperation procedure, both Council and Commission acknowledged Parliament's "significant but contingent contribution to the legislative process" (Earnshaw/Judge 1996: 124). Moreover, they concluded that the examination of Council's reasons for departing from Parliament's amendments indicated "the qualitative impact made by the European Parliament.” (Earnshaw/Judge 1996: 108). Thus, quantitative success rates should not be overestimated. On the other hand, it has to be pointed out that, even if the EP was exclusively successful in amending the recitals of a given draft proposal (which is not the case, see below), the final act would correspond to the EP’s majority will.

It has been argued that the cooperation procedure has transformed the Council-Commission dialogue established under the consultation procedure into a **trialogue**. Cooperation "hyphenated the relationship between Parliament and the other two institutions. But Parliament still remained, constitutionally, the 'outsider', dependant essentially upon maximizing its legislative influence through informal inter-institutional linkages" (Earnshaw/Judge 1996: 109). **With codecision then, Parliament's "influence" shifted towards real "power" within the ‘iron triangle’ of Brussels.** As **codecision** is a common act of the Council and the Parliament ("The logic of the conciliation procedure means that the two colegislators are condemned to finding an agreement"; EPDCC report for 1.3.1995/31.7.1996: 7), **it leads to an equalization of these institutions at the expense of the negotiation powers of the Commission (at least during conciliation)**. With the right to press the Council into conciliation or to reject the latter's common position, and thus the whole proposal, **Parliament obtained real bargaining powers in order to change substantive issues within directives, regulations and decisions**.

The areas where these powers are most visible are those where Parliament and Council found a compromise on the budgets of programs (e.g. in the cases of the Action plan 1995-1996 to combat cancer, of the SOCRATES, YOUTH FOR EUROPE, KALEIDOSCOPE programs) or where Parliament strengthened environmental and consumer concerns by setting stricter limits or by the insertion of consumer-linked provisions into the act in question. The following examples may illustrate the European Parliament’s substantive influence:

As regards the directive on approximation of the laws of the member states relating to **lifts**, the EP achieved a special clause on access for handicapped people. As regards the directive on **investor-compensation schemes,** the EP got the Council to agree on a higher minimum level of protection (20,000 ECU instead of 15,000). As regards the directive on **Timeshare contracts** and the protection of purchasers Council accepted that the date and place a contract is signed must be included. As regards the regulation concerning **novel foods and novel food ingredients**, the EP prevailed upon the Council to withdraw from its common position a provision to exclude from the scope of the Regulation genetic modifications limited to the agricultural characteristics of a product, e.g. where they improve a plant's resistance to rain, but where the resultant food product is not affected. In exchange, the EP made a concession to the Council over supplies in bulk. Concerning the directive on the **protection of consumers in respect of distance contracts**, the EP got the Council to agree on a number of consumer- friendly supplier obligations: (e.g. on telephone calls: the identity of the supplier and the commercial purpose of the call must be made clear at the beginning of any conversation with the consumer, in order that the latter may have the requisite information at the outset to hang up if he or she so wishes). Finally, Parliament also secured agreement in the directive concerning the **placing of biocide products on the market**, that it should be involved in drawing up lists of approved biocides (in the member states), so that it can constantly monitor the application of the legislation in force (Originally, the Council and the Commission wanted to get a blank cheque to create lists of approved biocides without the EP being involved). Imposing higher standards against the original will of the Member States is an obvious feature of Parliament's substantive success. In this regard, the codecision procedures on the **Auto-oil-program** (71 out of 103 initial amendments incorporated in the joint compromise text) or on **special foodstuffs for nutritional uses** illustrate Parliament's power to convince reluctant – blocking minority – Member States. (Shackleton 1999)

The rejection of the ONP voice-telephony draft directive (directive on Open Network Provisions [ONP] in voice telephony [last conciliation on 19.7.1994]) illustrated one of the main **"horizontal"** problems with codecision. Parliament opted for an advisory committee while the Council preferred a regulatory committee (type III-b). As the EP's conciliation unit reports, considerable progress was made over substantive issues in conciliation negotiations between Council and Parliament. However, no agreement could be reached over the more general issue of implementing measures known under the catchword of **"Comitology"** (Bradley 1999, Joerges/Voss 1999, Maurer/Mittag/Wessels 1999, Pedler/Schäfer 1996). This issue was very contentious, even before the codecision procedure was invented, during the cooperation procedure.

Similarly to what happened in the ONP case, Parliament and Council were unable to reach agreement on the establishment of a securities committee [last conciliation on 1.4.1998]). Again the Council refused to accept Parliament's standpoint concerning the committees, which were to help the Commission in implementing the directives. Parliament's delegation wanted the committee to be a management committee (under Comitology: type II-b), while the Council insisted it should be a regulatory committee (type III-b). The European Parliament held that the regulatory committees would allow the Member States too much scope to thwart the Commission in the use of its implementing powers (a simple majority of Member States would be enough to block a measure that the Commission regarded as necessary to implement the directives).

Codecision is a 'compromise-procedure'. The last codecision procedure agreed under the British presidency illustrates how the two negotiators - Parliament and Council - bargain on their preferences and how compromises on both substantive and horizontal issues can be reached. The procedure concerned a large package deal on the so-called 'Auto-oil-program' comprising two directives on the quality of petrol and emissions from motor vehicles. On the basis of the stage reached in the work, Council and Parliament convened the conciliation committee for 29 June 1998, the penultimate day of the British Presidency. The proceedings were concluded after a meeting lasting 4 - hours, reaching agreement on all the outstanding points. The key feature of the agreement is that the Council delegation agreed to make the limit values for 2005 compulsory in the two directives; in exchange, Parliament's delegation agreed to the figures which the Council proposed for the limit values in its common position. Moreover, the Council withdrew its proposal for a type-IIIb regulatory committee in favor of a type-IIIa committee, thereby enabling Parliament to maintain its opposition to the principle of type-IIIb regulatory committees (Conciliation Procedures Stop Press, No. 20, July 1998).

The EP opposed the "Comitology" rules of the Council, which in 1987 adopted a general decision providing for numerous types of committees made up of national civil servants in order to keep the Commission's executive powers in check. Since the codecision procedure provided Parliament with more substantive powers in the formulation of legal acts, Parliament was afraid that the Council - through the implementing committees - could withdraw certain provisions which were subject to successful EP amendments in contentious conciliation meetings.

A breakthrough occurred during the first year of implementation of the codecision procedure (namely on the occasion of the SOCRATES and the YOUTH FOR EUROPE III programs), when the institutions concluded two interinstitutional agreements of general application. The **"Modus vivendi" on Comitology** of 20 December 1994 provided for the European Parliament's committees to receive, at the same time and under the same conditions as the committee referred to in the basic act (thus the

"implementing committee" composed of the European Commission and Member states delegates) any draft implementing act submitted by the Commission. In the case of an unfavorable opinion of the Council, Parliament has to be informed. Moreover, the Council should take due account of the EP's point of view. The "Modus vivendi" enabled Parliament to monitor the implementation of jointly adopted legislation and to intervene in the final decision in the event of conflict. However, implementing the Modus vivendi in the daily life of codecision is not self-evident. Even after the SOCRATES and YOUTH FOR EUROPE decision, **the Council tries to impose regulatory committees instead of management or advisory committees.** However, both the Council and the Commission recognize the information procedure agreed within the framework of the Modus vivendi.

For example, the directive on the processing of personal data and protection of privacy in the telecommunications sector (ISDN) of 15.12.1997 includes a recital (No. 27) requiring the Commission to inform the European Parliament whenever it intends to convene the Committee set up by directive 95/46/CE.

The new decision of the Council setting up the Comitology Committees (Decision 1999/468/EC, OJEC 184/3) replaces the modus vivendi. The EP played a key role in the negotiations: It blocked nearly 50% of the appropriations available for the committees in the 1999 budget and delayed its opinion until the last legislative session, in May 1999 (Ciavarini Azzi 1999) [16].

Concerning the **incorporation of financial provisions** into legislative acts adopted under the codecision procedure, the Council continued to commonly refer to maximum amounts as **"amounts deemed necessary"** in its common position.

This practice is unacceptable for the EP, because it forms, together with the Council, the budget authority. The Joint Declaration of 30 June 1982 states, that "in order that the full importance of the budget procedure may be preserved, the fixing of maximum amounts by regulation must be avoided ...". Accordingly, Parliament argues that one of the general principles which govern the Communities' budget - the allocation of amounts on an annual basis - is undermined, when the Council fixes the whole budget for a multi-annual program in the original legislative act.

