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Procedural Reforms Of the EU Legislative Process



**-Increased Power for the
European Parliament?**

**Kajsa Helmbrink
Jutahusgatan 7 b
222 29 Lund
caizah@yahoo.com**

Abstract

This essay deals with the procedural reforms of the EU legislative process implemented during the last decade. The EU has often been considered undemocratic and one reason for this is the fact that the European Parliament has been almost powerless in the legislative process. The aim of this thesis is to examine to what extent the Parliament has become more powerful, due to the reforms. This matter is subject to discussion and different analysts have different opinions on the issue. Multi-level governance theory is used to analyse the role of the Parliament under the cooperation procedure, the first version of the codecision procedure (I) and the second version of the codecision procedure (II).

To analyse whether the Parliament's power has increased theoretical hypotheses of prominent analysts in the field are tested empirically. The theories predict that the procedural reforms may not have given the European Parliament the power intended. The findings contradict the hypotheses tested. Codecision I appears to make the Parliament more powerful than cooperation and codecision II makes it more powerful than codecision I. The reforms of the legislative process do seem to make the Parliament more powerful and have thereby helped decrease the democratic deficit of the EU.

Keywords: Codecision Procedure, Cooperation Procedure, EU Legislative Process, European Parliament, Power.

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List of Abbreviations

CP	Common Position, Council first reading proposal
ECJ	Court of Justice of the European Communities
ECSC	European Coal and Steel Community
EP	European Parliament
EU	European Union
JT	Joint Text, Agreement after Conciliation
Maastricht Treaty	Treaty on European Union
Member States	Member States of the European Union
MEP	Member of the European Parliament
SEA	Single European Act
QMV	Qualified majority vote, 5/7 in the Council

1 Introduction

The project of European integration in the shape of the European Union (EU) has always been haunted by a never-ending criticism of lacking legitimacy for the institutions of the Union. EU rules influence most aspects of European political life, from the regulation of the habitat of wild birds to voting within the World Trade Organisation.¹ The Council of ministers and the European Council (collectively labelled the Council from now on) dominates the legislative process of the EU together with the European Commission. The Council though, is neither directly elected by the people, nor subject to public control. It only represents the governments, which have been elected by only a part of the population. However, since 1987, when qualified majority voting was introduced for a number of provisions in the Council, not even these elected state leaders are guaranteed the absolute possibility to influence the legislation process. Although the Union has a parliament, directly elected by the citizens of the fifteen member-states, the European Parliament's (EP) lack of power over the legislative process, in combination with the situation in the Council, has caused the legitimacy of the Union to be strongly questioned. There is a discrepancy between the powers transferred to the community from the national Parliaments and the control of the EP over these powers. The EU suffers from a democratic deficit.² On the other hand the EP can, in contrast to most national Parliaments, still register a successive extension of its powers.³ During the last two decades a series of reforms have improved the chances of the European Parliament to influence the legislative process of the EU. This thesis focuses on these reforms and their consequences.

1.1 Purpose and Question

The purpose of this essay is to highlight the role of the European Parliament in the legislative process of the EU and how this role has changed since the Single European Act (SEA) 1987. This will be done in two parts. First by using a multilevel governance theoretical approach, the development of the formal framework of the EU-legislation process from an EP perspective will be analysed. In the second part two theoretical hypotheses will be empirically tested quantitatively. This is completed with a case study further investigating one of the hypotheses qualitatively in order to see beyond the formal rules and focus on how the legislative framework is used by the EP. The use of a case study aims at exploring to what extent the formal changes made are important in practise.

This, partly theoretical and partly empirical, analysis aims at answering the question: From Cooperation to Codecision - Increased powers for the European Parliament? The term power and how power can be measured is discussed in chapter 1.3.1.

¹ Moravcsik, Andrew, *The Choice for Europe* (1998) p. 1.

² Choate, Abigail, *The European Parliament and the democratic deficit* (1994) p. 7f.

³ SOU 1996:42, *Demokrati och öppenhet- om folkvalda parlament och offentlighet i EU*, p. 16.

1.2 Theoretical Approach

In the study of European integration, two fundamentally different views have traditionally dominated the approach to the process, neo-functionalism and intergovernmentalism. The neofunctionalists argued that the driving forces behind the integration process are non-state actors rather than sovereign nation-states.⁴ The European institutions for example, press for delegation of more powers to supranational institutions, in order to increase their own powers over policy outcomes. The intergovernmentalists, in line with the realist school have contradicted this line of reasoning. They argued that integration is controlled by nation-states and that they determine decision-making in the EU by bargaining among state executives.⁵ Although these “grand theories” has failed to fully explain the complex phenomena of European integration all further theorising on European integration takes some kind of standpoint in relation to these two classical approaches.⁶

1.2.1 Multi-Level Governance

A substantial literature has emerged to reflect upon the governance turn in EU studies. The scholars in this field wishes to avoid two fundamental caricatures of the EU: the focus on singular moments of change or crisis and the tendency to portray the dynamics of integration as centring on an opposition between the poles of nation-state and ‘superstate’.⁷ Established approaches focus our attention on so-called history-making moments and thereby neglect the day-to-day patterns of politics within the EU system. Critics argue that the forces behind integration outcomes are neither national governments nor supranational institutions, but a variety of interested actors.⁸ Attempts to combine a reading of the EU in policy process terms with an acknowledgement of its peculiarities are captured by the multi-level governance literature.⁹

The multi-level governance model does not reject the view that state executives and state arenas are important, just that they no longer monopolises European level policy-making.¹⁰ Actors at different levels and supranational institutions – above all, the European Commission, the European Court of Justice and the European Parliament, instead share decision-making competencies (have independent influence in policy-making that cannot be derived from their role as agents of state executives). This independent role must be analysed to explain European policy-making. National governments are constrained in their ability to control the supranational institutions they have created at the European level.¹¹

Gary Marks, Liesbet Hooghe and Kermit Blank evaluate contending models of EU governance and argue that multi-level governance models, rather than the state-centric models of Intergovernmental origin, explain how decision-making works in the European arena.¹² The assumption in the state-centric model is that supranational actors exercise little

⁴ Moravcsik, Andrew, *The Choice for Europe* (1998) p. 13.

⁵ Hix, Simon, *The political System of the European Union* (1999) p. 14.

⁶ Rosamond, Ben, *Theories of European Integration* (2000) p. 98ff.

⁷ *Ibid.* p.106.

⁸ *Ibid.* p. 106.

⁹ *Ibid.* p. 110.

¹⁰ Marks, Gary & McAdam, Dough in Marks (et.al.) *Governance in the European Union* (1996) p. 101

¹¹ Marks, Gary et. al., *European Integration from the 80s: State-Centric v. Multi-level Governance* (1996) p. 352.

¹² *Ibid.* p.341.

independent effect and exist only to aid member-states in achieving specific policy goals, through provision of information. An alternative view presented by Marks et. al. is that European integration is a polity creating process in which authority and policy-making influence are shared across multiple levels of government. While national governments still are powerful participants in EU policy-making, control has slipped away from them to supranational institutions.¹³

In sum, Multi-level governance predicts that several actors matter in the legislative process of the EU, including supranational institutions that exercise influence independent of member-states. This makes multi-level governance more of a neo-functionalist theory than an intergovernmental one. In order to be able to say something about the Parliament's role in the legislative process, the relationship between supranational institutions according to multi-level governance will be discussed next.

1.2.2 Policy-Making in the European Union - Shared Competence between EP, Commission and Council

Marks et. al. have found that the multi-level governance model is a valid approach to explain how the EU legislative process works in the sense that the European Council and the Council of ministers, representing the member-states, share authority with supranational institutions in the European arena. One way to impose theoretical order on the complex Euro-polity is to divide the policy-making process into four sequential phases: policy initiation, decision-making, implementation and adjudication.¹⁴ The *EP* (the institution in focus of this thesis) competes with the *Commission* on control over policy initiation (agenda-setting) and with the *Council* on decision-making, whereas the *Commission* and the *ECJ* compete with other actors on implementation and adjudication. Since this thesis emphasises on the making of legislation rather than the practical implications of adopted legislation the two latter phases will not be discussed here.

The *Commission* alone has the formal power to initiate and draft legislation.¹⁵ This includes the right to amend or withdraw its proposal at any stage in the process and from a multi-level governance perspective: "the *Commission* has significant autonomous influence over the agenda".¹⁶ But, the *Council* and the *European Parliament* can request the *Commission* to produce proposals, although they cannot draft proposals themselves. The *European Parliament* struggles to make use of its newly gained competence and obtain greater influence on the *Commission's* right of initiative. The *Council* and the *Parliament* have each succeeded in circumscribing the *Commissions'* formal monopoly of initiative more narrowly. Agenda setting is now a shared and contested competence among the four European institutions, rather than monopolised by one actor.¹⁷ The answer to exactly how much autonomous influence the *Commission* still has depends on whom you ask, also among theorists within the multi-level governance framework. The scientific debate on this issue will be addressed later on.

According to the *Treaties*, the main legislative body in the EU is the *Council* and until the *Single European Act* it was the sole legislative authority. The successive extension of

¹³ Marks, Gary et. al., *European Integration from the 80s: State-Centric v. Multi-level Governance* (1996) p. 342.

¹⁴ *Ibid.* p. 356.

¹⁵ Cini, Michelle, *The European Commission* (1996) p. 13.

¹⁶ Marks, Gary et. al., *European Integration from the 80s: State-Centric v. Multi-level Governance* (1996) p. 356.

¹⁷ *Ibid.* p. 358.

qualified majority voting under the SEA and the Maastricht Treaty has however changed this. Collective state control exercised through the Council has diminished. According to Marks et. al. this is first of all due to the growing role of the European Parliament in decision-making. The SEA and the Maastricht Treaty established cooperation and codecision procedures that have transformed the legislative process from a simple Council-dominated process into a complex balancing act between Council, Parliament and Commission.¹⁸ The procedures enhance the agenda-setting power of the EP. The intermeshing of institutions is particularly intricate under the codecision procedure, under which the Parliament obtains an absolute veto. If the Parliament or Council rejects the others' positions, a conciliation committee tries to reach a compromise.¹⁹ Even though the outcome of the codecision procedure is likely to be closer to the preferences of the Council than those of the Commission or Parliament, the Council is locked in a complex relationship of cooperation and contestation with the two other institutions. This is multi-level governance in action, and is distinctly different from what would be expected in a state-centric system.²⁰ To what extent the Parliament has agenda-setting power and decision-making power is discussed in the following chapters.

As a whole, according to multi-level governance: "EU decision-making can be characterised as one of multiple, intermeshing competencies, complimentary policy functions, and variable lines of authority – features that are elements of multi-level governance".²¹ The EP competes with the Commission on control over policy initiation and with the Council on decision-making. We now know that the Parliament, according to multi-level governance, has power over the legislative process. But how much power does it have, how has it changed over time and how is it exercised?

1.2.3 Using Spatial Models

According to multi-level governance different actors matter and both agenda setting and decision-making are shared competences. But given the complexity of decision-making in the EU, it is extremely difficult to derive the policy consequences of the different procedures. How can the broad theoretical assumptions discussed above be simplified so that they can be useful tools in analysing the real world? In order to generate predictions about legislative outcomes, spatial models are often used.

In spatial models of political institutions and legislative procedures, points in a policy space represent alternative policies. Each dimension of the policy space stands for a specific policy issue. The relevant political actors have preferences over alternative policies.²² Spatial models analyse the impact of institutions and procedures on policy choices. They have been used extensively since the late 1970s to study the institutions of the United States government and examine, for example, the effects of proposal, amendment and veto right on policy outcomes. Spatial models of the EU institutions and legislative procedures were introduced in the early 1990s. The models formulate conclusions in terms of equilibrium EU policies, and these policies depend on the preferences of the Commission, the Parliament and the member-states (in the Council), and the location of the status quo.²³

¹⁸ Marks, Gary et. al., *European Integration from the 80s: State-Centric v. Multi-level Governance* (1996). p. 364.

¹⁹ Hix, Simon, *The Political System of the European Union* (1999) p. 62.

²⁰ Marks, Gary et. al., *European Integration from the 80s: State-Centric v. Multi-level Governance* (1996) p. 365.

²¹ *Ibid.* p. 366.

²² Crombez, Christophe, *The Treaty of Amsterdam and the Codecision Procedure* (2001), p. 2.

²³ *Ibid.* p. 3.

The best-known model to simplify the complex legislative bargaining structure has been proposed by George Tsebelis and Geoffrey Garrett. (See appendix 1) This model starts out with a series of assumptions about the spatial orientation of the actors in the legislative process of the EU.²⁴ In all the configurations of the Council from the original six members to the current fifteen, the Qualified Majority criterion has hovered very close to 5/7ths of total votes. Thus, to represent QMV in the Tsebelis and Garrett model, the Council is deemed to have seven members, where a winning qualified majority is five out of seven (an approximation of 62 votes out of 87). There is a single dimension of legislative bargaining between “more” and “less” European integration. The actors have “ideal policy preferences” on this dimension. They also have “Euclidean preferences”, which means that actors want outcomes that are as close to as possible to their ideal policy, regardless of whether this is on the “more” or “less” integrationist side of their ideal policy. The member-states are aligned at different points along this single dimension. Two assumptions are made about the Commission and the Parliament.

First, they are treated as if they were unitary actors.²⁵ Major decisions in the Commission are actually taken by simple majority rule at the Weekly College of Commissioners meeting. Obedience is given to the opinions of Commissioners with jurisdiction over the policy area under debate, and the Commission President can sway debate on matters he/she deems important. As such, speaking about the Commission’s preferences is therefore shorthand for the preferences of its median Commissioner on a given issue.²⁶ Most Parliamentary decisions are also taken by “only” an absolute majority of all the members in the chamber. Thus, the Parliament’s preferences again is shorthand for the preferences of the median voter in the Parliament.²⁷

Second, in this model the preferences of the Commission and the EP are considered more pro-integrationist than those of any member-state in the Council.²⁸ This may seem strange given that Commissioners are nominated by individual governments for renewable four-year terms. Hence, governments might try to select their partisans as Commissioners and not to reappoint those who do not act in their interests. There is little evidence, however, that Commissioners behave as captives of their national governments. Most experts believe that all Commissioners are dedicated to furthering the EU’s integration agenda.²⁹ One reason for this is that the Rome Treaty explicitly ties the Commission to the goal of further integration. The Parliament’s policy preferences are assumed to be similar to those of the Commission. This is partly based on the empirical observation that the Commission and the Parliament tend to agree frequently on policy issues.³⁰ Most importantly, although members of the European Parliament are directly elected from constituencies in their home countries, they are currently not very accountable to them. Voters seem not to understand or care that the Parliament is a powerful institution. MEPs are thus given a more or less free rein to act as they please, and Garrett concludes that: "their behaviour invariably comes to be influenced by the pro-integrationist environment in Brussels".³¹

²⁴ Hix, Simon, *The Political System of the European Union* (1999) p. 88.

