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**The Increasing Institutional Power of the
European Parliament and EU Policy Making**

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1. Introduction

In recent decades, the European Parliament (EP) has been extremely skilful in pushing forward its institutional agenda to widen its powers in legislation, budgetary process and nomination and investiture of the Commission. Thereby, it has gained enormous influence in shaping concrete policies.

From the outset, European polity included the Council of Ministers as a legislator, composed of ministers of democratically elected national governments. The assembly, which later became the directly elected EP, constitutes the other legislator. Over time, the EP has grown from a minor partner in legislative procedure to a full co-legislator with the Council of Ministers. From the outset, the EP had a right of political supervision in nomination and investiture of the Commission. However, it only gradually developed an influential role in the Commission's composition. Today, the EP holds an important role in the nomination and investiture of the Commission. The EP also gained increasing competences in the budgetary process with regard to expenditures, non-compulsory and compulsory, however, not in regards to expenditures or "own EU resources". In an important substantive policy area, financial and economic governance, the EP gained considerable influence through the Lisbon Treaty and has ever since been able to further expand its power.

How can the fact that the EP gained such important powers in all these areas be explained? A number of conjectures derived from rational choice institutionalism and sociological institutionalism is presented to explain under which conditions the EP has been successful in expanding its power. The main strategies used by the EP have been - *given formal ambiguous institutional rules - to re-negotiate these rules in the course of their application* and thereby extend its powers. This leads to informal institutional rules, which were often subsequently formalised. Other important strategies have been a *delaying strategy; arena linking, i.e. withholding consent to a policy decision in one arena on the condition of being given more institutional power in another arena; the forming of alliances with member states in favour of expanding the EP's power; invoking rulings of the European Court of Justice (ECJ) in the hope of*

being confirmed in its institutional aspirations; making unilateral first moves in changing institutional rules that other institutional actors face that came with high political costs for returning to status quo ante. The EP also used *external problem pressure* to urge member states to accept more EP competences in treaty revisions and used *normative pressure of democratic legitimation to expand its power.*

In the empirical presentation, use of these strategies and conditions of their success or failure will be assessed as to their plausibility in areas of legislation, nomination and investiture of the Commission, budgetary procedure and economic governance. Finally, the question is raised: how does striking gain of parliamentary power relate to the recent new intergovernmentalism argument, which identifies a paradox of strengthened intergovernmentalism and at the same time deeper integration?

2. The EP as a legislator

In a period of over fifty years, the institutional rule which initially provided the EP with a merely consultative role in the legislative procedure; however, was transformed into a rule that established the EP as an equal co-legislator under the co-decision procedure along with the Council of Ministers.

Under the EEC Treaty (1957), the EP had a limited, consultative role in the adoption of Community legislation. The legislative power lay entirely in the hands of the Council of Ministers. However, the Council was obliged to consult the EP before adopting legislative proposals. When consulted, the EP was not obliged to formulate its opinion by a specific deadline, hence was able to use a *delaying strategy* (Corbett et al. 2000: 176). Soon, the EP set out to press for an extension of the consultation procedure to a wider range of issues, i.e. ‘all important problems’ (Corbett et al. 2000: 177). The Council obliged and added ‘voluntary consultations’ and then extended consultation rights beyond ‘important problems’ in the 1960s. By the mid-1970s, the Council consulted the EP on all legislative proposals (Corbett et al. 2000: 178). Following the first Community enlargement in 1973 with the accession of

Denmark, the UK and Ireland, the Paris governments' summit called for strengthening the EP's power of control and for improving relations with the EP. The Council committed itself to consult the EP on Commission proposals provided that it issued its opinion within an appropriate period of time (Corbett et al. 2000: 178). Hence, the EP successfully used the *delaying strategy* as well as the *normative legitimation strategy* when external pressure (enlargement) created functional needs with the support of some member states to extend the EP's powers in a treaty change.

After the first direct democratic elections, the EP requested in a resolution that the Commission consult the EP on all drafts of legislation before making a formal proposal to the Council. While the Commission's response to this demand was favourable, the Council only promised to regularly inform the EP. Following the Stuttgart Solemn Declaration of 1983, which pushed for a renewed effort of European integration, institutional proposals of the EP were included only to a limited extent due to member states' opposition (Beach 2005: 36).

In consequence, the EP started to *delay its opinion on legislative items* while demanding a more extensive interpretation of its formal rights. In another *arena linking strategy*, it used its budgetary powers under the conciliation procedure (Rittberger 2003, 204) to press for an extension of its consultation rights. It clashed with the Council over the Isoglucose Directive. Since the EP was slow in giving its opinion on the decision, the Council moved ahead and made a decision on the directive. The EP appealed to the ECJ, which annulled the Directive on the grounds that the EP, as the intermediary of the people, had not given its opinion (Corbett et al. 2000: 179). Hence, the EP successfully applied its *turning to the ECJ strategy*.

Once again engaging in a *unilateral move of proposing institutional change* at the treaty level, the EP proposed a treaty reform (Draft Treaty on a European Union, DTEU) simultaneously with the member states' Dooge Report, which also extended QMV and introduced co-decision. With external pressure, leading to the introduction of the Single Market Programme, treaty negotiations led to the new legislative *cooperation procedure*. All EP amendments during second readings were to be submitted to the Council. Those not confirmed by the

Commission could only be adopted by a unanimous vote in the Council. The cooperation procedure was less than the EP had aspired for in its DTEU, but still a step forward.