Due to the time-limits set for the conciliation procedure on both the SOCRATES and the YOUTH FOR EUROPE III programs, the EP could force the Council to start negotiations on this issue and subsequently to agree on a **joint declaration by Parliament, Council and the Commission on the incorporation of financial provisions into legislative acts** adopted on 6 March 1995. Here, Parliament agreed to the Council's will, that legislative acts concerning multi-annual programs shall contain a provision laying down the financial framework for the program for its entire duration. However,

16. The new Decision simplifies the committee procedures, grants the European Parliament a right of scrutiny over the implementation of acts adopted by co-decision and substantially increases the transparency in comitology. The Decision provides for criteria which will guide the legislator in the choice of committee procedures. The simplification of committee procedures particularly concerns the management (type II) and regulatory (type III) procedures, which will no longer have two variants each. As regards the regulatory procedure, the Council will no longer have the possibility to reject the proposal by simple majority (the so-called 'double safety net' is therefore abolished). If a qualified majority indicates its opposition to the text, the Commission will have to re-examine its proposal, and negotiations will have to continue in order to reach a compromise. The Decision provides for the involvement of the European Parliament in the implementation of acts adopted by codecision. If Parliament considers that an implementing measure that the Commission intends to take exceeds the implementing powers provided for in the basic act, it can indicate so to the Commission, which will have to re-examine the draft measures. In the framework of the regulatory procedure, the EP is granted a scrutiny right in those cases where, due to lack of agreement by the committee, the Commission refers to the Council a proposal on the implementing measures. The EP will be informed on committee procedures so it can exercise its right of scrutiny. Also the information to the public on committee procedures will be substantially improved. The rules on public access applicable to the Commission are made applicable to committee documents, a list of all the committees will be published in the Official Journal, and the Commission will publish an annual report on the working of committees.

following the EP's interest to keep its powers on the budget, the declaration defined this financial framework as "the principal point of reference for the budget authority during the annual budgetary procedure". Moreover, regarding legislative acts concerning multi-annual programs not subject to the codecision procedure, the institutions agreed that "these acts shall not contain an 'amount deemed necessary' [17].

We may conclude **that on those issues that were subject to the codecision procedure, Parliament obtained additional rights and was able to restrict the Council in the execution of its competencies.** Moreover, the example of the financial arrangements made under codecision shows that interinstitutional solutions linked to overarching questions within the sphere of this procedure may also become relevant for other procedures (e.g. cooperation). In other words**, the codecision procedure has led to a procedural spillover.**

However, whereas interinstitutional agreements and joint declarations may provide the European Parliament with additional rights or clarify the interpretation of competencies of the institutions involved, they are not visible and are almost incomprehensible to the citizens of the Union. **Therefore, it might be argued that the effective operation of parliamentary rights in the fields of EC legislation is leading to a structural trap with regard to transparency of the procedures concerned.**

6.1. The European Parliament and the 'legislative' assent procedure

Apart from the introduction of the codecision procedure, the TEU extended the scope of the assent procedure to some important Treaty provisions such as the substantial widening of the scope of citizenship - Article 18(2), the definition of the tasks of the European Central Bank - Article 105(6), amendments to the Statute of the European System of Central Banks and the European Central Bank - Article 107(5), the definition of tasks, objectives, organization and co-ordination of the Structural Funds - Article 161, the creation of the newly introduced Cohesion Fund - Article 161, the appointment of the European Commission - Article 214, and to all important international agreements establishing a specific institutional framework, or having important implications for the Community budget, or requiring the amendment of Community legislation pursuant to the co-decision procedure (Art. 300(3) TEC).

In order to incorporate the extension of the scope of the assent procedure (to Art. 18(2) and Art. 161) into its internal organization, Parliament introduced a distinction between "legislative" and "non-legislative" assent procedures. This led to a change in the EP's RoP. With regard to "legislative assent" procedures, the committee responsible decides - according to Rule 86-3 - to present an interim report to the Plenary with a motion of resolution containing amendments on the original proposal. Furthermore, Rule 86-3 holds: "If Parliament approves at least one recommendation with the same majority as required for the final assent, the President shall further discussion with the Council" (i.e. the opening of a **(informal) Conciliation procedure** with the Council). This 'procédure de concertation' was first instituted by a Joint Declaration of the EP, the Council and the Commission on 4 March 1975. Interpreting the difference between these two types of assent, it has been argued that "Parliament sees assent in the legislative field as a blunt instrument where, unlike an internationally negotiated agreement, it may wish to see proposals amended" (Westlake 1994: 151). **And indeed, amendments falling under Rule 86-3 of the EP's RoP are easier to reach than before the Maastricht Treaty because the required majorities have been relaxed to simple majorities.**

Following the newly introduced mechanism, the EP had to consider a Commission proposal for a **regulation establishing the Cohesion Fund** and a second proposal for a **regulation laying down the**

17. The IIA was replaced by the IIA of 6 May 1999 on budgetary discipline and improvement of the budgetary procedure, OJEC C 172 of 18 June 1999, Arts. 7 and 33-35.

detailed rules for implementing the former. The interim report of the EP's Committee on Regional Policy presented some 60 amendments and immediately asked for the conciliation procedure. Parliament insisted on including the implementation provisions into the 'basic regulation'. Whereas the Council refused to take part in the conciliation, its Presidency took part in an information meeting with the EP's delegation and the Commission on 19 April 1994. In the end, the '**informal conciliation' led to the inclusion of some EP amendments. What is perhaps most important here is that, during the conciliation procedure, the Council agreed to include the implementation provisions in an annex to the final regulation, therefore making them subject to the EP's assent** (Pithier Brites Correia 1996: 79-91).

The outcome of the conciliation procedure on the Cohesion Fund illustrates the usefulness of an informal mechanism for finding agreement between Parliament and Council in areas outside codecision.

However, the assent procedure reveals a structural weakness of Parliament's role in the policy-making process. Assent is regarded as an 'authorization' without which a legislative act cannot be definitely adopted by the Council. Consequently, the **EP's responsibility** under this procedure **is comparable to that it bears under the codecision procedure**. But, unlike the codecision procedure, assent does not provide a formal structure for the EP and the Council to settle their differences. Of course, the EP may block any decision subject to its assent or use its budgetary powers (freezing of financial items related to a legislative act). However, since the EP has the last word in the assent procedure, it always risks being made a scapegoat for a negative decision. The easiest remedy would be to make the conciliation/concertation mechanism compulsory for both the Council and the Parliament. Moreover, given the experiences gained so far with the Council, which tends to unilaterally declare the conciliation/concertation closed, **it is necessary to think about a provision that does not allow one institution to escape the conciliation/concertation.**

6.2. The European Parliament and the 'power of the purse'

The EP constitutes, together with the Council of Ministers one part of the **twin budgetary arm** of the Union, since the two institutions must agree – on the proposal of the European Commission – the overall budget. The Council has the final say on so-called 'compulsory expenditure' (CE), which arises 'necessarily' form the European treaties; the EP has the final say on non-compulsory expenditure (NCE). Overall, the 1994-1999 **Parliament** - which has always challenged the distinction made between CE and NCE - intensified the shift in the balance from CE (traditionally used for 2/3 of the budget and spent for finance the Common Agricultural policy) towards NCE. Originally, the 'budget authority' of the EC negotiated annual budgets. In the light of the SEA and Southern Enlargement however, they agreed on a modification of their decision-making process by adopting so-called **'financial perspectives'** for a multi-annual period in the framework of Interinstitutional Agreements - IIA (in 1988 and 1993). Herewith Parliament accepted maximum rates of increase for NCE and committed itself not to use its powers under Article 272(9) ECT to increase the maximum rate of increase set by the Commission (Gormley 1998: 358). The third **'financial perspective for the period 2000-2006** was agreed in December 1998, but Parliament refused to deal on the relevant IIA unless the completion of the Agenda 2000 negotiations. The 'blockage' issued against the Council was successful in that it altered the EP/Council balance with regard to their right of defining CE and NCE: Hence

during the budgetary conciliation of December 1998 Parliament achieved the right to mobilize with the Council budgetary amounts for both CE and NCE (European Parliament 1998). For former MEP Samland, the agreement indicated a move towards **"real co-decision on the EU budget"**.

During its last legislative plenary session in May 1999 then, Parliament approved the establishment of a new financial perspective for the period 2000-2006, the text of the IIA for the financial perspective for the period 2000-2006 and the new IIA on budgetary discipline and improvement of the budgetary procedure. The new IIA established a formal agreement on the following points:

- the classification as NCE of the structural and accompanying measures and all the pre-accession expenditure;
- the procedure for employing the flexibility instrument;
- a new conciliation procedure for the whole of the budget which forestalls classification disputes and which clears the way, ultimately, for a revision of the budgetary procedure;
- a clause stipulating that the financial perspective must automatically be revised when each enlargement takes place, as well as a general clause providing for a review of the agreement, including the financial perspective, at the request of either arm of the budgetary authority; the removal, in the table setting out the financial perspective of all references to binding sub-ceilings.

With regard to CAP-Heading 1, the Parliament succeeded the Council to establish the ceiling for that heading at a level below the agricultural guideline. Moreover the Council agreed to classify structural measures and accompanying measures as NCE. Regarding Structural Funds-Heading 2, the Council endorsed the Parliament's standpoint by confirming that the appropriations earmarked for the cohesion policy only constitute an expenditure target. The Council therefore accepted the possibility of allocating additional appropriations over and above the sum agreed by the Berlin European Council in order to finance innovative actions and the reduction in the funding of the URBAN programme. With regard to the internal policies – the classic NCS – Parliament and Council increased the annual ceilings by a total of 1480 million EURO. However, the EP could not convince the Council to finally incorporate the European Development Fund into the Community budget.