²⁵ Garrett, Geoffrey, *From the Luxembourg Compromise to codecision: Decision Making in the European Union*, *Electoral Studies* (1995), 14/3:289-308, p. 298.

²⁶ *Ibid.* p. 298.

²⁷ *Ibid.* p. 299.

²⁸ *Ibid.* P. 298.

²⁹ *Ibid.* p. 298.

³⁰ *Ibid.* p. 299.

³¹ *Ibid.* p. 299.

The status quo (if legislation is not adopted) is less integrationist than any member state.³² These assumptions predict rather different outcomes under different EU procedures. Different analysts also disagree on what these different outcomes under different procedures are. An overview of how prominent scientists analyse the legislative bargaining process and what role the Parliament has in it is given in chapter 3.

1.3 Method and Material

The basic point of departure of this essay is a multi-level governance-perspective. As outlined above, the emphasis is on the Marks et. al. assumptions regarding the relationship between the institutions involved in the legislative process of the EU. This is connected to the use of spatial models in the study of inter-institutional relations. Spatial models in the EU context are often associated with George Tsebelis and Geoffrey Garrett and their work will be used as a starting point for the analysis.

According to Guy Peters, to be effective in developing theory and in being able to make statements about structures larger than the individual, the social sciences must be comparative.³³ This thesis will be *comparative* in the sense that the Parliament will be investigated regarding its possible increased power in different stages of the policy process *over time*. Comparisons across time speak to some of the most important aspects of politics, Peters argues. Many of the interesting questions in comparative politics are concerned with change, and this method enables the researcher to address change directly.³⁴ According to Peters the method provides a very useful way to look at changes within the political structures of countries (here replaced by the political system of the EU).³⁵

According to Bjereld et. al., to have any substantial value, a scientific study has to say something beyond the actual study.³⁶ The generalising possibilities of a study about the EU are limited. However, some theoretical generalisations can be made through testing hypotheses in order to control the predictions of a theory.³⁷ Hypotheses are concrete and empirical sub-theses drawn from the theory. This study has a *theory-testing* approach inasmuch as Tsebelis' and Garrett's theoretical hypotheses, and one of their most active critics, Christophe Crombez' theoretical hypotheses are tested empirically. The aim is thereafter to try and falsify the hypotheses. Since a hypothesis is logically drawn from the theory, the theory has at least some explanation-value if the hypothesis is verified. However, one can not predict *how* true the theory is. Nevertheless, if the hypothesis is falsified, the theory has none or only limited explanation-value since a theory must explain all phenomena it makes predictions about. According to Bjereld et. al. it is therefore better to strive for falsification since it offers a more powerful test of the theory than verification.³⁸ Furthermore, Bjereld et. al. argue that the hypothesis-test gives the possibility to make general predictions through strengthening or weakening the faith in the theory and thereby the study offers generalisation-possibilities.³⁹ A hypothesis-test is carried out here since the theories of Crombez and Tsebelis and Garrett are tested.

³² Hix, Simon, *The Political System of the European Union* (1999) p. 90.

³³ Peters, B. Guy, (1998), *Comparative Politics Theory and methods*, p. 25.

³⁴ *Ibid.* p. 190.

³⁵ *Ibid.* p. 190.

³⁶ Bjereld, Ulf et. al.(1999) *Varför Vetenskap?*, p. 75.

³⁷ *Ibid.*, p. 77.

³⁸ *Ibid.* p. 78.

³⁹ *Ibid.* p. 78.

The investigation will be concluded in two parts, and the second part in two steps.

In the *first part* a critical research overview of the development of EP power since the SEA in 1987 till the Amsterdam Treaty in 1997 will be carried out. From this overview of Tsebelis' and Garrett's opinions, and opposing views, like Crombez' opinions, on the consequences of the different procedural reforms, hypotheses will be drawn.

Steunenberg stresses that conjectures based on formal models are not yet empirical facts. Instead, these conjectures are at best the starting point for further empirical research.⁴⁰ More empirical work has to be done in order to sift between "useful" and "not useful" models. "Without this work, formal modellers will continue to produce theoretical findings that may not be related to the object one aims to explain or understand" Steunenberg argues. He claims that most of the formal models on European Union decision making have not yet been put to a test in the sense that the outcomes they predict have yet to be confronted with the actual outcomes of decision making.⁴¹

Thus, in the *second part* the theoretical hypotheses drawn from the first part of the analysis will be discussed in two empirical studies. In these studies the power of the Parliament will be investigated in the codecision procedure pre and post Amsterdam. The *first step* in the empirical studies will be a quantitative analysis, based on two EP reports covering all the codecision procedures taken place since Maastricht in November 1993 till July 2000. The different analysts' claims are measured against the empirical material.

Steunenberg also argues that choosing the rate of successful amendments by the EP as the dependent variable is only a procedural aspect of decision making, which does not say much about the outcome of decision making in terms of policy. According to him "the formal models ought to be tested by comparing the outcomes they predict with the actual policies that result from the interaction between the Commission, the Council and the Parliament".⁴² Furthermore, Steunenberg claims that most models of the Union's legislative procedures are based on some interpretation of formal procedures as indicated by the Treaties. This perspective on decision making creates a kind of "formalistic bias", which neglects practices and other informal working methods.⁴³

The *second step* is therefore to complete the quantitative studies with a qualitative analysis of a specific case. Eckstein develops three ways in which cases can be applied directly to the construction and testing of theory.⁴⁴ One is through what he calls the "diciplined-configurative" study. This is a case study in which there is an attempt to utilise the case-study to illustrate a general hypothesis or theory. The theory has been developed outside the case, the case being an attempt to illustrate that the theory does indeed work.⁴⁵ Here, this method is used in a "reversed manner" as a post Amsterdam legislative draft is analysed to illustrate that the theory does *not* work. The case will be followed from initiation to conciliation and adoption of proposal into law. The thesis is completed with this kind of case study in order to (in line with Steunenberg's recommendations) capture more than "the rate of successful amendments", and in a humble way try to visualise the impact of "behind the scenes" events like informal consultations, and thereby strive to falsify the hypothesis of Crombez.

⁴⁰ Steunenberg, Bernard in Cormbez, Christophe, Steunenberg, Bernard and Corbett, Richard, Understanding the EU legislative process, European Union Politics(2000), 1/3:363-381, p. 369.

⁴¹ Ibid. p. 369.

⁴² Ibid. p. 370.

⁴³ Ibid. p. 370.

⁴⁴ Eckstein, Harry cited in Peters, B. Guy, (1998), Comparative Politics Theory and methods, p. 148.

⁴⁵ Bjereld, Ulf (et.al) (1999), Varför vetenskap?, p. 150.

The pros and cons of this way of addressing the problem, why this methodology was chosen and in what ways the choice of methodology affects the results are important.⁴⁶ Therefore validity and reliability of the methodology and the material are important to discuss, and so will be done in the following sections.

1.3.1 What is Power? - Operationalising the Term and Estimating its Validity.

At this point it is suitable to discuss the term *power*. Power has always been an obscure and unclear concept and a long lasting debate on the exact implication of the term has not led to any univocal definition. There are however certain interest points prevalent to the definition-proposals put forward. According to “Maktutredningens huvudrapport” there is a common understanding that power implies “the possibility to influence” (authors translation).⁴⁷ Keohane and Nye think of power as “the ability of an actor to get others to do something they otherwise would not do”. Power can also, according to Keohane and Nye, “be conceived in terms of control over outcomes”.⁴⁸ Both cases are here interpreted as power meaning something similar to influence. By power is in this thesis is therefore, in a broad sense, meant the Parliament’s ability to *influence* the legislation process of the European Union.

This way of using the term power as equivalent to influence is chosen since it’s consistent with the way it is used in the literature in the field of study. According to Garrett for example, the basic intuition from the American literature is that actors have *power* to *influence* legislative outcomes if they can make proposals, or amendments, that are difficult – if not impossible – to modify.⁴⁹ That is, for the Parliament, the possibility to make amendments to legislative proposals and have these amendments accepted by the Commission and the Council. For example, under the codecision procedure, a Parliament veto against a Council Common Position is impossible to overturn for the Council and the EP therefore has *power*.

The term used in theory must also be made testable in reality, otherwise one cannot verify or falsify the hypotheses. In the initial part of the essay, where structural development is analysed, power will be measured as the *formal* possibilities of EP to have its will imposed on the two other institutions. Power will be used in a non-specific way, only meaning that a certain structure enables the Parliament to influence in different ways. In the following part, where empirical facts are studied, power is simply measured as the *number of times* an EP amendment is ratified by the Council in the Joint Text of the Conciliation Committee or adopted by the Commission.

Validity in social research is the simple question whether we are measuring what we think we are measuring, or whether the observations we make are a function of other factors not included in the analysis.⁵⁰ Bjereld et. al. express validity as the degree of cohesion between the theoretical and the operational definition.⁵¹ The face validity of this study appears to be high. Nothing spontaneously contradicts that measuring power as the number of EP amendments accepted by the Council, or the formal institutional and procedural possibilities of the EP to exercise power over the legislative process, mirrors the power of the EP in a good

⁴⁶ Ibid. p. 98.

⁴⁷ SOU 1990:44, Demokrati och makt i Sverige, p. 17.

⁴⁸ Keohane, Robert O. and Nye, Joseph S. (1977), Power and Interdependence-World Politics in Transition, p.11

⁴⁹ Garrett, Geoffrey, From the Luxembourg Compromise to codecision: Decision Making in the European Union, Electoral Studies (1995), 14/3:289-308, p. 297.

⁵⁰ Peters, B. Guy, (1998), Comparative Politics Theory and methods, p. 46.

⁵¹ Bjereld, Ulf (et.al) (1999), Varför vetenskap?, p. 102.

way. By “contentual validity” Bjereld et. al. regard that the operational definition covers most aspects of the theoretical definition.⁵² In this case, a formal interpretation of the theoretical term is chosen. Unfortunately, thereby, the operationalisation of power has a low degree of contentual validity. Although the EP might be regarded powerful at a certain point in a certain process, power is only measured in a formal way. Informal channels of influence may affect that point in that process but fall outside the definition of power used and therefore not be noticed at all. To improve the contentual validity power is extended to include the search of *informal* influence in the case-study.

In sum the validity of this study is considered to be fairly high as it measures what it is supposed to measure, the power of the Parliament. The question is whether it measures power in *all* the various ways the term can be defined as. According to Peters however: “threats to the validity are almost inevitable, the major benefit to be gained from the description of those threats is simply to be aware of them in order to be able to discount their possible impact on results, if not always to avoid them.”⁵³ To be aware that the way the operationalisation is concluded affects the results of the study is thus important.

1.3.2 Material and Reliability

The material used to answer the question (if the European Parliament has increased its influence over the legislative process) is of two types. For the first part of the thesis, secondary sources dominates and relevant research is analysed and presented as the development of the powers of the EP are compared over time. For the second part of the essay, reports and primary legislative drafts are studied in the light of the secondary material in order to understand how the formal framework of the legislative process of the EU is used by the Parliament in relation to the Council and the Commission. This material will be addressed in a *theory-testing* manner where support for the Tsebelis-Garret model, or Crombez’ views, are searched for in the empirical material.

If the validity is dependent on *what* is measured, the reliability depends on *how* this is measured.⁵⁴ The material used here to answer the question seems to give a fair and objective picture of what the empirical reality looks like. Although reports from the European Parliament are used, the facts in them are unlikely to suffer from severe selection bias. They are official documents that would gain little from twisting the facts, since such behaviour probably would be discovered and criticised by the other institutions in the legislative process of the EU. From a reliability perspective this study aims at, in a clear and thorough way explain how every step of the analysis is taken so that a high degree of intersubjectivity is obtained. Facilitating for another researcher to repeat the same study in order to check if the results are the same is an important way of strengthening the reliability in a study.⁵⁵

1.4 Definitions and Limitations

The EU is based on three pillars. The European Union has a basic character of cooperation between nation states with supranational elements. The supranational elements can be found

⁵² Ibid. p. 103.

⁵³ Peters, B. Guy, (1998), *Comparative Politics Theory and methods*, p. 56.

⁵⁴ Bjereld, Ulf (et.al) (1999), *Varför vetenskap?*, p. 105.

⁵⁵ Ibid. p. 105.

in the first pillar.⁵⁶ Since this thesis is about the European Parliament, a supranational institution, only the legislation process in this pillar will be investigated.

The essay is concerned with inter-institutional relations and therefore the form and the nature of the different institutions are not investigated at any particular extent. Only a very brief picture of the EP will be drawn and the focus lies instead on the EP-relationship with the Council and the Commission.

Public opinion surveys repeatedly show that less than 60% of EU citizens know anything about the EP, and less than 5% have an informed impression of what MEPs do.⁵⁷ Also, European elections are not fought on European issues; the campaigns are run by national parties and on national issues. On top of this the number of participating voters in each of the direct elections have been relatively low.⁵⁸ With these factors in mind it can be questioned whether the EU would be more legitimate even if the EP had extended powers. This is an important discussion that however won't be carried out here.

The European Council brings together the heads of the governments of the member states and the Council of Ministers organises the rest of the national ministers in several sectoral Council's.⁵⁹ Both institutions will collectively be labelled the Council throughout this essay. The purpose of that is to minimise the risk of confusion, and since the two bodies have no particular role separately that is of importance for the analysis, little is lost by doing so.

1.5 Structure of the Thesis

In the next chapter a brief background of the European Parliament will be given. In chapter three the first part of the analysis will be carried out by a thorough analysis of the changes made in the legislation-making framework of the European Union since the SEA. The fourth and fifth chapters will be dedicated to the study of the empirical reality as it's mirrored in reports from the Parliament. Through this, the intention is to explore to what extent the Parliament is successful in taking use of its formal powers under codecision I and codecision II. In these chapters theoretical hypotheses are tested. In chapter five one case is followed through the legislative process in an attempt to measure the informal powers of the Parliament under codecision II. The sixth chapter summarises the results and discusses the answer of the question.

⁵⁶ SOU 1996:4, "Vem bestämmer vad? EU:s interna spelregler inför regeringskonferensen 1996" p. 6

⁵⁷ Hix, Simon, *The Political System of the European Union* (1999) p.75.

⁵⁸ Andersson, Christian & Lindahl, Rutger, *Europaparlamentet-EG:s demokratiska ansikte* (1994) p. 29.

⁵⁹ Hix, Simon, *The Political System of the European Union* (1999) p. 7.