The EP repeated its call for an IGC and treaty reform to establish a ‘federal type’ Political Union, extending powers of the EP, and in particular, introducing co-decision. Without a formal role in the IGC, it organised the European Assizes, an assembly of national parliaments, to muster support for its claims. In most member states, national parliaments have to ratify the outcome of IGC negotiations. The negotiations in Maastricht resulted in the introduction of *co-decision* in fifteen issue areas. Thus, the EP was fairly successful in obtaining extension of its own power in legislation by making *unilateral first mover steps* to push for treaty reform and *allying with national parliaments*. In the subsequent Amsterdam negotiations, the EP participated in a preparatory reflection group. The negotiations among member states brought an extension of co-decision from fifteen to twenty-three areas, the Nice Treaty an additional small extension.

The EP successfully pushed for using the Convention on the Future of Europe to create a role in the shaping of treaty negotiations for itself. After the rejection of the Constitutional Treaty, the co-decision procedure was further extended under the Lisbon Treaty and is now the ordinary legislative procedure. For the first time, the EP also obtained the right of co-decision in economic and financial governance as well as external trade relations.

In the period examined, the EP has been remarkably successful in expanding its legislative powers until it became a co-equal legislator with the Council of Ministers. The engine driving this expansion was the EP’s determination to strengthen its own role by re-negotiating ambiguous institutional rules to its advantage; by engaging in cross-arena linkage, i.e. supporting a policy issue in one arena only under the condition of obtaining more competencies in another arena; by seeking to create a role for itself in shaping of treaties by submitting for treaty revisions; by using problem pressure, such as the single market programme in order to expand its role and strengthen its institutional powers; by successfully invoking its importance and democratic legitimacy as the only directly elected political institution in the EU legislative process; by cooperating with national parliaments in order to

influence treaty revisions; by successfully invoking an ECJ ruling in order to obtain a verdict in its favour and engaging in arena linking with the budgetary process. However, the limits to some of these strategies were set by the resistance of member states hesitating to share their legislative powers with the EP.

3. The Nomination and Investiture of the Commission

The present competences of the EP to nominate and invest the Commission have developed 'out of nothing'. The EP employed mainly strategies of *renegotiation of incomplete institutional rules; making first moves in interpreting/changing formal institutional rules; emphasizing its direct democratic legitimation; gaining the Commission's support*. Informal changes obtained by the EP were not challenged by member states if they appeared as an acceptable compromise between less integrationist and more integrationist member states.

The Treaty of Rome stated that the President of the Commission was to be appointed by the common agreement of member-states' governments. This clear rule did not prevent the EP from giving its opinion on the President of the Commission, which, however, would not delay the decision. After the introduction of direct elections, the EP adopted a resolution in 1980 asking for a right to debate and vote on the candidate for President of the Commission proposed by member states. In response, the appointed President of the Commission, Gaston Thorn, came to the EP to take part in a debate that the Parliament described as 'confirmation hearings' (Westlake 1998). Once introduced, this informal institutional rule remained in place. The Treaty of Rome also granted the EP the right to censure the Commission as a whole (but not individual Commissioners). In the same resolution, the EP also stated that it would hold a "vote ratifying and expressing confidence" in the appointment of the Commission as a whole following a debate on its programme. It implemented this rule on the incoming Thorn Commission in 1981 (Westlake 1998). Thereby, it *unilaterally brought about an informal institutional change*.

After the adoption of the SEA the EP passed a resolution requesting the right to ‘elect’ the candidate proposed by the Council as Commission President and to vote on the Commission. This included a two-stage procedure in which it would first, elect the President based on a proposal by the European Council, and second, hold a debate and a vote of confidence on the Commission as a whole before it could take office. Member states’ reactions were split (Corbett 1993: 58–59). The compromise was that the EP would only be consulted on the nomination of the President.

In yet another unilateral move, in 1984, the EP presented the DTEU (see above) in which it requested modification of the Commission’s term of office to coincide with that of the EP so that its appointment would follow each EP election, and would also involve choosing the Commission President and the Commissioners by the European Council, as well as the Commission’s programme, and a parliamentary vote of confidence enabling it to take office. This request was underlined by the fact that the Delors Commissioners in 1985 delayed their oath-taking until they had obtained the EP’s confidence. *These informal institutional changes were formalized in the Maastricht Treaty* with provisions that the EP should be consulted as to the nomination and investiture of the Commission President.

The Treaty however does not specify *how* the EP should be ‘consulted’. These *ambiguous treaty terms were specified* in a unilateral move when the EP – in its *internal rules* – interpreted it as follows: the investiture of the President, decided by a majority of EP members is considered ‘binding’. Thereby the ‘consultative’ vote became a *de facto* vote of confirmation.

In 1999, the EP took the next unilateral step of informal institutional change: it revised its internal rules of procedure according to which the office of the President of the Commission should take into account the outcome of the European elections. It changed the term ‘vote of approval of the Commission President’ to the term ‘election of the Commission President’.¹ The EP made this change unilaterally.