As a reaction to its limited roles in initiating and framing the EC's policies by binding legislation, the **EP used its budgetary powers** in order to extract concessions from both the Commission and the Council, **by adding new 'budget lines'** within the space provided by NCE. On several occasions, the EP forced the Council to accept increased NCE on education, training, youth and culture policy, social and employment policy as well as actions within the fields of environment, health and consumer policy. It was especially in these policy fields that Parliament was able to create new items in the budget leading to the development of a wide range of new EC policy competencies. Hence, most of the ex-Articles 126-129 and 130a-130x followed a path formerly 'pioneered' by the practice of creating budgetary items in these fields.

the 1997 IIA on finance for the CFSP illustrates this achievement. Spending on CFSP was considered as NCS, thus giving the EP a 'financial' voice in this exclusively intergovernmental policy area. In exchange, Parliament lost its right to put such resources into the reserve, which it previously did [18].

In conclusion, Parliament used its budgetary powers extensively in initiating new policies. However one should bear in mind that **policy initiation is first and foremost a matter of (joint) legislation**, providing the citizens with a clear and binding set of rights and obligations. In this regard, ECJ case C-106/96 of 12 May 1998 indicated the risk of frictions over the existing legal bases in challenging the implementation of a set of action programs which had been initiated through the Community budget. The reaction of Parliament was to negotiate with the Council and the Commission an IIA on Legal bases and the implementation of the budget (adopted in September 1998). The IIA clarifies that policy initiation by budgetary politics is confined to a certain set of pilot schemes of an experimental nature, preparatory actions and specific actions listed in the IIA. **Interestingly the IIA deals with the applicability of Article 249 ECT in that it further defines the legislative character of the EC norms. Especially Art. 1.A. of the IIA could constitute a basis for revising Article 249 ECT in order to adapt the Treaty's classification of norms to the Union's empirical reality** (existing distinction between legislative – action programs related – decisions and decisions in the original meaning of Article 249) [19].

18. The IIA was replaced by the IIA of 6 May 1999 on budgetary discipline and improvement of the budgetary procedure, OJEC C 172 of 18 June 1999, Arts. 7 and 39-40.

19. The IIA was replaced by the IIA of 6 May 1999 on budgetary discipline and improvement of the budgetary procedure, OJEC C 172 of 18 June 1999, Arts. 7 and 36-37.

7. The execution of Parliament's supervisory powers

Holding the Union's institutions to account for their activity and failure constitutes one of the original powers of the European Parliament. How often did Parliament make use of its control powers? How often, and under which circumstances, did Parliament made use of its power to investigate alleged contravention or maladministration in the implementation of Community law? What were the results of the temporary committees of inquiry?

7.1. Questions: a traditional instrument loosing its appeal

Parliamentary questions are one of the "freest procedures in modern legislatures, gives the individual MEP an excellent chance of promoting and defending those issues which he or she regards important" (Raunio 1996: 357). Whereas the Commission is bound by Article 197 ECT to "reply orally or in writing to questions put to it by the European Parliament or by its members", the Council only unilaterally agreed to answer questions put to it in 1973 [20]. The Maastricht Treaty widened the scope of possible questions to ex-Art. J.7 (CFSP with regard to the Council), ex-J.11 (CFSP with regard to the Commission) [21]., ex-K.6 (Cooperation in Justice and Home Affairs [CJHA] with regard to the Council) and ex-K.8 (CJHA with regard to the Commission). Due to the anticipated position of Parliament in EC legislation and thus to the expected restrictions on available plenary time, Parliament changed its RoP in 1993. Since then three (instead of four until Maastricht) kinds of questions are allowed:

- **Written questions -** Rule 44, tabled by any MEP are the most popular of the procedures. There are no procedural constraints and Members are free to decide when to submit a written question.
- **Questions for oral answer (with debate) -** Rule 42, tabled only by a committee, a political group or 32 MEPs. These questions are filtered by the Conference of Presidents, which decide on their admissibility and order. The reply to these questions may be followed by the adoption of a resolution. Again, only a committee, a political group or 29 MEPs may table such a resolution.
- **Questions in question-time** - Rule 43, tabled by any MEP. Here the President decides on their admissibility and on the order. Answers to these questions are given during 90-minute periods in question time.

The next two graphs indicate the evolution of the three different types of question and their destination. According to these statistics, the oscillation of all three types of procedures does not follow a clear pattern except that of direct elections. MEPs increase the frequency with which they table questions prior to direct elections. Since November 1993, the two types of oral question have remained at a level of around 1,000 and 250 respectively per year. Rule 42 questions are at a very low level and - given the number of MEPs since 1995 (626 compared to 518 since 1986) - are clearly in decline. In contrast, it seems that written questions enjoy a growing interest among MEPs. However, a closer look shows that after the 1999 elections even this type of question will probably remain at the 1993 level of around 4,250 questions a year.

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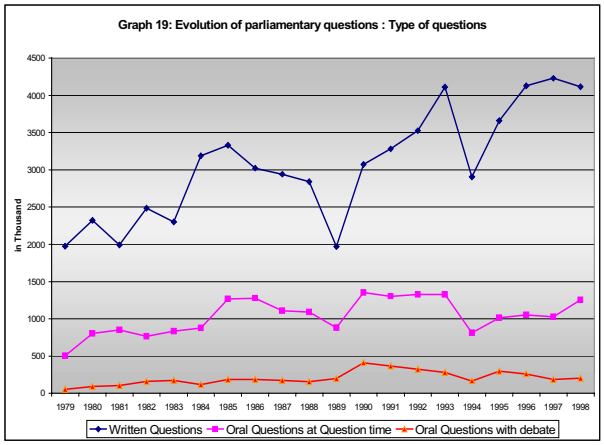
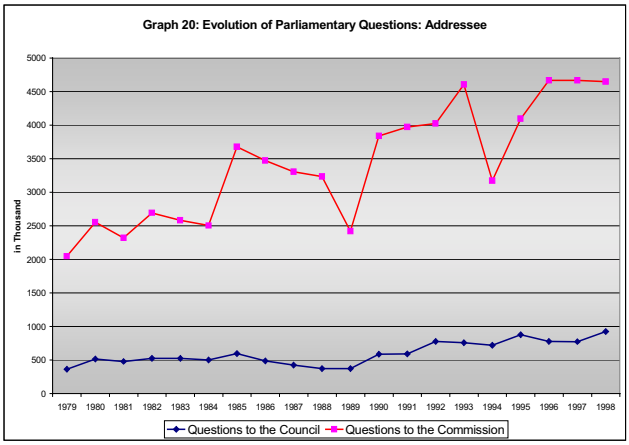
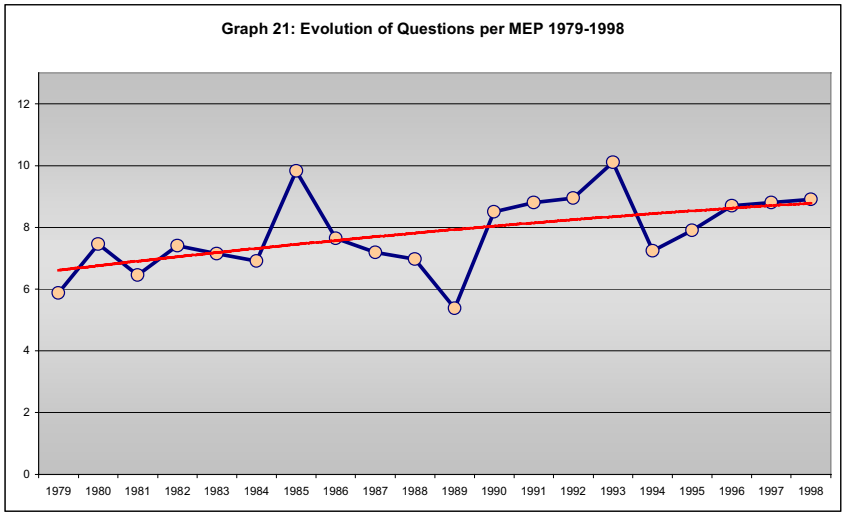
20. Vermerk des Rates für das EP vom 16.10.1973, in: Bulletin des EP Nr. 34/73 v. 19.10.1973; reprinted in Bieber, Roland: Organe der erweiterten Europäischen Gemeinschaften: Das Parlament, Baden-Baden 1974, p. 197.
21. CFSP questions replace the previously used formula of EPC - questions to the Conference of Foreign Ministers.





As regards the destination of questions since November 1993, we observe a slight but constant **growth in questions to the Council of Ministers**. Interest in the Council started to increase in the early 90's and has remained stable after the coming into force of the Maastricht Treaty. Consequently, **the newly introduced types of question with regard to the CFSP and CJHA pillars have not had a significant impact on the operation of Parliament's questions.**

Finally, if we take into account the total number of MEPs (which has increased from 198 in 1973 to 626 in 1995), graph 21 shows that after the last direct elections the overall average number of questions per MEP has increased only slightly in relation to previous periods. Secondly and more important perhaps, **the relative augmentation of questions is constantly diminishing since 1994.**



In conclusion then, **it can certainly be said that the original instrument of the European Parliament's control vis-à-vis the Commission and the Council has lost its attractiveness.** Given the fact that the EP has been granted with more far-reaching powers in the field of EC legislation, this relative decline is highly understandable.

7.2. The European Parliament's Committee of Inquiry - a "tiger in its infancy" [22].

The introduction of Article 193 ECT provided a new legal base for the European Parliament to set up temporary Committees of Inquiry in order to investigate "alleged contraventions or maladministration in the implementation of Community law".