2 The European Parliament - Background and Facts

This chapter sketches the history of the powers of the European Parliament briefly and comments on some basic features of its organisation.

As the European Coal and Steel Community (ECSC) was created in 1951 the embryo of the European Parliament was formed in the shape of the Common Assembly. The Common Assembly aimed from the very beginning at forming transnational groups according to political belief and not nationality.⁶⁰ The Assembly decided to call itself the European Parliament in 1962 but this was criticised since the name contributed to the impression that the EP had far more powers than it did.

The Assembly was initially only given the right to debate the activities of the other institutions of the Community and to adopt a motion of censure as the member states were reluctant to give it more power. Giving the Assembly more power would be at the expense of the Council and the member states were protective of their national interests.⁶¹ The EP then moved step by step towards a more influential role in decision-making. In 1970 and 1975 the EP received budgetary powers. The EP, together with the Council, is the budgetary authority in the EU.⁶² The Conciliation Procedure was introduced in 1975 to avoid conflicts between the Council and the EP in budgetary matters but later also became important in other areas (see chapter 3).

The EP did however not have the right to participate in the adoption of legislation. It was only granted advisory powers, which meant that the Parliament was asked for an opinion on a Commission proposal. The Council could regard or ignore this opinion. This insignificant role in the legislation process was the reality for the European Parliament until the cooperation procedure was introduced in the Single European Act (SEA) in 1987. More substantial influence was given to the EP in 1993 through the Maastricht-treaty as the codecision procedure was introduced and after the Amsterdam-treaty in 1997 the codecision procedure was reformed and became a very important feature of the legislation process. All these procedures will be analysed in the following chapter.

The EU has a classical two-chamber legislature: in which the Council represents the “states” and the European Parliament the “citizens”.⁶³ In contrast to many other legislatures, however, the Council is more powerful than the EP.⁶⁴ Until 1979 each member of the European Parliament was nominated by a national parliament, but the EP presented the first proposal for elections by direct universal suffrage as early as 1960. The Council however ignored the proposal as the Member States were opposed to giving more power to the EP and direct elections had unwanted supranational overtones.⁶⁵ It took the Council 16 years to agree with the EP and the first direct elections were held in 1979, elections have been held every five years since.⁶⁶ The European Parliament has 626 members and the member states are represented in the EP in a more balanced way than in the Council. Still, smaller countries are over-represented and larger ones under-represented. Germany for example has 21,8% of the EU population but only 15,8% of the MEPs and 11,5% of the votes in the Council. Sweden, representing 2,4% of the EU population has 3,5% of the MEPs and 4,6% of the votes in the Council.⁶⁷

⁶⁰ Choate, Abigail, *The European Parliament and the democratic deficit* (1994) p. 14.

⁶¹ *Ibid.* P. 15.

⁶² Andersson, Christian & Lindahl, Rutger, *Europaparlamentet-EG:s demokratiska ansikte* (1994) p. 30.

⁶³ SOU 1996:4, *Vem bestämmer vad? EU:s interna spelregler inför regeringskonferensen 1996*, p 7.

⁶⁴ Hix, Simon, *The Political System of the European Union* (1999) p. 56.

⁶⁵ Choate, Abigail, *The European Parliament and the democratic deficit* (1994) p. 18.

⁶⁶ Hix, Simon, *The Political System of the European Union* (1999) p. 75.

⁶⁷ SOU 1996:4, *Vem bestämmer vad? EU:s interna spelregler inför regeringskonferensen 1996*”p.20.

The main work of the EP is done in the standing committees, temporary committees and the committee of inquiry. These committees examine questions referred to them by the EP, and prepare reports containing draft legislative resolutions on Commission proposals, non-legislative reports or own initiative reports.⁶⁸ The most important task of the committees is to examine legislative proposals on which an EP opinion is required. Each proposal is referred to an appropriate committee where a rapporteur draws up a report, which is then considered in the plenary. Examples of how a committee works can be found in chapter 5.2.

⁶⁸ Choate, Abigail, *The European Parliament and the democratic deficit* (1994) p. 22.

3 Consultation, Cooperation & Codecision

During the past decades the EU has gone through three major rounds of treaty revision. Each of these revisions reformed the EU institutions.⁶⁹ This chapter starts by giving an overview of the formal EU legislative process under different procedures. This is followed by a more detailed investigation of the consequences for institutional bargaining of the three revisions – the SEA, the Maastricht-treaty and the Amsterdam-treaty. The Tsebelis-Garrett model will serve as a starting point when analysing the implications of the different procedures. The model will then be evaluated and measured against its critics. Unfortunately the legislative system of the EU is very complex at first glance, and to be honest at a closer look too. The intention here, however, is to try and explain the process as clearly as possible. Most elements will be discussed at least twice in order to keep the perception of the process comprehensive.

There are four distinct legislative procedures that regulate how the bargaining between the Council, the EP and the Commission is carried out. These procedures are consultation, cooperation, codecision I and codecision II.⁷⁰ (See appendix 2) The consultation procedure gives the EP almost no power at all and only one reading is required. The cooperation procedure (through the SEA) and the codecision procedures (through the Maastricht Treaty (I) and the Amsterdam Treaty (II)) enables the Parliament to influence the EU legislative process and an additional, second reading, is introduced. If the EP and the Council do not agree after the second reading the Council can overturn any amendments made by the Parliament with unanimity. Under codecision a conciliation committee, where the Council and the Parliament tries to agree on a Joint Text (JT), is convened. Under the codecision II procedure, the proposal falls if the Parliament doesn't accept the Joint Text; the EP has the final word. Under codecision I the procedure could continue to a third reading. If the Conciliation Committee adopts a JT the legislation goes to a third reading both under codecision I and II. In that case, the legislation falls under codecision II if the Council doesn't confirm the JT by QMV, and the EP confirms it by an absolute majority. Under codecision I, if the Conciliation Committee had failed to produce a Joint Text, at this stage the Council could choose by QMV to reaffirm its Common Position. Following such a move, the CP becomes law unless the EP votes by an absolute majority to reject the reaffirmed CP.

When which procedure is applied is regulated in the Treaty. Hopefully all of this becomes clearer after the consequences of the procedures are analysed in the next sections.

There are two basic voting rules in the Council, unanimity and qualified majority voting (QMV). Unanimity means that each member state has one vote and legislation cannot be passed if one or more member-states vote against the legislation.⁷¹ When QMV is used the votes are weighted according to the size of a member-state's population, and roughly five-sevenths, 62 out of the 87 votes, constitute a qualified majority and are required for a legislation proposal to be passed.⁷² In the EP, single majority is needed to give an opinion and absolute majority to make amendments in, adopt or reject proposals. By single majority is

⁶⁹ Crombez, Christophe, i Cormbez, Christophe, Steunenberg, Bernard and Corbett, Richard, Understanding the EU legislative process, European Union Politics(2000), 1/3:363-381, p. 363.

⁷⁰ SOU 1996:4, Vem bestämmer vad? EU:s interna spelregler inför regeringskonferensen 1996, p. 8.

⁷¹ Hix, Simon, The Political System of the European Union (1999) p. 68.

⁷² Tsebelis, George & Garrett Geoffrey, Legislative Politics in the European Union (2000), European Union Politics, 1/1:9-36, p. 33.

meant >50% of the given votes, that is >50% of the MEPs *present* must be in favour. Absolute majority means that >50% of the *total number* of MEPs must be in favour of a decision.⁷³

3.1 Pre and Post the Single European Act

3.1.1 Consultation

Until 1987, and the entry into force of the SEA, the consultation procedure was the main legislative procedure in the EU.⁷⁴ Only a first reading is necessary under consultation whereby the Commission proposes a policy and the Parliament gives an opinion on the proposal, usually proposing amendments. The Council can then, regardless of the EP opinion, adopt the law by QMV or unanimity depending on Treaty article. But, in many cases even when only QMV was needed, the decisions were taken by unanimity. This was due to the Luxembourg compromise, which gave any member of the Council the opportunity to block the passage of new legislation in any area it considered of “national interest”.⁷⁵ *The EP has the right to have an opinion under consultation, but the Council and the Commission can ignore its opinion totally.*

This changed with the passage of the SEA. Some policy areas - typically associated with contentious issues of "high politics" - remained subject to unanimous Council approval. Much of the EU's day-to-day legislative agenda was, however, unblocked by the member governments' commitments both to reaffirm the application of QMV to the issues originally intended in the Rome Treaty, and to bring additional policy areas under QMV.⁷⁶ Consultation still applied to about two thirds of EU legislation in 1997 on issue areas as the free movement of capital, competition policy and industrial subsidies.⁷⁷ But the insignificant role of the Parliament changed as the cooperation procedure was introduced in the SEA to govern internal market reform.

3.1.2 Cooperation

The most important institutional innovation in the SEA was to give the EP a significant legislative role. Today, cooperation applies to areas such as social policy, implementation of regional funds, research and technological development, and a number of environmental issues- though its scope was reduced both at Maastricht and Amsterdam (see following sections) in favour of a more extensive use of codecision.⁷⁸ The cooperation procedure accounted for about 10% of EU legislation in 1997.⁷⁹

⁷³ Andersson, Christian & Lindahl, Rutger, *Europaparlamentet-EG:s demokratiska ansikte* (1994) p.32.

⁷⁴ Crombez, Christophe, i Cormbez, Christophe, Steunenberg, Bernard and Corbett, Richard, *Understanding the EU legislative process*, European Union Politics(2000), 1/3:363-381, p. 363.

⁷⁵ Tsebelis, George & Garrett Geoffrey, *Legislative Politics in the European Union* (2000), European Union Politics, 1/1:9-36, p. 12.

⁷⁶ *Ibid.* p. 13.

⁷⁷ Crombez, Christophe, *The Treaty of Amsterdam and the Codecision Procedure* (2001), p. 18.

⁷⁸ Tsebelis, George & Garrett Geoffrey, *Legislative Politics in the European Union* (2000), European Union Politics, 1/1:9-36, p. 13.

⁷⁹ Crombez, Christophe, *The Treaty of Amsterdam and the Codecision Procedure* (2001), p. 18.

Under the cooperation procedure (introduced by the SEA) the Council cannot ignore the EP opinion, but has to examine the Commission proposal and the EP text, and then agree on a Common Position (CP) by QMV, which usually involves a series of amendments to the Commission proposal.⁸⁰ The legislation then goes to a second reading stage. The EP has three months to decide whether to amend, accept or reject the Council's CP, acting by an absolute majority. If the Parliament fails to act the legislation is deemed accepted by the EP. The Commission then decides whether to accept or reject the EP amendments before resubmitting the legislation to the Council. The Council now has three months to act, and the Council can either adopt the legislation into law if the EP made no amendments, or adopt the EP amendments accepted by the Commission. But to overturn EP rejections or amendments accepted by the Commission the Council needs unanimity.

In sum, the Parliament may amend Commission proposals and if the Commission accepts these amendments they are presented to the Council, which can either accept them under QMV or amend them unanimously.⁸¹ The Parliament can also reject proposals. Such a rejection can only be overridden by an agreement between the Commission and a unanimous Council. *The Parliament can thus still be ignored under cooperation, but not as easily as under consultation.*

3.1.3 Implications of Cooperation

According to George Tsebelis and Geoffrey Garrett, many analysts consider the legislative role given to the European Parliament under cooperation of no real consequence to policy outcomes.⁸² In contrast, they argue that the Parliament has a role as a conditional agenda setter under cooperation that has been of considerable legislative effect.⁸³ Under cooperation the Parliament has the right to amend Commission proposals. The Council can approve amendments that are accepted by the Commission by qualified majority vote or to reject them (and adopt their own proposals) by unanimity. Tsebelis analyses the last steps of the cooperation procedure and finds that the EP has important powers, which he refers to as "conditional agenda-setting" powers. The EP can make proposals that the Council is more likely to support than reject, and hence produce legislation that is more integrationist than under the consultation procedure.⁸⁴ It is easier for the Council to accept a Parliament proposal than to amend it, provided that the Commission accepts it too.⁸⁵ However, the Parliament cannot successfully propose any policy it wants: the proposal must satisfy a few conditions, therefore "conditional" powers.

Nonetheless, Tsebelis' contribution suffers from a number of important problems. Crombez identifies and addresses several of these problems. He contends that the Parliament's right to amend proposals does not give it more powers than its right to issue non-binding opinions under consultation, because the Commission is not bound to accept the amendments.⁸⁶ Therefore, Crombez argues, the Parliament has the same agenda-setting

⁸⁰ Hix, Simon, *The Political System of the European Union* (1999) p. 85.

⁸¹ Tsebelis, George & Garrett Geoffrey, *Legislative Politics in the European Union* (2000), European Union Politics, 1/1:9-36, p. 13.

⁸² *Ibid.* p. 14.

⁸³ *Ibid.* p. 14.

⁸⁴ Hix, Simon, *The Political System of the European Union* (1999) p. 91.

⁸⁵ Crombez, Christophe, *The Treaty of Amsterdam and the Codecision Procedure* (2001), p. 3.

⁸⁶ Crombez, Christophe, in Cormbez, Christophe, Steunenberg, Bernard and Corbett, Richard, *Understanding the EU legislative process*, European Union Politics(2000), 1/3:363-381, p. 364.

powers under cooperation as under consultation. The Commission takes opinions and amendments into account, only if it prefers them to its original proposal.⁸⁷ Moser raises a similar argument as he claims that the principal shortcoming of Tsebelis' analysis, is that it's limited to the last steps of cooperation.⁸⁸ Under cooperation Parliament proposals are in fact amendments to proposals the Commission made in earlier steps of the procedure, not its own proposals. According to both Moser and Crombez these earlier steps are ignored by Tsebelis, and Moser argues that if the last steps are incorporated into the model the finding will be quite different. The Commission, rather than the Parliament, has agenda-setting powers.⁸⁹

According to Marks et al agenda setting became a shared and contested competence among the four European institutions, rather than monopolised by one actor after Maastricht.⁹⁰ Steunenberg analyses the consultation, cooperation and codecision I procedures. He concludes, that the Commission dominates the legislative process, whereas the Parliament plays a minor role under cooperation.⁹¹ Steunenberg claims that the EP has no impact under consultation, and only conditional veto powers under cooperation, where a unanimous Council can override its veto. Crombez, like Steunenberg, concludes that the Parliament has no powers under consultation, but he claims that the EP acquires veto powers under cooperation. Under cooperation a unanimous Council can override a Parliament veto, but the Parliament is unlikely to have such extreme preferences that no country in the Council supports its veto.⁹² Moreover, an EP veto can only be overridden by unanimity in the Council. To sum up: in opposition to Tsebelis and Garrett, Crombez and Steunenberg both agree with Moser that the Parliament has no agenda-setting powers under cooperation.

