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THE INFLUENCE OF THE EUROPEAN PARLIAMENT ON POLICY OUTCOMES ACROSS DIFFERENT LEGISLATIVE PROCEDURES

(Implications on the legal integration of the European Union)

1 Introduction

European integration has attracted considerable attention of scholars, because of uniqueness of institutional structures and working practices it brought forth. Both political and legal systems of the European Union represent a challenge for researchers, owing to their *sui generis* nature – EU is both intergovernmental and supranational[1], though integration dynamics strengthened supranational dimension of the EU and made it more salient. The dynamics of integration also brought about series of primary legislation introducing major reforms of essentially constitutional nature. Continual transfer of responsibilities from Member States to the EU has implied increasing scope of EU competencies over a number of policy areas, and consequently brought about significant changes of both formal and informal structures.

Transfer of responsibilities from Member States to the EU has required permanent adjustments of institutional structures and working procedures, the

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[1] EU is "less than a federation, but more than a regime" (Wallace, 2000), "it is neither a state nor an international organisation" (Sbragia, 1992:257), "institutionalised intergovernmentalism in a supranational organisation (Cameron, 1992:66).

reasons being twofold: firstly, those reforms embodied Member States' willingness to enhance credibility of their commitments, and secondly increasing scope of competencies at the EU level resulted in increased workload, therefore institutional reforms were an essential prerequisite for sustaining the ability of EU institutions to operate in an efficient and effective manner. Each substantial institutional reform in turn, has considerably altered the balance between supranational dimension and intergovernmental dimension and consequently had a huge impact on the outlook and relative powers of the key EU institutions.
One of the far-reaching institutional reforms which took place during the 1980s and 1990s was the reform of the decision-making rules, i.e. introduction of the new legislative procedures, which altered the balance and distribution of powers amongst principal legislative actors. The first one – cooperation procedure – came with the Single European Act (SEA) and the completion of the single market, and the second – co decision procedure I (COD I) – was introduced by the Maastricht Treaty and shortly after (the Treaty of Amsterdam) modified – co decision procedure II (COD II).

Until SEA, the Commission and the Council of Ministers were the principal legislative actors (with the European Parliament (the EP) having modest role in legislative process), the former being charged with initiating Community legislation, and the latter being the key decision maker. Introduction of the new procedures resulted in the changed balance of legislative powers among the three institutions. While it is undisputable that the SEA provided the EP with the ability to influence legislative outcomes by introducing the second reading and qualified majority voting in the Council (QMV) in a number of policy areas, which helped create a large corpus of pro-integration legislation there is no agreement as to whether the extension of the use of QMV by Mastricht Treaty strengthened the role of the EP.

In this essay I will try to analyse the power of the EP each of the major legislative procedures provides for. The paper is organised as follows: brief presentation of the EU institutions involved in the legislative process; analysis of the main legislative procedures as prescribed by TEC; discussion of the implications of different institutional arrangements governing EU legislative procedure on the legal integration of the EU, with the emphasis on the role EP has under each of these procedures.

2 Key Legislative Actors in EU Legislative Process

Analysis of the power of a legislative actor requires prior identification of the key actors involved in the legislative process. The Treaty says: "In order to carry out their task and in accordance with the provision of this Treaty, the European Parliament acting jointly with the Council and the Commission shall make regulations and issue directives, make recommendations or deliver opinions[2]" (TEC, Art. 249); therefore the key legislative actors in the process of creation of Community legislation are the European Commission, the Council of Ministers and the EP.

a) The European Parliament

Members of the EP (MEPs) have been directly elected by the citizens of the member states since 1979. Introduction of direct elections was a response to increasing concerns regarding *democratic deficit* and was a mean of providing democratic legitimacy to the EU as a whole. EP now has 626 directly elected MEPs according to proportionality principle, but there still is some over-representation of the smaller member states. The Treaty of Nice sets future limit of number of MEPs – 732, and changes the pattern of distribution among member states. The new system, after the ratification of the Treaty of Nice Treaty, will become effective as of 2004. elections.

MEPs have been increasingly organised in political party groups, which reflects increasing pro-European orientation. More specifically, rather than along national lines, MEPs have been divided along ideology lines, with left-right division being by far the most stable line of conflict. As Noury (Noury, 2002) shows, left-right and pro-/anti-European cleavages predict 90% of voting outcomes within EP. The analysis of coalition formation process (Hix, 1999:83), reveals that the median in the EP is the most likely to be pro-European. Hence, the empirical research conducted so far reveals that the EP is predominantly a supranational institution, which explains the importance of the EP's involvement in legislative (policy) process for legal integration at the EU level.