After the failure of the Constitutional Treaty in which the goals of the EP – through the Convention process – would have been incorporated, the Lisbon Treaty adhered to its main

¹ Agence Europe, ‘PE/Traité d’Amsterdam: les principales modifications du Règlement du PE approuvées afin de l’adapter au niveau traité’, 10/03/1999.

idea and now states that the European Council, “taking into account the elections to the European Parliament and after having held the appropriate consultations”, “propose to the European Parliament a candidate for President of the Commission [. . .] [who] shall be elected by the European Parliament by a majority of its component members”. And “the Council, by common accord with the President-elect, shall adopt the list of the other persons whom it proposes for appointment as members of the Commission [...] (TFEU, Title I, Chapter 1, Section 4).

In applying the Lisbon Treaty, the EP *used the ambiguity of its terms* to build a case for an entirely new approach to selecting the Commission president (Dinan 2014). In 2010, PES decided to nominate their party candidate as president of the European Commission. The Commission was very supportive claiming that this would deepen the political debate in Europe. In 2014, the EP voted on a resolution urging “the European political parties to nominate candidates for the Presidency of the Commission and expect those candidates to play a leading role in the parliamentary electoral campaign in particular by personally presenting their program in all Member States of the Union” (EP Resolution of 22.11.2012 on the elections of the EP in 2014, 1)

These moves were again backed by the Commission which argued in its Recommendation in March 2013 that a previous selection of candidates by each party “would make concrete and visible the link between the individual vote of a citizen of the Union for a political party in the European elections and the candidate for President of the Commission supported by that party” and thereby increase the legitimacy and accountability of the Commission, and more generally the democratic legitimacy of EU policy-making (cited by Hobolt 2014).² Some heads of government voiced disagreement with the EP’s interpretation of implications of the Lisbon Treaty changes, which eventually was called the “Spitzenkandidaten Strategy”. However, after each party had selected their candidate, it became increasingly difficult for them to push for an alternative candidate for presidency. After the elections in May 2014, which gave the EPP a majority, Jean-Claude Juncker was elected by the EP. To reverse this informal rule of choosing

² Commission Recommendation of 12 March 2013 enhancing the democratic and efficient conduct of the elections to the European Parliament (2013/142/EU).

a candidate for President of the Commission and to return to the status quo ante of having the candidate chosen by member governments will not be easy.

To conclude, the EP was extremely successful in maximizing its competences in the nomination and investiture of the Commission. The strategies most successfully deployed by the EP are renegotiation of incomplete institutional rules with the EP blocking decision-making until the Council gave in to a rule change. Another extremely important strategy was to move first and establish a new informal institutional rule, which would be costly for member states to change. However, the EP would not have succeeded without the support of some member states and the Commission aspiring to enhance its own legitimacy.

4. The EP in the Budgetary Process

At the outset, the EP only had the power to approve or amend the budget and the Council could reject its changes by QMV. Today, annual budgets are jointly decided by the Council and the EP; but both have to respect the ceilings of expenditure set by the multiannual financial framework (MFF). MFFs are passed unanimously by the Council, after obtaining the EP's consent. The financing of the budget (the 'own resources' issue) can only be modified by a unanimous decision of the Council after consultation of the EP – a decision that has to be ratified in each member state. What is striking is that institutional change in budgetary policy has taken place without Treaty reforms. Institutional rules governing the budget have remained unchanged for over thirty years (from the Brussels Treaty of 1975 to the Lisbon Treaty). However, during this period, the EP, the Council and the Commission have signed several inter-institutional agreements (IIAs) including rules that fundamentally altered the budgetary process.

The Treaty of Rome left the Assembly with limited budgetary powers. The draft budget of the Commission was submitted to the Council. Within a month, the EP could either approve or amend the budget. For the latter, the Council was obliged to amend or reject each amendment by qualified majority voting. With the introduction of agricultural levies as own resources and

the concomitant weakening of national parliaments, to compensate for the loss of power of national parliaments, the Commission asked for the strengthening of the EP by granting the latter the right to approve the Community budget (Rittberger 2005). Hence, in this case, the *normative democratic legitimation argument* was used successfully as a strategy to extend the EP's powers. Because of French opposition, which led to the 'empty chair crisis', the 'Luxembourg compromise' of 1966 was concluded: First, member states and the Commission committed themselves to avoid QMV when national vital interests were at stake and second, to end any discussion of the EP's empowerment in budgetary procedures.

In substance, member states committed to gradual replacement of member-state contributions through own resources including agricultural levies, customs duties and a share of VAT receipts. The EP was granted the power to reject the entire budget by a two-thirds majority. In case of a blockade, a system of 'provisional twelfth'³, based on the past budget, would be put in place. Member states also accepted the distinction between 'compulsory' expenditure resulting from the Treaty or from acts adopted under the Treaty where the Council had the last word, from the 'non-compulsory' expenditure (NCE) over which the Assembly had the final say. At the time, these accounted for a very small proportion of total expenditure (4%) (Lindner 2003). To ensure that the EP did not increase non-compulsory expenditure without restraint, the Treaty provides for a maximum rate of increase (MRI) for NCE. Importantly, the Council retained full competences over Community revenues. The EP, however, was granted the power of discharge of budget execution.

In the two decades after the Luxembourg Treaty, the Council and the EP were in conflict over the interpretation of the Treaties. The EP sought to increase its budgetary prerogatives, by focusing on criteria for differentiating between compulsory expenditure and other types of expenditure, and the annual rate of increase for non-compulsory expenditure. In other words, *ambiguities in the treaty provisions were renegotiated*. Moreover, frequently an *arena linkage between budgetary and legislative decisions was established* (Lindner 2006).