3.2 The Maastricht Treaty

3.2.1 Codecision I

The codecision procedure (codecision I) was added to the legislative rules at Maastricht in 1993. In addition to replacing cooperation for internal market matters, this procedure was also applied to new areas of EU jurisdiction in the treaty such as education, culture public health and consumer protection.⁹³ The codecision procedure applied to about 15% of EU legislation in 1997.⁹⁴ There are two major institutional differences between the initial form of the codecision procedure and cooperation.

First, the Council cannot reject EP amendments accepted by the Commission. If the Parliament and the Council do not agree after the second reading, the Council has to request a Conciliation Committee (with 15 members from both the Council and the EP and a non-voting representative from the Commission) to discuss such amendments and try to adopt a

⁸⁷Ibid. p. 364.

⁸⁸ Moser in Crombez, Christophe, *The Treaty of Amsterdam and the Codecision Procedure* (2001), p.3.

⁸⁹ Moser in Ibid. p. 3.

⁹⁰ Marks, Gary et. al., *European Integration from the 80s: State-Centric v. Multi-level Governance* (1996) p. 358.

⁹¹ Crombez, Christophe, *The Treaty of Amsterdam and the Codecision Procedure* (2001), p. 4.

⁹² Ibid. p. 4.

⁹³ Tsebelis, George & Garrett Geoffrey, *Legislative Politics in the European Union* (2000), European Union Politics, 1/1:9-36, p. 13 f.

⁹⁴ Crombez, Christophe, *The Treaty of Amsterdam and the Codecision Procedure* (2001), p. 18.

Joint Text (JT) by a QMV of the Council representatives and a simple majority of the EP representatives.⁹⁵

Second, if the Committee can't agree to a JT, the Council can choose by QMV to reaffirm its prior Common Position, possibly with amendments proposed by the Parliament. Following such a move, the CP becomes law unless the EP votes by an absolute majority to reject the reaffirmed CP.⁹⁶ *It's hard for the EP to override the Council but the EP can no longer be ignored under codecision I.*

3.2.2 Implications of Codecision I

Tsebelis and Garrett state, that many scholars hold, that the power of the Parliament was significantly increased by this first version of codecision since the EP got the ability to unconditionally veto proposals after the Conciliation Committee. This is considered to make it a far more influential legislator than under cooperation. Tsebelis and Garrett instead argue that the transition from cooperation to codecision entailed the Parliament's exchanging its conditional agenda setting power for unconditional veto power.⁹⁷ They claim that under the assumption that the EP is more integrationist than the Council, the swap of the conditional agenda setting under cooperation, for the unconditional veto under codecision I, was a "bad deal for the parliament". Tsebelis and Garrett stress that the Parliament is more powerful under cooperation than under codecision I.⁹⁸ They hold that codecision I took the agenda-setting powers away from the Parliament in favour of the Council, because the Council could confirm the Common Position originally approved, if it failed to reach an agreement with the Parliament in the Conciliation Committee.⁹⁹

Crombez, nevertheless, disagrees for two reasons. First, he argues, the Parliament does not have conditional agenda-setting powers under cooperation once the entire procedure is considered (as explained above). The Parliament's approval is required for a Common Position to become EU law since a majority of its members can block adoption of the CP. A second objection is that the Parliament and the Council *together* acquire agenda-setting powers under codecision I, since they can amend Commission proposals in the Conciliation Committee.¹⁰⁰ Crombez thus claims that the Council and the Parliament genuinely co-legislate under codecision I since successful Commission proposals need the approval of *both* the Parliament and a qualified majority in the Council.¹⁰¹ Moreover, the Parliament and a qualified majority in the Council can *together* amend Commission proposals in the Conciliation Committee. Crombez concludes that the Commission maintains considerable agenda-setting powers under codecision, but these powers are smaller than under consultation and cooperation.¹⁰²

⁹⁵ Hix, Simon, *The Political System of the European Union* (1999) p. 85.

⁹⁶ Tsebelis, George & Garrett Geoffrey, *Legislative Politics in the European Union* (2000), European Union Politics, 1/1:9-36, p.14.

⁹⁷ *Ibid.* p.14.

⁹⁸ Tsebelis, George & Garrett Geoffrey, *Legislative Politics in the European Union* (2000), European Union Politics, 1/1:9-36, p. 15.

⁹⁹ Crombez, Christophe, in Cormbez, Christophe, Steunenberg, Bernard and Corbett, Richard, *Understanding the EU legislative process*, European Union Politics(2000), 1/3:363-381, p. 365.

¹⁰⁰ Crombez, Christophe, *The Treaty of Amsterdam and the Codecision Procedure* (2001), p. 5.

¹⁰¹ Crombez, Christophe, in Cormbez, Christophe, Steunenberg, Bernard and Corbett, Richard, *Understanding the EU legislative process*, European Union Politics(2000), 1/3:363-381, p. 365.

¹⁰² Crombez, Christophe, *The Treaty of Amsterdam and the Codecision Procedure* (2001), p. 5.

Steunenberg makes an interesting remark regarding the Tsebelis-Garrett opinion on codecision I. He finds it rather peculiar that the European Parliament has supported the introduction of codecision and feels that this procedure has strengthened its role as a co-legislator in the EU if the Tsebelis-Garrett claim had any empirical basis.¹⁰³ Otherwise one could expect that the EP would not prefer such a change, and after having worked with both legislative procedures for several years, the Parliament fully supported the idea to drop the cooperation procedure in favour of codecision. During the preparations for the Amsterdam Treaty, the Parliament clearly indicated that there should be one general procedure for legislation, namely codecision.¹⁰⁴ This view, that the Parliament enjoyed greater influence under codecision I than under cooperation, the opposite of the Tsebelis-Garrett view, is supported by the MEP Corbett.¹⁰⁵ He claims that practitioners like politicians and officials as well as empirical evidence imply that the EP's influence on legislation is greater under codecision I than under cooperation. According to Steunenberg this preference of the EP for the codecision procedure could indicate support for Crombez' claim that the Maastricht Treaty has to be regarded as the principal step towards a more powerful Parliament.¹⁰⁶ Crombez, Steunenberg and Corbett contradict Tsebelis' and Garrett's argument about the Council's incentive to return to its CP if the Conciliation Committee breaks down.

3.3 The Amsterdam Treaty

3.3.1 Codecision II

The codecision procedure was modified in the Amsterdam Treaty approved by EU government leaders in June 1997 and the procedure in its altered form is labelled codecision II. Additional policy areas were brought under its scope (the procedure now applies in 38 areas compared with 15 under Maastricht)¹⁰⁷, including equal treatment of the sexes, administration of the European Social Fund, health and safety, some aspects of environmental policy and fraud.¹⁰⁸ Codecision II now applies to most major EU legislation.¹⁰⁹

Codecision I intended to give the Parliament a more important role in the EU legislative process but the EP, along with many scholars, claimed that the procedure failed to provide for real codecision. Therefore the member governments decided to remove the last two stages of codecision I in the Amsterdam Treaty to meet this type of criticism.¹¹⁰ Crombez claims that the institutional changes provided for in the Treaty in general seek to render EU decision-making more democratic and less complex and that the reform of codecision can be

¹⁰³ Steunenberg, Benard in Cormbez, Christophe, Steunenberg, Bernard and Corbett, Richard, *Understanding the EU legislative process, European Union Politics(2000)*, 1/3:363-381, p. 367.

¹⁰⁴ *Ibid.* p. 369.

¹⁰⁵ Corbett, Richard in Cormbez, Christophe, Steunenberg, Bernard and Corbett, Richard, *Understanding the EU legislative process, European Union Politics(2000)*, 1/3:363-381, p. 373

¹⁰⁶ Steunenberg, Bernard in Cormbez, Christophe, Steunenberg, Bernard and Corbett, Richard, *Understanding the EU legislative process, European Union Politics(2000)*, 1/3:363-381, p. 369.

¹⁰⁷ Imbeni, Renzo et. al., 2000, "Activity Report 1 May1999 to 31 July 2000 of the delegations to the Conciliation Committee", p. 1.

¹⁰⁸ Tsebelis, George & Garrett Geoffrey, *Legislative Politics in the European Union (2000)*, European Union Politics, 1/1:9-36, p. 14.

¹⁰⁹ Crombez, Christophe, in Cormbez, Christophe, Steunenberg, Bernard and Corbett, Richard, *Understanding the EU legislative process, European Union Politics(2000)*, 1/3:363-381, p. 364.

¹¹⁰ Crombez, Christophe, *The Treaty of Amsterdam and the Codecision Procedure (2001)*, p. 1.

interpreted in that light.¹¹¹ From an institutional perspective the most important development of the Amsterdam reforms is that the Conciliation Committee is now the last stage of the legislative game. If the Conciliation Committee, the representatives of the Council and the Parliament, cannot agree to a JT, the proposed legislation lapses. The Council's final proposal to the Parliament and the EPs decision on this, determine whether to revert to the status quo.¹¹²

3.3.2 Implications of Codecision II

The Amsterdam Treaty took away the Council's right to reaffirm its CP if it failed to reach an agreement with the Parliament. Hix states that the Council and the EP are genuine co-legislators under codecision II.¹¹³ Tsebelis and Garrett agree to this and declare that the Parliament is unambiguously more powerful under codecision II than under cooperation.¹¹⁴ According to Crombez, Tsebelis and Garrett contended that this reform of codecision put the parliament in the same position as the Council. Crombez argue, however, that the EP did not need the reform of codecision to enhance its powers. Codecision I was already truly bicameral.¹¹⁵ Crombez also argues that rather than increasing the Parliament's power and reducing the Council's power, as those responsible for the changes intended, the new codecision procedure renders the Commission irrelevant, and may actually reduce the Parliament's power because the Amsterdam reform of codecision may have some unintended consequences.¹¹⁶ First, codecision II eliminates the Commission's formal agenda-setting powers.¹¹⁷ Under codecision I the Commission's proposal influenced the contents of agreements between the Council and the Parliament, because the Council could confirm the proposal if the Conciliation Committee failed to reach an agreement. Under codecision II the status quo prevails, if the Council and the Parliament fail to reach an agreement. Moreover, the Commission plays no formal role in the negotiations between the Council and the Parliament. The resulting EU policies then depend on the bargaining powers of the Council and the Parliament rather than the Commission proposal.¹¹⁸ Codecision II decreases the Parliament's powers, insofar as the Parliament can be considered to have preferences close to the Commission's, as is often supposed, and to have little bargaining power compared to the Council.¹¹⁹ Resulting policies may then be further away from the EP ideal under codecision II than under codecision I.¹²⁰ Crombez and Corbett disagree with Tsebelis and Garrett about the importance of codecision II. Crombez even says that the EP maybe even has less power under codecision II than under codecision I.

¹¹¹ Crombez, Christophe, *The Treaty of Amsterdam and the Codecision Procedure* (2001), p. 1.

¹¹² Tsebelis, George & Garrett Geoffrey, *Legislative Politics in the European Union* (2000), European Union Politics, 1/1:9-36, p. 14.

¹¹³ Hix, Simon, *The Political System of the European Union* (1999) p. 56.

¹¹⁴ Tsebelis, George & Garrett Geoffrey, *Legislative Politics in the European Union* (2000), European Union Politics, 1/1:9-36, p.15.

¹¹⁵ Crombez, Christophe, in Cormbez, Christophe, Steunenberg, Bernard and Corbett, Richard, *Understanding the EU legislative process*, European Union Politics(2000), 1/3:363-381, p. 364.

¹¹⁶ Crombez, Christophe, *The Treaty of Amsterdam and the Codecision Procedure* (2001), p. 16.

¹¹⁷ Crombez, Christophe, in Cormbez, Christophe, Steunenberg, Bernard and Corbett, Richard, *Understanding the EU legislative process*, European Union Politics(2000), 1/3:363-381, p. 365.

¹¹⁸ *Ibid.* p. 366.

¹¹⁹ Crombez, Christophe, *The Treaty of Amsterdam and the Codecision Procedure* (2001), p. 16.

¹²⁰ Crombez, Christophe, in Cormbez, Christophe, Steunenberg, Bernard and Corbett, Richard, *Understanding the EU legislative process*, European Union Politics(2000), 1/3:363-381, p. 366.

3.4 Different analysts, Different Views – Summing Up

The collective will of the EU governments in the past decade has manifestly been geared to democratising decision-making by empowering the Parliament. Multi-level governance predicts, according to Marks et al., that the Parliament competes with the Commission on agenda-setting power and with the Council on decision-making. The above chapter mirrors the somewhat opposing views on to what extent the EP has managed to obtain agenda-setting power and decision-making power under various procedures. Tsebelis and Garrett have different opinions about the consequences of the procedural reforms than Crombez. They consider the SEA and the Amsterdam Treaty as the principal steps towards a more powerful Parliament. Crombez, by contrast, regard the Maastricht Treaty as the main step.¹²¹ These views lead to two testable hypotheses that will be presented next.

Tsebelis and Garrett consider the cooperation procedure to give the Parliament *more* influence over the legislative process than codecision I. Crombez, and others with him, definitely regards the cooperation procedure to give the Parliament *less* influence than codecision I. Tsebelis and Garrett argue that codecision II makes the Parliament a genuine co-legislator with the Council and think it's is far more important for increased Parliament power than codecision I. Crombez, along with others, agree that codecision II makes the EP a co-legislator but argue that the Parliament already had that power under codecision I. Crombez even claims that codecision I makes the EP *more* influential than codecision II.

If Tsebelis and Garrett are right about that cooperation makes the EP more powerful than codecision I, and Crombez is right about that codecision I makes the EP more powerful than codecision II, the situation becomes very complicated. The recent procedural development is namely to move areas of legislation from cooperation to codecision, and codecision I has been substituted with codecision II. The EP even wants to make codecision II the only legislative procedure.¹²² If the Tsebelis and Garrett-hypothesis is proven wrong the EP preference on skipping cooperation in favour of codecision becomes comprehensible. If Crombez hypothesis is proven wrong the substitution of codecision I with codecision II is understandable. Otherwise the recent procedural development of the EU can be argued to hinder the extension of Parliament power and thereby increase, rather than decrease, the democratic legitimacy of the whole Union. If both Tsebelis and Garrett, and Crombez, are proven wrong in the aspects mentioned above, indications that the shift from cooperation and codecision I to codecision II is a favourable development in respect to empowering the European Parliament are noticeable.

Steunenberg stresses that conjectures based on formal models are not yet empirical facts. Instead, these conjectures are at best the starting point for further empirical research.¹²³ Therefore the hypotheses drawn from Tsebelis-Garrett and Crombez will be tested against empirical material. This is carried out in the next two chapters.

¹²¹ Crombez, Christophe, in Cormbez, Christophe, Steunenberg, Bernard and Corbett, Richard, Understanding the EU legislative process, European Union Politics(2000), 1/3:363-381, p.364.