The key functions of the EP are the following:

1) Involvement in legislation,

[2] Regulations, directives, decisions, recommendations and opinions are the legal instruments of the Community – secondary legislation.

2) Involvement in budgetary process,
3) Involvement in scrutiny and control, and
4) Involvement in EU appointments.[3]

EP's power in legislative process has been permanently increasing since the European Court of Justice (ECJ) ruling in the "Isoglucose" case onwards. Basically, the ECJ upheld the EP's right to be consulted and generally strengthened the EP political position by nullifying a Council decision that had been taken under the consultation procedure but without EP's having been consulted (Dinan, 1999:301).

The power of the EP was further advanced with the increase of the EP budgetary powers in 1975, and introduction of cooperation and then co decision (COD) I and II legislative procedures. EP's power varies significantly over different legislative procedures and depends not only on the Treaty provisions containing procedural rules, but is affected by the other variables as well, namely the time (impatience), the status of existing legislation (SQ), level of uncertainty, distribution of preferences within institutions participating in the legislative process, that is the EP, the Council of Ministers and the European Commission and the amount of information each legislative actor possesses about other actors' preferences. These variables, which affect the power of EP in EU legislative process, have been successfully accommodated within the spatial model of legislative choice, employed by vast majority of political scientists exploring different legislative practices.

b) The European Commission

According to the Treaty Establishing the European Union (TEC) the European Commission initiates Community legislation, that is the first pillar legislation[4]. But "The Council may request the Commission to undertake any studies the Council considers desirable for the attainment of the common objectives, and to submit it to any appropriate proposals" (TEC, Art. 208), and "The European Parliament may, acting by a majority of it's members, request the Commission to submit any appropriate proposal on matters on which it considers that a

[3] Classification source: Dian, 1999:213

[4] First pillar legislation comprises European Communities legislation. Second pillar – CFSP, and the third – Police and Judicial Cooperation in Criminal Matters (former JHA) are intergovernmental.

Community act is required for the purpose of implementing this Treaty (TEC, Art. 193, par 2). Therefore, "the Commission has monopoly power, but it does not have gate keeping power" (Crombez, 1996:204). The Commission's power in legislative process has decreased over years, particularly after the introduction of COD I.

c) The Council of Ministers

The Council is the institution exercising significant powers as conferred upon it by the Treaty, including budgetary, legislative and powers within the realm of Common Foreign and Security Policy. The Council composed of one representative at the ministerial level from each member state. Which minister attends Council meetings depends on the issue on agenda, although its institutional unity remains intact. Since ministers are national delegates and politically accountable to national parliaments, the Council is an intergovernmental institution and essentially the instrument of national control over EU decision-making. Therefore, any analysis of legislative politics of the EU assumes the Council is the least integrationist legislative actor, as compared to the Commission and the Parliament.

3. Institutional Setting

The choice of decision-making procedure depends on the legal basis of the initiative. It is up to the Commission, as initiator to determine the legal basis when it draws up a proposal, but the choice must be based on objective criteria that are open to judicial review[5].

Parallel existence of different procedures "…stems primarily from two very closely interrelated facts: first, political elites – in the member states and in EU institutions – have always agreed that some types of decision-making led themselves to an essentially intergovernmental approach and other types led themselves more to supranational approach; second, there has never been a consensus among elites where the balance between supranationalism and

[5] www.europa.eu.int/institutions/decision-making/index_en.htm. After the introduction of cooperation procedure, there were several informal disputes between the Commission and the EP concerning the legal basis of the initiative.

intergovernmentalism should be…" (Dinan, 1999:118). In other words, the type of decision-making reflects the degree of willingness (or lack of willingness) of Member States to give up their sovereignty in specific areas.

a) Consultation Procedure

Consultation procedure is the simplest and the oldest procedure introduced by the founding Treaties (Treaties of Rome). Nowadays, it is applied to politically sensitive areas such as CAP[6] and those transferred from the third to the first pillar (visa, asylum, immigration, and other policies related to free movement of persons). Consultation procedure is essentially a compromise between intergovernmentalism and supranationalism. "On the one hand, decisions are taken through intergovernmental negotiations in the Council. On the other hand, a proposal is made by the Commission and it only needs qualified majority for approval" (Crombez, 1996:212).

