

EUROPEAN PARLIAMENT

Directorate-General for Research

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(Co-)Governing after Maastricht:

The European Parliament's
institutional performance 1994 - 1998

Political series

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institutional performance 1994 - 1998

Lessons for the implementation of the Treaty of Amsterdam

(including Executive Summary in French)

Political series

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Executive Summary

The Amsterdam Treaty, when ratified, will empower the European Parliament (EP) with additional rights and duties which will strengthen its role as co-legislator. The EP will modify 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 can learn 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** (*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 and control 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 40% in the "post-Maastricht" 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, tax or agricultural policy, we observe a **long-term and constant trend of extending the EP's legislative involvement**. From this overall trend we can differentiate 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), nearly 25% of the European Commission's legislative proposals addressed to both the Council and the European Parliament until December 1997 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 12% in 1997 - **at a fairly low level**. However, 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 programmes but also on a very significant amount of **binding secondary EC legislation**.

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 1997 Parliament was quicker than the Council to adopt its first reading resolutions. The difference between the time taken by the European Parliament for the adoption of its first reading resolutions regularly 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 Article 100a as their legal base: there has been much less use made of the new articles. If one looks at codecision procedures currently in progress, 63.2% of cases are based on Article 100a and only 10.5% (11 out of 106) on legal bases newly introduced with the Maastricht Treaty.

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 dialogue. **Codecision in turn leads to an equalisation** 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 analysed 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 138c 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 has worked effectively. The fact that Parliament 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 organisation 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.

Summarising 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 125 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 - shorter than 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.**

Présentation synthétique

Le traité d'Amsterdam, lorsqu'il sera ratifié, conférera au Parlement européen (PE) de nouveaux droits et devoirs qui renforceront son rôle de colégislateur. Le PE modifiera son règlement pour tenir compte de ces évolutions. Le présent rapport vise à apprécier le rôle du PE dans le processus législatif depuis le traité de Maastricht pour lui permettre de tirer les enseignements du passé et d'utiliser au mieux les pouvoirs qui lui sont attribués par le traité d'Amsterdam. Il se fonde sur les nombreuses données concrètes recueillies (chapitre 1) pour analyser les modalités d'application et de mise en oeuvre des compétences du Parlement dans les domaines suivants (chapitre 2) :

- rôle du Parlement dans la **préparation et l'élaboration de la législation communautaire** (*fonction législative du Parlement européen*) ;
- exercice des pouvoirs du Parlement en matière de **contrôle politique des autres institutions de la Communauté** (*fonction de contrôle du Parlement européen*) ;
- rôle du Parlement dans les **procédures de nomination** aux postes des autres institutions de la Communauté (*fonction élective et fonction de contrôle du Parlement européen*) ;
- **participation** du Parlement à **l'évolution des institutions** de l'Union européenne (*fonction de développement du système*).

Cette évaluation des diverses fonctions du Parlement européen, associée à une analyse historique de l'évolution de son rôle, permet d'énoncer les conclusions ci-dessous.

Organe au **rôle initial essentiellement consultatif**, le Parlement européen est devenu un **organe législatif**, et cette transformation est à bien des égards impressionnante (chapitre 4). La proportion des domaines d'action sur lesquels il n'est pas compétent ("exclusion législative") est passée de 72,09% dans la CE d'origine à 40% dans la CE post-Maastricht. Nombre des questions essentielles et politiquement sensibles relatives à l'intégration européenne **sont à présent soumises à de nouvelles procédures décisionnelles dans lesquelles le PE joue un rôle plus important**. Si le Parlement reste exclu de certains domaines d'action de l'UE, comme les politiques commerciale, fiscale ou agricole, **on note une tendance constante, sur le long terme, à l'extension de ses attributions législatives**. Il convient toutefois d'opérer des distinctions entre les différentes tendances en fonction des diverses procédures législatives. Si le traité instituant la Communauté européenne ne prévoyait d'appliquer la procédure de **codécision** que dans 9,25% de ses dispositions (ayant trait au règlement), près de 25% des propositions législatives soumises par la Commission européenne à la fois au Conseil et au Parlement européenne jusqu'en décembre 1997 ont relevé de cette procédure. En revanche, si l'on considère que ce traité prévoyait l'application des procédures de **coopération** et de **codécision** dans 19,12% de ses dispositions, la **proportion de ces deux procédures** par rapport à la **législation issue du Conseil** représente près de 12% en 1997, **niveau relativement faible**. Notre évaluation contredit toutefois l'idée que le PE ne possède pas de véritables pouvoirs législatifs et révèle qu'il a, depuis le traité de Maastricht, compétence pour colégiférer avec le Conseil non pas seulement à propos de programmes d'action moins contraignants,

mais aussi dans un nombre significatif de domaines de la **législation communautaire dérivée, de force contraignante**.

En termes **d'efficacité du processus décisionnel** (chapitre 5), on peut conclure que, contrairement à la croyance commune, la procédure de codécision **n'engendre pas de retard significatif** dans l'adoption finale de la législation communautaire. Certes, cette procédure paraît lourde mais, jusqu'en 1997, le temps nécessaire au Parlement pour adopter des résolutions en première lecture était moindre que celui nécessaire au Conseil pour adopter des positions communes. En fait, il a régulièrement été de moitié inférieur au temps pris par le Conseil. Une étude détaillée de la date d'introduction des actes législatifs met en lumière deux points. D'une part, **l'aboutissement des procédures législatives portant sur d'anciennes propositions de la Commission**, soumises au Parlement avant l'entrée en vigueur du traité de Maastricht, **est plus long lorsque celles-ci relèvent** de la procédure de codécision. D'autre part, il apparaît que plus la période entre une proposition législative de la Commission et l'adoption d'une position commune par le Conseil est restreinte, plus vite le Parlement est en mesure d'adopter une position. De même, plus le temps nécessaire à l'adoption d'une résolution en première lecture par le Parlement est long, plus le temps nécessaire pour parvenir aux phases finales de la codécision augmente.

L'étude montre également que, jusqu'à aujourd'hui, les procédures de codécision ont principalement porté sur les actes législatifs visés à l'article 100a : les actes législatifs avec procédure de codécision qui relèvent des nouveaux articles ont été beaucoup moins nombreux. Ainsi, 63,2% des procédures de codécision actuellement en cours portent sur des domaines relevant de l'article 100a et seulement 10,5% (soit 11 sur 106) sur les nouvelles bases juridiques introduites par le traité de Maastricht.

Pour ce qui est de **l'influence législative** (chapitre 6) du Parlement, notre étude fait apparaître que dans les domaines relevant d'une procédure de codécision, le Parlement a obtenu des **pouvoirs supplémentaires** et a souvent été en mesure d'imposer des limitations au **Conseil**. En outre, les dispositions financières prises dans le cadre d'une codécision démontrent que de telles solutions interinstitutionnelles peuvent se révéler adaptées à d'autres procédures (cf. coopération). En d'autres termes, la procédure de codécision **a eu des retombées procédurales**. On peut considérer que les **aspects institutionnels** de la procédure de coopération ont transformé le dialogue entre le Conseil et la Commission (instauré par la procédure de consultation) en un « trialogue ». **La codécision, quant à elle, met ces institutions sur un pied d'égalité** aux dépens des pouvoirs de négociation de la Commission (du moins pendant la phase de conciliation). **Elle a fait évoluer l'influence du Parlement dans le sens d'un pouvoir réel**. Avec le pouvoir de contraindre le Conseil à la conciliation ou de rejeter sa position commune, et donc l'ensemble de la proposition, le Parlement a obtenu de réels pouvoirs de négociation lui permettant de faire modifier des dispositions essentielles des directives, règlements et décisions.

Le rapport analyse également la **fonction de contrôle** du Parlement européen (chapitre 7). Il souligne que la mise en cause de l'instrument de contrôle initial dont dispose le Parlement sur la Commission et le Conseil ne suscite plus guère d'**intérêt**. Cette désaffection relative tient au fait que le Parlement possède à présent des pouvoirs beaucoup plus étendus en matière de législation communautaire. Par ailleurs, le recours à l'article 138c du traité instituant la CE - définissant la nouvelle base juridique de nomination de **commissions d'enquête** temporaires par le Parlement - a fait la preuve de son efficacité à plusieurs égards. Ainsi, l'enquête sur l'ESB a eu un impact considérable sur l'issue de la CIG 1996/1997. Elle a conduit à une évolution de la base juridique de la législation communautaire dérivée dans le domaine de la médecine vétérinaire. En dépit de quelques limitations, les deux commissions d'enquête se sont révélées être globalement **un complément efficace** aux pouvoirs de contrôle du Parlement européen.

Quant à l'intervention du Parlement dans les **procédures de nomination** (chapitre 8), il est manifeste que la procédure « d'investiture de la Commission » a fonctionné efficacement. Le fait que le Parlement a presque réussi à rejeter l'approbation du président de la Commission choisi par les États membres témoigne de la façon dont le Parlement a réussi à transformer une procédure interne en instrument politique. L'organisation d'auditions **s'est révélée positive**, car la Commission les a acceptées alors que, juridiquement, elle n'y était pas tenue.