¹²² Imbeni, Renzo et. al., 2000, "Activity Report 1 May1999 to 31 July 2000 of the delegations to the Conciliation Committee", p. 23.

¹²³ Steunenberg, Bernard in Cormbez, Christophe, Steunenberg, Bernard and Corbett, Richard, Understanding the EU legislative process, European Union Politics(2000), 1/3:363-381, p. 369.

4 Are Tsebelis & Garrett Right?

Tsebelis and Garrett consider the post-SEA cooperation procedure to make the European Parliament more powerful than the post Maastricht codecision I procedure. The Tsebelis and Garrett model predicts that, under codecision I, the Council will have an incentive to facilitate a breakdown of the conciliation committee, so that it can reaffirm its original CP. The EP has unconditional veto, it must either accept the Council CP or reject the CP and accept the status quo. But since the EP is more integrationist than any member state, it will prefer any proposal by the Council to the status quo. The Council can make a take-it-or-leave-it proposal to the EP, which the EP will invariably accept. The main reason why Tsebelis and Garrett consider the cooperation procedure better than codecision I is thus the Council's ability to present "take it or leave it" proposals under codecision I, which leaves the Parliament less powerful than under cooperation. This assumption will now be compared to the empirical facts.

4.1 Quantitative Evidence

The first version of the codecision procedure under Article 189b of the Treaty of Maastricht was applicable for more than five years, from 1 November 1993 to 30 April 1999. In a European Parliament activity report from the Delegations to the Conciliation Committee the codecision I procedural development from the entry into force of the Treaty of Maastricht to the entry into force of the Treaty of Amsterdam is presented.¹²⁴ Of the 165 completed codecision procedures during this period, 66 were settled in Conciliation Committees, representing 40%. In only three of the Conciliation Committees, no agreement was reached.¹²⁵ In five years the EP only rejected a CP after a failed Conciliation Committee once, in a case on Voice Telephony. The EP once rejected a Joint Text after agreement in Conciliation. Once, a file was closed without an agreement (as the Council had not confirmed its common position there was no need to vote on rejection in plenary sitting.) Twice the EP adopted an intention to reject at second reading. A quantitative analysis of the results of conciliation procedures allows us to draw some conclusions. Of the 66 procedures completed, only three did not reach an agreement. Of the total 913 amendments adopted at second reading by Parliament in codecision concerning the 63 cases which reached an agreement:

- a) 244 were accepted unchanged, i.e. 27%
- b) 328 were accepted in a compromise close to the amendment, i.e. 36%
- c) 59 were accepted in a compromise with a future commitment, i.e. 6%
- d) 45 were accepted in a compromise, adding a declaration, i.e. 5%
- e) 35 were deemed already covered by another part of the CP, i.e. 4%
- f) 202 amendments were not accepted at the end of the negotiations, i.e. 22%

¹²⁴ Fontaine, Nicole et. al., 1999, "Activity Report 1 November 1993 to 30 April 1999 of the delegations to the Conciliation Committee".

¹²⁵ Ibid. p. 4.

These figures, from the EP report, show that 74% (a+b+c+d) of the Parliament amendments in the Conciliation Committee were accepted unchanged or in compromised form.¹²⁶

These hard facts indicate that the explanation-value of the Tsebelis and Garrett hypothesis is limited. The Council, in the Conciliation Committee, accepts 74% of EP second reading amendments. Moreover, contradictory to the Tsebelis and Garrett assumption, the Council does not seem to facilitate a breakdown of Conciliation in order to return to the Common Position. The fact that the Council only tried this manoeuvre once, and failed, implies that the Council does regard the EP views in the Conciliation Committee, even under codecision I. Crombez raises the same argument as he shows that the Council and the Parliament failed to reach an agreement in the Conciliation Committee only three times under codecision I, the Council confirmed its earlier CP once, and the EP rejected it.¹²⁷ The fact that the Council only once attempted to reconfirm its own position rather than seek conciliation with the Parliament, when this was possible under the Maastricht Treaty, seems to run counter to what Tsebelis and Garrett predicted. Why did the Council not try to reconfirm its CP after a breakdown in the Conciliation Committee more often? If a qualitative look at the phenomenon is taken, some explanations might be found.

4.2 Qualitative Reflections

Richard Corbett is a Member of the European Parliament and he says that the Tsebelis-Garrett view is the opposite of almost every practitioner. He argues that the statistics as well qualitative analyses imply that the Parliament's influence on legislation is greater under codecision than under cooperation.¹²⁸ He agrees to the fact that the Council only once attempted to reconfirm its own position rather than seek coalition with the Parliament, when this was possible under the Maastricht version of the codecision procedure, seems to run counter to what Tsebelis and Garrett predict. Corbett points out, that even when bargaining between the Parliament and the Council has centred on a one dimensional divergence such as money for programmes, for example SOCRATES Research, where the Parliament could seemingly be put very easily by the Council in a "take-it-or-leave-it" position, the result has almost always been at least some movement by the Council in order to reach a compromise with the Parliament. Corbett argues that the reason for this was that the Parliament was well aware that the treaty allowed the Council to reconfirm its CP if it did not reach an agreement with the EP in the Conciliation Committee and challenge the Parliament to take it or leave it. The Parliament also knew that this would strengthen the Council and was determined not to allow this to happen.¹²⁹ Corbett's view is that rule no. 78 of the EP's internal Rules of Procedure was drafted so as to ensure that the Parliament would automatically vote on a rejection motion if the Council should try to return to its CP. The Parliament's leadership let it be known that this would be the Parliament's reaction to such a manoeuvre. The first time the Council tried it, the EP overwhelmingly rejected the legislation in question, and the Council never tried to do it again. This implied that the EP would reject particular outcomes which, individually, it would have preferred to the status quo. It was however necessary to establish

¹²⁶ Fontaine, Nicole et. al., 1999, "Activity Report 1 November 1993 to 30 April 1999 of the delegations to the Conciliation Committee", p. 11.

¹²⁷ Crombez, Christophe, in Cormbez, Christophe, Steunenberg, Bernard and Corbett, Richard, Understanding the EU legislative process, European Union Politics(2000), 1/3:363-381, p. 365.

¹²⁸ Corbett, Richard in Cormbez, Christophe, Steunenberg, Bernard and Corbett, Richard, Understanding the EU legislative process, European Union Politics(2000), 1/3:363-381, p. 374

¹²⁹ Ibid. p. 374

the Parliament's bargaining powers and exert greater influence in the long run. Corbett's main criticism towards Tsebelis and Garrett is thus that its based not on practical reality but on a too literal interpretation of the Treaty that took no account of how the institutions sought to interpret or use the Treaty.¹³⁰

4.3 Summing Up

Fortunately, from the Parliament's point of view, the Tsebelis and Garrett hypothesis seems to have little support empirically. The Council, in the Conciliation Committee, accepted 74% of EP second reading amendments. Moreover, contradictory to the Tsebelis and Garrett assumption, the Council does not seem to facilitate a breakdown of Conciliation in order to return to the Common Position. The fact that the Council only tried this manoeuvre once, and failed, implies that the Council does regard the EP views in the Conciliation Committee, even under codecision I. One explanation for this is that the Parliament was aware of the risk it ran to be put in a "take-it-or-leave-it" position and therefore established a policy to always reject a Council CP after a failed Conciliation Committee. So, Tsebelis and Garrett seem to be wrong, at least in the aspects investigated here. The Parliament seems to have done the right thing when arguing that the cooperation procedure should be replaced by codecision I.

¹³⁰ Corbett, Richard in Cormbez, Christophe, Steunenberg, Bernard and Corbett, Richard, Understanding the EU legislative process, European Union Politics(2000), 1/3:363-381, p. 374

5 Is Crombez Right?

In political systems that involve many actors, complex procedures and multiple veto points, the power to set the agenda is extremely important.¹³¹ The Commission alone has the formal power to initiate and draft legislation.¹³² Until Maastricht this included the right to amend or withdraw its proposal at any stage in the process and from a multi-level governance perspective; the Commission had significant autonomous influence over the agenda.¹³³ However, after Maastricht the Council and the European Parliament can request the Commission to produce proposals, although they cannot draft proposals themselves. The European Parliament struggles to make use of this competence and expand its influence over the Commission's right of initiative. The Amsterdam Treaty makes a number of changes to the codecision procedure, simplifying it and, above all, conferring prerogatives on the Parliament, which according to the EP, now has full legislative powers together with the Council.¹³⁴ In particular Article 251 of the Treaty introduces the possibility for an agreement to be reached with the Council at the first reading of the Commission's legislative proposal, and removes the right to confirm the text of its own CP. If the Conciliation Committee is unable to approve a JT, the proposed act falls. Under codecision (I and II), the Commission plays a significantly smaller role in determining the final content of legislation than under the consultation or cooperation.¹³⁵ The formal agenda setting powers of the Commission have been systematically degraded in the past decade. Crombez goes so far as to claim that the Commission plays no legislative role at all under codecision II since the Council and the Parliament can amend the Commission proposal as they wish, and then adopt these changes in the Conciliation Committee.¹³⁶ Crombez implies that the fact that the Commission is much less influential under codecision II can result in making also the Parliament less powerful under codecision II than under codecision I. This is based on the assumption that the EP and the Commission are considered to have similar preferences. Furthermore, since the EP has limited bargaining power in relation to the Council, the EP will be less powerful when the Commission's influence is decreased. Why this argument is more relevant under codecision II than under codecision I is because the Council, before codecision II, could return to its CP if the Conciliation Committee broke down. Crombez considers the CP closer to the Commission preference, and therefore closer to the Parliament preference, than the status quo since the CP is based on the initial proposal by the Commission. In codecision II the proposal falls if no JT is agreed on after Conciliation, and this is considered to be further away from the EP preference than the CP.

¹³¹ Marks, Gary et. al., *European Integration from the 80s: State-Centric v. Multi-level Governance* (1996) p. 358.

¹³² Cini, Michelle, *The European Commission* (1996) p. 13.

¹³³ Marks, Gary et. al., *European Integration from the 80s: State-Centric v. Multi-level Governance* (1996) p. 356.

¹³⁴ Imbeni, Renzo et. al., 2000, "Activity Report 1 May 1999 to 31 July 2000 of the delegations to the Conciliation Committee", p. 5.

¹³⁵ Tsebelis, George & Garrett, Geoffrey, *Legislative Politics in the European Union* (2000), *European Union Politics*, 1/1:9-36, p.25.

¹³⁶ Crombez, Christophe, *The Treaty of Amsterdam and the Codecision Procedure* (2001), p. 2.

The Parliament is satisfied with codecision II and states that it should not be amended.¹³⁷ The Parliament also claims, that codecision works and should be extended to cover all legislative acts adopted in the Council by QMV.¹³⁸ These views are opposite to what one would expect if the Crombez assumptions are correct. Is the European Parliament so out of touch with reality that it doesn't know what its doing or is there a flaw in the Crombez hypothesis? This question will be discussed in the next section.

5.1 Quantitative Evidence and Informal Contacts

In a European Parliament activity report from the Delegations to the Conciliation Committee an overview of the first year (1 May 1999 to 31 July 2000) of codecision II is presented. Out of a total of 65 dossiers concluded under the new codecision procedure, the data relating to the various stages of the procedure are as follows:¹³⁹

- a) 13 cases were concluded at first reading, or 20% of the total, on the basis of the Parliament's position, without a common position being adopted by the Council.
- b) 35 cases were concluded at second reading, or 54% of the total, either following the adoption by the Parliament of the Council's Common Position (18 procedures, 28%) or following approval by the Council of the amendments adopted by Parliament at second reading (17 procedures, 26%).
- c) 17 cases were concluded following Conciliation, or 26% of the total.

In contrast, under the old codecision procedure (November 1993 to April 1999), 165 dossiers were considered by the Parliament, of which 66 (40%) were concluded by Conciliation and 99 (60%) at second reading (of which 63 cases in which the EP did not amend the CP and 36 cases in which the Council accepted the EP amendments). During the Maastricht period, the Conciliation Committee ended in failure in three instances whilst there were no failures during the period considered here. According to the Report, an initial analysis clearly shows, that Conciliation as a percentage of total codecision procedures have declined in favour of agreements concluded at first and second reading.¹⁴⁰ In absolute terms, there has been a very substantial increase in the number of Conciliation Committees, to 17 in the year being examined compared with an average of 12 during the Maastricht period. This is due to the significant rise in the annual overall number of codecision procedures, as a result of the widening of the scope of the codecision procedure brought about by the Amsterdam Treaty.¹⁴¹ The figure of 65 cases concluded during the year in question is well above that for codecision during the Maastricht period, when there was an average of 30 codecision procedures a year, and indicates an increase of more than 100% in the annual average.¹⁴²

The above figures show how a real awareness has developed on the part of the EP of the possibilities provided by the Amsterdam Treaty of concluding the legislative process at first or second reading.¹⁴³ According to the EP report the reduction in the number of conciliation

¹³⁷ Imbeni, Renzo et. al., 2000, "Activity Report 1 May 1999 to 31 July 2000 of the delegations to the Conciliation Committee", p. 21.

¹³⁸ Ibid. p. 23.

¹³⁹ Ibid. p. 6.

¹⁴⁰ Ibid. p. 6.

¹⁴¹ Ibid. p. 6.

¹⁴² Ibid. p. 6.

¹⁴³ Ibid. p. 9.

procedures in percentage terms noted, has been possible in large measure thanks to the efforts made by the Parliament and the Council. Efforts to look for, and try to reach, an agreement during the early stages of the legislative procedure in order to bring the process to a conclusion as quickly as possible. The three institutions are able, in the early stages of discussions, to identify sensitive aspects of proposed legislation. The Crombez argument, that the Parliament is less powerful in the legislative process under codecision II than under codecision I because the lack of bargaining power of the EP in the Conciliation Committee, looks weak when noticing that the frequency of Conciliation Committees have decreased. (Since this argument is built on the assumption that the EP is less powerful under codecision II since it has little bargaining power in relation to the Council in the Conciliation Committee.)

In the cases that do reach the Conciliation Committee, Crombez thus predicts that the EP has little bargaining power compared to the Council. Due to the fact that the Commission is not present in Conciliation, and that the EP preferences are considered closer to the Commission's preferences than to the Council's preferences, causes, Crombez argues, that the outcome of the Conciliation Committee will be further away from the EP's preferences now than under codecision I.

