

Procedural Reforms of the EU Legislative Process

Increased Power for the European Parliament?

Kajsa Helmbring
caizah@yahoo.com

Kajsa Helmbring holds a Masters degree in Political Science and is currently completing an additional degree in Economics at Lund University. Fields of interest include issues of regional integration politically as well as economically, in Europe as well as in developing countries. This paper was awarded the Crafoordska-prize as second runner up for best essay on European issues as well as the Bertil Ohlin award for best Masters thesis in 2001.

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CENTRE FOR EUROPEAN STUDIES AT LUND UNIVERSITY:

Box 52
SE-221 00 LUND
Sweden

Phone: +46 (0)46-222 88 99
Fax: +46 (0)46-222 40 06
Email: cfe@cfe.lu.se

Abstract

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 approach 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, the value of theoretical hypotheses of prominent analysts in the field are measured empirically. The theories predict that the procedural reforms may not have given the European Parliament the power intended. The findings of this paper, however, contradict the hypotheses. Codecision I appears to make the Parliament more powerful than cooperation and codecision II makes it more powerful than codecision I. Thus, the reforms of the legislative process do seem to make the Parliament more powerful and have thereby helped increase democratic legitimacy of the EU.

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 that the institutions of the Union lack legitimacy. 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. On the other hand the EP can, in contrast to most national Parliaments, still register a successive extension of its powers.² 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 for empowering the Parliament.

The purpose 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, 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 evaluated 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 objective of the case study is to examine to what extent the formal changes made are important in practice.

This partly theoretical and partly empirical analysis aims at exploring whether the successive shift from using the Cooperation-procedure to increasing decision-making under the Codecision-procedure has increased the power of the European Parliament.

The European Union has a basic character of cooperation between nation-states with supranational elements. The supranational elements can be found in the first of the three basic pillars.³ Since this thesis is about the European Parliament, a supranational institution, only the legislation process in this pillar will be investigated, focusing on the EP-relationship with the Council and the Commission.

At this point it is suitable to discuss the term *power*. Power has always been an obscure and unclear concept and a lengthy debate on the exact implication of the term has not led to any univocal definition. There are however certain points of interest common in the definition-proposals put forward. It has been argued that there is a common understanding that power implies “the possibility to influence” (authors translation).⁴ 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”.⁵ Both cases are here interpreted as power meaning something similar to influence. This way of using the term power is 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.⁶ 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 veto by Parliament against a Council Common Position cannot be overturned by the Council, and the EP therefore has *power*.

The term used in theory must also be made testable; otherwise one cannot draw any conclusions from the empirical reality. In the initial part of the essay, where structural development is analysed, power will be measured as the *formal* possibilities for the EP to impose its will on the two other institutions, to what extent a certain structure enables the Parliament

to influence in different ways. However, in the subsequent part, where empirical facts are studied, power is measured simply 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.

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

The Multi-level governance literature predicts that several actors matter in the legislative process of the EU, including supranational institutions that exercise influence independent of member-states. Marks et. al. have found that this 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.⁷ The *EP* 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.

The Commission alone has the formal power to initiate and draft legislation.⁸ 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”.⁹ 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.¹⁰ 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 academic 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 ratification of the Single European Act it was the sole legislative authority. The successive extension of 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.¹¹ 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.¹² 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.¹³ To what extent the Parliament has agenda-setting power and decision-making power is discussed in the following chapters.

In this setting Marks et. al. conclude that EU decision-making can be characterised as one of multiple, intermeshing competencies, complementary policy functions, and variable lines of authority – features that are elements of multi-level governance.¹⁴ The EP competes with the Commission on control over policy initiation and with the Council on decision-making. This implies that the Parliament indeed has power over the legislative process. But how much power does it have, how has it changed over time and how is it exercised?

The Marks et. al. assumptions regarding the relationship between the institutions involved in the legislative process of the EU is used to study the inter-institutional relations. This will be concluded in two parts.