Art. 193 invited the EP, the Council and the Commission to negotiate an interinstitutional agreement to determine the detailed provisions concerning the exercise of the EP's new rights. After lengthy and controversial discussions between the Council and the Parliament concerning the powers that a committee of inquiry should enjoy, the final agreement was published in April 1995. Following the conclusion of the agreement, Parliament amended its RoP by introducing a new Rule 151 specifying the operation of its committees of inquiry.

Once the procedural and organizational design of the committee was set up, the EP started its first inquiry at the beginning of 1996 with an examination of the **EC's transit system** [23]. The committee met 37 times (with 16 formal sessions of evidence) over 13 months, and adopted its report in February 1997. Unlike reports of standing committees, the committee of inquiry **published its report before debating it in the plenary in March 1997.** In July 1996, the EP decided to set up a second committee of inquiry: on the BSE crisis. This committee met 31 times (with 16 formal sessions of evidence) during 6 months and presented its report in February 1997.

The two committees were different in two respects. By contrast with the EC transit regime, the **BSE crisis was hotly debated** throughout the European Union in 1996. **The committee subsequently had a considerable impact on the revival of the EC's consumer protection policy**. The second difference concerned the **addressee** of the inquiry. Whereas the inquiry on the Transit regime considered an old-fashioned administrative system and the inbuilt structural threats from large-scale fraud, the BSE committee considered more individual failings and consequently it searched for directly identifiable responsibilities for maladministration. More specifically it "pointed the finger directly at the United Kingdom for its perceived failings [...] and also laid a high level of blame on the Commission" (Shackleton 1997: 5).

The two committees of inquiry were **successful in various ways**. First, given the lack of a judicial sanction mechanism in order to oblige witnesses to tell the truth, the two committees recorded the evidence and made it available to the general public. In doing so, they ensured that witnesses would be held to account by a wide audience outside the EP. Secondly, the BSE committee, in particular, encouraged and enjoyed a significant press and media coverage (Shackleton 1997: 11). Thirdly, **thanks to a conditional threat of a possible motion of censure**, there was a direct and visible impact of the committees' work on the investigated institutions, namely the European Commission. In its resolution of 19 February 1997, Parliament warned the Commission that if the recommendations of the BSE committee were not carried out - within a reasonable deadline and in any event by November 1997 -, a motion of censure would be tabled. The threat of voting a motion of censure is a novelty for the European Union. It showed how the right of inquiry can be combined with other powers at the EP's disposal. Within the European Commission, the responsibilities of the Directorate General responsible for Consumer Affairs (DG XXIV) were widely expanded. The prestigious, but highly criticized, DG for

22. Cf. Shackleton 1997: 2.
23. The transit regime of the EC is a system whereby goods coming into the EC are exempted from tax until they reach their country of destination inside the EC or cease to be liable on leaving the EC's territory.

Agriculture (DG VI) was obliged to hand over seven scientific, veterinary and food committees as well as a special unit, which evaluates public health risks.
Most importantly perhaps was that **the BSE inquiry also had a considerable impact on the outcome of the 1996/1997 IGC. It led to a fundamental change of the legal basis for EC secondary legislation in the field of veterinary medicine.** Art. 152(4)b ECT as amended by the Amsterdam Treaty now holds, that - by way of derogation from Article 37 (ex-Article 43 on agriculture), measures in the veterinary and phytosanitary fields which have as their direct objective the protection of public health -, are to be decided pursuant to the codecision procedure!

Parliament's impact with regard to the **Transit Regime Committee was less spectacular**. In contrast to the BSE inquiry, Parliament chiefly attacked the Member States and their administrations for the ease with which the transit regime can be defrauded, and consequently for the loss of several billion ECU each year to the EC and national budgets (Beckedorf 1997: 255). Although the Transit committee, in comparison to the BSE committee, considered a more technical issue, **it managed to transform the problem from a purely administrative issue to a political one.**

Besides their positive impact, the two committees of inquiry also **illustrated the limits and weaknesses of the interinstitutional agreement.** Perhaps the most frustrating shortcoming concerned the powers of the EP with regard to its right to summon individuals for inquiry. The interinstitutional agreement laid down three different categories of witness with limited rights for the EP in each case. The **first category** offers the possibility of **inviting a member of an institution of the EC or of the Government of a Member State**. In practice, the invitations addressed to the Commission did not prove any difficulty for either committee. Cross-examinations with members of the present Commission and - in the case of the BSE inquiry - of former Commissioners (Mr. MacSharry and Mr. Steichen) did not constitute a problem. By contrast, invitations to members of national governments gave rise to a series of problems in the BSE committee. Whereas the Irish Minister of Agriculture followed up the invitation to give evidence to the committee, the then British Agriculture Minister, Mr. Hogg, refused to speak before the committee and decided to send the Permanent Secretary from his Ministry. Of course, Art. 3(2) of the interinstitutional agreement did not specify the term 'member of Government'. Therefore, the British government could freely decide who it authorizes to appear before the committee of inquiry [24]. However, given the level of political awareness and mistrust that surrounded the BSE crisis, the refusal of the British minister served to "increase suspicions in the committee concerning the British response to BSE". The example revealed that the **powers of the EP with regard to calling witnesses lacks an efficient sanction mechanism for Member States or institutions refusing to cooperate.**

The **second category** of witnesss covers **officials from the EC institutions or from national administrations**. In comparison with Art. 3(2), Art. 3(3) of the institutional agreement underlines that the institution or Member State concerned is obliged to designate an official in response to a request of the committee of inquiry. Witness may only be refused if "grounds of secrecy or public or national security dictate otherwise by virtue of national or Community legislation". In practice, the European Parliament´s committees of inquiry were not confronted with invited officials unwilling to testify. The **third category** of witnesses is specified in Art. 3(8) of the interinstitutional agreement. The committee of inquiry may request "any other person" to give evidence before it. Here too, in practice the rule **did not encounter any problems**. "No one who was approached refused to accept an invitation" (Shackleton 1997: 8). On the contrary! The EP even convinced non-EU-citizens to attend the transit committee [25].

24. However, according to British law, members of government are the "Prime Minister", the "Ministers", "Secretaries of State", "Parliamentary Secretaries" and "under-secretaries". A "Permanent Secretary" is a civil servant and thus, under British constitutional law, not a member of government (Beckedorf 1997: 243).
25. This was the case when, Philip Morris, Europe (based in Switzerland) decided to give evidence to the Transit committee.

In spite of these shortcomings, **the two committees of inquiry proved to be an effective additional means for the European Parliament's supervisory powers**. The European Parliament demonstrated "its traditional pugnacious assertiveness of its rights and its ingenuity in exploiting constitutional gray areas" (Westlake 1997a: 23). Art. 6 of the interinstitutional agreement holds that the rules "may be revised as from the end of the current term of the European Parliament in the light of experience". Given the two "test-cases" of the BSE and the Transit Committee, future negotiations between the institutions may focus on a sanction mechanism for Member States that refuse to cooperate in an inquiry. However, given the Council's - i.e. the Member States' - reluctance during the original negotiations on the agreement, the EP should not bind itself to this search for stronger formal powers. As the BSE case shows, even non-Treaty based means, such as the newly introduced threat of a motion of censure, are appropriate instruments for effective control of the European Commission.

8. The participation of Parliament in the appointment of other Community institutions

The TEU granted the EP the right to be consulted on the Member State's choice of the President of the European Commission and to approve the European Commission. Furthermore, the Treaty provided the EP to be consulted on the President of the European Monetary Institute and, once the EMU is established, on the appointment of the President, Vice-presidents and the members of the Board of the European Central Bank. The EP's earliest involvement in appointment mechanisms dates back to 1975, when the Budget Treaty set up the Court of Auditors. According to Art. 247(3), the Council "appoints the members of the Court, acting unanimously after consulting the European Parliament".

Whereas Parliament's right to vote on a motion of censure on the Commission raised and backed Parliament's attempts to increase its influence in the appointment of the Commission, the role in the nomination of the other institutions and bodies can not be derived from a similar political basis.

Appointments reflect a dynamic system of checks and balances or, in the language of the ECJ, a system of **loyal cooperation as derived from Article 10 of the ECT** (ECJ; C 246/81, 1451). In addition, **appointments create a relationship of accountability and responsiveness between the appointing and the appointed institution**. Until Maastricht, the European Parliament acted in a paradoxical situation: Under Article 201 ECT (Article 27-2 of the Merger Treaty), the Commission could be dismissed as a collegiate body by Parliament. In very general terms, it would be natural that the institution, which has the sole right to censure the Commission, should also have the right to appoint the members of this body. However, contrary to this the right to nominate and to approve the Commission was held by the Member States alone. Since the **Faure-report** on the Merger Treaty (Rapport PE 84/1960-1961, 7.11.1960), the EP has discussed the question of how to improve the political legitimacy of the Commission and how to introduce a greater degree of accountability into the EC inter-institutional system [26].

A first breakthrough occurred when the European Council in its Stuttgart Declaration of 19 June 1983 confirmed Parliament's willingness to hold a vote on the work program of the new Commission. By amending its RoP, Parliament decided on 15 June 1988 to introduce Rule 29A, which provides for the new President sought within the Enlarged Bureau to receive a parliamentary vote of confidence [27]. The European Council of Hanover then confirmed this informal consultation procedure (Louis 1989: 13).

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[26]. For an overview on the proposals to reform the appointment procedure of the Commission, see Louis 1989: 14-20; Bieber 1991: 4417 and 4148; Capotorti/Hilf/Louis/Weiler: 10; the Herman report on the Constitution of the EU 1994: 15-17 and the Froment-Meurice report on the investiture of the Commission: 2-4.