³ Art. 315 TFEU says "If, at the beginning of a financial year, the budget has not yet been definitively adopted, a sum equivalent to not more than one twelfth of the budget appropriations for the preceding financial year may be spent each month in respect of any chapter of the budget in accordance with the provisions of the Regulations made pursuant to Article 322; that sum shall not, however, exceed one twelfth of the appropriations provided for in the same chapter of the draft budget."

As to the ambiguous boundary between compulsory and non-compulsory expenditure, the EP often managed to re-classify compulsory budgetary items as 'non-compulsory' (Dankert 1983). Finally, the Council instituted legal proceedings against the EP in 1982, but at the same time, institutions sought to settle the dispute outside the ECJ. This led to the 'Joint Declaration' settling on a definition of non-compulsory expenditure as 'Community legal obligations towards third parties' (as previously defined by the EP)⁴ (Dankert 1983). In this case the *shadow of an ECJ ruling* benefitted the EP.

In a *unilateral strategy or first mover action*, in 1985, the EP unilaterally exceeded the maximum rate of increase for the 1986 budget, arguing that the Council had failed to provide adequate funds for the accession of Spain and Portugal (Corbett et al. 2009). The Council took the EP to the ECJ. The Court ruled that the two institutions had to agree explicitly on a new maximum rate of increase (Corbett et al. 2009). Hence, the *invoking of the court strategy* did not work out to either's party advantage.

In another *first mover strategy*, the EP frequently allocated funding to new programs for which the Council had not adopted enabling legislation, thus indirectly obtaining some legislative competences or forcing the Council to legislate⁵. In a compromise, a joint declaration in 1982 specified that where expenditure was entered in the budget for 'significant, new Community action', the EP and the Council were to 'use their best endeavours' to adopt a regulation in the budgetary year in question. Hence, the EP was successful in inducing legislation by prior appropriation.

Faced with serious budgetary problems by the end of the 1980s⁶, a procedure reform became necessary. The Delors Commission proposed to fix a ceiling for each broad category of expenditure in advance in a 'multi-annual financial perspective', an increase of direct member-state contributions, stabilizers to reduce the increase of spending on agriculture and

⁴ 'Joint Declaration on various measures to improve the budgetary procedure', 30.6.1982. This meant that a substantial proportion of CAP spending and all administrative expenditure by the institutions was now classified as non-compulsory.

⁵ In 1976/ 1977 for instance it allocated funds for special projects in culture, considering entry of appropriations in the budget as a sufficient basis for future legislation, a position firmly rejected by the Council (Corbett et al. 2003).

⁶ The CAP suffered from chronic overproduction, custom duties dropped and simultaneously increased structural funds were committed to Southern Member States (Pollack 2008).

an increase of allocations for structural policies. The EP made it clear that it would only participate in an IIA if its power in compulsory spending and in the Commission's management of its expenses would be increased. Hence, the EP engaged in a *cross arena linkage*: more powers in return for support of a budget reform. Having a veto when concluding an IIA, in the agreement of 1999 the EP de facto gained co-decision powers for the entire budget, including compulsory expenditure. The agreement stipulates that agreed ceilings (on both compulsory and non-compulsory expenditure) were subject to a joint agreement by the EP and the Council. Moreover, the EP secured the use of conciliation meetings at various stages in the annual budgetary process. As a consequence, the distinction between compulsory and non-compulsory expenditure became less relevant (but was only formally abolished in 2004) (Corbett et al. 2009).

In the Financial Framework, the EP managed to introduce some flexibility into the budget lines and ceilings under special economic conditions (Lindner 2006). It presented amendments that went beyond the ceiling whenever special conditions were given and threatened to abandon negotiations in case these requests were not met. The Council never formally accepted these amendments, but it never challenged them in the ECJ either (Lindner 2003, Lindner 2006). Hence, de facto the outcome was a new flexibility reserve.

A clear pattern emerges: the IIAs provided the EP with an arena in which it negotiated with the Council and the Commission at face level. Each time an agreement expired and new ones were negotiated (in 1993, 1996, 1999, 2006), the EP managed to increase its influence in both multi-annual and annual budgetary processes. Since the EP had veto power on these renewals and IIAs have no binding value, withdrawal or non-renewal was always an option. Since MEPs intensity of preferences for institutional empowerment is higher than for member-states representatives who traditionally have a more short-term policy orientation and are subject to voters reactions more directly (Farrell and Héritier 2007), member states tend to yield to EP's institutional requests for fear that their budgetary goals would not be met (Lindner 2006).

In the important area of own resources, however, the EP could not gain additional powers. It never managed to obtain more than a commitment by member states to address the question at the next IGC. Clearly, member states draw the red line – as regards the EP's powers – where their own national budgets are concerned.

During the Convention the EP reiterated its long-term request for the *formal* abolition of distinction between different types of expenditure, introduction of co-decision for the budgetary procedure; and formalization of the Financial Perspective within the Treaty. It also demanded that the time frame of the financial perspective be reduced to five years in order to make it concurrent with EP elections. To some extent, these proposals were reflected in the final Convention decision. After the rejection of the Constitutional Treaty, a rebalance of power of both institutions had to be instituted. In case of non-consensus in conciliation, the process ends and the Commission must present a new draft budget. Additionally, a 'passerelle' was introduced that enables the European Council, by unanimity, to authorize the Council to act by a qualified majority when adopting the multiannual financial framework. These provisions were incorporated into the Lisbon Treaty.