Consultation procedure begins with the Commissions' proposal. The Treaty provisions governing consultation procedure oblige the Council to consult the EP on a proposed legislation and not to act before the opinion is issued in a 'reasonable time', but EPs opinion is not binding. In its ruling in Isoglucose case, the ECJ upheld the EPs right to be consulted and generally strengthened the EPs political position by nullifying a Council decision that had been taken under the consultation procedure but without EP having been consulted (Dinan, 1999:301). But, the Court also stated that "indefinite delay is not a legitimate Parliamentary tactic on legislation designated as 'urgent' by the Council" (Scully, 1997b:60). Hence, EP's role in consultation procedure is advisory; its influence is limited to the threat of delaying legislation, except in the circumstances of impatient Council, willing to make concessions, when the outcome is likely to be (slightly) more integrationist.

b) Assent procedure

Assent procedure was introduced by the Single European Act (SEA, 1986) and gave the EP the power of unconditional veto. The Council is the decision-maker,

[6] Commodity regimes and related issues are being regulated under consultation procedure, while co decision is applied in the area of food safety (e.g. GM directives).

but the EP is to accept or veto the decision after the Council reached the decision. The EP cannot make any amendments, therefore does not have agenda-setting power. Assent procedure is applied in few areas such as the structural funds and enlargement.

c) Cooperation Procedure

Cooperation procedure was also introduced by the SEA. The completion of internal market, achieved by the SEA required institutional reforms. With the introduction of the cooperation procedure, QVM as voting rule was extended to a larger number of cases, particularly single market legislation.

Cooperation procedure comprises the following stages:

FIRST READING

a) The Commission proposes legislation and submits the proposal to the Council after receiving EP's opinion,

b) The Council adopts common position (CP) confirming or amending Commission's proposal (voting rule – QMV),

SECOND READING

a) The EP can amend, adopt or reject CP (voting rule – absolute majority) within three months; if the EP fails to act within the time limit, the CP is deemed accepted,

b) The Commission can incorporate or reject EP's amendments or after EP's rejection withdraw legislation,

c) The Council can adopt the Law if there were no EP amendments, or adopt the amendments (voting rule – QMV) if the Commission accepted them as well, or overturn EP rejection/reject EP amendments accepted by the Commission (voting rule – unanimity) in which case the Law passes.

Rules governing second reading of cooperation procedure reveal the power EP has under this procedure. As the Council can, in the second reading, either adopt EP's amendments by QMV or reject them by unanimity, the cooperation procedure, as some claim, puts the EP in the position of conditional agenda-setter (Tsebelis, Garrett). Others argue EP's power under cooperation procedure is essentially conditional veto power (detailed discussion below). In any case, as QMV is the voting rule in the Council only if the Commission

incorporates EP's amendments into initial proposal, acceptance by the Commission is one of the variables which determine success of EP amendments in cooperation procedure.

Kreppel's analysis of success of the EP in cooperation procedure (Kreppel, 1999) suggests that EP's amendments are more likely to be adopted if they are of technical nature and less likely if they are politically controversial (also Tsebelis and Kalandrakis, 1999), therefore the level of significance of amendments is confirmed to be another factor affecting their success.

d) Co decision Procedure

Co decision procedure was introduced by the Treaty of Maastricht (1992) – COD I and reformed by the Treaty of Amsterdam (1999) – COD II.

Stages in co decision procedure:

FIRST READING

Same as in cooperation procedure.

SECOND READING

a) Same as in cooperation procedure

b) The Commission issues an opinion incorporating or rejecting EP's amendments

c) The Council can adopt the Law if there were no EP amendments, or adopt the amendments (voting rule – QMV) if the Commission accepted them as well, or unanimously adopt amendments rejected by the Commission. But if the Council unanimously rejects EP's amendments it must convene a Conciliation Committee.

CONCILIATION COMMITTEE

Conciliation Committee is composed of equal number of EP and Council representatives. Its task is to produce a Joint Text (JT) within six weeks. If it fails to produce JT, the law fails.

THIRD READING – repealed in COD II

a) The Council can adopt the JT or reconfirm CP (in both cases the voting rule is QMV).

b) The EP can adopt the JT or approve Council's reconfirmed CP (in both cases the voting rule is absolute majority).