[27]. See: JOCE, No. 187 of 18 July 1988: 81.

A new step in the direction of the **elective function of the EP** was taken with the introduction of EP assent to the new Commission college, under Art. 214(2) ECT as amended by the Maastricht Treaty. This article incorporated informal arrangements of the Stuttgart Declaration of the European Council [28]. into Community law. With the entry into force of the TEU, the Commission's mandate was aligned with the Parliament's mandate. Thus, **the right of approval could not only be perceived as a formal act, but as a design for a genuine political decision**. Accordingly, the EP, by amending its RoP on 15 September 1993, sent a clear signal that it insists on this right and regards it as an essential part of its competencies. In planning to put its new competencies into operation for the new 1995-1999 Commission, the EP maximized its potential by means of a three-stage obstacle course:

First, following Rule 32-2 Parliament **approved the designation of Jacques Santer but by a very narrow margin of 262 against 244 votes.** This result indicated a clear left/right split between on the one side the EPP, the RDE and FE and the PES, ELDR, GUE, V and ARE groups on the other. Jacques Santer drew 77% of his vote from the Christian-democratic/conservative block. (Hix 1996: 65). With this decision, Parliament sanctioned the fractious process of finding a candidate for the Presidency of the Commission acceptable to all governments. Secondly, following Rule 33 of the RoP, **the European Parliament organized hearings with the candidates to the Commission.** These meetings resembled the procedure of the US Senate used to confirm high political officials. Of course, this informal procedure created a number of technical and political problems. However, **it also constituted an opportunity for the EP to increase its powers and the accountability of a "government-type executive"**. Although the then Commissioner Pithier underlined in September 1993 that Parliament cannot, through its RoP, unilaterally bind any other institution without the latter's consent [29]. President Honest succeeded in inviting the designated Commissioners to present themselves before the parliamentary committees. The candidates accepted this procedure even if it contained the risk of an infringement of the principle of collegiality of the Commission. Since Rule 33 inherently implies that the portfolios of the Commission designates correspond largely with the responsibilities of the Parliament's committees, the "hearing-procedure" required the designated Commission to settle this issue at an early stage. Consequently, **the informal hearing procedure strengthened the autonomy of the President of the Commission against the interests of Member States in sketching the tasks of his future colleagues**. Since the hearings were open to the public and transmitted live via the "EURONEWS" TV station, they had a Europe-wide effect.

In order to prepare the investiture procedure, the EP elaborated criteria according to which the Commission should be qualified: First, the Commissioners should have been chosen on the grounds of their general competence "which means that they must have considerable abilities entitling them to form part of a governmental-type executive body exercising responsibility on behalf of 350 million citizens" [30]. Secondly, the political affiliations or political affinities of the Commissioners must take account of political pluralism and the existence of several mainstream political movements both in the Member States and within the European Parliament [31]. Thirdly, the Commission has had to be more representative regarding the equality between men and women. Therefore article 7 of the Froment-Meurice report required an appropriate presence of women. Finally, Parliament considered it "essential that some Commissioners should be chosen from among the MEPs currently (i.e. 1993) in office so as to take account of a more parliamentary nature" [32]. During the investiture procedure and more specifically during the hearings held between 4 and 10 January 1995 the notion of the "general competence" of Commissioners-designate created some problems. Thus the committees responsible for the hearings of Mrs. Gradin and Mr. Flynn criticized these two candidates on the ground of their contentious competencies. Moreover, as six Commissioners were nominated to deal with foreign affairs, Parliament was concerned about possible uncertainties and friction, specifically in relation to human rights and the EC's development policy.

The third stage of the investiture concerned the final vote on the overall program and the composition of the Commission as a collegiate body. Whereas the first stage took place on the basis of the relevant Treaty Articles, this final stage was rooted in a combination of the ECT and the EP's RoP. After the hearings, the committees met *in camera* in order to discuss the performance of their candidates. The President of the Parliament, after having received the resumes of the Chairman and Chairwomen of the committees then sent a letter to Mr. Santer containing the results of the hearings and the comments made on some of the Commissioners designate. As a consequence of Parliament's "amendments" to the repartition of the portfolios

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28. The EP resolution of 17.4.1980 based on the Rey report on the relations between the European Parliament and the Commission estimated in Art. 7 that the vote on the work program of the Commission represents the consequence of Parliament's power to vote a motion of censure over the Commission. See: JOCE No. 117 of 12 May 1980: 53.
29. Debates of the EP, No. 3-434/47 of 14 September 1993.
30. Draft report on the investiture of the Commission, Part A: Motion for a resolution, Rapp. François Froment-Meurice, PE 208.503/A, p 3.
31. Ibid., p 6.
32. Ibid. p 8.

of the Commissioners, President Santer decided to reinforce the internal coordination of foreign affairs through the creation of a working group of the Commissioners concerned (Marín, Brittan, van den Broek, Pithier and de Silguy) chaired by himself. In order to comply with the EP's objections against Mr. Flynn, the Commission President decided to chair an open working group on Equal opportunities and human rights. Finally, Mr. Santer promised to reform the Code of Conduct of the Commission with regard to Parliament's requests. For instance, the PES group asked successfully that in future the new Commission should withdraw legislative proposals rejected by an absolute majority in Parliament!

The general assessment of this first investiture procedure is twofold. The **organization of the hearings has been a successful experiment** (Maurer 1995). **The Commission accepted a requirement made by Parliament without being legally bound to do so.** Thus, we may argue that **Parliament gained in autonomy with regard to the Commission and the Member States**. As MEP Bernie Malone puts it, "the Commission has had its legitimacy enhanced and Parliament has exerted enough changes to justify its claim that this has not been just a simple rubber stamping exercise. It also provided a useful procedure for MEPs to get to know their new Commissioners far quicker than in the past" (Malone 1995: 3). This evaluation may be too optimistic. Even if the procedure itself became a very important element for the strengthening of the Commission's formal legitimacy [33]., it was not clear if this new established kind of political relationship between the two institutions could also provide a basis for **sustainable accountability** of the Commission with regard to the EP. Nevertheless, **the new Code of Conduct of March 1995 contains some important elements demanded of President Santer after the hearings on the appointment of the Commission. For example, the Commission agreed to Parliament's request to withdraw legislative proposals which the EP rejects.** And according to Nicoll, the "EP's success in bending the Commission to its will over the withdrawal of proposals which the EP has rejected is a significant incursion into the Commission's prerogatives" (Nicoll 1996: 281).

The formal i.e. **"official" investiture procedure proved to be a very fractious and cumbersome one**. Most heads of government [...] just wanted to get the problem wound up, rather than allow it to fester over the summer in a manner that would call their trusteeship of the EU's affairs into question, further denting their already depreciated domestic reputations for governing competence" (Hix 1996: 69-79).

In contrast, as regards **Parliament's performance in the non-Treaty based investiture procedure, it is proof of the fact that even in those cases where the EP did not have the formal right to approve an individual candidate, it offered a public forum for discussion and political debate that can hardly be ignored by the Member States.**

The informal "hearing-procedure" of Commission candidates was not as original as is perceived in European "publi(c)shed opinion". Even before Parliament set its evaluation criteria for the Commissioners designate, it passed a resolution in November 1992 on the general guidelines on the procedure for the **appointment of the Court of Auditors** [34]**.** (Jacobs 1999) These guidelines included general principles for delivering its opinion on the candidates. Similarly to the investiture procedure of the Commission, Parliament organized hearings with the nominees in the Committee of Budgetary Control.

The assessment of the designated members had to follow the following criteria: Candidates should have a high level of professional experiences acquired in public finance, management or management auditing; they should not be in charge of

33. See: Conclusions of the Committee on institutional affairs on the hearings held with the future members of the Commission, PE DOC 263/263665.ce of 30 January 1995.
34. See: OJEC, No. C 337/51 of 17 November 1992.

political duties in parties; the age-limit was not allowed to be over 65 at the end of the first term of office; finally, Parliament asked for a higher female representation in the Court.

In fact, **since 1989 the consultation of the EP had considerable effects on the Council's decision on the appointment of the Court of Auditors** (Bradley 1990: 248). Since the European Parliament identified the Court as its own creation, it always "had a proprietorial, and almost paternal attitude" towards it (Westlake 1994: 47). For example, the resolution of 18 January 1994 embodying the EP's opinion on the appointment of a member of the Court gave a negative opinion on a candidate, because the Council was too late in providing the EP with information concerning judicial proceedings against the candidate. This example illustrates one of the most important implications of the consultation mechanism. Hence, the **procedure gives substance to the concept of "mutual trust" between the two institutions responsible for the audit on the budget of the EC**. However, since the Court of Auditors has been elevated from a simple body to one of the five institutions of the EC, **it would be appropriate to consider giving Parliament the right to approve the members of the Court of Auditors**. Consequently, the EP asked the Council to respect its criteria of 1992 for appointing new members to the Court (Resolution on report A4-0001/995 of 19.1.1995). However, the Treaty of Amsterdam failed to amend Art. 247 in order to comply with Parliament's requirements.