First 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 Garretts 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.¹⁵ More empirical work has to be done in order to distinguish 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.¹⁶

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 that have 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".¹⁷ 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.¹⁸

A second step is therefore taken to complete the quantitative studies with a qualitative analysis of a specific case. Here, a post Amsterdam legislative draft is followed from initiation to conciliation and adoption of proposal into law. This is done in order to (in line with Steunenbergs 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.

The material used to answer the question (whether the European Parliament has increased its power in the legislative process) is of two types. In the first part of the thesis, secondary sources dominate and relevant research is analysed and presented as the development of the powers of the EP are compared over time. In 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, is sought for in the empirical material.

In the next chapter 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 third and fourth chapters will be dedicated to the study of the empirical reality as it is mirrored in reports from the Parliament. Through this, the intention is to explore to what extent the Parliament is successful in making use of its formal powers under codecision I and codecision II. In these chapters theoretical hypotheses are tested. In chapter four a legislative proposal is also followed through the legislative process in an attempt to measure the informal powers of the Parliament under codecision II. The fifth chapter summarises the results and discusses the overarching question.

2 Consultation, Cooperation & Codecision - Three modes of inter-institutional bargaining

During the past decades the EU has gone through three major rounds of treaty revision. Each of these revisions reformed the EU institutions.¹⁹ This chapter examines in detail the consequences for institutional bargaining of the three revisions – the SEA, the Maastricht-treaty and the Amsterdam-treaty.

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.²⁰ 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.²¹ In the EP, simple majority is needed to give an opinion and absolute majority to make amendments in, adopt or reject proposals. By simple majority is meant >50% of the votes cast, 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.²²

Pre and Post the Single European Act

Consultation

Until 1987, and the entry into force of the SEA, the consultation procedure was the main legislative procedure in the EU.²³ 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”.²⁴ Hence, the EP has the right to have an opinion under consultation, but the Council and the Commission can disregard 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.²⁵ Consultation still applied to about two thirds of EU legislation in 1997 on issue areas such as the free movement of capital, competition policy and industrial subsidies.²⁶ But the insignificant role of the Parliament changed as the cooperation procedure was introduced in the SEA to govern internal market reform.

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.²⁷ The cooperation procedure accounted for about 10% of EU legislation in 1997.²⁸

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.²⁹ 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 requires unanimity in the Council.

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.³⁰ 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's views can thus still be disregarded under cooperation, but not as easily as under consultation.

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.³¹ In contrast, they argue that the Parliament has a role as a conditional agenda setter under cooperation that has been of considerable legislative effect.³² 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 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.³³ It is easier for the Council to accept a Parliament proposal than to amend it, provided that the Commission accepts it too.³⁴ 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. Christophe 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.³⁵ Therefore, Crombez argues, the Parliament has the same agenda-setting powers under cooperation as under consultation. The Commission takes opinions and amendments into account, only if it prefers them to its original proposal.³⁶ Moser raises a similar argument as he claims that the principal shortcoming of Tsebelis' analysis, is that it is limited to the last steps of cooperation.³⁷ 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.³⁸

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.³⁹ 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.⁴⁰ 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 veto by Parliament, but the Parliament is unlikely to have such extreme preferences that no country in the Council supports its veto.⁴¹ 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.

The Maastricht Treaty

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.⁴² The codecision procedure applied to about 15% of EU legislation in 1997.⁴³ 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 Joint Text (JT) by a QMV of the Council representatives and a simple majority of the EP representatives.⁴⁴

Second, if the Committee cannot agree on 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.⁴⁵ It is difficult for the EP to override the Council but the EP views can no longer be neglected under codecision I.

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 acquired the power to veto proposals unconditionally 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.⁴⁶ 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.⁴⁷ 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.⁴⁸

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). 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.⁴⁹ 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.⁵⁰ 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 weaker than under consultation and cooperation.⁵¹

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.⁵² 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.⁵³ 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.⁵⁴ 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.⁵⁵ 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.