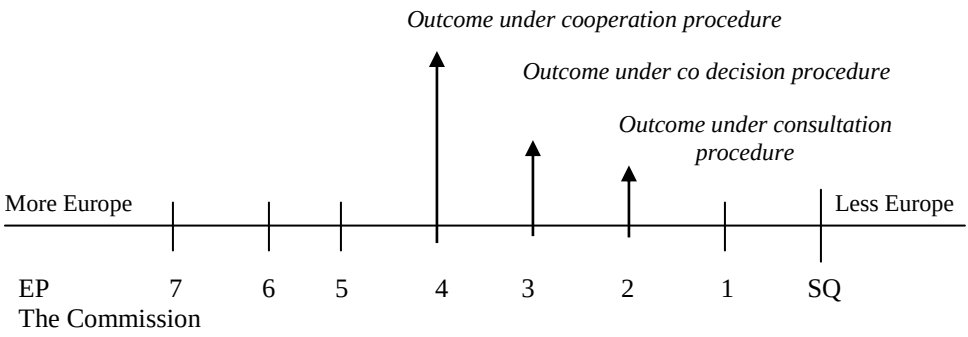
Unlike cooperation procedure that puts EP in the position of conditional agenda-setter (conditional veto player), COD I actually provides the Council with the agenda-setting power. The EP has the unconditional power of veto if the Council reconfirms CP in the third reading. There is debate in the literature which institutional setting gives EP more power: cooperation procedure or COD I. This is not only the question of relative importance of agenda-setting and veto power, but the question of the nature of power EP has under each procedure (below).

Since the third reading is abolished by the Treaty of Amsterdam, COD II is the typical bicameral legislative procedure. The Conciliation Committee composed of equal number of EP's and the Council's representatives, is the last stage of the process where the Council and the EP bargain about JT. Therefore, there is a power of "mutual veto". As for the agenda-setting power, it is at the Conciliation Committee.

4. Comparing EP's powers across different legislative procedures: Tsebelis – Garrett Model

As noted above, the power of the EP is mainly determined by institutional setting, considered in the previous part. Apart form that, EP's power is determined by the distribution of preferences within the Council, EP and the Commission. Although the Commission's role declined after COD I being introduced, in his study of cooperation and COD I procedures Tsebelis argues that "all differences in rejection rates are attributable to differences in the influence and the behaviour of the Commission" (Tsebelis et al, 2001:597).

Tsebelis-Garrett Model of EP-Council legislative bargaining



(Source, The Political System of the European Union, Hix, pg 90)

Tsebelis-Garrett model aims to prove the "superior" position of the EP, in terms of its influence, under the cooperation procedure than under the COD I. The model assumes that the EP and the Commission are more pro-integration orientated than the Council and that all actors have 'Euclidean preferences' - they are indifferent between proposals of equal distances from their ideal point. The SQ (status quo) "could represent existing legislation at European level or, in the absence of it, a set of national laws" (Tsebelis and Garrett, 1997a:78). In other words, SQ represents a degree of integration.

The EP does not have much power under the *consultation procedure*. The key players are the Council and the Commission. Concrete outcome depends on the voting rule. If the voting rule is unanimity "the least integrationist member state is likely to veto any proposal that is not closer to its ideal point than the SQ" (Hix, 1999:90). Therefore, the most integrationist outcome in this scenario is at point 2. However, if the voting rule is QMV "the Commission will make the proposal that is closest to its [country 3 – the pivot] ideal point" (Tsebelis and Garrett, 2000:18), so the outcome is most likely to be at the point 4.

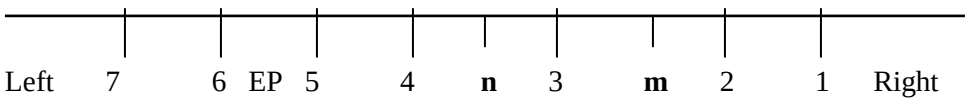
Under the *cooperation procedure*, the role of EP is significantly increased. Since the Council only adopts EP amendments by QMV and needs unanimity to reject them "the EP simply has to gain the support of member state 3 by making "a proposal at position 4, which member state 3 (the pivot) will support" (Hix, 1999:91). Tsebelis argues that under cooperation procedure the EP *can* have agenda setting-power"…this procedure *may* enable the EP to offer a proposal that makes a qualified majority of the Council better off than any unanimous decision. *If* such a proposal exists, *if* the EP is able to make it, and *if*

the Commission adopts it, then the EP has agenda-setting power (Tsebelis, 1994:131)". EP's agenda-setting power is *conditional*, exists *only* in quoted circumstances.