Similarly to the appointment procedures of the Court of Auditors, the procedure concerning the President of the **European Monetary Institute (EMI)** was used by the EP to organize **media-oriented public hearings** with the respective candidate. Concerning the political implications of these appointment procedures, it could be argued that although "Parliament's role is only consultative, it is potentially crucial. Like for other appointments where Parliament is consulted, when it comes to a public vote in an elected parliament on an individual, it would be surprising if that individual wished to take office should Parliament reject his or her candidacy. [...] It is therefore likely that the consultation of Parliament will amount, in practice, to a vote of confirmation in which Parliament enjoys a virtual right of veto" (Jacobs/Corbett/Shackleton 1995: 250). As regards the appointment of Baron Lamfalussy as the first President of the EMI, Parliament refused to be rushed by the Heads of State or Government in approving their candidate. The Committee for Economic and Monetary Affairs and Industrial Policy, together with its Sub-Committee on Monetary Affairs, elaborated a hearing procedure similar to the US Senate's confirmation hearing for the nominee to the position of Chairman of the Federal Reserve. The EMI procedure was carefully prepared and Baron Lamfalussy fully agreed to the test (written questionnaire of the Committee sent to the candidate and a three hours 'examination') because it served as the precedent for the appointment mechanisms set out for the **Executive board of the European Central Bank** (Elgie 1998). **Consequently the hearings which Parliament organized in May 1998 with the ECB's nominees** showed that it **was able to 'de-dramatize' the conflict which occurred on 2 and 3 May 1998 between the Heads of State or Government during the nomination of the ECB's President.** Much attention has been given to the independence of the ECB (Arndt 1996; Gormley/de Haan 1996). Given the importance of a low and stable rate of inflation, its independence together with its mandate to strive for price stability should be welcomed (Issing 1998). However, independence should not automatically lead to the exclusion of democratic accountability (Randzio-Plath 1998; Calmfors 1998). Given the experiences with the appointment procedures to the EMI and the ECB to date, we argue that **the European Parliament is undoubtedly the appropriate body to be responsible, at least by way of codecision with the Council, for the nomination of the ECB's executive board.**

Neither the TEU nor Parliament's RoP provide a role for the EP in the appointment of **judges to the**

Court of Justice and the Court of First Instance. However, the first attempt of the EP to gain some influence in the appointment of the ECJ can be seen in the resolution of 13 April 1989 when Parliament urged the Member States to appoint more female judges (Bradley 1990: 249).

In 1993 the Rothley report of the Committee of Institutional Affairs requested the election of judges by the Council and the European Parliament. The task of the report was not only to increase Parliament's role in the appointment mechanism, but also to strengthen the role of the ECJ as a 'Constitutional Court'. Hence, this proposal was inspired by Art. 94(1) of the German Basic Law, which gives both parliamentary chambers the right to elect half of the judges of the German Constitutional Court.

After the entry into force of the Maastricht Treaty, the EP on several occasions reiterated its demand to vet the candidates for the ECJ. Interestingly, Parliament dropped its age-old request for a stronger role in the appointment of judges during the 1996/1997 IGC.

The appointment procedure for the European Ombudsman is an exclusive right (and duty) of the European Parliament. Hence, the European Parliament **elects the European Ombudsman** after each election of the European Parliament for the duration of its office. Similarly to the appointment mechanisms, which Parliament devised for the Court of Auditors and the European Commission, all candidates are interviewed by the EP (in the case of the Ombudsman, by the Committee on Petitions). However, the procedure differs from the aforementioned in many ways. Firstly, the rules governing the Ombudsman's powers were not subject to an interinstitutional agreement, but to a decision by Parliament subject to the Council's assent. In fact in March 1994, the EP adopted the draft regulations and conditions governing the performance of the Ombudsman's duties, which were subsequently confirmed by the Council. Secondly, the appointment procedure only involves the EP and the candidates. In fact, the EP itself publishes - in the OJEC - a notice calling for nominations for the office of the Ombudsman. According to Rule 177 of the RoP, candidates must have the support of 32 MEPs at least, who are nationals of at least two Member States. Thirdly, the Ombudsman is exclusively bound to the European Parliament. He/she has to deliver an annual report to the Parliament - the other institutions are not mentioned in either Art. 195 ECT nor in the EP's RoP. Fourthly, only the European Parliament has the right to dismiss the Ombudsman. Citizens' complaints concerning instances of maladministration in the activities of the EC institutions may be addressed either directly to the Ombudsman or through a Member of the EP. In sum, the **institution of the Ombudsman** (Haag 1997: 154, who defines the Ombudsman as "selbständiges Nebenorgan") reflects not only an exclusive relationship between the Ombudsman and the EP, but also between the latter and the citizens of the Union.

9. The Participation of Parliament in the 'System Development' of the European Union

The European Union is a dynamic political system. It faces a permanent process of **institutional change**. Consequently it is necessary to analyze the activities of the European Parliament and its functional scope either in the transformation of institutional relations within the EU or in the intercourse of the relations between member states and the EU.

Due to the difficulty of quantifying informal contacts, it seems nearly impossible to measure the concrete influence of the EP in the institutional evolution of the European Union. Concerning the system development function, the influence of the EP appears on first sight to be **rather restricted**, although the EP had constantly been one of the most **demanding actors** for institutional changes and constitutional proposals. Even before the first European elections in 1979 there had been various resolutions to reform the system, such as the Pleven Report in 1961 or the Bertrand Report in 1975. The 1979 elections of the EP – "itself a major constitutional change in the community" (Jacobs/Corbett/Shackleton 1995: 299) - have further increased

this role of the European Parliament. In 1984 the EP submitted a Draft Treaty on the European Union - the so-called **Spinelli Draft -** which was one of its most important initiatives. Although the Spinelli Draft was not taken up as an actual constitution, it achieved a certain influence on debates at that time and inspired the proceedings leading to the conclusions of the Single European Act (Archer/Butler 1996: 49). During the last decade, the three Intergovernmental Conferences (IGC's) - 1985, 1991 and 1996 - have shown a constant image of the system-development role of the European Parliament.

9.1. Institutional change through incrementalism - the development of interinstitutional agreements

Like other treaties before it, the TEU left the EC institutions with a wide range of questions, particularly regarding their roles and powers in the European policy-making process. **Interinstitutional agreements** (IIA) concluded since October 1993 were a **pragmatic answer to resolve frictions and conflicts** between the European Parliament on the one hand and the Council and the Commission on the other (Monar 1994). Some IIAs derived directly from Treaty provisions. In fact, Art. 195 ECT provided for an IIA on the regulations and general conditions governing the performance of the **European Ombudsman**, and Art. 193 assumed that the detailed rules governing the EP's new **right of inquiry** shall be determined by "common accord". Apart from these two IIA, the original 'post-Maastricht-set' of IIAs included the general issue of **democracy and transparency**; the implementation of the **subsidiarity principle**; the operation of the **Conciliation Committee** under Art. 251 and the issue of **budgetary discipline** and **budgetary procedures**. Negotiations started in 1992 and were partly resumed under the Belgian Presidency in October 1993, when the Presidents of the three institutions signed the 'budgetary' IIA in order to endorse the EC's 1993-1999 financial perspective. In addition, in January 1995 the three institutions also concluded an IIA on the **official codification of EC legislation**. However, given the restrictive position of the Council with respect to the powers of the temporary committees of inquiry, the relevant IIA negotiations continued until April 1995.

Besides the successfully agreed IIAs, the proposals of the EP (submitted in December 1993) for three other IIAs on the implementation of **CFSP**, on the application of Title VI TEU (**Cooperation in the fields of justice and home affairs**) and on the implementation of **EMU** failed. In fact, in February 1994 the Council, informed the EP that it did not wish to enter into negotiations on the EP's draft IIAs (Monar 1994: 716-717; Maurer 1996).

However, as regards the CFSP issue, the interinstitutional trialogue was reopened during the 1996/1997 IGC and the EP achieved an IIA on CFSP financing (replaced by the IIA on budgetary discipline of May 1999). This establishes a procedure for a formal consultation of Parliament about the main aspects involved in the CFSP. It requires the Council to provide detailed financial plans of joint actions and the Commission to inform Parliament at least every four months about the implementation of CFSP action and to supply financial forecasts for the rest of the year.

In addition to these IIAs, the EP got the Council and the Commission to conclude an agreement on the question of **Comitology** with regard to legislative acts adopted under codecision and cooperation - the so-called **Modus vivendi** of 1995 (OJEC C043, 20.2.1995). This IIA provides Parliament with the power to monitor the implementing measures and to enable it to be involved in the final decision in the event of disputes between the "Comitology Committee" and the Commission. Finally, under the pressure of the time-limits set by the conciliation procedure on the SOCRATES and YOUTH FOR EUROPE III programs, the institutions also set an IIA (in the form of a 'joint declaration') on the **incorporation of financial provisions into legislative acts**. The EP accepted the inclusion of a financial framework in multi-annual programs. In exchange, the Council agreed that the budgetary authority (i.e. the EP and the Council) may depart therefrom. In adopting this IIA, the EP achieved a 57 year-old objective, namely the "recognition of the primacy of the budgetary authority, as against the legislator, with regard to allocating the resources available" (EPDCC report, 1 March 1995, p. 11) [35].