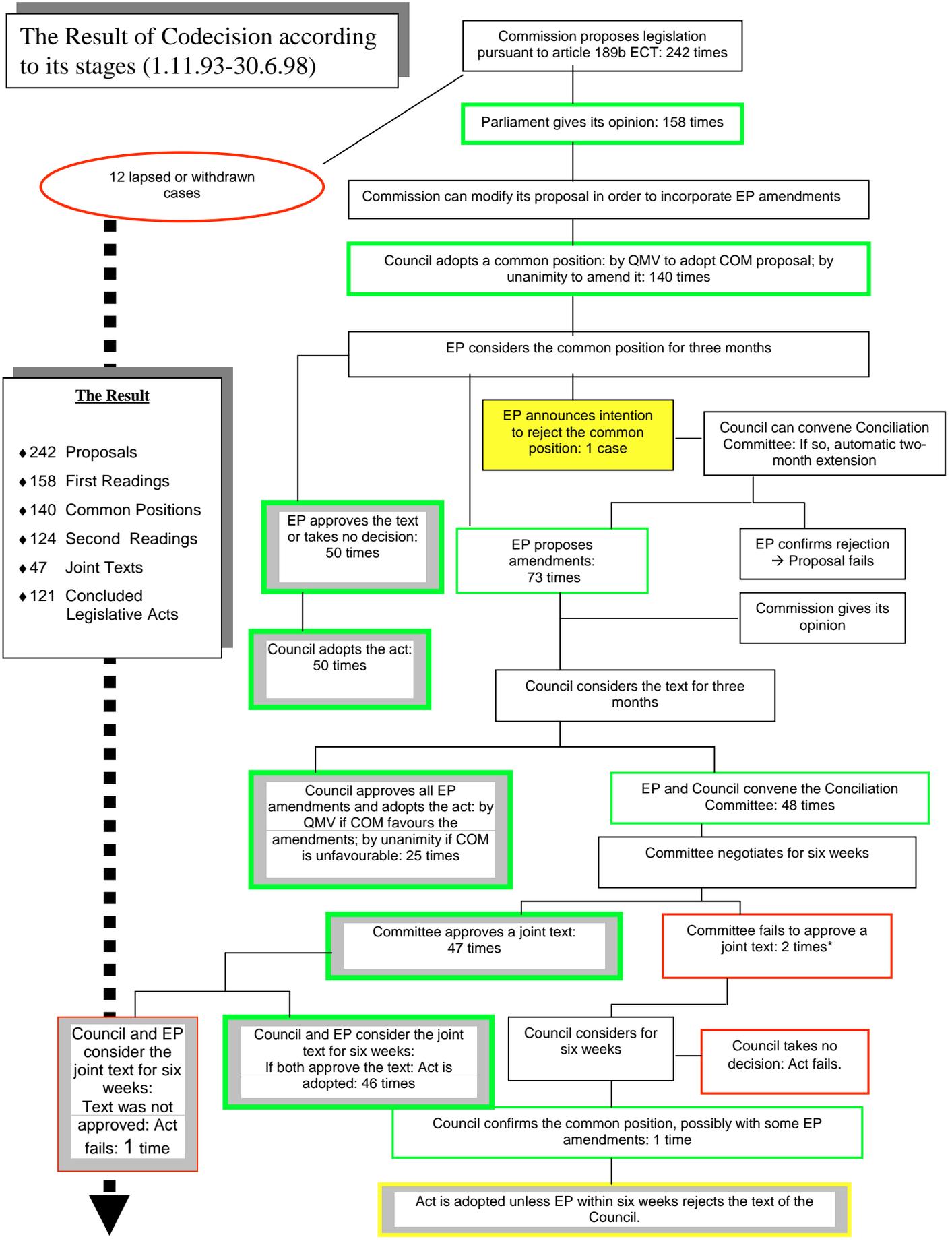
L'élaboration du système (chapitre 9) semble être la tâche, ou fonction, la plus difficile du Parlement, car il lui faut tout à la fois améliorer sa situation au sein du cadre institutionnel et faire progresser les politiques de la Communauté. C'est pourquoi elle constitue un projet progressif, à long terme. Le PE doit continuer d'appliquer sa stratégie de **petits pas** et de **compromis** avec les partenaires puissants, en veillant constamment à ne pas dépasser les limites. Une position exagérément rigide et inflexible pourrait compromettre toute amélioration ultérieure de la position du PE. En revanche, l'absence de position marquée pourrait enterrer les grandes réformes ou décisions constitutionnelles. Jusqu'à présent, le Parlement a toujours fait montre d'une attitude constructive.

Pour conclure sur les différents aspects des compétences du Parlement européen (chapitre 10), on peut dire que si, à première vue, le Parlement ne semble pas avoir réussi à mettre en œuvre les dispositions du traité de Maastricht, d'autres facteurs doivent être pris en compte. Nous estimons que l'Union européenne est un « organisme politique en cours d'élaboration » et que son évolution ainsi que celle du Parlement est organique et progressive. Si l'on adopte ce point de vue pour évaluer la contribution du Parlement européen à la production d'une législation de force contraignante, **celui-ci apparaît comme une composante à l'importance croissante du système politique de l'Union européenne**. L'efficacité du Parlement au niveau de la procédure de codécision et de la mise en œuvre des récentes procédures de nomination indique que, tirant les leçons du passé, le Parlement a modifié la configuration des relations institutionnelles : les débats bilatéraux se sont transformés en débats trilatéraux. Le rôle du Parlement européen s'est considérablement accru.

La procédure de codécision est, certes, complexe, mais les députés s'y sont familiarisés. Elle comporte, bien sûr, des inconvénients, mais l'échec de trois procédures de codécision sur un total de cent vingt-cinq ne constitue pas un revers majeur pour ce nouvel instrument législatif. Nombre d'observateurs affirment que le processus de codécision ne fonctionnera pas efficacement. Les résultats de la présente étude démontrent que la procédure de codécision est, en termes d'efficacité, plus courte que la procédure de coopération et qu'elle permet au Parlement européen de définir le programme des mesures communautaires sur un pied d'égalité avec le Conseil. En outre, contrairement à une croyance répandue, **la condition d'unanimité au sein du Conseil n'a pas eu d'incidence négative sur l'efficacité de la procédure de codécision.**

L'efficacité du Parlement quant aux nouvelles procédures de nomination et aux commissions d'enquête temporaires, renforçant ses succès dans les procédures de codécision, met en lumière que, en plus des dispositions officielles prises par la CIG de Maastricht, les **dispositions informelles, non incluses dans les traités et par conséquent non contraignantes, peuvent également être efficaces pour construire une démocratie parlementaire au sein de l'Union européenne.**

The Result of Codecision according to its stages (1.11.93-30.6.98)



12 lapsed or withdrawn cases

- The Result**
- ◆ 242 Proposals
 - ◆ 158 First Readings
 - ◆ 140 Common Positions
 - ◆ 124 Second Readings
 - ◆ 47 Joint Texts
 - ◆ 121 Concluded Legislative Acts

• COD 95188 failed. Anticipating the new Art. 251(6) ECT, the two institutions closed the procedure.

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

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 189b 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 'constitutionalized' 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**. Summarising these changes, it can be argued that the Maastricht Treaty has considerably strengthened the position of the EP within the political system of the EC.

Nevertheless, more than five 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 (see: 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 many the TEU indicates 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 189b 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 applies are considered to be rather limited (Gosalbo Bono 1995; Tsinisizelis/Chrysochoou 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 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 deal 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 meagre 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, 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), 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 the British Presidency of the Council of the EU (30.6.1998).

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 (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 analysed:

- 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 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 **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 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.

2. 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 first phase of its 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: this 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, scrutinise 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 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 competences). 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 IGCs but also via other methods such as interinstitutional agreements.

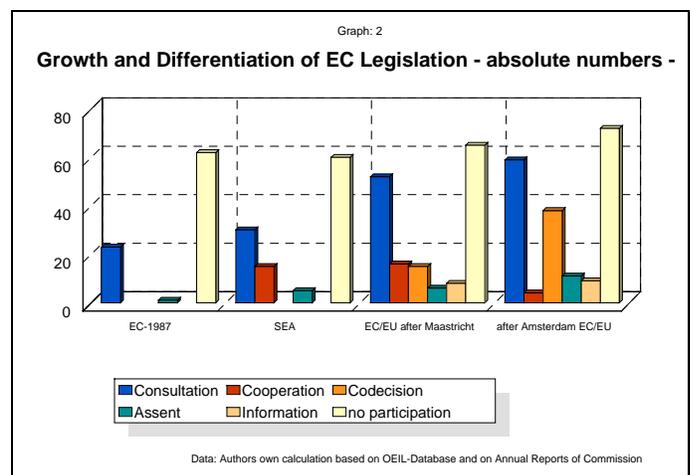
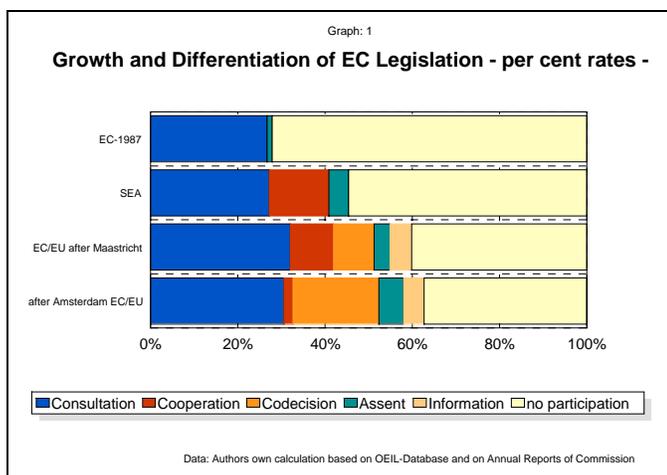
² As this paper is concerned with the EP's implementation of the Maastricht Treaty provisions, we also refer to the phase from 1 November 1993 to May 1998.

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 organisations 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 characterised by a gradual extension of responsibilities and authority leading to an enlarged scope of action at EC level (Wessels 1997). Simultaneously, more and more competences 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 criticised 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 conceptualisation 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 1993 [Maastricht]). However, if we focus on the rates of the treaty-based decision-making procedures (Graph 2), we have to recognise 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 65 in 1993).³



³ In addition the proportion of Parliament's "non participation" in the two intergovernmental pillars was 100%!

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	

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	

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 - approx. 3/1999)

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	

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. Cf. chapter 18.

The **Conciliation Committee** is 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**. If conciliation fails, the Council has the right to confirm its common position (with QMV or Unanimity depending on the Commission's opinion) within six weeks of the expiry of the period granted to the Conciliation Committee, possibly with amendments proposed by Parliament. However the Parliament has the final option to disapprove the Council's act. In that case, the act is deemed not to have been adopted and the procedure fails. Therefore, with codecision, the EP has gained almost equal say, at least in terms of vetoing a legislative act. **Unlike the Council, however the EP is not able to bypass resistance in the Council and subsequently adopt the act without having the approval of the Council.**

This brief overview shows that, from the original EEC Treaty to the Maastricht 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 programme led to a great increase in the volume of Community legislation in general. Thus, cooperation included the bulk of legislative harmonisation in the following areas: the single market, specific research programmes, 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).

Table 4: Parliamentary activity 1987 - 1997: Completed procedures and resolutions of the EP

Year	Council secondary legislation	Commission secondary legislation	Commission legislative proposals (Codecision in brackets)	European Parliament Consultation	Parliament: Cooperation			Parliament: Codecision					EP Assent	EP Budget	Initiative Resolutions Statements, Urgencies
					1	2	Concluded	1	2	3	Concluded	Failed, Lapsed or 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	5739	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	65	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

Own compilation. Source: European Commission: Annual report of the European Commission 1986-1997.