The EP report however, interestingly shows a development in the opposite direction. During the period in question a new development was introduced where representatives from the Council, the Parliament and the Commission meet in so called Trialogues to prepare, in an informal way, for meetings of the Conciliation Committee.¹⁴⁴ According to the EP, Trialogues ensures greater continuity in relations between the Parliament and the Council and strengthens the Parliament's role in the codecision procedure.¹⁴⁵ This type of meeting is currently undergoing a process of change. According to the EP report the Trialogues are replacing the Conciliation Committee. By way of statistics, during the period examined in the EP report, 18 Conciliation Committee meetings, 31 Trialogues and 48 delegation meetings were held.¹⁴⁶ Not only has the frequency of Conciliation Committees (where, according to Crombez, the weakness of the Parliament is exposed) decreased, but they have been replaced by Trialogues where the Commission is present and the Parliament's role is strengthened.

As mentioned several times now, Crombez claims that the EP has little bargaining power compared to the Council in the Conciliation Committee. However, when quantitatively analysing the rate of acceptance of EP amendment by the Council in the Conciliation Committee a somewhat different picture can be discerned. Of the 281 amendments adopted by the Parliament at the second reading:¹⁴⁷

- a) 66, or 22%, were accepted as they stood (compared with 27% during the Maastricht period)
- b) 165, or 59% were accepted on the basis of a compromise (compared with 42% during the Maastricht period)
- c) 16, or 7%, were accepted on the basis of a declaration (compared with 5% during the Maastricht period)
- d) 34 amendments, or 12%, failed to be accepted by the end of the negotiations (compared with 22% during the Maastricht period).

¹⁴⁴ Imbeni, Renzo et. al., 2000, "Activity Report 1 May1999 to 31 July 2000 of the delegations to the Conciliation Committee", p. 13ff.

¹⁴⁵ Ibid. p. 13.

¹⁴⁶ Ibid. p. 18.

¹⁴⁷ Ibid. p. 19f.

These data show that 88% (a+b+c) of the Parliament's amendments were accepted in Conciliation as they stood or in the form of a compromise against 74% under Maastricht. The figures speak for themselves. The Parliament power, at least measured as the number of amendments accepted, has certainly not decreased since codecision II entered into force. Not even in this respect Crombez' hypothesis seems to find support empirically.

These facts indicate that the Crombez hypothesis, claiming that the Commission has no influence at all under codecision II can be questioned. There has been a decrease of negotiations concluded in a Conciliation Committee in percentages in favour of concluded cases in the first and the second reading. The compromises between the Council and the Parliament in the first and the second reading are still "only" amendments to the original Commission proposal. The cases that do reach Conciliation Committee are to an increasing degree prepared in the Trialogues where the Commission is present and the Parliament is strengthened. Moreover the Parliament seems to have increased its own power in the Conciliation Committee, regardless of the Commission's role, both towards the Council and the Commission, as the acceptance rate of amendments has increased from 74% under Maastricht to 88% under Amsterdam. An additional circumstance, that can be considered to contradict the general assumption by Crombez (that the Parliament is less powerful under codecision II than under codecision I), is the fact that the Parliament under codecision II for the first time has succeeded in requesting an initiative and bring to adoption a legislative proposal of its own.

Steunenberg argues, that choosing the rate of successful amendments by the EP as the dependent variable is only a procedural aspect of decision making, which does not say much about the outcome of decision making in terms of policy. This perspective on decision making creates a kind of "formalistic bias", which neglects practices and other informal working methods.¹⁴⁸ There is thus a need for qualitative studies of informal practises. Therefore, to understand how the EP managed to request an initiative, and bring to adoption a legislative proposal, the case of Motor Insurance will be analysed next.

5.2 Motor Insurance – a Disciplined-Configurative Case

This case is interesting because for the first time a legislative initiative of the European Parliament, pursuant to Article 192 of the Treaty (The European Parliament may, acting by a majority of its Members, request the Commission to submit any appropriate proposal...), has led to the adoption of a European directive; the 4th "Motor Insurance" directive.¹⁴⁹ The fact that this was concluded under codecision II, although the EP had the formal possibilities to "initiate" proposals already under codecision I, contradicts the general assumption by Crombez that the EP is less powerful under codecision II than codecision I.

The Parliament invited the Commission to propose a directive on motor accidents occurring outside the victim's country of origin in October 1995 and the Commission did so in 1997. The directive was finally agreed upon on the 16 of May 2000. However, the mere fact that the EP for the first time initiated a proposal through the Commission and agreed on a

¹⁴⁸ Steunenberg, Bernard in Cormbez, Christophe, Steunenberg, Bernard and Corbett, Richard, Understanding the EU legislative process, European Union Politics(2000), 1/3:363-381, p. 370.

¹⁴⁹ Imbeni, Renzo et. al., 2000, "Activity Report 1 May1999 to 31 July 2000 of the delegations to the Conciliation Committee", p. 5.

Joint Text with the Council in the Conciliation Committee, doesn't say anything about how powerful the Parliament was within this process. How much of the initial proposal was realised in the final directive? Did the Parliament, the Commission and the Council have any substantial disagreements, and which institution managed to impose its will on the other two on these issues of disagreement? These kinds of questions are to be discussed next as the case of Motor Insurance is analysed in order to at least to some extent avoid the "formalistic bias" criticised by Steunenberg. This is carried out through the realisation of a disciplined-configurative study where the general hypothesis is illustrated. To enable an appreciation of the value of the theoretical hypotheses by Crombez, the proposal will be followed from initiation to adoption and the power of the Parliament will be estimated in a qualitative sense. The process in general terms can also be followed in Appendix II.

5.2.1 Initiation

Road accidents in which the owners of the vehicles involved reside in different states and the vehicles are registered in different states may take one of two forms. Either the accident occurs in the victim's state of residence ("incoming motorist"), or it occurs in the country of residence of the person causing the accident or in another state ("visiting motorist"). In a report from the EP Committee on Legal Affairs and Citizens' Rights on the initial proposal from 1998, it was argued that in either case claims-settlement had to be made easier for the sake of the victims. According to the report it was often difficult to identify the vehicle owner and his insurer, as the relevant data were not always available from a central point. The victim had to make his claim in a foreign language. The other party's insurer frequently delayed the settlement of claims in the hope that the victim would eventually abandon his claim. Claims taken to court abroad were at least 15% more expensive and in general lasted up to eight years.¹⁵⁰ This is an economically important issue since it covers some 500,000 cases a year.¹⁵¹

The first case, that of the "incoming motorist", was dealt with in 1991 on the basis of a recommendation by the UN Economic Commission for Europe by a private law agreement between the national motor insurance associations. This procedure, known as the Green Card System, works on the basis that the insurance associations authorise each other to settle claims for damage caused by *incoming* motorists. The association, to which the insurer liable for a claim belongs, compensates the association settling the claim.¹⁵² The Green Card System is primarily, but not exclusively, a European System. It presently includes most, but not all European Countries, the west of the Urals, the Caspian Sea and countries bordering the Mediterranean Sea. A total of 43 countries. (For a complete list of members, see Appendix 3) This system was considered to work to general satisfaction, but did not solve the problem of the case of the "visiting motorist". A draft agreement to have such cases similarly settled via a private agreement between the national insurance associations was prepared but not concluded, as one association was unable to sign it. All parties considered that only a universally applicable solution would be appropriate. Moreover, according to the report, all parties regarded the introduction of a direct right of action by the victim against the insurer under law to be necessary, which would not be possible by way of a private agreement. Therefore the Parliament regarded a Community harmonisation directive indispensable.¹⁵³

¹⁵⁰ Rothley, Willi, 1998. European Parliament Document no. A4-0267/98. P. 17.

¹⁵¹ Europe Daily Bulletins, No 7720-19/5/2000, Agence Europe.

¹⁵² Rothley, Willi, 1998. European Parliament Document no. A4-0267/98. P. 18.

¹⁵³ Ibid. P. 18.

To start the process, the Committee on Legal Affairs and Citizens' Rights for the first time in the history of the Parliament used the instrument of legislative initiative pursuant to article 138b of the EC Treaty, which had been introduced by the Maastricht Treaty. The committee submitted a draft resolution to the Parliament, which contained all the components for a directive to that effect. The Parliament adopted this initiative on 26 October 1995 and it was also welcomed by the insurance industry, the automobile clubs and the accident-victims organisations. This led to the Commission proposal on Motor Insurance presented on 10 October 1997, which contained the basic points of the resolution adopted by the European Parliament.¹⁵⁴ The objective of the proposal was thus to improve the remedies available to persons who are temporarily in a Member State other than their state of residence, and suffer loss or injury in that Member State caused by a vehicle registered and insured in a Member State other than their state of residence.¹⁵⁵ If for example an Italian travelling in a third country like Switzerland, or another EU state like Germany, has an accident and suffers damage caused by a vehicle registered or insured in France, the Italian shall have easy access to the insurance company which is regarded as financially liable.

The solution proposed by the Parliament to the problem of "visiting motorists" can be described in three stages:

-First of all the Parliament stressed the introduction in national laws of a direct right of action. This is a right enabling the victim to make a direct claim and if necessary take legal action against the insurer providing cover for the vehicle as well as the driver responsible for the accident and the vehicle owner. This was the only point affecting substantive law in the Member States associated within the proposal.¹⁵⁶

-Secondly, every insurance undertaking operation in the Community must be required to appoint a representative in each other Member State, responsible for settling claims on its behalf and for its account, and in the language of the respective countries. This ensures that the victim can deal with somebody in that persons own country.¹⁵⁷

-Thirdly, the establishment of information centres will enable victims at any time to identify the appropriate claims representative.¹⁵⁸

In its proposal the Commission adopted these three elements and added two others:

-It expanded the role of the information centres to make them responsible not only for disclosing the name of the relevant claims representative, but also for keeping a register of motor vehicles registered, of insurance undertakings providing cover for those vehicles, the numbers of the insurance policies involved and the names and addresses of the insured.

-The Member States are also required to establish *compensation bodies* required to act within two months of the presentation of a claim by a victim if the insurer has failed to appoint a claims representative, or the insurer or its representative has failed to make an offer of compensation or to provide a reply with reasons to a claim within three months.¹⁵⁹

¹⁵⁴ The Legislative Observatory, Reference no. COD/1997/0264, p. 7.

¹⁵⁵ Ibid. p. 7.

¹⁵⁶ Rothley, Willi, 1998. European Parliament Document no. A4-0267/98. P. 18.

¹⁵⁷ Ibid. P. 18.

¹⁵⁸ Ibid. P. 19.

¹⁵⁹ Ibid. P. 19.

5.2.2 Parliament Opinion, 1st Reading

On 30 June 1998 the Parliament decided on a total of 36 amendments.¹⁶⁰ The main amendments of the Commission proposal suggested by the Legal Affairs Committee were:¹⁶¹

- An extension of the scope of the directive to include non-EU countries. (No. 15a)
- An expansion of the role of the information centres to make them responsible for keeping records of motor vehicles registered, insurance undertakings, insurance policy numbers and the names and addresses of insurance policy holders. (No. 28-32) These amendments defer little from the Commission proposal, the intention is to clarify the text for the reader.¹⁶²
- A requirement for Member States to establish compensation bodies which must act within two months of the submission of a claim by a victim, if the insurer has failed to appoint a claims representative. The amendment makes clear that the body may not be a government body and the right to conclude an agreement between compensation bodies. (No. 33)
- A series of deadlines designed to ensure that the accident victims are compensated rapidly. (No. 26-27)

On a debate in plenary on 15 July 1998 Commissioner Monti congratulated the Parliament on the initiative it had taken to call on the Commission to develop the proposal in question. Furthermore he indicated that the Commission may accept wholly or partly 20 of the 36 amendments. However, concerning No.15a, Mr. Monti rejected the extension of the guarantee concerning accidents that take place in a third country, because this fell within the scope of international agreements.¹⁶³ The Commissioner stated that he agreed with 5 of the amendments in principle but that he could only accept them if certain changes were made. 8 amendments were rejected because, instead of improving the initial proposal, they risked making it less clear and 3 amendments were just not accepted.¹⁶⁴

On 16 July 1998 the Parliament voted on the 1st reading amendments. The Parliament regarded the indications from Mr. Monti and some amendments were therefore changed or excluded from the Opinion. The most controversial issue of the 1st reading Opinion was that the EP chose to keep amendment 15a, calling in particular for an extension of the scope of the directive to non-member countries although Mr. Monti had rejected it. According to the Parliament there was no apparent reason why an accident between an Italian and a Frenchman but occurring in Switzerland should not be covered by the directive.¹⁶⁵

On 31 March 1999 the Commission presented which Parliament amendments it accepted. The Commission's amended proposal took account of the Parliament's opinion to the extent that the measure or the text makes reference to the operation and shortcomings of the green card system.¹⁶⁶ Amendment 15a was not accepted.

¹⁶⁰ Rothley, Willi, 1998. European Parliament Document no. A4-0267/98. P. 2-22

¹⁶¹ The Legislative Observatory, Reference no. COD/1997/0264, p. 7.

¹⁶² Rothley, Willi, 1998. European Parliament Document no. A4-0267/98. P. 20.

¹⁶³ The Legislative Observatory, Reference no. COD/1997/0264, p. 6.

¹⁶⁴ Ibid. p. 6.

¹⁶⁵ Rothley, Willi, 1998. European Parliament Document no. A4-0267/98. P. 20.

¹⁶⁶ The Legislative Observatory, Reference no. COD/1997/0264, p. 5.

5.2.3 Council Common Position

21 May 1999 the Council presented its Common Position. The CP corresponded substantially to the Commission's amended proposal and took account of most of the amendments requested by the EP. It is however worth noting that the Council did not accept the extension of the field of application of the directive to third countries.¹⁶⁷ The Common Position was accepted by the Commission on 1 October 1999 and the CP was considered to retain the essence of the Commission's initial proposal. The Commission agreed with the changes introduced by the Council and regarded that they would improve the quality of the legislative text.¹⁶⁸

Consequently there remained one point of divergence between the CP and the Parliament's opinion: amendment 15a. In a communication from the Commission to the Parliament the Commission explains why neither the Commission nor the Council were able to accept this amendment.¹⁶⁹

-Firstly, some problems were related to applicable law. Since, in most cases, the applicable law will be the law of the Member State of the accident, the result of introducing amendment 15a would, according to the Commission, imply that it would not be sufficient for the claims representative to be familiar with the basic principles of motor insurance legislation in the 15 Member States, but he would also have to carry out additional researches on a case by case basis regarding the laws of any third country every time such a case should come up. This would, argued the Commission, imply additional costs for the insurance industry and rather slow settlement of the injured party's requests.