35 The IIA was replaced by the IIA of 6 May 1999 on budgetary discipline and improvement of the budgetary procedure, OJEC C 172 of 18 June 1999, Arts. 7 and 36-37

Even if IIAs cannot amend the Treaties (Monar 1994: 719), in practice, they can go far beyond what has been agreed under the Maastricht Treaty. IIAs have sow "the seeds of future Treaty amendments" (MEP Metten in: OJ Debates, 11.3.1993, p. 251). They have acknowledged and even increased the political role of the EP in the EC's and even, as the CFSP agreement shows, in the EU's policy-making process. Thus, IIAs are useful instruments for running the EU more efficiently, more transparently, and more democratically. In other words, **IIAs are an "important means of informal constitution building in the EU"** (Dinan 1998: 298). Unlike in the IGC's on Treaty Reform the **European Parliament takes an active part in driving the other institutions for new legal, organizational and budgetary arrangements**. Thus, **the European Parliament was able to set some important items on the agenda of the 1996/1997 IGC.**

9.2. The Participation of the European Parliament in the Intergovernmental Conference 1996/1997 - constitutional gains?

During the negotiations of the **Intergovernmental Conference 1985,** the involvement of the EP was limited. Although it monitored work intensely and its then president Pierre Pflimlin and Altiero Spinelli were invited to some ministerial meetings, these remain in the end only restricted involvement, which caused the EP to accept the Single European Act with limited institutional proceedings for the Parliament. However, it was primarily the Parliament which pushed the governments to initiate a treaty revision.

In the **1991 IGC**, the European Parliament adopted several resolutions based upon the Martin and Colombo reports on the process of Treaty revision and stated its preferences for institutional reforms. President Baron took part in all European Council meetings and in two meetings of the Foreign Affairs Ministers. Moreover, all members of the Council were expected to participate in various meetings with a delegation of the EP. In conclusion, the pressure applied by Parliament was **in no particular case decisive.** Nevertheless, the EP accomplished some "major steps forward in the direction advocated by the European Parliament" (Jacobs/Corbett/Shackleton 1995: 304) It served as a supporting element to those governments and institutions that pledged for substantial reforms. Neither the new policy areas, for example consumer protection, education and culture, nor the codecision procedure would have come into force without the permanent pressure of the EP.

In the **1996/97 IGC,** the position of the EP was **completely different** from previous Intergovernmental Conferences. Two members of the European Parliament, Elmar Brok (Group of the European People's Party) and Elisabeth Guigou (Socialist Group), participated in the Reflection Group. According to statements of spectators, both played a very effective role in the discussions of the **reflection group**. Due to French and British demands no member of the EP was permitted to participate at the IGC itself. However, a close association with the IGC, especially via information, was ensured by the member governments. However, as a letter from the EP President to the Council President of 12 March 1997 reveals, the implementation of the provisions concerning the EP's participation at the IGC was not satisfactory. In fact, the Turin European Council arrangements were undermined by "a minimalist interpretation, since the exchange of views which are supposed to take place with the President of the European Parliament at ministerial sessions of the IGC are in practice being restricted almost exclusively to a speech [...] without a proper debate ensuing" (CONF/3847/97).

In a **clear contrast** to the proceedings in 1991, the preparation of the 1996 IGC revealed **considerable progresses** for the European Parliament. It had taken one step closer to full integration into the framework of negotiations. In sum the EP had at least four specific options in order to gain support and to succeed in system developing. First, the EP could benefit from its **partnership with national parliaments**. Second, it could profit from alliances with certain **national governments**. Due to pressure from their national parliaments the Belgian as well as the Italian government connected their signature of the SEA to the vote of the EP. Both governments proclaimed that they would not accept the results of the IGC until the European Parliament had approved it. This proclamation put considerable

pressure on the other European governments to take the view of the EP into account. A third option of the Parliament in order to gain support was to use its contacts with **intermediary groups** and **national political parties**. Finally, a fourth strategy of the EP resulted from linking important decisions and enacting a kind of **package deal**. In the 1996 IGC this last option had some influence. The European Parliament stated that if the results of the ongoing IGC were unsatisfactory, it would reject the future enlargement of the Union, which is a decisive right of the EP (Art. 49 TEU). As any future enlargement is subject to the assent procedure, Parliament's right embodies a tremendous potential.

9.3. The EP's influence on the outcome of the 1996/1997 IGC

The European Parliament is always - longing for a wide scope of powers and rights. The EP's main demands in the 1996/97 IGC referred, inter alia, to the decision-making process and the powers of the EP therein (CONF/3810/97; CONF/3891/97), the statute of MEPs (CONF/3881/97), employment policy (CONF/3891/96), and to CFSP reform (CONF/3885/97). The EP intended to be established as the co-player of the Council with equal rights. Therefore it proposed a simplification of the various procedures by reducing them to three types: consultation, codecision and assent. The second procedure codecision - should be the standard decision-making process of the Community, including qualified majority voting in the Council as a general rule.

The outcome of the 1996/1997 IGC for the EP was somewhat ambiguous (Nickel 1998, Nickel 1999). In particular, the parliamentary ambition of enlarging the codecision procedure was not fully successful, although 23 new cases were introduced. The budgetary division between obligatory and non-obligatory expenditures was not overthrown, as requested by Parliament. The EP did not receive any formal rights in changes of the TEU and - as other considerable examples - it did not obtain any specific titles in the common agricultural policy and in the second pillar. On the other hand the simplification of the codecision procedure was a major achievement according to the Parliament's demands. The new procedure for investiture of the Commission, the incorporation inclusion of the social protocol into the ECT and the new title on employment policy were other examples of new powers for the Parliament. Summarizing these outcomes, the success of the IGC is respectable. Of course, not every demand was fulfilled and the EP still lacks substantial rights in the institutional development of the EU. However, in comparison with former IGC's, the European Parliament has increased its role in system development, both in its participation in the IGC and in the results achieved by the conference.

System development appears to be the most laborious function of the EP, considering that the Parliament has to improve both its situation within the institutional framework and advance the community's policies. Therefore system development seems to be a function 'a longue durée'. The EP still has to make use of its strategy of **small steps** and **compromises** with powerful partners. These compromises are, however, based on thin ice. A position of the EP, which is too inflexible and rigid, could obstruct further improvements. An attitude too weak on the other hand could prevent far-reaching solutions. The European Parliament has not, to date, used this possibility against major reforms or constitutional decisions, but rather showed a constructive attitude (Wessels 1995: 893).

10. Conclusions, Lessons and Options for further institutional strategies of the European Parliament

Our study on the European Parliament's development reveals that the EP's success in implementing the

Maastricht Treaty may not, at first glance, be strikingly evident. We have examined the European Union as a 'polity in the making'. In this regard the development of both the EU and the European Parliament is organic and evolutionary. Using this dynamic perspective in assessing the European Parliament's role with regard to its contribution in the production of binding legislation, we observe an increasingly important component of the EU political system. Parliament's performance in the **codecision procedure** as well as in the implementation of the newly introduced appointment procedures clearly indicate that **by building on precedents** in the 'valley' of Treaty implementation (Christiansen/Jorgensen 1999), Parliament has steered the geometry of institutional relations from a two-sided to a triangular form. The European Parliament has considerably grown in importance. **It cannot be denied that it has considerably developed from a rather 'decorative'** (Wallace 1996: 63) **to a legislative institution.** Of course, codecision is a cumbersome procedure, but the MEPs have become acquainted with it. Codecision has its shortcomings. But three failed procedures out of 169 do not indicate a massive defeat of this new legislative instrument. Much analysis has suggested that codecision will not work effectively. On the contrary, we observed a procedure which is - with regard to efficiency – as efficient as cooperation, and which - with regard to the substance of European secondary legislation - enables the EP to set the EC policy agenda on an equal footing with the Council. Moreover, contrary to what has been suggested, codecision and the unanimity requirement in the Council have had no negative impact on the efficiency of the procedure. Parliament's performance in both the new **appointment procedures** and the operation of the **committees of inquiry** reveal that besides the formal arrangements agreed at the Maastricht IGC, informal, non-Treaty based and therefore, non-binding arrangements are effectual means of building a parliamentary democracy in the European Union. In other words, **incrementalism matters**. Whereas Parliament plays only a minor role at the 'peaks' of IGC's, it is able to navigate potential IGC's issues in the 'valley' of Treaty implementation.

10.1. Conclusions, particularly in the light of the Amsterdam Treaty

The **Treaty of Amsterdam** widens the **scope of application** of both the **codecision procedure** and the assent procedure. Moreover, the new Treaty introduces the European Parliament as a **legislative body** in the areas of freedom, justice and security, confirms Parliament's budgetary powers with regard to the CFSP and strengthens the Parliament´s **elective role** with regard to the European Commission and its President. The IGC negotiations on the role of the European Parliament in the legislative decision-making process of the EC were easier to conclude than those on institutional reform in general. The legislative procedures are streamlined, in that the cooperation procedure is replaced by codecision in all areas apart from four in the field of EMU. Codecision now applies to 38 articles containing procedural elements. Moreover, five years after the entry into force of the Amsterdam Treaty, codecision will be automatically extended to measures on the procedures and conditions for issuing visas by Member States as well as to rules on a uniform visa. The assent procedure has been extended to the new TEU provision on sanctions in the event of a serious and persistent breach of fundamental rights by a Member State. Finally, the scope of application of the consultation procedure has been extended by nine treaty provisions. Considering the real use of all these different Treaty articles, early reactions on the outcome of the Amsterdam Treaty estimated that nearly 70% of the European Community's legislative output will be adopted under the codecision procedure (Brok 1997; Nickel 1997; Maurer 1998) [36]. However, we should not trust our emotions immediately after the 'end game' in Amsterdam. As we

[36]. In fact, the '**virtual' codecision statistics** produced by the European Parliament's Conciliation Secretariat in July 1997 underlined that "if the provisions of the draft Amsterdam Treaty were to be applied to the legislative procedures completed between 1 November 1993 and 7 July 1997, the number of codecision procedures would be increased from 80 to 192. The same exercise with regard to legislative procedures in progress would increase the number of codecision procedures from 110 to 193" (Conciliation Stop Press, No. 9/July 1997).

have seen, the cooperation and codecision procedures taken together only covered about 8 to 13 percent of the total secondary legislation adopted by the Council.