Table 5: Proportion of cooperation and codecision in relation to the total legislative output of the Council

Year	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997
Proportion	1.12%	7.00%	9.93%	9.12%	8.60%	8.40%	9.52%	9.40%	5.70%	11.57%	11.95%

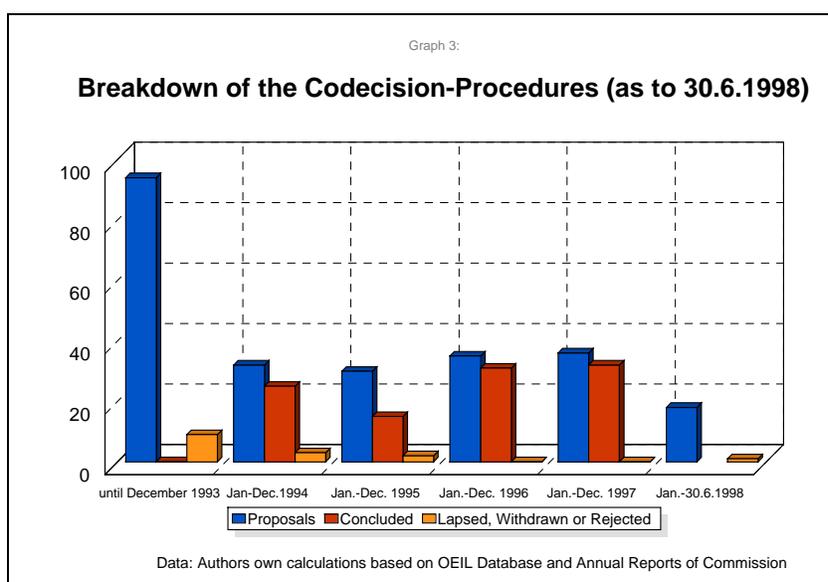
The impact of the **codecision procedure** on EP participation in the production of binding secondary EC legislation is impressive. The following figures indicate the Parliament's performance with its newly gained legislative powers for the period between 1 November 1993 and 30 June 1998 .

Table 6: Breakdown of the codecision procedures (15.7.1998)

Proposals submitted	Proposals (not concluded yet)	Concluded	Lapsed, Withdrawn or Rejected
Until December 1993	59 + (32)	0	9
January - December 1994	30 + (2)	23	3
January - December 1995	26 + (4)	16	2
January - December 1996	17 + (18)	31	0
January - December 1997	4 + (32)	32	0
January - 30.6.1998	(18)	19	1
Sum	136 + (106)	121	15

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 **July 1998**, a total of **242 legislative** proposals had been transmitted to the European Parliament pursuant to the codecision procedure, of which **136 (56.19%) have been concluded**. In **121 cases (50%)**, the Commission's initiatives have resulted in **secondary binding legislation decided jointly by the European Parliament and the Council**. 106 cases are pending before either the Council or the European Parliament.

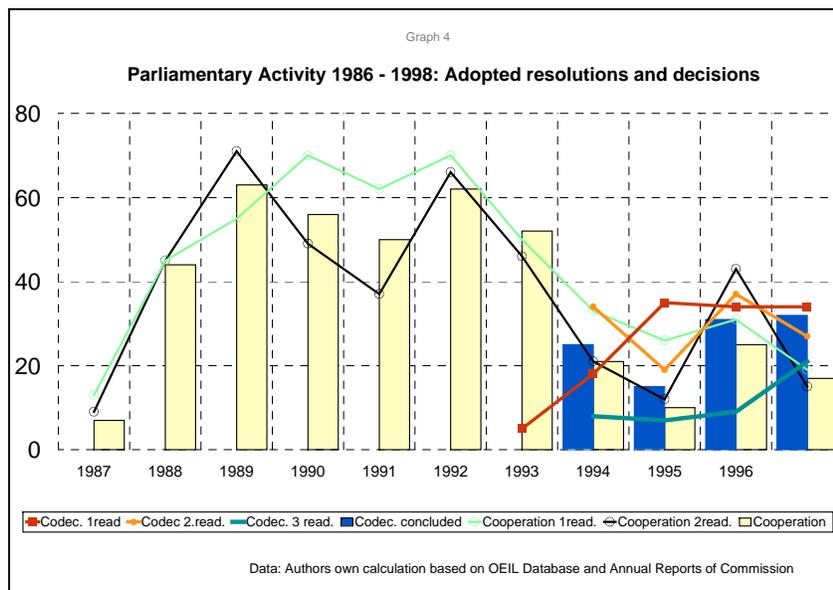


To date, there have been **15 cases** in which the proposal of the Commission has **failed**. In **8 of these**, the procedure **lapsed** because the Council was unable to adopt a common position. In **four cases**, **the Commission withdrew** the proposal prior to Parliament's first reading. Only three 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 **121 approved acts** (up to July 1998), **73 cases (60.34%)** were reached **without convening the Conciliation committee out of which 49 (67.12%)** were **approved by Parliament without amending the common position** of the Council. In the remaining **24 (32.87%) cases**, **the Council accepted all of the second reading amendments proposed by the EP**. **48 common positions (39.66%)** were subject to conciliation and joint compromise texts of both the Parliament and the Council.

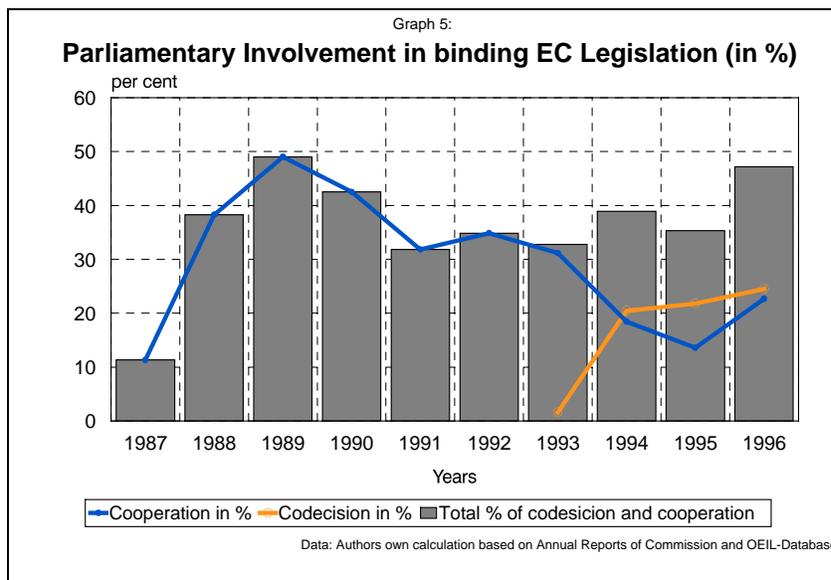
Apart from these legislative acts, **three proposals failed after conciliation**. In two cases no agreement could be found on the type of committee which would help the Commission in implementing the directives. **One** proposal reached the stage of a **joint legislative text** (directive on the legal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

As for the **106 proposals underway** on 15 July 1998, **30** are awaiting the EP's **1st reading** and **52** the Council's **common position**. Apart from these cases, **8 common positions are still subject to Parliament's second reading**. On **4 matters, Council and Parliament have to convene the conciliation committee**, because the Council did not agree on all of the second reading amendments of the EP. In **5 of the pending cases, conciliation has been concluded** with joint compromise texts which are now (15.7.1998) **subject to a third reading** in both the Council and the EP after the 1998 summer break. **7 other codecision proposals have been concluded after the second reading** of Parliament but **have not yet been published**.



If we look first 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 13.57% (1995) whereas the share of those providing for codecision has increased to 21.78%. **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 harmonisation measures in the framework of the internal market. With Maastricht, the procedure to be applied for Article 100a shifted from cooperation to codecision. Hence 65.9% of the codecision procedures concluded between November 1993 and June 1998 fell under Article 100a.



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, 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 5 indicates that the scope of their application has been significantly extended (from 11.34% in 1987 to 47.2% in 1996).⁵ 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 1997 pursuant to both the **cooperation and codecision procedure represented only 11.95% of the total secondary legislation adopted by the Council.** Nevertheless, table 6 reveals 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.⁶

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 December 1997 came under this procedure.

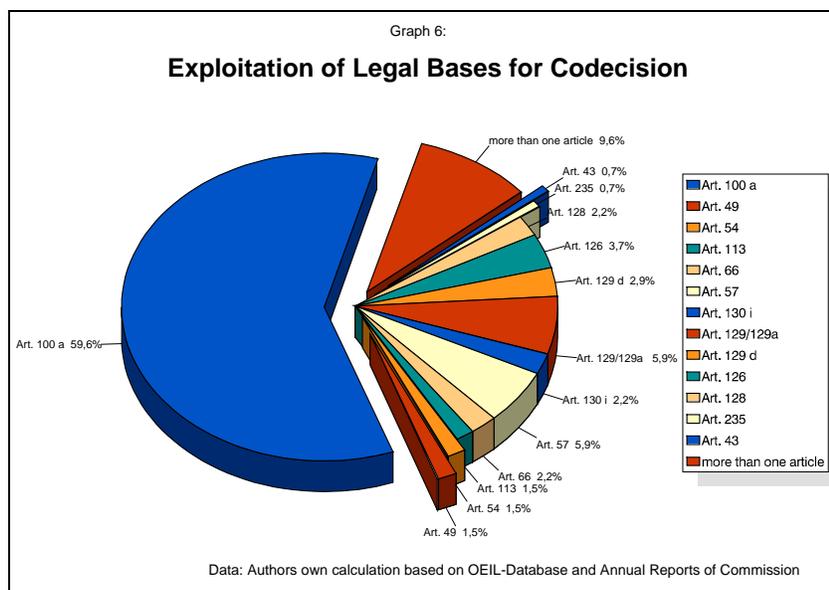
⁵ We also observed a relative increase in Parliament's legislative involvement in the overall total of Council's decisions (from 3.53% in 1987 to 31.81% in 1996). However, not all of the Council decisions and resolutions mentioned in the Commission's Annual Reports correspond to Community legislation.

⁶ A high proportion of the Council's output (indicated in table 6) 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 9-12%).

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 nearly 12% in 1997 - at a rather low level.**

4.2. 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, **66.9% (81) of the procedures concluded up to the end of June 1998 were based on Article 100a (harmonisation measures concerning the internal market).** Conversely Article 100b was never used for the adoption of mutual recognition measures in the field of the internal market.⁷ Similarly, the legal basis for the adoption of environmental programmes, Article 130s, was not used for codecision procedures until the end of June 1998. Here the institutions used the cooperation procedure for adopting the ALTENER II programme (promotion of renewable energy sources) and the SAVE II programme (Improving energy efficiency in the Community).⁸ Moreover, **only 16.52% (20) of the procedures were based on articles incorporated into the Maastricht Treaty** together with the codecision procedure (Articles 126 - Education and Youth; 128 - Culture; 129 - Health; 129a - Consumer Protection; 129d - Trans European Networks). The exploitation of legal bases dealing with Title III ECT on the **free movement of persons, services and capital (relevant codecision articles 49, 54, 56, 57[1], 57[2] and 66) was more significant:** 15 (12.39%) of all codecision procedures in force were based on one of these articles. In addition 7 other directives (5.78%) were concluded on a combination of articles 49, 57, 66 and/or 100a.