Most of the changes introduced by the Lisbon Treaty were a formalization of informal practices, i.e. the IIAs (Lindner 2006). The distinction between compulsory and non-compulsory expenditure was formally abolished, and a joint adoption of annual budgets by the Council and the EP was provided for. If the conciliation committee does not reach an agreement, the budget draft is rejected and the Commission prepares a new draft. However, some shifts in the balance of powers occur with new procedures, which do not necessarily empower the EP. The EP's new veto on compulsory expenditures is linked to the loss of having the last word on NCE (now major part of EU spending). If no agreement is reached and provisional twelfths is activated, it previously had power to overrule the Council by a three-fifths majority on proposed increases in NCE. Now, it can co-decide in all policy areas, but only to the extent that it can block increases or vote for a decrease (Bauer et al. 2015; Benedetto 2013).

In conclusion, the EP was successful in obtaining a co-equal role alongside the Council in questions of expenditure. The drivers of this development were the democratic legitimation argument, particularly, in the early decades (Rittberger 2005, Moury 2007; Lindner and Rittberger 2003). Another important strategy employed by the EP was the forming of alliances with Southern member states keen on receiving regional funds. Rights of the EP and specific expenditures supported by the EP were closely linked (Lindner 2006). With the introduction of IIAs, the EP was given an ideal platform to present its institutional requests and to obtain them. Its bargaining power was considerable because it could refuse, withdraw, or refuse to renew non-binding IIAs at any point in time. *Mutatis mutandis* the provisions of the Lisbon Treaty abolish the possibility of the EP to withdraw from IIAs and cancel the maximum rate of increase, thereby weakening the bargaining power of the EP.

5. The EP in Economic Governance⁷

Since entry into force of the Lisbon Treaty in December 2009, the EP's competences in the field of economic governance have primarily been based on Art. 121.6 TFEU. It grants the EP co-decision rights for multilateral surveillance "to ensure closer coordination of economic policies and sustained convergence of the economic performances of the Member States" (Art. 121.3 TFEU). The same applies to provisions relating specifically to members of the Eurozone (Art. 136 TFEU) (Fasone 2014: 171).

The new formal competences of the EP became effective in a time of acute financial and economic crisis. How did the EP use its new formal powers in economic governance? Did it obtain an informal extension of these institutional powers and, if yes, how did it influence policy outcomes? Of course, the role of the EP in driving institutional change in economic governance has to be seen in the overall context of power shifts in favour of other institutional actors at the European level, but also at the horizontal level between member governments and from member states to non-majoritarian actors.

⁷ This section is based on H ritier and Schoeller, 2015, *The EP as a Driver of Institutional Change in European Economic Governance*, unpublished manuscript; and Schoeller and H ritier, 2017, 'Economic governance' in H ritier, Moury, Meissner and Schoeller, 'Parliamentarization from the top?' unpublished manuscript.

The EP used a number of the above described strategies in order to extend its power beyond the formal powers introduced under the Lisbon Treaty. It *delayed decision-making* in order to gain more influence in the process; it *engaged in arena linking* acquiescing to substantive decisions only under the condition that it was given more institutional power in another arena; it *formed alliances with national actors and non-majoritarian actors* in order to *influence member states' decisions*; it *made first moves* in order to create institutional 'faits accomplis' and it *mobilized public opinion* in its favour to create informal rules giving it more powers that are difficult to revise by member states.

How did these strategies play out in concrete cases of economic governance decisions? In the case of the important Six-pack legislation to revise the Stability and Growth Pact, the EP obtained an informal institutional change in its favour. The Six-pack includes measures to strengthen budgetary surveillance as well as a new surveillance procedure aiming to prevent and correct macroeconomic imbalances, the so-called Macroeconomic Imbalances Procedure (MIP) (Bouwen and Fischer 2012: 21). It consists of five regulations and one directive.

During negotiations with the Council and the Commission, the EP obtained that a semi-automaticity would be introduced under a *reversed qualified majority vote (RQMV)* in the implementation of the Six-pack. If the Commission decides that a member state has not taken effective action in observing limits of budget deficits and government debt, it can only be disregarded if a majority of Eurozone member states agree to it. The EP proposed the introduction of RQMV in 15 different parts of the regulations (O'Keefe et al. 2016: 226). This was contested by the Council since RQMV results in a relative loss of member states' influence. From the vantage point of the EP, the strengthening of the Commission, which is politically accountable to the EP, would also add to the EP's power.

The EP also secured *codification of the European Semester*, the annual national budget assessment procedure for economic policy coordination, into a legal text and the establishment of a legal framework for the surveillance of national reform programmes⁸ (Interview 2; Interview 3). Originally, the European Semester was to be soft law applied by the

⁸ European Parliament (2011) FAQ on the economic governance "six pack". Economic and monetary affairs, <http://www.europarl.europa.eu/news/de/news-room/content/20110920BKG27073/html/FAQ> (31.01.2017).

Commission and the Council. Moreover, the EP insisted that itself and national parliaments should have a formal role in the legislative process. (O’Keeffe et al. 2016: 226).

The EP also obtained the introduction of a so-called *Economic Dialogue* (Interview 2). For the first time, this allows the EP to invite other institutions, i.e. the European Council, member governments, the Commission and the Euro Group to discuss spill-over effects of the Six-pack in an open discussion (Interview 3)⁹. In the view of the EP, economic dialogues constitute an important institutional innovation. By contrast, the Council does not consider them a substantial change (Interview 7) but rather ‘unilateral briefings’ by member governments (Interview 4; see also Schlosser 2016).