-Secondly, the Commission held that problems might arise related to attribution of jurisdiction and competence of national courts to judge the dispute in cases where problems need to be solved before the courts.¹⁷⁰

In sum the Commission takes the view that the CP retains the key elements of the Commission's proposal as well as those of the EP amendments that were accepted by the Commission and incorporated in its amended proposal. The Commission fully supported the Common Position.¹⁷¹

On 30 November 1999 the Parliament accepted the CP subject to a number of amendments. One of the most important amendments remained. In the recommendation for second reading the Committee on Legal Affairs and the Internal Market state, that despite the counter-arguments put forward by the Commission and the Council, it seemed "both reasonable and feasible" for an accident between to EU citizens in a third country to be dealt with according to the rules of the directive.¹⁷² This was considered a logic extension of the directive, and that such a move was broadly supported by the insurance industry.¹⁷³

¹⁶⁷ Ibid. p. 4f.

¹⁶⁸ Celex: no. 51999PC1553S, 01/10/1999, p. 2.

¹⁶⁹ Celex: no. 51999PC1553S, 01/10/1999, p. 2.

¹⁷⁰ Ibid. p. 3.

¹⁷¹ Ibid., p. 11.

¹⁷² Rothley, Willi (1999), European Parliament Document no. A5-0086/1999, p. 16.

¹⁷³ The Legislative Observatory, Reference no. COD/1997/0264, p. 4.

5.2.4 2nd Reading

On 15 December 1999 the EP approved the Council's Common Position subject to among others, the amendment that aim to extend the field of application of the directive so that it covers accidents that take place in third countries as long as the vehicles involved are registered in the EU.¹⁷⁴ By adopting these amendments the EP accepted the recommendations by the Committee on Legal Affairs and the Internal Market.

The Commission pronounced its opinion on the 2nd reading vote of the EP on 22 February 2000. Major amendments adopted in the 2nd reading concerned for example the insurance undertaking's right to choose its claims representative, the injured party's right to use the language of the Member State of his/her residence and the injured party's right of information. A total of 19 amendments were adopted at second reading.¹⁷⁵ The Parliament amendments designed to extend the scope of application were rejected again, but the reasons for the rejection were modified to a certain extent.¹⁷⁶ The mechanism of compensation in the motor insurance directive is built on the Green Card System. According to the Commission, it cannot be extended to third countries, which do not belong to that system and which do not recognise the validity of the European insurance. The application of the directive, in particular the provision granting direct right of action against insurance undertakings, is argued to in some cases conflict with third country law. Therefore the amendments concerning accidents in third countries could not be accepted in the form they had. However, the Commission declared that it may consider an extension of the scope of the directive, which take account of the preceding considerations. "Any compromise should clearly identify the third countries to which the directive can be effectively extended. Furthermore, any solution would have to avoid conflicting with third country legislation".¹⁷⁷

Since the Council and the Commission were unable to approve all of the Parliament's amendments a Conciliation Committee was convened on 9 March 2000.

5.2.5 Conciliation Committee and 3rd Reading

The attempts to resolve the divergence of amendment 15a during the EP 2nd reading failed because of the Council's opposition, based on an argument that the enlargement of the scope of the directive would create extra-territorial effects as a result of Community legislation.¹⁷⁸ The Conciliation Committee reached an agreement on a Joint Text for the directive on civil liability in respect of the use of motor vehicles. After breaking the deadlock in the Council concerning the most difficult question, of amendment 15a, the Conciliation procedure ran relatively smoothly.¹⁷⁹ The problem was resolved by enlarging the scope of the directive to accidents occurring in third countries that are members of the green card system. This will in practise cover over 90% of third country accidents involving Community parties.¹⁸⁰ The Council also accepted the EP's amendments concerning the rights of the insurance

¹⁷⁴ Ibid., p. 3.

¹⁷⁵ Rothley, Willi, (2000). European Parliament Document no. A5-0130/2000, p. 7.

¹⁷⁶ Celex: no. 52000PC0094(01), 22/02/2000, p.3.

¹⁷⁷ Celex: no. 52000PC0094(01), 22/02/2000, P. .3.

¹⁷⁸ Rothley, Willi, (2000). European Parliament Document no. A5-0130/2000, p. 7.

¹⁷⁹ Ibid. p. 7

¹⁸⁰ The Legislative Observatory, Reference no. COD/1997/0264, p. 3.

undertakings and the injured parties. For the entry into force of Article 6 concerning compensation bodies, a satisfactory compromise was found.¹⁸¹

On 16 May 2000 the Parliament in its third reading approved the Joint Text settled by the Conciliation Committee. The directive was published in the Official Journal on 16 May and entered into force on 20 July 2000.¹⁸²

5.2.6 Motor Insurance- A Success for the Parliament

The fact that this directive was dealt with under codecision II, although the EP had the formal possibilities to initiate proposals also under codecision I, contradicts the general assumption by Crombez that the EP is less powerful under codecision II than codecision I. The Parliament was also successful in making the Commission and the Council accept its amendments. The Commission accepted wholly or in a changed form 25 of the EP's 36 amendments to the initial proposal and the Council based its Common Position largely on the amended proposal. Also, a number of EP amendments of the Common Position were accepted by the Council. The only major divergence was on amendment 15a which was initially rejected by both the Commission and the Council. However, this question was finally solved in the Conciliation Committee and the resulting compromise was a good deal for the Parliament. So, it seems like both in terms of the number of amendments accepted, and the importance of the amendments accepted, the Parliament proved to be powerful in the case of Motor Insurance. The fact that the Parliament disagreed with the Council and the Commission on an issue that the two of them agreed on indicate that the Parliament not always has the same preferences as the Commission, and even when the Commission sides with the Council the Parliament can in fact impose its will. The EP is not always weak compared to the Council in the Conciliation Committee.

5.3 Summing Up

The Parliament's support for the replacement of codecision I with codecision II seem to be well grounded empirically. This runs counter to Crombez' hypothesis claiming that the Parliament has less influence under codecision II than under codecision I since the Commission has no influence at all under codecision II. First of all the Commission does not seem entirely powerless after Amsterdam. There has been a decrease of negotiations concluded in a Conciliation Committee in percentages in favour of concluded cases in the first and the second reading. The compromises between the Council and the Parliament in the first and the second reading are still "only" amendments made on the original Commission proposal. The cases that do reach Conciliation Committee are to an increasing degree prepared in the Trialogues where the Commission is present and the Parliament is strengthened. Moreover the Parliament seems to have increased its own power in the Conciliation Committee, regardless of the Commission's role, both towards the Council and the Commission, as the acceptance rate of amendments has increased from 74% under Maastricht to 88% under Amsterdam. An additional critique is the fact that the EP for the first

¹⁸¹ Ibid. p. 3.

¹⁸² Official Journal of the European Communities, 20.7.2000. "Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000. L 181/65.

time "initiated" a directive under codecision II, although the EP had the formal possibilities to do so already under codecision I. This contradicts the assumption by Crombez that the EP is less powerful under codecision II than codecision I. It also seems like both in terms of the number of amendments accepted, and the importance of the amendments accepted, the Parliament proved to be powerful in this case. The fact that the Parliament disagreed with the Council and the Commission on an issue that the two of them agreed on, indicate that the Parliament not always has the same preferences as the Commission. Even when the Commission sides with the Council, the Parliament can in fact impose its will.

6 Conclusion

Due to the democratic deficit, a discrepancy between the powers transferred to the EU from the national Parliaments and the control of the EP over these powers, the legitimacy of the European Union has been questioned. The EP has however successively increased its powers during the last two decades. This thesis focuses on the reforms of the legislative procedures and the consequences of these reforms for the power of the European Parliament. According to multi-level governance theory the Council was the sole legislative authority until 1987 when the Single European Act came into force. The extension of qualified majority voting has however changed this. Collective state control exercised through the Council has diminished and according to Marks et. al. this is due to the growing role of the EP. The SEA, Maastricht and Amsterdam established cooperation and codecision have transformed the legislative process from a simple dominated process into a complex balancing act between Council, Parliament and Commission. Different analysts within the multi-level governance field have very different opinions of the importance of the new procedures. Tsebelis and Garrett consider the SEA and the Amsterdam Treaty as the principal steps towards a more powerful Parliament and find that the Maastricht Treaty actually decreases the power of the Parliament. Crombez, by contrast, regard the Maastricht Treaty as the main step and consider the Amsterdam Treaty to possibly decrease the power of the EP. In order to answer the question of the essay (From Cooperation to Codecision – Increased power for the European Parliament?) the views of Tsebelis and Garret, and Crombez, have been tested empirically since they imply quite different answers. If Tsebelis and Garrett are right about that cooperation makes the EP more powerful than codecision I, and Crombez is right about that codecision I makes the EP more powerful than codecision II, the recent procedural development, to move areas of legislation from cooperation to codecision, and substitute codecision I with codecision II does not make sense from the point of view of the EP.

The Tsebelis and Garret hypothesis was tested against quantitative empirical facts covering all the codecision procedures carried out under the Maastricht Treaty. Their view, that the EP is less powerful under codecision I than under cooperation, finds little support. A qualitative discussion of the quantitative facts explains that Tsebelis and Garrett may have been right in theory but in the practical reality the EP sought to make the best of its situation and was aware of the problems pointed out by Tsebelis and Garrett. Therefore the Parliament managed to act just as powerful, if not more, under codecision I than under cooperation.

The Crombez hypothesis was tested against quantitative facts covering the codecision procedures carried out since the Amsterdam Treaty. Crombez' view, that the EP is less powerful under codecision II than under codecision I, since the Commission has no influence under codecision II, also finds little support. The results of the investigation show that the Commission still has power after Amsterdam. The Parliament also seems to have increased its own power in the Conciliation Committee, regardless of the Commission's role, both towards the Council and the Commission. The test of the Crombez hypothesis was completed with a qualitative case study. Through the analysis of the Parliament proposal for a 4th Motor Insurance directive not just the rate of successful amendments made by the EP but also practices and other informal working methods were captured. The case study shows that both in terms of the number of amendments accepted and the importance of the amendments accepted, the Parliament proved to be powerful in the case of Motor Insurance. The findings of this thesis thus points at one direction, Tsebelis and Garrett, and Crombez, are wrong in the aspects investigated. The EP seems to have increased its power first by wanting

codecision I to replace cooperation and then by arguing that codecision II should be the only legislative procedure. These results are to be seen in the light of the method and material used to analyse the problem. With another theoretical or methodological approach the results may have been different. The answer of the question as it has been investigated here however is: Yes! The Parliament has increased its powers, first through the introduction of the cooperation procedure, then again as codecision I was introduced and finally co-legislates with the Council under codecision II. The EP seems to be on the right path towards eliminating the democratic deficit.

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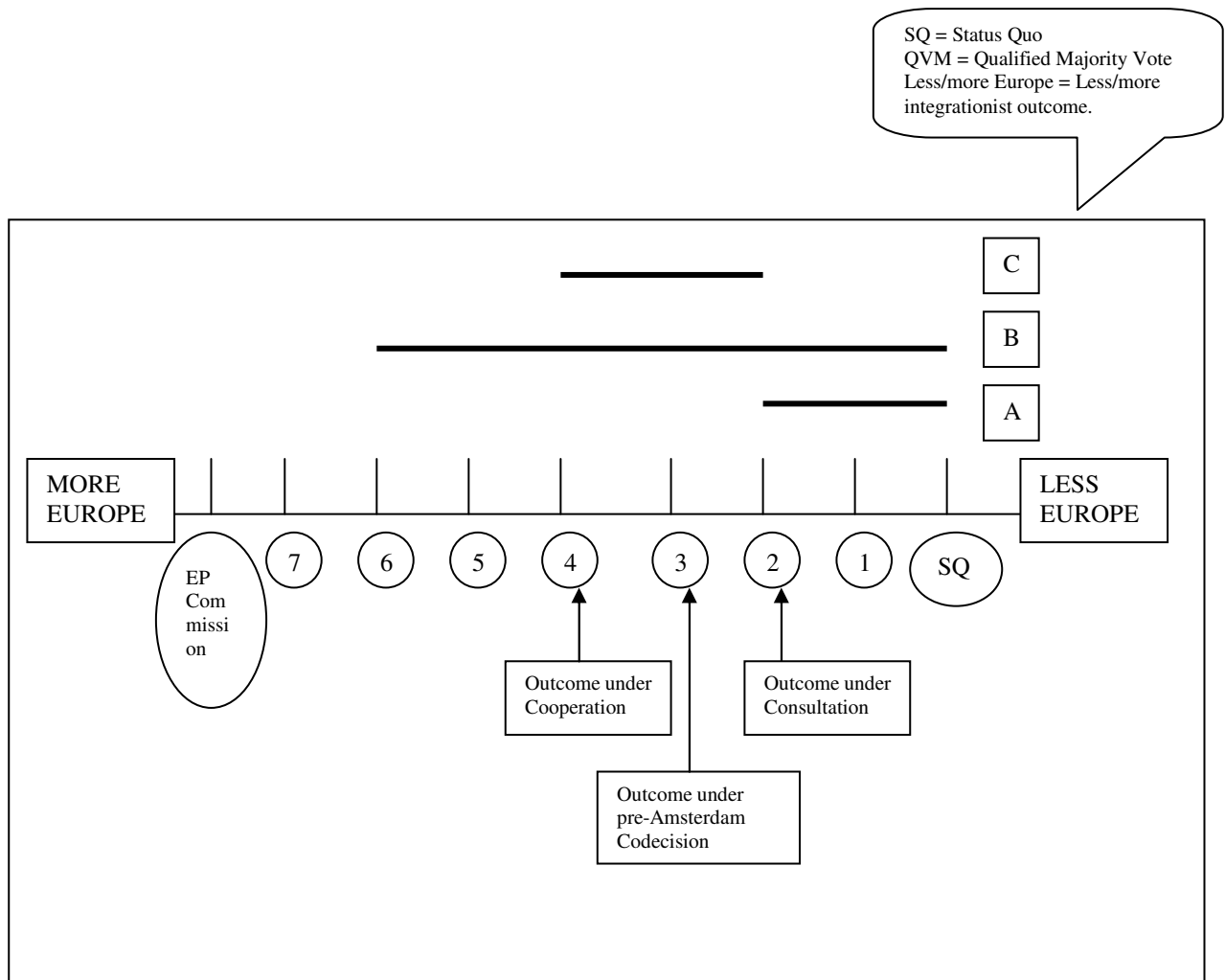
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Legislative Observatory (<http://www.db.europarl.eu.int/oeil>), Procedure View: Motor Insurance reference COD/1997/0264.