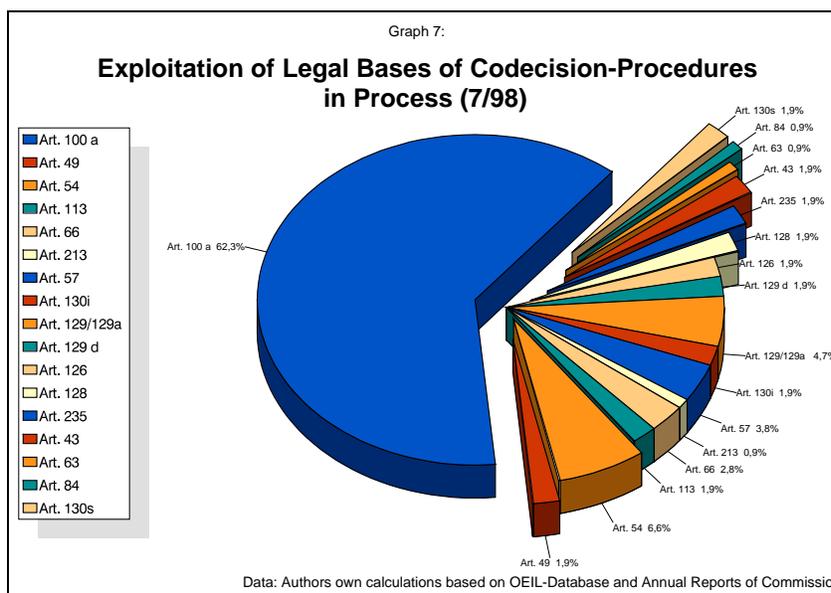


⁷ Consequently, the Amsterdam Treaty deleted article 100b in the consolidated version of the ECT.

⁸ We found two environment programmes based on codecision which are currently underway. On the Community programme of policy and action on environmental sustainable development (ESDP - date proposed: 24.1.1996), Parliament and Council held four conciliation meetings leading to a joint compromise text. Parliament approved the compromise at its meeting of 15 July 1998. Thus the programme is only awaiting its publication in the Official Journal. The main point of contention concerned the status of the legislative decision and the degree to which it could be regarded as binding. It was agreed that the decision should specify “the priority objectives of the Community” in the sphere of environmental policy. According to the EP’s conciliations secretariat, this formula “is both consistent with the Treaty and a binding undertaking” (Conciliation procedures Stop press, No. 19, June 1998). In addition to the ESDP, the action programme for groundwater protection (proposal date: 10.7.1996) is still underway.

Legend: Art. 49 - Free movement of workers; Art. 54 - Right of establishment; Art. 56 - Treatment of foreign nationals; Art. 57(1) - Mutual recognition of diplomas; Art. 57(2) - Provisions for the self-employed; Art. 66 - Services; Art. 100a - Internal market harmonisations; Art. 100b - Internal market mutual recognitions; Art. 126 - Education and Youth; Art. 128 - Culture; Art. 129 - Incentive measures for public health; Art. 129a - Consumer protection; Art. 129d - Trans-European Network guidelines; Art. 130i - Multi-annual Framework Programme for Research & Technology; Art. 130s - Environment programmes.

In sum, the exploitation of the newly introduced articles remains rather feeble. The trend towards concentration on internal market measures based on Article 100a is confirmed if one looks at the procedures in progress: 67 (63.2%) cases are based on Article 100a and only 10.5% (11 out of 106) are founded on legal bases newly introduced with the Maastricht Treaty.



Interestingly, **in some cases, codecision went beyond the legal bases introduced by the Maastricht Treaty.** Regarding those procedures completed before the end of June 1998, four cases referred to Art. 43 - agriculture (in combination with Art. 100a), four to Art. 113 - trade policy (in combination with Art. 100a) and two cases to Art. 235.

However the failure rate of these atypical procedures is 54.74% higher than is the case for procedures based on the formally agreed codecision articles. Moving on to the codecision procedures underway, we observe that two cases are based on Art. 43 (+ 100a), two on Art. 113 (+100a), one on Art. 213 and two on Art. 235. The latter deal with Trans-European Networks in the electricity and natural gas domain and in the field of telecommunications. Both proposals were transmitted to the EP and the Council on 10 November 1993 and are still awaiting the common position of the Council.

Thus, given the experiences to date with Art. 235 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 (4.13%) resulted in the adoption of a **regulation**. Another set of 21 (17.35%) legislative acts concluded until the end of June 1998 were dealing with action programmes - including decisions establishing action programmes - in the fields of education and youth (Art. 126), culture (Art. 128), health (Art. 129), research and technology (Art. 130i) and the internal market (Art. 100a for the SCHUMAN, FISCALIS and the KAROLUS programme; Art. 100a in

combination with Art. 113 for the Customs 2000 programme). The **directives and regulations added together cover 82.79% 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 programmes but also on a very large amount of binding secondary EC legislation.**

4.3. The institutional impact of codecision on the European Parliament

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 75 deals with the composition of Parliament's delegation. According to Rule 75(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 75(3) of RoP). This composition has proved to work satisfactorily (Progress report of the EP delegations to the Conciliation Committee [EPDCC] 1994-1997).⁹ 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 “specialisation” of MEPs. They are now required to become experts in technically complex matters. Of course, expertise is not a new feature for MEPs, and it is not exclusively relevant to the existence of the codecision procedure. However, unlike other procedures, codecision provides room for manoeuvre, 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 July 1997,¹⁰ the Conciliation Committee held 42 meetings on a total of 38 legislative proposals. 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,

⁹ 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
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 <u>shall</u> 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 <u>not be public</u> .
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 <u>shall</u> lay down further procedural guidelines for the work of the delegation to the Conciliation Committee.

¹⁰ As the relevant data for the period from 1.8.1997 to 30.6.1998 was not available, we restrict ourselves to an analysis based on the five published "Progress Reports on the Delegations to the Conciliation Committee" (Last update covering the period from 1.8.1996 to 31.7.1997).

the attendance of MEPs 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 79.83%¹¹]).

At first glance, we observe that the average attendance of MEPs 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 MEPs 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 ($V = 86.66$) is more than twice that for the period prior to the elections ($V = 33.3$).

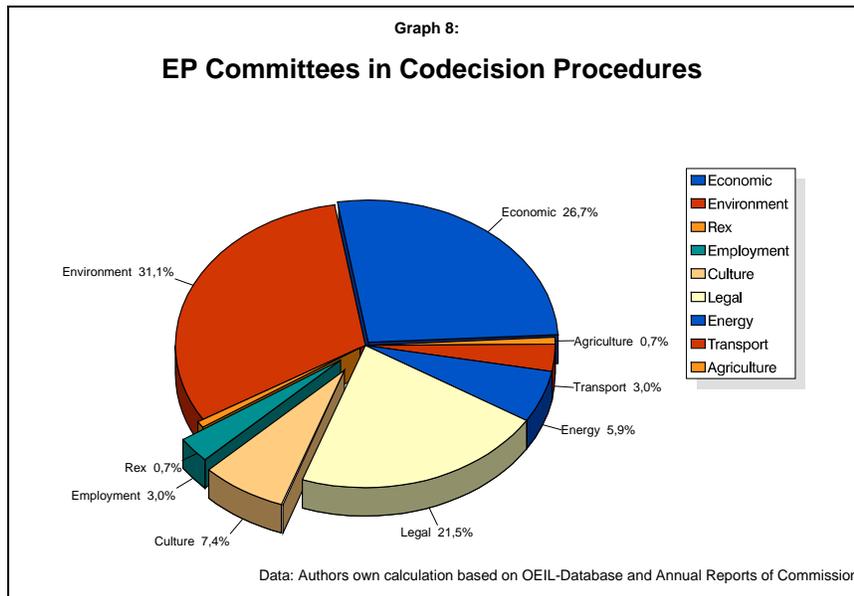
High and low attendance rates may also be explained by the substance of a given issue. In this regard, it could be argued that unlike political/horizontal (comitology and budgetary-related) issues, technical conciliation meetings may attract MEPs to a lesser extent. However, we could not observe a correlation 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) and 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) attracted an average of 71.1% and 95% MEPs respectively. These figures only give a rough indication of possible explanations on the variation in MEP attendance at conciliation meetings. It would be even more interesting, however, to have better detailed and comparative studies on the conciliation meetings in different policy areas.

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.

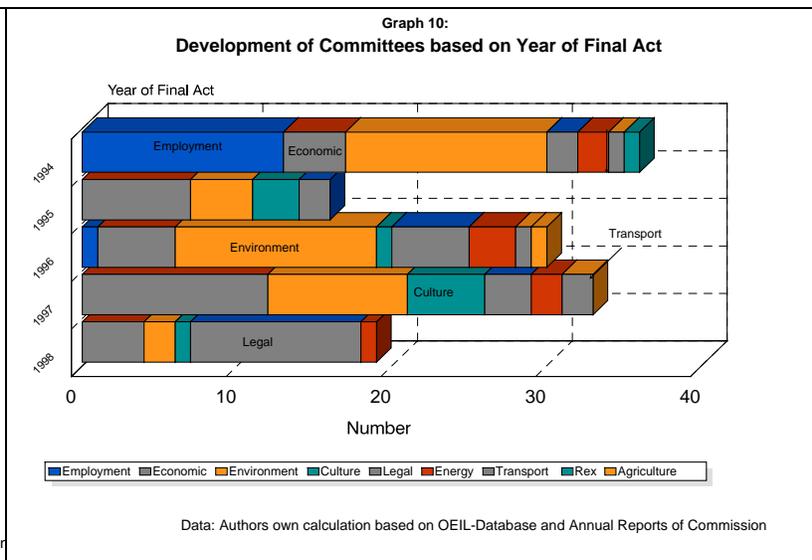
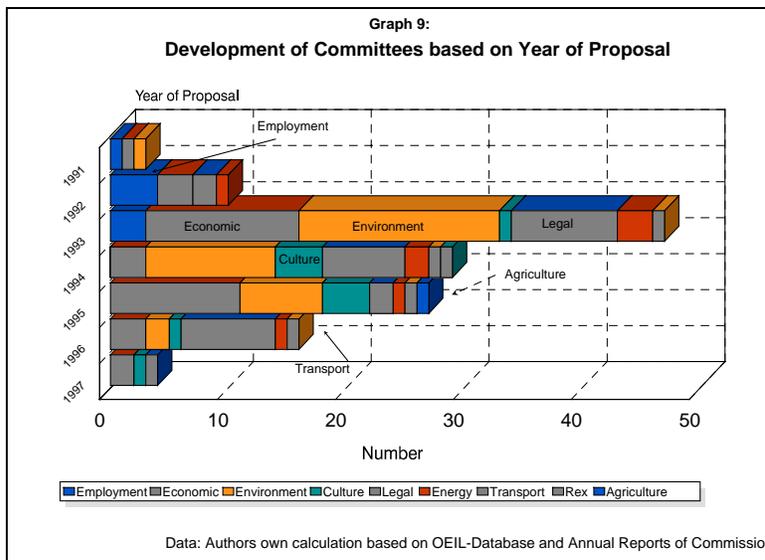
Even before codecision came into force, the cooperation procedure had led to a "better organisation and voting discipline within the Parliament. The need to obtain an absolute majority of Parliament's membership in order to reject or amend a common position in second reading led to better concertation between the political groups, [...] and was also a stimulus for reorganising 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 organised 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.**

¹¹ 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 2.7.1997 we counted X/15 MEPs (average attendance of 73.55%).