The Amsterdam Treaty

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)⁵⁶, including equal treatment of the sexes, administration of the European Social Fund, health and safety, some aspects of environmental policy and fraud.⁵⁷ Codecision II now applies to most major EU legislation.⁵⁸

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.⁵⁹ 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 interpreted in that light.⁶⁰ 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 on 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.⁶¹

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.⁶² Tsebelis and Garrett agree with this and declare that the Parliament is indubitably more powerful under codecision II than under cooperation.⁶³ 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.⁶⁴ 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.⁶⁵ First, codecision II eliminates the Commission's formal agenda-setting powers.⁶⁶ 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.⁶⁷ 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.⁶⁸ Resulting policies may then be further away from the EP ideal under codecision II than under codecision I.⁶⁹ Crombez and Corbett disagree with Tsebelis and Garrett about the importance of codecision II. Crombez even says that the EP maybe even have less power under codecision II than under codecision I.

Different analysts, Different Views - The controversy over the procedural reforms

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 about the extent to which 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, regards the Maastricht Treaty as the main step.⁷⁰ 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 as giving 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 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 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.⁷¹ If the Tsebelis and Garrett-hypothesis is proven wrong the EP preference for giving up 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's power and thereby decrease, rather than increase, the democratic legitimacy of the whole Union. If both Tsebelis and Garrett, and Crombez, are proven wrong in the aspects mentioned above, it would indicate that the shift from cooperation and codecision I to codecision II is a favourable development in respect to empowering the European Parliament.

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.⁷² Therefore the hypotheses drawn from Tsebelis-Garrett and Crombez will be tested against empirical material. This is carried out in the next two chapters.

3 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.

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.⁷³ 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.⁷⁴ 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%

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 compromise form.⁷⁵

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 take into account 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.⁷⁶ 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.

Qualitative Reflections

Richard Corbett is a Member of the European Parliament and he says that the Tsebelis–Garrett view is the opposite of that of almost every practitioner. He argues that the statistics as well as qualitative analyses imply that the Parliament’s influence on legislation is greater under codecision than under cooperation.⁷⁷ He agrees with 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.⁷⁸ 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 the Parliament's bargaining powers and exert greater influence in the long run. Corbett's main criticism against 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.⁷⁹

The Value of Codecision I - Lack of Support for Tsebelis & Garrett-hypothesis

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, contrary 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 pay attention to the EP views in the Conciliation Committee, even under codecision I. One explanation for this is that the Parliament was aware beforehand of the risk it ran of being put in a "take-it-or-leave-it" position and therefore established a policy always to 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.

4 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.⁸⁰ The Commission alone has the formal power to initiate and draft legislation.⁸¹ 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.⁸² 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.⁸³ 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 consultation or cooperation.⁸⁴ 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.⁸⁵ 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.

The Parliament is satisfied with codecision II and states that it should not be amended.⁸⁶ The Parliament also claims that codecision works and should be extended to cover all legislative acts adopted in the Council by QMV.⁸⁷ 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 does not know what it is doing or is there a flaw in the Crombez hypothesis? This question will be discussed in the next section.

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:⁸⁸

- 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.⁸⁹ 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.⁹⁰ 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.⁹¹

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.⁹² According to the EP report the reduction in the number of conciliation 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 it is noted that the frequency of Conciliation Committees have decreased. (That is because this argument is built on the assumption that the EP is less powerful under codecision II as 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. Crombez argues that 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, 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.⁹³ According to the EP, Trialogues ensure greater continuity in relations between the Parliament and the Council and strengthen the Parliament's role in the codecision procedure.⁹⁴ 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.⁹⁵ Not only has the frequency of Conciliation Committees (where, according to Crombez, the weakness of the Parliament is exposed) decreased, but Conciliation Committees 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:⁹⁶

- 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).