10.2. Options for further institutional strategies of the European Parliament

- **With regard to its legislative roles**

The Amsterdam Treaty permits the codecision procedure to be concluded at first reading stage. Consequently, the new procedure offers a chance for accelerating, rationalizing and simplifying the EC's legislative process. Given the new legal basis where codecision will apply, the possibility of conclusion after the first reading may lead to saving time for a higher number of legislative proposals. Given the importance of the first reading stage, Parliament should improve both the process of adopting the relevant amendments and their quality. The Amsterdam Treaty abolishes the intention to reject Council's common position phase and the so-called 'third reading' of the Council in the case of failure of conciliation. This not only means greater responsibility for the Council, but also for the EP's delegation to the Conciliation Committee. Given the sometimes rather low attendance rates of MEPs in the Conciliation Committee, Parliament should think about how to make it more attractive or even compulsory for its delegates. As for the five-year period for matters previously being dealt with under the Justice and Home Affairs pillar, the Committee on Civil Liberties and Internal Affairs in particular will potentially become more involved in the codecision procedure. Consequently, the EP considered the latter's responsibilities and amended the relevant parts of the Rules of Procedure. As regards the assent procedure, the institutions should make the conciliation/concertation mechanism compulsory for both the Council and the Parliament. Given a future scenario of a Council of Ministers with more than 20 representatives, it would be appropriate to introduce the EP as a fully stretched co-legislator in all areas of original, binding, secondary legislation. New interinstitutional agreements may ensure the institutions a smooth running of the codecision procedure. Here, the EP may focus on an IIA which enables the European Parliament - especially its committee on Citizens' Freedoms and Rights, Justice and Home Affairs - to monitor the "communitarisation process" of both ex-Title VI TEU and the Schengen-Acquis effectively.

The considerable increase of Parliament's powers and activities with regard to its participation in EC legislation goes hand in hand with a decline in own initiative and urgency resolutions during the last twenty years. Due to its newly gained capacities in co-legislating with the Council, the 1999-2004 Parliament will probably not change its internal rules governing the time allotted for debating and voting on non-legislative issues. To accomplish its powers apportioned by the Amsterdam Treaty, the European Parliament will need more and more resources – time, staff and space - for legislation. Accordingly, it is plain to argue that MEPs elected for the 1999-2004 Parliament has to face the crucial question, in which respect they can translate their position as representatives of the peoples – their constituency, their party interests and demands – into action enabling them to become re-elected. Political groups which ideally condense society interests and needs are confronted with the problem, how they can present these products of aggregation in the European Parliament. If the European Parties and the EP's political groups want to develop further the "linkage between institutions and constituencies within the polity" (Gaffney 1996: 1-2, Hix/Lord 1997 7-10), they must carefully choose between the different political and institutional capabilities at hand. What the European Parliament clearly needs is a strategy for politicizing the European Union. The 'face-to-face' between the Parliament and the Council has a damaging effect, in that the citizens do not – and can not - perceive

the Parliament as a 'room' providing space for transnational communication and – perhaps more important – for transnational and controversial debate on de-nationalized socio-economic cleavages. If the European Parliament continues to be exclusively perceived as a unitary actor, the citizenry will continue to loose its interest in a – more and more powerful – institution.

Table 12: Options for further institutional strategies of the European Parliament

STRATEGY WITH REGARD TO THE EP'S:	INSTITUTIONAL REFORMS WITHOUT TREATY AMENDMENTS	NEW TREATY
LEGISLATIVE FUNCTION	- Strengthening of EP's conciliation committee (RoP reform) - New IIA on the assent procedure: making concertation/conciliation compulsory	- Widening of the scope of application of the codecision procedure (general rule: QMV in the Council → Codecision) - Introducing a formal conciliation mechanism in the assent procedure or replacing assent by codecision - Revision of Art. 249 to adapt the Treaty classification of norms to the EC/EU institutions' reality
CONTROL FUNCTION	- Amendment of IIA on committees of inquiry - New IIA on Parliament's supervisory powers with regard to the incorporation of Schengen into the ECT/TEU - New IIA on cooperation between the EC institutions with regard to the five-year period in Title IV (new) - New IIA on Parliament's supervisory powers with regard to EMU - New III on Parliament's supervisory powers with regard to closer cooperation	- Amending Art. 202: Council and EP jointly delegate executive powers to the Commission - Introducing a formal consultation procedure in the CFSP - Introducing a formal consultation mechanism for all decisive phases of closer cooperation (across the EU 'pillars')
ELECTIVE FUNCTION	- Intrainstitutional Agreement between the political groups of the EP on the 'pre-selection' of the candidate for the President of the European Commission	- EP's assent required for the ECB - EP's assent required for appointments to the Court of Auditors - Consultation mechanism for the appointment of judges to the ECJ
SYSTEM-DEVELOPMENT FUNCTION	- IIA on EP participation in treaty reform	- EP's assent for Treaty reforms - Equalization of EP and Council with regard to the budget procedure

- **With regard to the nomination and/or approval of other bodies of the European Community**

The Amsterdam Treaty grants the EP the right to approve the candidate for the President of the Commission. Given the experience gained in the last investiture, it would be appropriate to think about a new 'informal' implementation mechanism, which provides for a closer and more political relationship between the Commission and the Parliament. However, the EP should not wait for another IGC to empower providing the European 'demos in the making' to elect the President of the European Commission. In our view, it is the task of the political groups of the EP to agree on an appointment procedure based on the 2004 European elections. As regards the rights of the European Parliament in the appointment procedures of other institutions such as the Court of Auditors and the ECB, Parliament has proved that it is prepared to codecide with the Heads of Government or State on their candidates. Therefore, Parliament should strike for its assent. Finally, given the EP's existing already achieved rights in the appointment of other EC institutions, it would be appropriate to provide Parliament with a formal consultation mechanism in the ECJ's appointment procedure.

- **With regard to the development of the European Union's institutional and procedural system**

Does the European Union need a Constitution? For some commentators, this question is not relevant because "Europe already has a 'multilevel constitution': a constitution made up of the constitutions of the Member States bound together by a complementary constitutional body consisting of the European treaties (Verfassungsverbund)" (Pernice 1999: 707). Hence, given the empirical evidence from the implementation of the Maastricht Treaty and the new provisions of the Amsterdam Treaty, **the bulk of the observed shortcomings could be corrected by new interinstitutional agreements**. With regard to the **codecision** procedure, IIAs should provide enough room for maneuver for both the EP and the Council. Concerning **EMU**, democratic accountability may be strengthened by a new interinstitutional agreement on the key EMU-related issues (excessive deficit procedure, international agreements on monetary or foreign exchange regimes, mutual assistance procedures) including decision-making procedures related to the new **growth and stability pact**. With regard to the temporary **committees of inquiry**, a relevant agreement could provide a good basis for strengthening the EP's position. As regards Parliament's new powers in ECT-based **Justice and Home Affairs**, Parliament should seek an informal agreement with the Council on how to adopt the foreseen decision on the possible shift from unanimity + consultation towards codecision.

However, the **'Amsterdam Left-overs' IGC** is likely to take place before the final stage of the next accession round. The institutional protocol of the Amsterdam Treaty, the conclusions of the European Council meeting in Vienna and Cologne as well as the decision of Commission President Romano Prodi to set up high level groups for identifying issues of further institutional reform give several indications of an early Treaty reform. Thus, the European Parliament may take the opportunity to act as a broker for Member States' interests in order to settle potential elements of conflict (weighting of votes and number of Commissioners) at an early stage. In this regard, the newly elected Parliament may use its interparliamentary network (with the parliaments of the EU Member States as well as with those of the applicant countries) to formulate adequate proposals at an early stage. The new IGC may also settle some age-old concerns of the European Parliament. With regard to the budget, the difference between compulsory and non-compulsory expenditure should be abolished. **Parliament should get the right to approve Treaty amendments.**

The adopted codecision procedures indicate another element of future treaty reform: The increasing amount of 'legislative decisions' inducing action programs in the fields of health, the environment, youth, education, culture and research may raise the question about the usefulness of the existing classification of Community norms (one could add that the norms provided for in the TEU treaty parts of the Union's legal framework necessitate too a revision of the classification of norms). Hence, Article 249 seems to be outdated since it does not make a distinction between the 'decision' in its classic meaning and the new generation of 'legislative decisions'. **The European Parliament should take up the initiative for the upcoming "Helsinki IGC" to reformulate Article 249 ECT.** Finally, the wording of Treaty articles which specifically refer to Art. 251 as the procedural basis ('The Council, acting in accordance with the procedure referred to in Article 251...') should be adapted to the Union's reality ('The European Parliament and the Council, acting in accordance with the procedure referred to in Article 251...').

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