Overall Commissioner Rehn concluded that in its first legislative encounter with ECOFIN as a co-legislator in economic policy the EP “... achieved almost all of your most important objectives” (Rehn 2011: 2). “You have codified the European Semester, providing for comprehensive assessment of Member States’ progress on Europe 2020, our strategy for growth and jobs. You have set up a structured economic dialogue, providing for a prominent role of Parliament throughout the European Semester. You have achieved the opportunity for detailed discussion of country-specific situations at every key decision-making stage of the policy cycle, including the Parliament’s right to initiate dialogues with individual Member States. In all parts of the legislation you have won better information flow to the Parliament, and more transparency...You have got reverse QMV in a number of important cases to improve the automaticity of decision-making, as the rule in the corrective arm....You have won an equal role for Parliament in determining the scoreboard for detecting possible macroeconomic imbalances...” (Rehn 2011: 2).

By which of the above mentioned strategies did the EP obtain these results? The *delaying strategy* only partly meets expectations. The Six-pack was decided under considerable time pressure and under a prevailing sense of emergency of sovereign defaults (see also Bressanelli and Chelotti 2016). In spite of this prevailing sense of urgency, the EP did not regularly use a delaying strategy (Interview 2; Interview 7). Only in two instances did it expressly draw out

⁹ The Council wanted to ensure that the formulation would not imply that the Council can be summoned by the EP (Interview 7).

decisions in order to achieve its institutional objectives. During negotiations on the RQMV, when they came to a halt over the number of issues subject to RQMV, the Council refused to make concessions and the EP resorted to a delaying strategy (O’Keeffe et al. 2016: 12). In the other instance, the definition of the indicators to measure a possible macro-economic excessive imbalance, the Council and the EP blocked each other because the Council opted for Art. 291 (implementing acts) where the EP is excluded, and the EP opted for Art. 290 (delegated acts) where it has coequal power alongside the Council to reject Commission decisions. The EP delayed the decision making process and lost. It was not empowered; instead both the EP and Council were disempowered under the *new informal rule of cooperation* with the Commission gaining power.

The *arena-linking strategy* was successfully employed by the EP. This is reflected in the fact that the EP flatly refused to adopt regulations under co-decision unless it would be granted de facto co-decision under those NOT under co-decision. Once the six texts were tabled together, it was impossible for the Council to exclude the EP from those acts where it formally had no co-decision powers, because the EP credibly threatened to block other regulations (Interviews 2; 6; 7). As one interviewee put it, “A little friendly blackmail not to adopt the rest of the legislation (which was under co-decision) helps” (Interview 2; Interview 7; see also O’Keeffe et al. 2016: 226). The gains for member states from the entire Six-pack being adopted swiftly are clearly greater than the ‘loss’ of granting the EP co-decision rights in issues where formally there would only be cooperation.¹⁰

The *first mover strategy* was employed successfully. The EP took the unilateral decision to organize hearings in appointment procedures in which it formally does not have an

¹⁰ As one interviewee from the Council stated, “In the six-pack you had one or two [regulations] which were not under co-decision, so which strictly did not require the Parliament’s approval. This typically is hijacked by the Parliament and they have seen that as a package together from the outset, and we have not really resisted. It was difficult because the Commission came up with the six on the same day, so it was also treated here synchronically. But then in the negotiations you come to the point where you say: ‘Look, Parliament, on those two we are happy to have your opinion, but in principle we don’t have to care’. Now, if you say that, you are in big trouble because then you won’t get your compromise on the other four. So **I think once you allow these being handled together you are trapped**. Let’s say you, as Council, there was no other way than to accept that you handle the six together and that basically means that the Parliament was negotiating on those two where it was not co-decision-maker; it would negotiate on it as on the other. So in practice they were treated in the same way. [...] **So basically we Council would have the same outcome even if the Parliament were co-legislator**. So basically, yes, we basically lost. **This has been lost. The Parliament has basically gained a full role of co-legislator de facto.**” (Interview 7; emphasis added).

institutional role. Thus, in the case of control procedures of “programme countries”, it organized informal hearings for candidates in question and made recommendations depending on the outcome of the hearings. Such hearings were organized for members of the Troika, the ECB, ESM, and agencies (Interview 6). From the Commission’s viewpoint this is an attempt to make individual officials directly accountable to the EP (Interview 6). Formally, the decision rests with member states. However, it is hard to imagine that, if a candidate does not meet the approval of the EP, the Council would go ahead and appoint him or her anyway. Hence, our expectation that if returning to the status quo ante for the strategic counter-parts is difficult, a first move by the EP in introducing a new informal institutional rule will result in an informal de facto empowerment of the EP.