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's 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 does Crombez' hypothesis appear 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 reduction in 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 bringing 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.⁹⁷ 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.

Motor Insurance – Evaluating the Power of the Parliament

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.⁹⁸ 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 Joint Text with the Council in the Conciliation Committee, says nothing 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 at least to some extent to avoid the “formalistic bias” criticised by Steunenbergh. 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 assessed in a qualitative sense. The process in general terms can also be followed in Appendix II.

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.⁹⁹ This is an economically important issue since it covers some 500,000 cases a year.¹⁰⁰

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.¹⁰¹ 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.) 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 considered 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 as indispensable.¹⁰²

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.¹⁰³ 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.¹⁰⁴ 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.¹⁰⁵
- 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 his/her own country.¹⁰⁶

- Thirdly, the establishment of information centres will enable victims at any time to identify the appropriate claims representative.¹⁰⁷

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.¹⁰⁸

Parliament Opinion, 1st Reading

On 30 June 1998 the Parliament decided on a total of 36 amendments.¹⁰⁹ The main amendments of the Commission proposal suggested by the Legal Affairs Committee were:¹¹⁰

- 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 differ little from the Commission proposal, the intention is to clarify the text for the reader.¹¹¹

- 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 stresses that the body may not be a government body and may not have 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 could 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.¹¹² 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.¹¹³

On 16 July 1998 the Parliament voted on the 1st reading amendments. The Parliament considered 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.¹¹⁴

On 31 March 1999 the Commission stated which amendments by Parliament 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.¹¹⁵ Amendment 15a was not accepted.

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.¹¹⁶ 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 considered that they would improve the quality of the legislative text.¹¹⁷

Consequently there remained one point of divergence between the CP and the Parliaments 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.¹¹⁸

- 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 arose. 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.¹¹⁹

In sum the Commission took the view that the CP retained 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.¹²⁰

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.¹²¹ This was considered a logic extension of the directive, and that such a move was broadly supported by the insurance industry.¹²²

2nd Reading

On 15 December 1999 the EP approved the Council’s Common Position subject to, among others, the amendment that aimed 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.¹²³ 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.¹²⁴ 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.¹²⁵ 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 to conflict with third country law. Therefore the amendments concerning accidents in third

countries could not be accepted in their current form. 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”.¹²⁶

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.

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.¹²⁷ 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.¹²⁸ 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 practice cover over 90% of third country accidents involving Community parties.¹²⁹ The Council also accepted the EP’s amendments concerning the rights of the insurance undertakings and the injured parties. For the entry into force of Article 6 concerning compensation bodies, a satisfactory compromise was found.¹³⁰

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 2000.¹³¹

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 as if in terms of both the number of amendments accepted, and of 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 does not always have the same preferences as the Commission, and even when the Commission sides with the Council the Parliament is in a position to win acceptance for its views. The EP is not always weak compared to the Council in the Conciliation Committee.

The Value of Codecision II - Lack of Support for Crombez-hypothesis

The Parliament's support for the replacement of codecision I with codecision II seems 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 have been fewer 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 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 as if 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, indicates that the Parliament does not always have the same preferences as the Commission. Even when the Commission sides with the Council, the Parliament is in a position to win acceptance for its views.

5 Conclusions

The discrepancy between the powers conferred on to the EU from the national Parliaments and the control of the EP over these powers has caused the legitimacy of the European Union to be 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 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 these new procedures. Tsebelis and Garrett consider the SEA and the Amsterdam Treaty to be the principal steps towards a more powerful Parliament and find that the Maastricht Treaty actually reduces the power of the Parliament. Crombez, by contrast, regards the Maastricht Treaty as the main step and considers 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 that cooperation makes the EP more powerful than codecision I, and Crombez is right 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 analysis 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 Parliament succeeded in taking equally powerful action under codecision I as it had under cooperation, if not more so.

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 point in 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. Hence, 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 increasing the legitimacy of the EU-legislative process.

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