Not all authors support this standpoint. Steunenberg (1994), Moser (1996) and Crombez (1996) claim that under cooperation procedure the EP has *conditional veto power*. It is effective provided that Council's QMV and the Commission are more supportive of changing SQ than the absolute majority in the Council. Had the unanimous Council and the Commission been more supportive, the EP cannot exercise veto power, because of the Council's power to overrule. However, "It is unlikely that the EP's veto would not be supported by any country. In equilibrium this requires at a minimum that the Parliament has an ideal policy to the left (right) of all countries ideal policies. The Parliament is not likely to have such extreme preferences. Therefore, its veto power is likely to be effective" (Crombez, 1996:219).

Under the *COD I*, if the Conciliation Committee fails to adopt JT, the Council may reconfirm its CP. Tsebelis and Garrett (Tsebelis and Garrett, 2000:20) argue that due to "backward induction" (Tsebelis and Garrett, 1997a:80), the Council is more likely to stick to the position held immediately prior to convening the Conciliation Committee. And since it can reconfirm the CP by QMV, it is most likely to be located at the position 3. In the third reading, the EP is in a 'take-it-or-leave-it' position. As pro-integration oriented, the EP prefers CP at position 3 to SQ. "Among the many possible compromises between the Parliament and the Council in cooperation, the Parliament selects the one closest to its ideal point, while in co decision the selection is delegated to the Council" (Tsebelis et al, 2001:579).

EP-Council legislative bargaining on a left-right dimension



(Source, The Political System of the European Union, Hix, pg 90)

When the dimension of legislative bargaining is left-right, the outcome is likely to be different. The EP's position is centre-left (ideal position of 'grand coalition' PES-EPP).

If the SQ is at the point **n**, and the Council's proposal is to the right of SQ, the EP is will prefer SQ to the Council's proposal. But if the SQ is at the

point **m**, the EP would adopt each Council's proposal that is to the left of the SQ. With the QMV in the Council, the outcome is most likely to be point **n** – supported by country 3 (the pivot).

Therefore, it is obvious that the outcome in this one-dimensional scenario EP's position largely depends on the preferences of EP's dominant coalition.

There has been a debate in the literature whether the EP has more power under cooperation procedure or COD I. Arguments in favour COD I can be found in the articles of Scully: "Whereas under cooperation the EP's influence was entirely conditional on it winning agreement from the Commission, the conciliation committee is made up of EP and Council representatives, with the Commission being largely uninvolved in the process" (Scully, 1997b:63) and "the Council of Ministers might fail to present the EP take-it-or-leave-it choice – it would require them to risk certain benefits accruing from accepting another legislative outcome (such as compromise in the conciliation committee)" (Scully, 1997c:99).

Co decision procedure was introduced with the intention to grant more power to EP than it had under cooperation procedure. The intention was partly realised - in respect to institutional amendments, but on the other hand, the Maastricht Treaty failed to make the EP equal player to the Council.

One important instrument that was introduced following the institutionalisation of COD I – a new rule in Rules of Procedure of the EP – Rule 78. According to the rule 78, the EP leadership, that is the Committee responsible, a political group or at least 32 members may propose a motion to reject the Council's CP if the EP's request, following the breakdown of Conciliation Committee, to the Commission to withdraw legislation was denied. This rule represented a "credible threat" (Hix, 1999:94) to the Council and gave EP the opportunity to end the procedure at the stage of Conciliation Committee. This could partly explain why, in total, more amendments were accepted by the Council under co decision than under cooperation procedure.

5. Conclusion

Setting aside theoretical debate as to whether EP's power can be called conditional agenda-setting or unconditional veto power, and moving beyond theoretical models, it is obvious that the role EP has in EU legislative process has been steadily increasing over years. With the development of the European Union, the scope of its supranational component has been increasing. What has

actually been happening is so called *spill over effect*. In case of EP it is both political and functional spill overs that brought about the increase of its powers: from consultation procedure and advisory role of the EP, to COD II as a classical bicameral legislative procedure with EP being equal player to the Council of Ministers. Bearing in mind predominantly pro-integration position of the EP, its greater involvement in the EU legislative process has had huge impact on both qualitative and quantitative aspect of the EU legal system.

Despite those developments, there still are certain areas in which the member states have exclusive competencies reserved to themselves. In all those areas the power of EP is very limited or does not exist. Regardless of the political sensitivity of certain issues, the functional spill over might lead to a greater involvement of the EP even in their design in the future, which would contribute to further integration, including legal, at the EU level.

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