Parliamentary institutional gains were also achieved by forming an *alliance with non-majoritarian actors*. If preferences of the non-majoritarian actors are similar to those of the EP, and the majoritarian actor views carry weight in the negotiations, the EP’s alliance with the latter may further its institutional goals. O’Keeffe et al. point out that some drafting suggestions of the ECB (legal opinions ECB 2009, 2010, 2011) were taken on board as amendments of the EP (O’Keeffe et al. 2016: 228), such as the RQMV. The ECB also explicitly supported the EP in the negotiation over the extension of the RQMV in June 2011 (O’Keeffe et al. 2016: 228).¹¹

The *mobilization strategy* states that the EP mobilizes public opinion in order to make economic decisions more accountable to the EP, thereby putting member states under pressure to give the EP more power. In the negotiations of the Six-pack, the EP „...made ample use of press releases at critical junctures, thereby publicizing its confrontational stance vis-a-vis the Council and the European Council....This tactic was also aimed at marking the difference with the Council, which traditionally uses the formal channel of Council conclusions and factual press releases to inform the public about the adoption of its position” (Council of the EU, 2011 in O’Keeffe et al. 2016: 227). It „...publicly positioned itself as the ‚defender of the European interest’ against a Council which was trying to defend national

¹¹ „...the President of the ECB stated that ‚the ECB Governing Council would have appreciated an opinion move from the European Council towards the EP’ (Trichet 2011)“ (O’Keeffe et al. 2016: 228).

competences and interests” (EP, 2010c in O’Keeffe et al. 2016: 227). Commission participants in the negotiations confirmed the new style of interaction brought by the EP into the negotiations, describing it as “adversarial, electoral campaigning style” while the Commission and the Council are used to substantive/technical discussions (Interviews Commission 2010, 2011).

In conclusion, in the case of the Six-pack the EP’s were to make the procedures less bureaucratic and to allow for more transparency and accountability to the EP. It obtained the introduction of the Economic Dialogues, the codification of the European Semester, and the quasi-automaticity under the RQMV of the sanctioning procedure. It achieved a de facto influence in appointing heads of the newly created bodies in economic governance. By contrast, the attempt to influence the revision and institutional rules when defining indicators of the scoreboard measuring macroeconomic imbalance was unsuccessful.

In order to obtain its goals, the EP very effectively used strategies of cross-arena linkage; of delaying decision-making processes; of inventing new informal institutional rules; of forming alliances with non-majoritarian actors and mobilizing the public for more democratic accountability in economic governance.

In sum, the EP made some headway in widening its formal and informal institutional powers under the Six-pack. Yet, the modifications, which it obtained in that legislation, are not at its centre. The weight of member states and the Commission in deciding and shaping the Six-pack was and is pre-eminent. „The decisive factor was the political will of the Heads...Without their pressure, the Six-pack wouldn’t have happened“ (Bressanelli and Chelotti 2016: 517/18). Moreover, the Commission, as Bressanelli and Chelotti (2016) note, did not act as a ‚neutral broker‘, but sided with member governments under pressure to come to a fast adoption of the legislation.

In the case of the European Banking Union, the EP obtained some institutional changes and some of its policy objectives. The Banking Union consists of the Single Rule Book, the Single Supervisory Mechanism (SSM), the Single Resolution Mechanism (SRM) and the Single Resolution Fund (SRF). The SSM and the SRM were decided under co-decision, the SRF is an

intergovernmental agreement. It was the specific policy objectives of the EP to ensure that the monetary policy functions and the surveillance functions of the ECB under the SSM would be clearly separated. It also strongly insisted on more transparency of procedures of the SSM and, *delaying the decision*, accepted the legislation under co-decision only after obtaining better access to information from the ECB in its supervision of banks. The IIA of 2013¹² provides that the ECB submit a yearly report to the EP on the execution of its task (IIA 2013: 3); that the Chair of the Supervisory Board may be invited to additional “ad hoc exchanges of views on supervisory issues with Parliament’s competent committee” (IIA 2013:4); and that the ECB “should provide Parliament’s competent committee at least with a comprehensive and meaningful record of the proceedings of the Supervisory Board that enables an understanding of the discussions, including an annotated list of decisions” (IIA 2013: 6).

The EP also successfully employed a *first mover strategy* linked with a *delaying strategy*. From the outset, the EP had sought to improve accountability of the decision making authorities under the SSM (and SRM) by seeking a role in governance of various boards and to establish rules that the latter report to the EP (Interview 2; 3). In order to achieve these aims, it only gave its support to the legislation under co-decision after it had been granted more powers than originally envisaged over the appointment of top officials at the new single supervisor. For instance, the Inter-Institutional Agreement between the EP and ECB on the SSM provides that

“A public hearing of the proposed Chair and Vice-Chair of the Supervisory board shall be held in Parliament’s competent committee. Parliament shall decide on the approval of the candidate proposed by the ECB for Chair and Vice-Chair through a vote in the competent committee and in plenary. [...] If the proposal for the Chair is not approved, the ECB may decide either to draw on the pool of candidates that applied originally for the position or to re-initiate the selection process [...]” (Inter-Institutional Agreement 2013: 7).

¹² Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, OJ C 373, 20.12.2013, p. 1–11.

Thus, in the case of the Banking Union, the EP managed to some extent to widen its power and take some limited influence in the case of SSM and SRM, but not in the case of the SRF which was concluded as an international agreement to avoid co-decision.