Appendix 1 - Tsebelis-Garrett Model of EU Legislative Bargaining



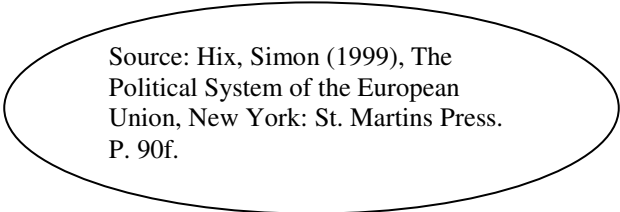
- A: (SQ-2) Proposals preferred by the Council to SQ, under unanimity.
- B: (SQ-6) Proposals preferred by the Council to SQ, under QMV.
- C: (2-4) Proposals preferred to the Council under QMV to "most integrationist" policy under unanimity

Under **Consultation** the final decision is by the Council, but the Commission and the EP will want to propose legislation that is as close to their "ideal policy positions" as possible. However, with unanimity in the Council, the least integrationist member state is likely to veto any proposal that is not closer to its ideal point (at position 1) than the SQ. As a result the most likely outcome is legislation that is more integrationist than 1, but closer to 1 than the SQ, for example at the position of member state 2 in the figure.

Under **Cooperation** the final decision is again with the Council, in the second reading. This time, however, the Council decides whether to accept EP amendments by QMV or reject them (and adopt their own proposals) by unanimity. From the analysis of the consultation procedure, for the Council to agree on a policy by unanimity the legislation must be supported by the least integrationist member state (at position 1), but from the EP's perspective it simply has to gain the support of member state 3 for the Council to support its proposal by QMV, as

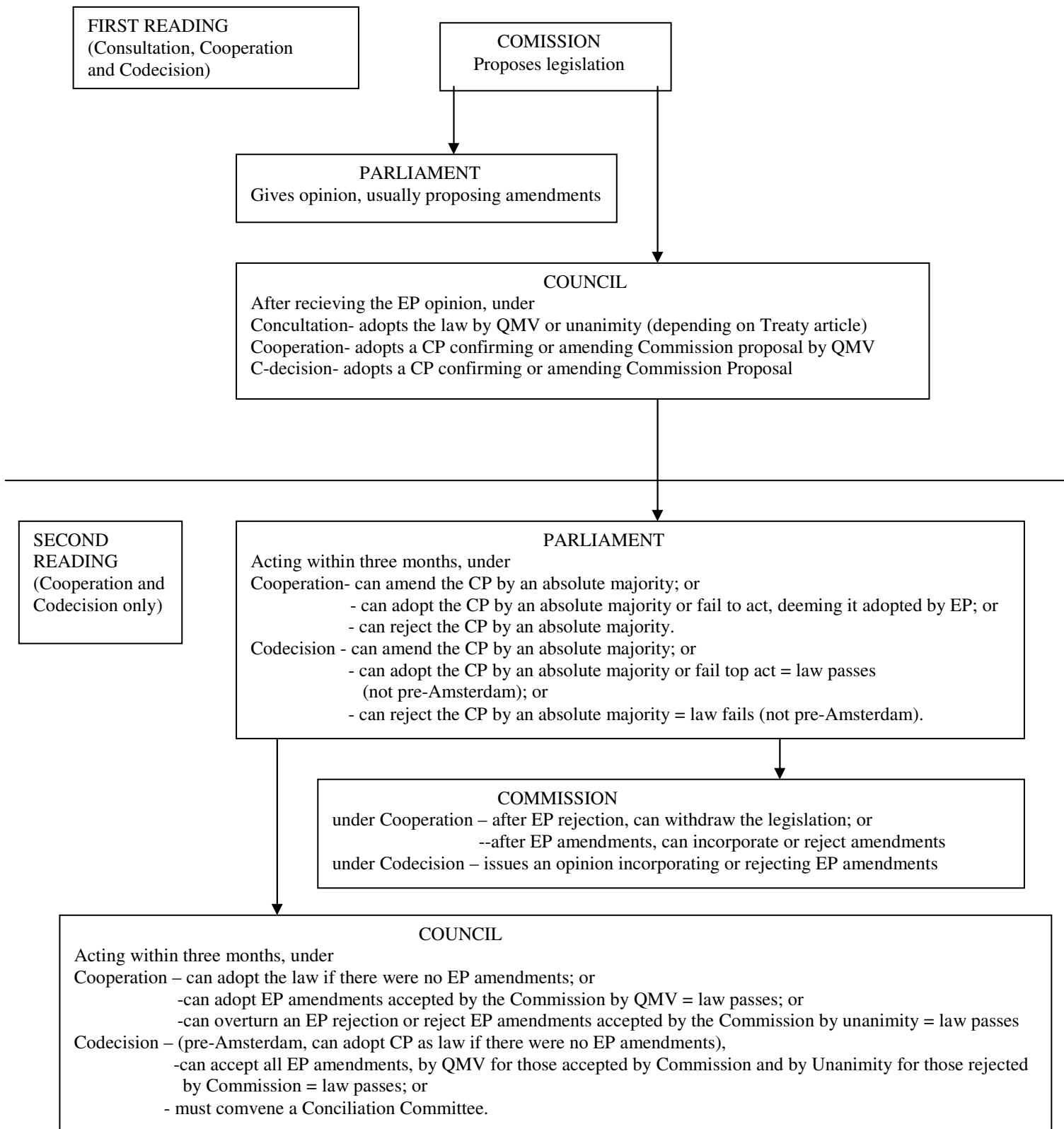
member state 3 is “pivotal” in creating a winning coalition (of states 7, 6, 5, 4 and 3). Member state 3 prefers any policy proposal in the range 6-SQ to SQ. However, if the EP makes a proposal at point 6, the Council will be able to agree at point 2 by unanimity (which member state 3 will support as it is closer to its ideal point than position 6), and consequently reject the EP’s proposal. Nevertheless, the EP can make a proposal at position 4, which member state 3 will support, as it is indifferent between positions 4 and 2 (they are equally as far from 3’s ideal policy). According to Tsebelis, under cooperation the EP is the “conditional agenda-setter”: the EP can make proposals that the Council is more likely to support than reject, and hence produce legislation that is more integrationist than under consultation.

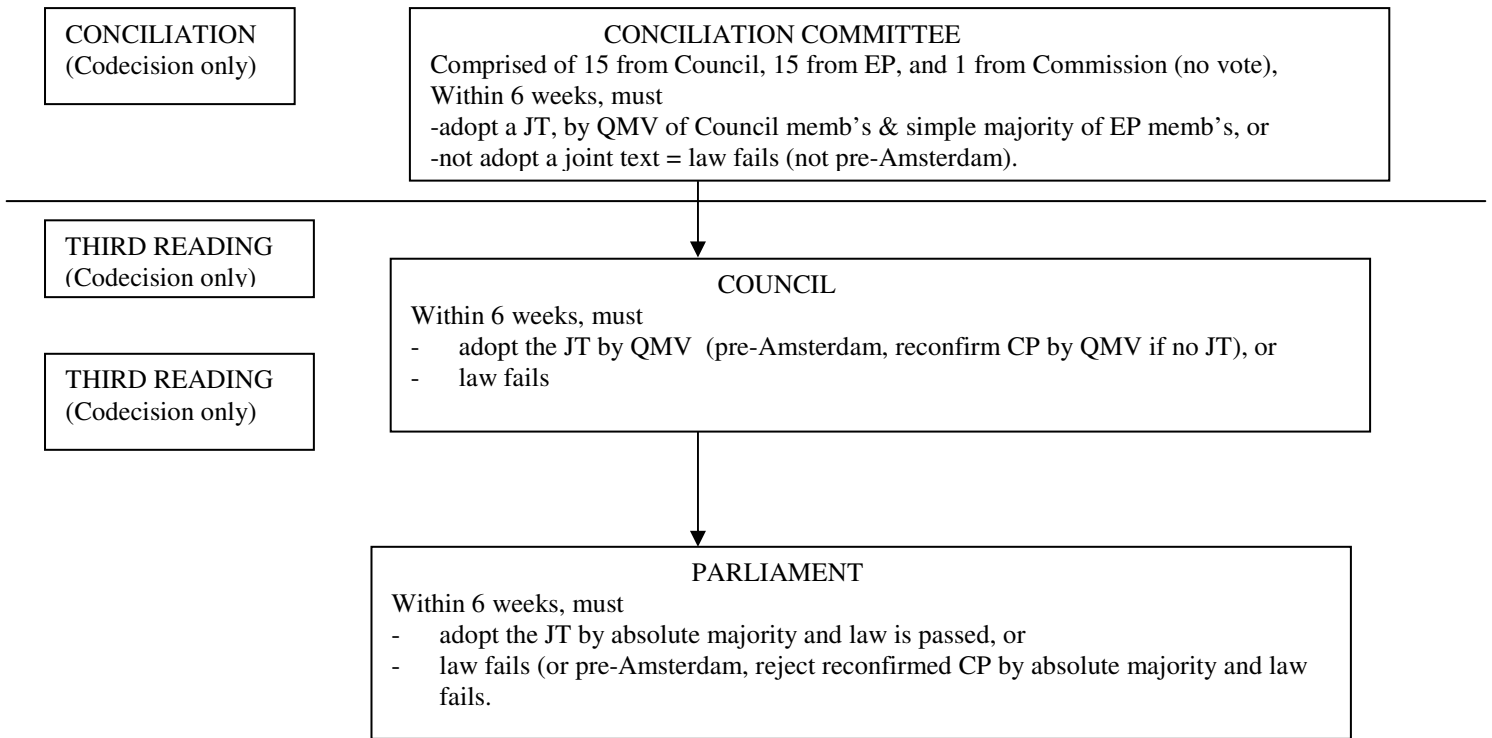
Under *Codecision* as established by the Maastricht Treaty, the EP has the last word instead of the Council, in the third reading. At face value this gives the EP more power than under the cooperation procedure, but the Tsebelis and Garrett model predicts that agenda-setting power under codecision I lies with the Council rather than the EP. In fact, the Council has an incentive to facilitate breakdown in the Conciliation Committee, so that it can reaffirm its original CP. In this situation the EP only has an “unconditional veto”: it must either accept the Council CP or reject the CP and accept the SQ. As the figure shows, however, because the EP is more integrationist than any member state, it will prefer any proposal by the Council to the SQ. Because the Council can adopt the CP by QMV, the CP is likely to be located at position 3: the pivotal actor under this decision rule. The Council can make this “take-it-or-leave-it” proposal to the EP, which the EP will invariably accept. The likely outcome under codecision is thus, according to Tsebelis and Garrett, less integrationist than under cooperation. Tsebelis consequently argues that by introducing the codecision procedure, the Maastricht Treaty actually reduced rather than strengthened the power of the EP.



Source: Hix, Simon (1999), *The Political System of the European Union*, New York: St. Martins Press. P. 90f.

Appendix 2 - The EU Legislative Process





Source:

Hix, Simon (1999).
 The Political System of the European Union,
 New York: St. Martins Press. P. 66-87

Appendix 3 - Member States of the Green Card System

CODE	COUNTRIES	BUREAUX	
A	AUSTRIA	Verband der Versicherungsunternehmen	[43](1) 711 560
AL	ALBANIA	Instituti I Sigurimeve	[355](42)34189
AND	ANDORRA	Oficina Andorrana d'Entitats	[376] 86 00 17
B	BELGIUM	Bureau Belge des Assureurs Automobiles	[32](2) 287 18 11
BG	BULGARIA	Bulstrad Insurance and Reinsurance plc	[359](2)9856 6400
BIH	BOSNIA-HERZEGOVINA	Biro Osiguranja Bosne I Hercegovine	[387](71)213 674
CH	SWITZERLAND	Swiss National Bureau of Insurance	[41](1) 628 8930
CY	CYPRUS	Motor Insurers' Fund	[357] (2) 763 913
CZ	CZECH REPUBLIC	Ceska Pojistovna A.S.	[420](2)2405 3101
D	GERMANY	Deutsches Buro Grune Karte E.V.	[49](40)33 44 00
DK	DENMARK	Dansk Forening for International Motorkoretojsforsikring	[45](33) 137 555
E	SPAIN	Oficina Española de Aseguradores de Automoviles	[34](91)446 0300
EST	ESTONIA	Eesti Liikluskindlustuse Fond	[372]626 4602
F	FRANCE	Bureau Central Français	[33](1)53 32 24 51
FIN	FINLAND	Liikennevakuutuskeskus	[358](9) 680 401
GB	UNITED KINGDOM	Motor Insurers' Bureau - UK	[44](1908)830 001
GR	GREECE	Motor Insurers' Bureau - Greece	[30](1)32 23 324
H	HUNGARY	Hungarian Motor Insurance Bureau	[36](1) 266 1928
HR	CROATIA	Hrvatski Ured Za Osiguranje	[385](1)4616755
I	ITALY	Ufficio Centrale Italiano (U.C.I.)	[39] (02) 34 96 81
IL	ISRAEL	Israel Insurance Association - The Green Card Bureau	[972](3)5677 333
IR	IRAN (ISLAMIC REP. OF)	Bimeh Markazi Iran - Green Card Bureau of Iran	[98](21)2050001-5
IRQ	IRAQ(Suspended)	National Insurance Company	[964](1)886 30 00
IRL	IRELAND	Motor Insurers' Bureau - Ireland	[353](1) 676 99 44
IS	ICELAND	Alþjóðlegar Bifreidatryggingar á Islandi	[354] 568 1612

L	LUXEMBOURG	Bureau Luxembourgeois des Assureurs	[352] 457 304
LV	LATVIA	LR Satiksmes Birojs	[371] 724 1822
M	MALTA	Malta Green Card Bureau	[356] 232 640
MA	MOROCCO	Bureau Central Marocain des Sociétés d'Assurances	[212](2) 39 18 57
MD	MOLDOVA	"ARCA" National Agency of Insurers	[373] 2 212 258
MK	F.Y.R.O.M.	National Insurance Bureau	[389](91)13 61 72
N	NORWAY	Trafikkforsikringsforeningen	[47](22) 04 85 00
NL	THE NETHERLANDS	Nederlands Bureau der Motorrijtuigverzekeraars	[31](70)3408 280
P	PORTUGAL	Gabinete Português de Carta Verde GPCV	[351](1)721 2923
PL	POLAND	Polish Motor Insurance Bureau	[48](22)651 2833
RO	ROMANIA	BAAR - Biroul Asiguratorilor de Autovehicule din Romania	[40] (1) 250 36 60
S	SWEDEN	Trafikforsakringsforeningen	[46](8)783 70 00
SK	SLOVAKIA	Slovenska Poistovna AS	[421](7)54415628
SLO	SLOVENIA	Slovensko Zavarovalno Zdrufenje, GIZ	[386](61)1377 098
TN	TUNISIA	Bureau Automobile Tunisien	[216](1)256 800
TR	TURKEY	Turkiye Motorlu Tasit Burosu	[90](212)275 0256
UA	UKRAINE	Motor (Transport) Insurance Bureau	[380](44)227 7184
YU	YUGOSLAVIA(Suspended)	Udrufenje Osiguravajucih	[381](11)750 359

Source:
<http://www.cobx.org>