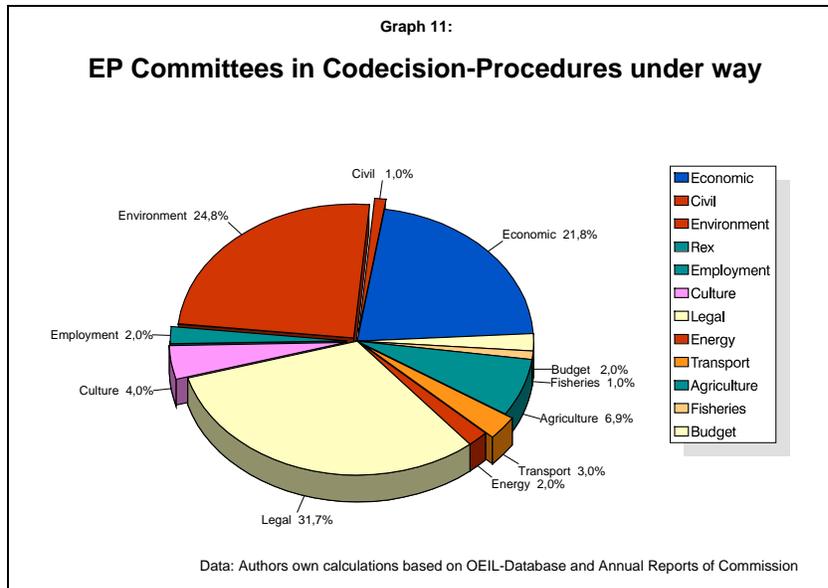
Similarly to what we can observe with regard to the scope of the procedure, **codecision has led to a structural concentration of workload in only three out of the 20 permanent committees**. Hence, the bulk of the procedures concerned the Committee on the Environment, Public Health and Consumer Protection, 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 share nearly 80% of all procedures concluded until the end of June 1998.**



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. 100a, the majority of concluded codecision procedures engaged the three committees mentioned above. Concerning the distribution of these “Art.-100a-codecisions”, the Committee on the Environment, Public Health and Consumer Protection was engaged 33 times, the Committee on Economic and Monetary Affairs and Industrial Policy 24 times and the Committee on Legal Affairs 12 times. **Thus, 56.5% of the 121 concluded codecision procedures covered both Art. 100a 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 231 in 1997! See table 6.)



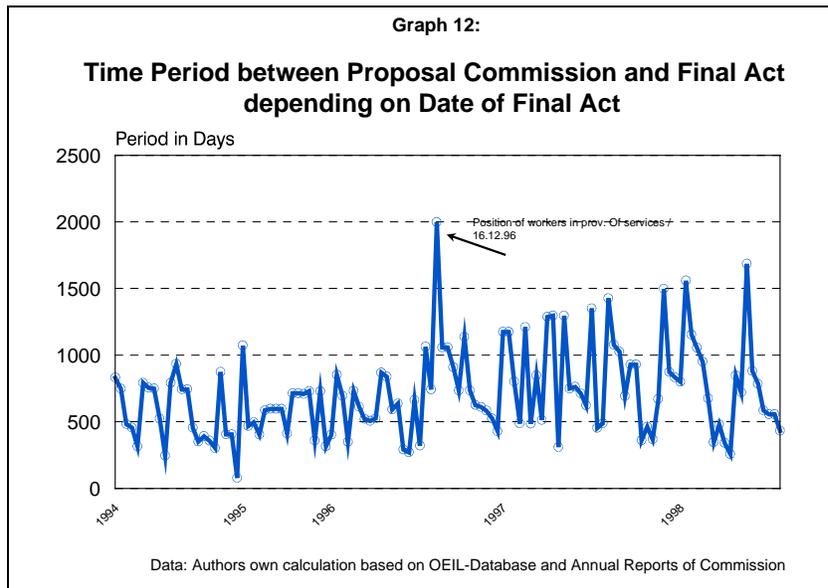
Both the introduction of codecision itself and the internal re-organisation of the European Parliament's services with regard to the implementation of the procedure had important impacts on MEPs. With regard to their involvement in the procedure, we observe a **growing nucleus of members** who are becoming **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**. Graph 11 (below) shows that with regard to codecision in process, new committees such as the Committee on Civil Liberties and Internal Affairs are becoming engaged in the procedure.



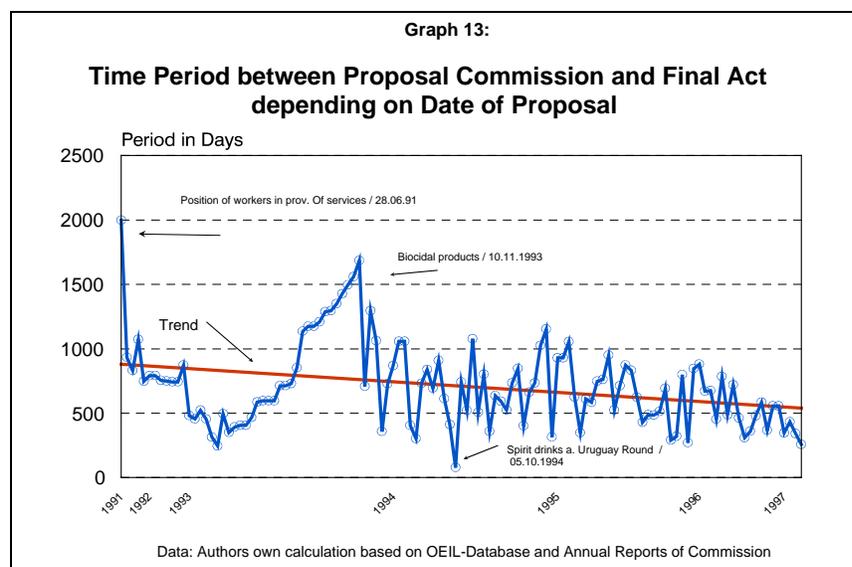
Codecision also had a major impact on the Council: its Ministers, COREPER representatives and other relevant bodies recognise that they are now working in an **institutional triangle** with the European Parliament and the Commission as equal partners for negotiating compromises. Closer European Parliament/Council contacts at all stages of legislation become a more and more useful means for preparing formalised conciliation meetings. Francis Jacobs notes that "there 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 "familiarisation" 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. Of course, the procedure appears cumbersome. Indeed, graph 12 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.



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 13). 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 838 days, original “codecision proposals” lasted only 633 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.**



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 (1.11.1993¹² - 30.6.1998) was as follows:

for all acts without conciliation:	634 days
for all acts in which conciliation took place:	815 days
Total average (122 procedures count):	710 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 63 days. However, the average duration for all legislative acts **adopted under the codecision procedure is 710 days**. This is less than the total average duration for all the acts hitherto **adopted under the cooperation procedure, which is 734 days**.

¹² As for the completed codecision procedures (on 30.6.1998) 53 started prior to the entry into force of the TEU.

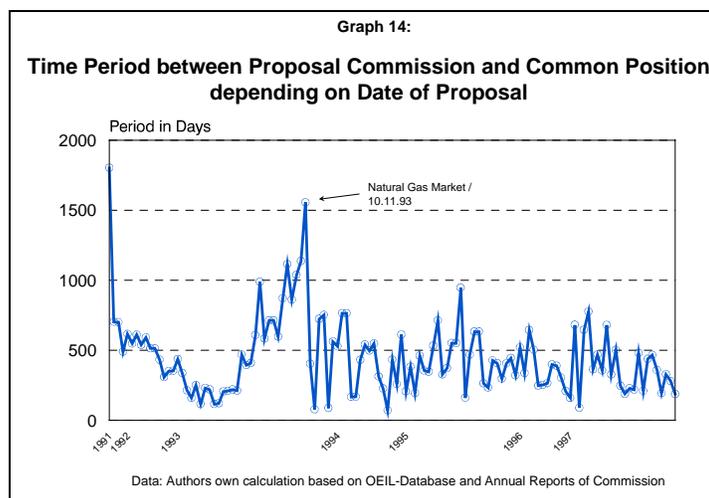
5.1. Codecision after the first reading of the EP and the common position of the Council

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

Table 7: ∅ COM proposal - Council common positions exceeding the total duration for codecision procedures (= 710 days)

Short title	Legal Basis	COM Proposal	Common	∅ Final act - proposal (days)	∅ Common position -	∅ Final act – Common
Novel Foods	100 A	10.11.93	23.10.1995	1174	712	462
Investor compensation	57	10.11.93	23.10.1995	1209	712	497
Restrictions on marketing dang. Subst.	100 A	15.12.94	26.11.1996	847	712	135
2 and 3 Wheel Vehicles Components	100 A	30.11.93	23.11.1995	1295	723	572
Flavouring substances in Foodstuffs	100 A	01.12.93	22.12.1995	1062	751	311
Textile names	100 A	24.01.94	26.02.1996	1057	763	294
Binary textile fibre mixtures	100 A	24.01.94	26.02.1996	1057	763	294
Solvency Ratio (Credit Institutions)	57	24.01.96	09.03.1998	880	775	105
Misleading advertising	100 A	10.11.93	19.03.1996	1426	860	566
Pressure equipment	100 A	10.11.93	29.03.1996	1296	870	426
Profession d'avocat	49 + 57	21.12.94	24.07.1997	1153	946	207
Rules for the internal market in electricity	100 A	10.11.93	25.07.1996	1135	988	147
Data protection ISDN	100 A	10.11.93	12.09.1996	1496	1037	459
Masses of vehicles	100 A	10.11.93	28.11.1996	1350	1114	236
Biocidal products	100 A	10.11.93	20.12.1996	1559	1136	423
Natural Gasmarket	100 A	10.11.93	12.02.1998	1685	1555	130
Position of workers in prov. Of services	66	28.06.91	03.06.1996	1998	1802	196

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: 256 days).