A case of economic governance in which the EP failed in its application of *cross arena linkage* is the European Stability Mechanism. The European Stability Mechanism (ESM) is based on an international agreement outside EU law which does not allow for any influence on the part of the EP. However, in order to establish the ESM, it was deemed necessary to amend Article 136 TFEU. The treaty amendment took place under the simplified treaty revision procedure (Art. 48.6 TEU), under which the EP was consulted and gave its consent to the amendment of Article 136. The ESM as such was established under an international agreement in which the EP played no formal role. The EP did ask to be involved in the ESM negotiations (Library of the European Parliament 2012: 4). In its Resolution of January 2012, for instance, the EP requested “that Parliament participates in the same way in these negotiations”¹³. However, these requests were ignored by the Council (see also Fasone 2014: 169f). It also proposed amendments which were entirely disregarded by the European Council (Fasone 2014: 170). “The EP was not involved in the negotiations and the treaty establishing the ESM does not make any reference to this institution” (EP 2014b: 46). The large amounts of national budgetary means involved in the ESM were at the roots of member states resistance to the EP’s participation in the shaping of the ESM.

6. Competence gains of the EP: How much new intergovernmentalism?

A bird’s eye view of the development of the EP’s power in legislation, the nomination and investiture of the Commission, the budgetary process and economic governance reveals a picture of predominantly growing powers of the EP. This does not apply to the budgetary process as regards own resources; and in economic governance it does not apply to the

¹³ European Parliament resolution of 18 January 2012 on the European Council of 8-9 December 2011, <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2012-2> (31.01.2017).

international agreements of ESM, Fiscal Compact¹⁴ and the Banking Resolution Mechanism and Single Resolution Fund where member governments clearly opposed parliamentary influence. Of course, the fact that the EP gained more legislative power and more budgetary powers offered important levers to more influence in substantive policy areas such as economic governance. Increased institutional power in the nomination and investiture of the Commission also allowed for more EP influence on policy programmes of a ‘more political Commission’ under Juncker and reform plans in general as regards a new system of governance of the Eurozone such as reflected in the Five Presidents’ Report.

How do these findings of an increased institutional power of the EP relate to the statements formulated by Bickerton et al. (2015) regarding the new intergovernmentalism which has arguably emerged since the Maastricht Treaty? The authors argue that we are faced with a new phase characterized by an ‘integration paradox’ of deepening integration without supranationalism, characterized by “an absence of supranational decision-making as typically framed by the Community method – that is, the transfer of law-making power to the European level, an expansion in the initiating powers of the Commission and the enforcement powers of the CJEU, and the resort to majority voting to pass legislation” (Bickerton et al. 2015: 706). Instead, what has emerged is predominance of member states’ preferences, prevailing of deliberation and consensus seeking as decision-making styles and delegation to independent regulatory authorities (Bickerton et al. 2015: 706ff). As such this description of new intergovernmentalism as an analytical reference point to assess the developments of the EP’s power as empirically described above, remains rather vague (see Schimmelfennig 2015: 723ff).¹⁵

With these reservations, comparing our findings with characteristics of new intergovernmentalism offered by Bickerton et al. (2015), our findings suggest in part a disconfirmation and in part a confirmation of their description. Disconfirming evidence is

¹⁴ In the case of the Fiscal Compact the EP, by linking the confirmation of the 2-pack to a limited role in the negotiation of the Fiscal Compact, took some influence.

¹⁵ The ‘hypotheses’ proposed by Bickerton et al. (2015) are not causal hypotheses, but descriptions. H1, for instance, “Deliberation and consensus have become the guiding norms of day-to-day decision-making at all levels” 2015: 711; or H3 “Where delegation occurs, governments and traditional supranational actors support the creation of empowerment *de novo* bodies” (2015: 713).

that there has been a clear deepening of powers of the EP as a supranational actor in legislation, the nomination and investiture of the Commission, the budgetary process and to some limited extent in economic governance since Maastricht, albeit not across the board. Confirming evidence of more intergovernmentalism would be that the Council has retained important competences on the revenue side of the budget, in economic policy making under the ESM, the Fiscal Compact and the Single Resolution Mechanism and Single Resolution Fund under the Banking Union. Also, the European Council as a decision-making body has become stronger in the last decades. This strengthening may be considered a reaction to the advancing power of the EP when seeking to define a policy agenda together with a 'political Commission'. To be true, Puetter (2014) argues that the rise of the EP to a co-legislator during the post-Maastricht period does *not* disconfirm the propositions of new intergovernmentalism because new intergovernmentalism refers to policy areas where co-decision was not introduced. According to our theoretical argument, however, the EP has been very successful in using its strategies of gaining additional influence even in areas where it has not been given formal decision-making powers.

Indirectly relating to the position of the EP, there certainly is empirical evidence that a lot of delegation has taken place, shifting decision-making power to non-majoritarian decision-making bodies, i.e. the ECJ, the ECB, and independent regulatory authorities. This means that important decision-making competences have been shifted out of the political space, and thereby also the EP's power, into executive and judicial space. If it is assumed that preferences of all these non-majoritarian actors are integration-friendly, which is probable, it would be an indication for more supranationalism. Moreover, taking into account the debate about Over-constitutionalisation (Grimm 2015; Schmidt 2016), and again assuming that the ECJ's preferences are predominantly pro-integration, would provide evidence in favour of more supranationalism.

As to the argument regarding the mode of decision-making which ever since Maastricht arguably has been increasingly characterized by deliberation and consensus, our studies provide only partial empirical evidence. To be true, the pressure for strengthening the EP's powers for democratic legitimation purposes has certainly played a role in increasing its role

in legislation, the budgetary process and the nomination and investiture of the Commission as well as economic governance. But clear interest-oriented bargaining has dominated the picture to an equal extent, if not more. This is substantiated by the fact that the EP had to engage in tough negotiations, even blackmailing strategies, in order to expand its powers.

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