Once the Council has adopted its common position, the longest case scenario would involve 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 the 69 proposals subject to codecision. The procedures lasted on average 158 days. This period of time could have led 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 and the first half of 1998 the time periods were respectively 326; 239; 352 and 204 days (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 whole procedure lasted on average **243 days**. Common positions adopted in **1994 and 1995** that were subject to codecision procedures lasted on average **245 and 309 days** respectively. Then, from **1996 onwards** the average delay fell to periods of **297, 201 and 100 days** (on average).

However, the EP is also responsible for delays. The average duration for first readings was 201 days 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 135 days**. It then fell to **123 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 260 days**. However, the average delay fell to **257 in 1996 and 215 days in 1997**.

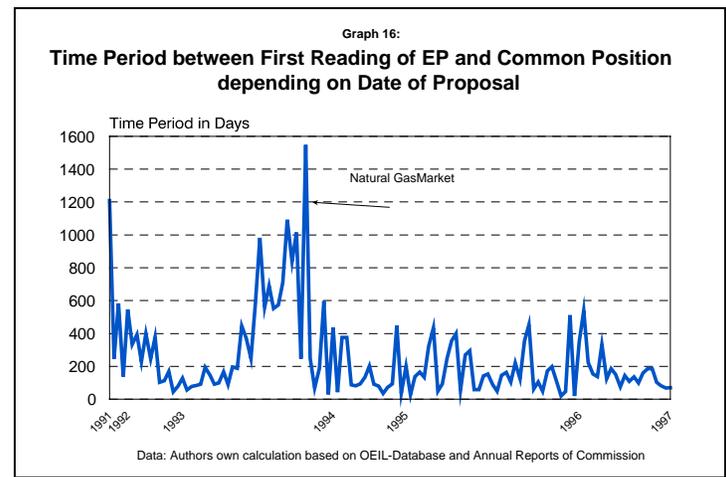
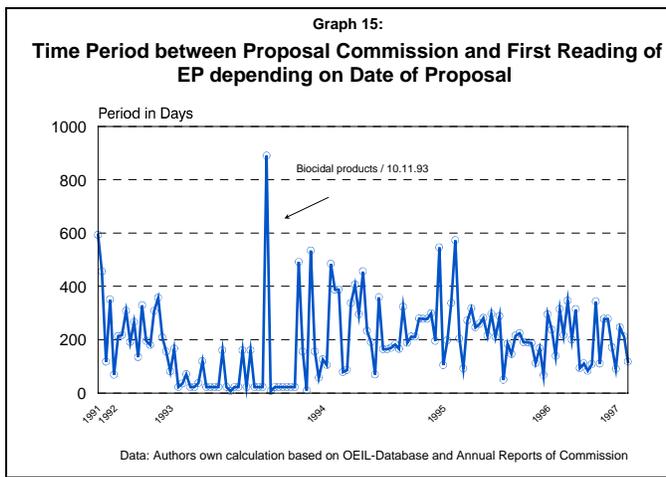
This rather positive impression can be contrasted by focusing on **procedures that are currently under way**. Here, Parliament needed an average of **44 days until December 1993**, and **160 days in 1994**. The duration for first reading suddenly increased to **523 days in 1995**. For **1996, 1997 and 1998**, the average duration was **336, 361 and 230 days** respectively.

However if we compare the two bodies within the EC's legislative branch, **we note that, until 1997, 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 half of the time needed in the Council for the adoption of its common positions.**

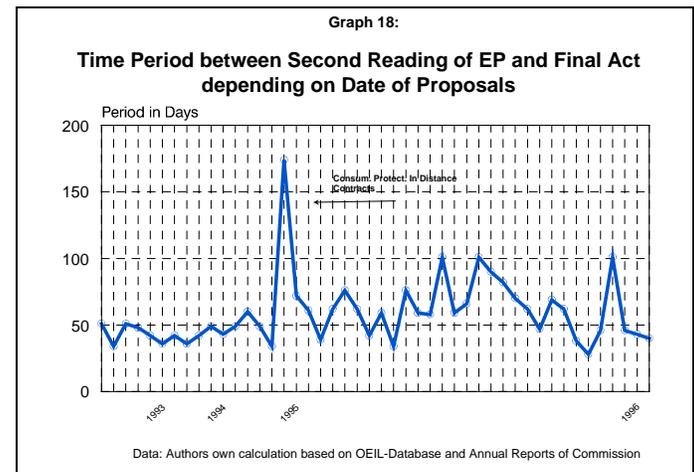
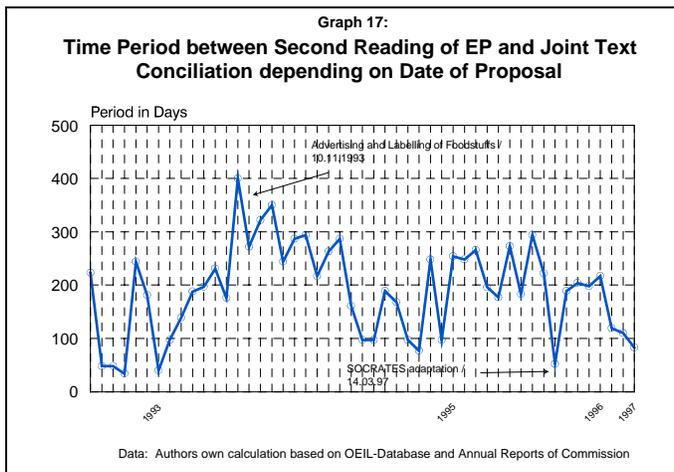
Table 8: Average duration for common positions and first reading resolutions according to the date of the Commission's proposal

Date of COMMISSION proposal	COUNCIL: Average duration of Common positions		EUROPEAN PARLIAMENT: Average duration of first reading	
	Concluded procedures	Procedures under way	Concluded procedures	Procedures under way
Until 10.11.1993	548	1669	156	48
Until 31.12.1993	433	1292	173	550
1994	422	1212	260	496
1995	371	928	216	532
1996	408	609	214	374
1997	246	321	166	321
1998	-	-	-	97

Since September 1994, we observe a constant decrease in the average time required for/duration of 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.



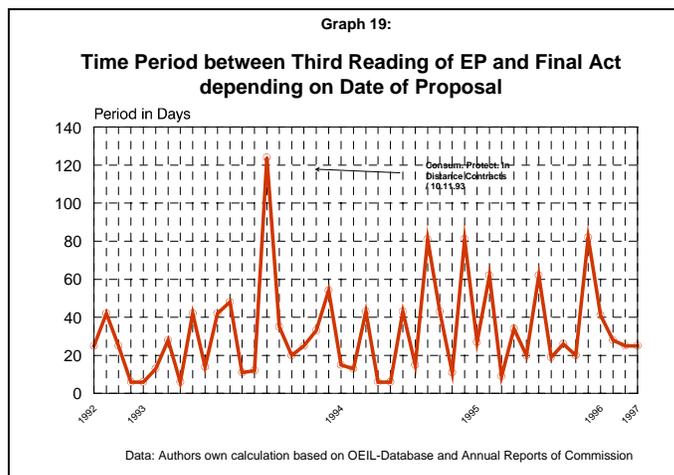
The next charts indicate the time-period taken by the different stages in the codecision procedure after the adoption of a common position by the Council. They too show a slight decrease in the periods of time depending on the “age” of draft legislation subject to conciliation and joint compromise texts. In contrast, the next chart indicates the average time period required between the adoption of Parliament’s second reading resolutions, including those where conciliation was not necessary. Here we observe a slight increase in the overall duration. 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, is 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 22 days was necessary for the final approval of codecision procedures without conciliation and 12 days for those procedures where a third reading in Parliament was necessary. In conclusion, our findings may be generalised in two arguments:

- 1. 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.**

2. **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.**

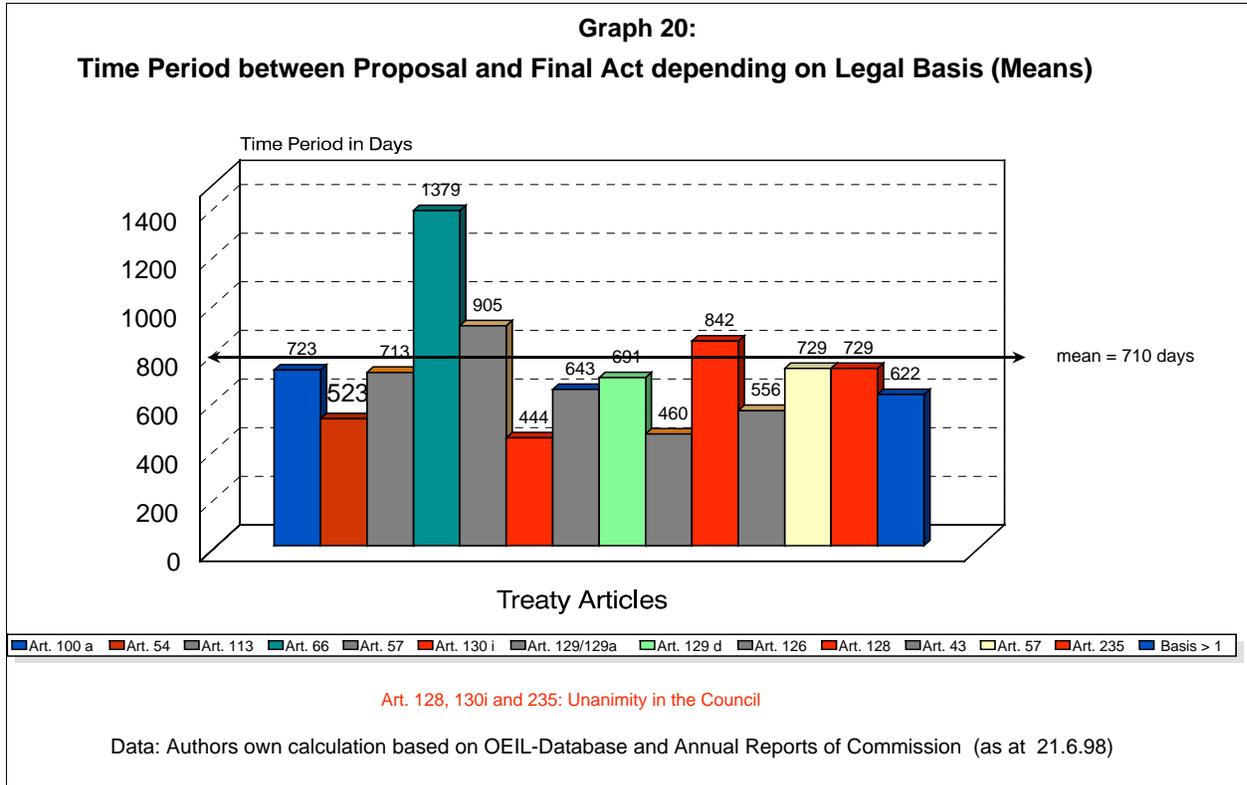


5.2. “Institutions learn” - A look into the legal bases and codecision

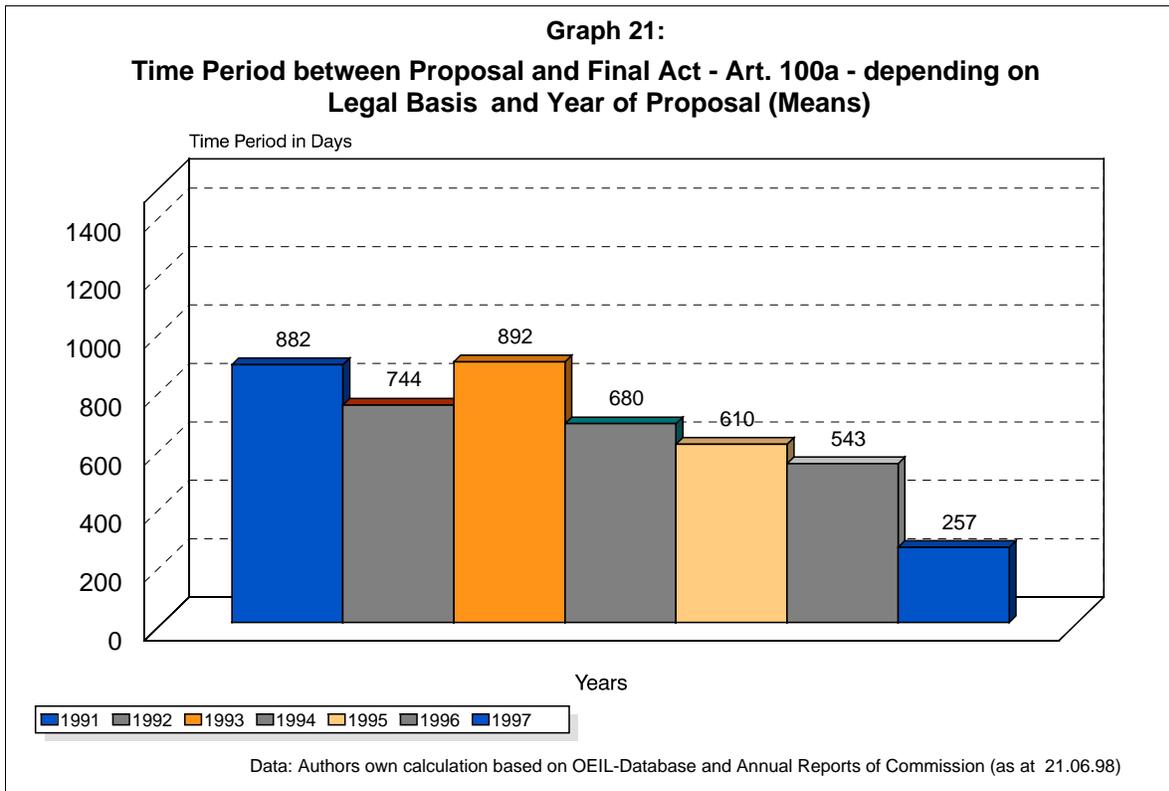
At first glance, the extension of the EP’s legislative competencies can be characterised as successfully reducing the parliamentary "democratic deficit". However, with regard to the **time efficiency** of the codecision procedure, this success may be limited because codecision is not, as is the cooperation procedure, always governed by **majority voting** in the Council of Ministers. According to Article 128 (Culture) and Article 130I (Multiannual 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 criticised as one of the failures of the Amsterdam Treaty, we analysed 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 128 and 130I TEC and co-decision based on the other Articles where qualified majority voting may be applied.)?

Graph 20 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. 130I (RTD) with 444 days was one of the shortest! In contrast, procedures based on Art. 128 needed an exceptionally long time to adopt action programmes in the field of culture and the one procedure based on Art. 66 was even lengthier than Art. 128-based codecisions. However, the delay which occurred on the directive on posting of workers in the framework of the provision of services on the basis of Art. 66 should not be overestimated. In fact, the duration was mainly due to the fact that the European Parliament needed 593 days for its first reading resolution - pursuant to the cooperation - and that 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. 66 functioned as only one of two and more legal bases, the average duration was 708 days, and thus shortly below the total average of codecision procedures recorded until the end of June 1998 (710 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.



As noted above, Art. 100a 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.



Graph 21 shows that both **the Council and the European Parliament have undergone a considerable “learning process” in adopting binding legislation on the basis of Art. 100a**. The average duration for Art. 100a codecision procedures proposed in 1991 was 882 days. Between 1991 and 1997 then, the average duration was reduced by a factor of three (exactly $\times 3.303$) to 257 days (for 1997 proposals)! This is all the more interesting since procedures based on Art. 100a covered nearly half of all legislative acts where conciliation between the Council and the EP was necessary (24 conciliations; average duration of those procedures: 913 days).

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 analyse 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 1,074 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 Mr. 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 Mr. 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 9: Success rates for cooperation and codecision procedures (until July 1997)

Cooperation and codecision procedures published up to the end of July 1997	400 cooperation procedures since July 1987	82 codecision procedures since 1 November 1993
Proportion of amendments accepted at first reading stage 6,008 under cooperation 1,777 under codecision	Commission: 54% (+0.6% in part)	Commission: 52.5% (+3.9% in part)
	Council: 41% (+0.4% in part)	Council: 42.7% (+3.7% in part)
Proportion of amendments accepted at second and third reading stage 1,593 under cooperation 520 under codecision	Commission: 43% (+4% in part)	Commission: 61% (+1.9% in part)
	Council: 21% (+3% in part)	Council: 46.9% Joint compromises: 12.5%

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 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.**

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:

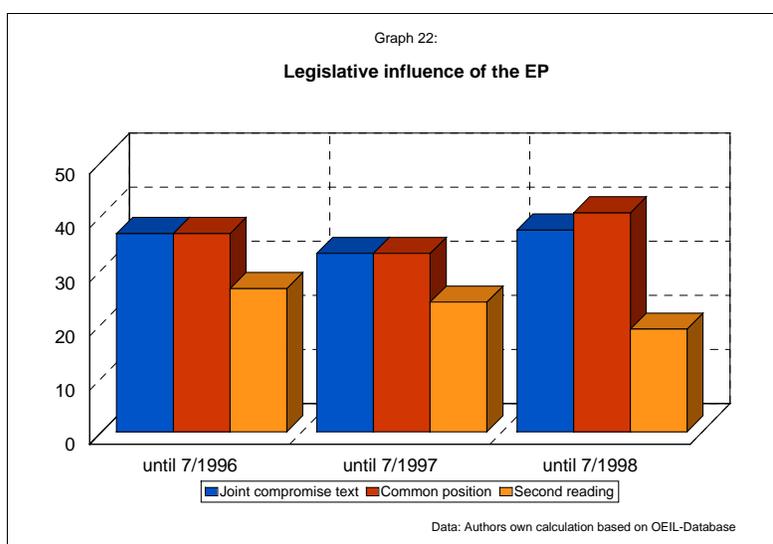
- a **final act corresponding to the EP’s second reading** is defined as an act where the Council approves the EP’s second reading draft without amending it;
- a **final act corresponding to the Council’s common position** is defined as an act where the European Parliament, in its second reading, approves 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 124 completed procedures (121 agreed + 3 failed cases) until the end of June 1998, there were:

- **47** cases in which the final text of the legislative act corresponds to the conciliation committee's **joint compromise text** (**37.9%** 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 to **7/1996**);
- **51** cases in which the final text of the legislative act corresponds to the **common position of the Council** (**41.12%** 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**);
- **23** cases in which the final text of the legislative act corresponds to the **EP's second reading**; (**18.54%** 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 (**2.41%** of the cases).

In comparing the period between 1 November 1993 and July 1996 with the period between July 1996 and July 1997 (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 influence declined from 26.5% in 1996 to 24% in 1997 and finally to 18.5% for 1998. However, 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.

Concerning the **institutional aspects of the cooperation procedure**, it has been argued that the 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 maximising its legislative influence through informal inter-institutional linkages" (Earnshaw/Judge 1996: 109). **With codecision then, Parliament's "influence" shifted towards real "power"**. 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 equalisation 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 and the 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 biocidal products on the market**, that it should be involved in drawing up lists of approved biocids (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 biocids without the EP being involved).

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"**. 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-programme" 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 4½ 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 favour 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 provides 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 unfavourable 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 recognise 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.

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 multiannual 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 multiannual programs shall contain a provision laying down the financial framework for the program for its entire duration. However, 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 multiannual programs not subject to the codecision procedure, the institutions agreed that "these acts shall not contain an 'amount deemed necessary'".

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 8a(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 106(5), the definition of tasks, objectives, organisation and co-ordination of the Structural Funds - Article 130d, the creation of the newly introduced Cohesion Fund - Article 130d, the appointment of the European Commission - Article 158(2), 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. 228 (3) TEC).

In order to incorporate the extension of the scope of the assent procedure (to Art. 8a(2) and Art. 130d) into its internal organisation, 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 80-3 - to present an interim report to the Plenary with a motion of resolution containing amendments on the original proposal. Furthermore, Rule 80-3 holds: "If Parliament approves at least one recommendation with the same majority as required for the final assent, the President shall request 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 80-3 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 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 (Pinheiro 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 "authorisation" 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.**

7. The execution of Parliament's supervisory powers (political control of other Community institutions)

How often did Parliament make use of its control powers? How often, and under which circumstances, did Parliament make 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

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 140 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 1973.¹³ The Maastricht Treaty widened the scope of possible questions to Art. J.7 (CFSP with regard to the Council), J.11 (CFSP with regard to the Commission)¹⁴, K.6 (Cooperation in Justice and Home Affairs [CJHA] with regard to the Council) and 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 42, 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 40, tabled only by a committee, a political group or 29 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.

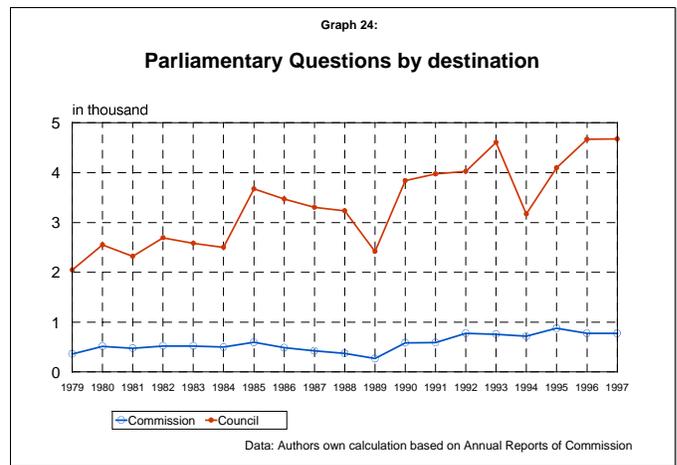
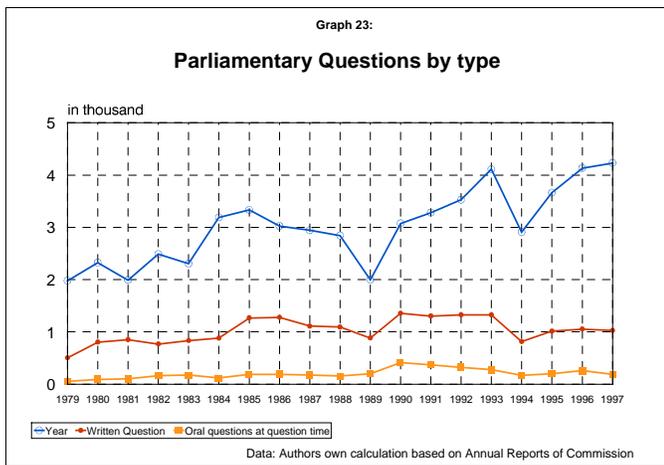
“**Questions in question-time**” - Rule 41, tabled by any MEP. Here the President decides on their admissibility and on the order. Answers to these questions are given during 90-minute periods in “question time”.

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 40 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.

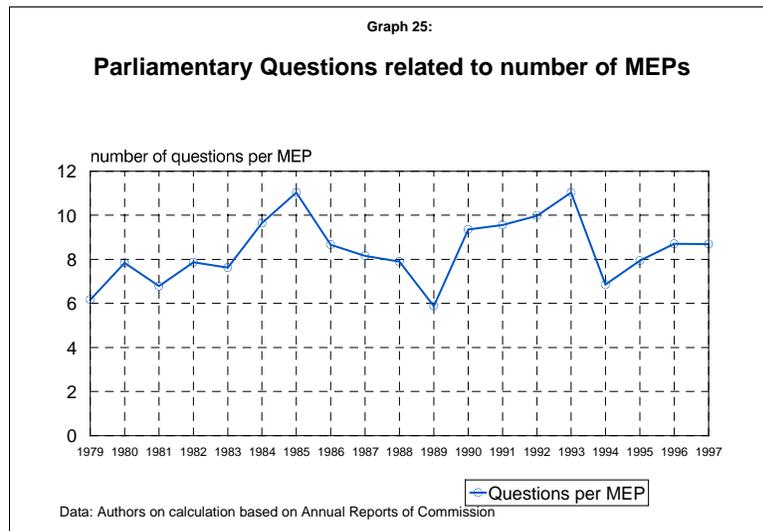
As regards the destination of questions since November 1993, we observe a slight but constant **growth in questions to the Council of Ministers**. Interest in the Council started to increase in the early 90s and has remained stable after the coming into force of the Maastricht Treaty. Consequently, **the 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**.

¹³ 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.

¹⁴ CFSP questions replace the previously used formula of EPC - questions to the Conference of Foreign Ministers.



Finally, if we take into account the total number of MEPs (which has increased from 198 in 1973 to 626 in 1995), graph 29 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"¹⁵

The introduction of Article 138c 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. 138c 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 136 specifying the operation of its committees of inquiry.

Once the procedural and organisational 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**.¹⁶ 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 criticised, DG for 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**

¹⁵ Cf. Shackleton 1997: 2.

¹⁶ 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.

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 authorises to appear before the committee of inquiry.¹⁷ 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 witnesses 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.¹⁸

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 grey 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

¹⁷ 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).

¹⁸ This was the case when, Philip Morris, Europe (based in Switzerland) decided to give evidence to the Transit committee.

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. 188b(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 5 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 144 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.¹⁹

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.²⁰ The European Council of Hanover then confirmed this informal consultation procedure (Louis 1989: 13).

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. 158 (2) ECT as amended by the TEU. This article incorporated informal arrangements of the Stuttgart Declaration of the European Council²¹ 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 maximised its potential by means of a three-stage obstacle course:

¹⁹ 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.

²⁰ See: JOCE, No. 187 of 18 July 1988: 81.

²¹ The EP resolution of 17.4.1980 based on the Rey report on the relations between the European Parliament and the Commission estimated in § 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.

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 organised 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 Pinheiro underlined in September 1993 that Parliament cannot, through its RoP, unilaterally bind any other institution without the latter's consent,²² President Hänsch 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."²³ 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.²⁴ Thirdly, the Commission has had to be more representative regarding the equality between men and women. Therefore § 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".²⁵ 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 criticised 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 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, Pinheiro 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

²² Debates of the EP, No. 3-434/47 of 14 September 1993.

²³ Draft report on the investiture of the Commission, Part A: Motion for a resolution, Rapp. François Froment-Meurice, PE 208.503/A, § 3.

²⁴ Ibid., § 6.

²⁵ Ibid. § 8.

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 the investiture procedure is twofold. The **organisation of the hearings has been a successful experiment** (Maurer 1995: 95-96). **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 MEP's 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 legitimacy²⁶, 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.**

Did the investiture have an impact on the early stages of EC policy-making? The Maastricht Treaty introduced an Art. 138b ECT giving the EP the right to request the Commission to submit legislative proposals. In fact, the EP has used this new prerogative only three times:

On 30.1.1997 it asked the Commission to submit, on the basis of Art. 43, 130S and 235, a legislative proposal concerning a general EC strategy for the forestry sector.

On 17.4.1996 it asked the Commission to present, on the basis of Art. 129 a legislative proposal for a Council and EP decision concerning a European health card.

On 26.10.1995 it invited the Commission to propose a directive on the regulation of claims resulting from traffic accidents occurring in another member state.

EP requests under Art. 138b are not binding and the EP does not want to tie the Commission by these requests. According to the EP's majority view, neither Art. 138b nor Art. 152 (granting the Council with a similar right to request the Commission policy initiation) should be transformed in a way that would undermine the Commission's role as the EC's policy initiator. Thus, **Art. 138b did not have a significant impact on the institutional relationship between the EP and the Commission in setting the EC's policy-making agenda.** However, it is not unrealistic to imagine the European Commission inviting Parliament to act under Art. 138b in the future. Since 1993 the European Commission has been pressured by member states to propose "less, but better" legislation (Smith/Kelemen 1997: 4). **Thus, it is easy to imagine a future Commission inviting "outside pressure" for policy-initiation from the European Parliament.**

²⁶ 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.

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**.²⁷ These guidelines included general principles for delivering its opinion on the candidates. Similarly to the investiture procedure of the Commission, Parliament organised 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 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 A4-0001/95 of 19.1.1995). However, the Treaty of Amsterdam failed to amend Art. 188b 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 organise **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 organised in May 1998 with the ECB's nominees showed that it was able to "de-dramatise" 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

²⁷ See: OJEC, No. C 337/51 of 17 November 1992.

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 159 of the RoP, candidates must have the support of 29 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. 138e 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 analyse 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 Plevin 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. 138e ECT provided for an IIA on the regulations and general conditions governing the performance of the **European Ombudsman**, and Art. 138c 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. 189b 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 dialogue was reopened during the 1996/1997 IGC and the EP achieved an IIA on CFSP financing. 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.²⁸ Finally, under the pressure of the time-limits set by the conciliation procedure on the SOCRATES and YOUTH FOR EUROPE III programmes, 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 multiannual programmes. 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 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).

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 sowed “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 took an active part in driving the other institutions for new legal, organisational 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

²⁸ Currently, the three institutions are negotiating a new agreement on Comitology.

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. O 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 (resolution of 19.11.1997 on the Treaty of Amsterdam, OJ C371, 08.12.97, p. 99). 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. Summarising 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 IGCs, 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 “à longue durée”. The EP still has to make use of its strategy of **small steps** and **compromises** with powerful partners. These compromises are, however, based on thin ice. A position of the EP, which is too inflexible and rigid, could obstruct further improvements. An attitude too weak 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, 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 125 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 - shorter than 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.**

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

The **Treaty of Amsterdam** (signed on 2 October 1997) 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 were streamlined, in that the cooperation procedure was 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. As a result, this procedure will cover an overall of 59 EC and nine EU cases after the entry into force of the Amsterdam Treaty. Considering the real use of all these different Treaty articles, early reactions on the outcome of the Amsterdam Treaty estimate that nearly 70% of the European Community's legislative output will be adopted under the codecision procedure (Brok 1997; Nickel 1997; Maurer 1998).²⁹ However, we should not trust our emotions immediately after the 'end game' in Amsterdam. As we have seen, the cooperation and codecision procedures taken together only covered about 8 to 12 percent of the total secondary legislation adopted by the Council.

²⁹ 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).

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, rationalising 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. Given 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 may consider the latter's responsibilities and amend 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 colegislator 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 that improves its control powers in the implementation phase of EC secondary legislation (Comitology). Furthermore, with regard to its role in Justice and Home Affairs, the EP should try to push the Council into an IIA which enables the European Parliament - especially its Civil Liberties committee - to monitor the "communitarisation process" of both ex-Title VI TEU and the Schengen-Acquis effectively.

Table 10: 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 operation of the codecision procedure New IIA on the assent procedure: making concertation/conciliation compulsory	Widening of the scope of application of the codecision procedure Introducing a conciliation mechanism in the assent procedure
CONTROL FUNCTION	Amendment of IIA on committees of inquiry New IIA on Comitology 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	Amending Art. 202 (new): Council and EP delegate executive powers to the Commission Introducing a formal consultation procedure in the CFSP
ELECTIVE FUNCTION	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 Equalisation 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 to elect the President of the European Commission. In our view, it is now the task of the political groups of the EP to agree on an appointment procedure based on the next 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? 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 manoeuvre 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, a **new IGC** is likely to take place before the final stage of the next accession round. The institutional protocol of the Amsterdam Treaty gives 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. A 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**.

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