



# BUILDING PARLIAMENT: 50 YEARS OF EUROPEAN PARLIAMENT HISTORY

## 1958–2008

European Parliament – 50th birthday  
series



BUILDING PARLIAMENT:  
50 YEARS OF EUROPEAN PARLIAMENT HISTORY

1958–2008





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under the direction of Yves Mény, for the European Parliament.

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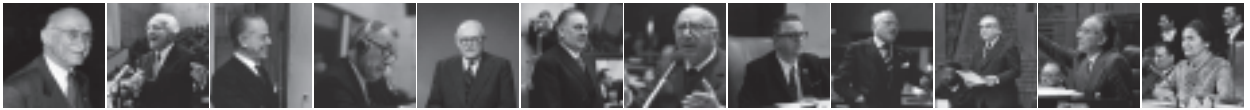


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## INTRODUCTION

On 28 February 1958, the Common Assembly of the European Coal and Steel Community (ECSC) met for the last time in the Maison de l'Europe, in Strasbourg. A few weeks later, on 19 March, the European Parliamentary Assembly held its constituent session. This reprised the role of the Common Assembly within the ECSC, acting as a parliamentary institution for the two new Communities – the European Community and the European Atomic Energy Community – whose treaties (the Treaties of Rome) came into force on 1 January 1958. As the rules of procedure were only amended or supplemented in so far as the new treaties rendered this necessary, and the Assembly had the same political groups as before, the main focus was to ensure the continuity of European parliamentary operation during the transition. It was, shall we say, a very humble beginning for an Assembly that in 1962 would adopt the imposing title of 'European Parliament'. This is not surprising, bearing in mind that the founding fathers did not have high hopes for the parliamentary institution, convinced as they were at the time that the Assembly could only be a sounding box for nationalism, and considering that the Community within which it acted had a purely economic nature<sup>1</sup>. Yet before long the Assembly would be destined for a very different future. On the one hand, it would increase its representativeness and legitimacy to the point of being elected by universal suffrage, thus becoming the first international parliamentary assembly elected directly by the people of the member nations. On the other hand, even before it came to be di-

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<sup>1</sup> P.J.G. Kapteyn, *L'Assemblée commune de la Communauté européenne du charbon et de l'acier*, Leyde, A.W. Sythoff, 1962, pp. 8-10.

rectly elected, the Assembly began slowly but surely to obtain more power in the style of a conventional parliamentary body. This was usually with the support of the Member States, although sometimes on its own initiative.

The authors of this volume – historians, political commentators and experts in Community affairs from several different Member States – retrace the complex history of Europe's parliamentary institution from 1958 to the present day. They analyse the composition, procedures, strategies and transformation of the European Parliament (EP), not to mention its limitations, dissecting the sometimes conflicting, sometimes collaborative relations between the Assembly and other bodies in the institutional triangle. They emphasise the 'missionary' role adopted by this political arena, both in terms of the constitutionalisation of the European Union and the advocacy and protection of democratic values, planting the seed for a European civic area.

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The gradual parliamentarisation of the European Union has gone hand in hand with the need to make up the 'democratic deficit' – mainly seen as a 'parliamentary deficit' – from which the Community, and later the European Union, was thought to suffer owing to the gradual transfer of powers or competences from Member States to supranational bodies and the concomitant loss of political control of national parliaments.

The first part of this volume shows how this deficit is also due to uncertainties linked with the representativeness of the European Parliament and therefore its legal and political legitimacy. Examining the organisation and impact of European elections, the authors will be asking: is the European Parliament representative enough of the Union's citizens? The lengthy process that has taken the Assembly from 'indirect legitimacy' to 'direct legitimacy' based on common suffrage has not resolved the issue. The early renouncement of a uniform electoral procedure, albeit one described by the EC Treaty (Article 138(3)), in exchange for common fundamental rules<sup>2</sup> has undermined the homogeneity and thus the representativeness of European representatives. Elected almost entirely by list-based proportional representation, very often with national and fixed party lists, which mechanically distances them from voters, members have little incentive to adopt a European way of thinking: if they want to be re-elected, they need to look to their national parties in order to be re-entered on the lists<sup>3</sup>. During campaigns for European elections, 'second-order' elections and mid-term elections, national issues generally piggyback on the European debate, which is reduced simply to opposition between those for and those against Europe. In spite of the growing regionalisation of the European elections and the increasing attention that MEPs have paid in recent years to their constituency, the gulf between elected representatives and their voters has continued to widen, as demonstrated by the steady fall in voter turnout: during the 1999

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<sup>2</sup> Jean-Louis Burban, *Le Parlement européen*, 'Que sais-je' No 858, 1989, p. 26.

<sup>3</sup> Nicolas Clinchamps, *Parlement européen et droit parlementaire. Essai sur la naissance du droit parlementaire de l'Union européenne*. Paris, LGDG, 2006, p. 89.

European elections, fewer than one in two voters took part in the ballot and in 2004, the average participation was 45.6% across the 25 Member States<sup>4</sup>.

Are there other factors that run counter to the true representativeness of European society? What about the incomplete nature of European citizenship? Do we accept that European citizens, who during the first elections eschewed the Strasbourg Parliament owing to its negligible role, today fail to recognise themselves in a European Parliament whose powers are greatly increased, but which they still see as secondary to their own national parliament? The European Parliament has undeniably been penalised by the disproportionate representativeness of citizens in the various Member States. Having represented a barrier to the election of the EP by universal suffrage in the early 1970s, the weighted voting system, devised in the early days of the Community and maintained throughout the Treaties without ever being properly revised, has resisted all attempts to make it fairer (Dehousse and Patijn projects). The need to limit the maximum number of representatives has strengthened the arguments of those who are loath to modify the sacrosanct rules of equal treatment between the 'large' and overrepresentation of the 'small' Member States<sup>5</sup>. The representativeness of the European Parliament is compromised by the fact that federations of national parties, such as the PPE-DE, PSE and ALDE, which dominate the Strasbourg Parliament, still have a very limited impact on public opinion in Europe<sup>6</sup>.

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Forced to compete with other 'levels of authority' (the Council and the Commission), the European Parliament has, since the mid-1990s, endeavoured to open itself up to civil society. It has engaged in dialogue with associations, non-governmental organisations, grassroots organisations, trade unions and churches, particularly in the context of intergovernmental conferences or the Convention on the Future of the European Union, intended to bring about treaty reform and engineer a Europe which is closer to its citizens. Yet this kind of 'participatory democracy' is not without its own risks, since it amounts to a challenge to the authority of Members of the European Parliament to speak on behalf of the citizens they are supposed to represent. The 'competitive' nature of the European decision-making process has also led MEPs to seek the expert opinion of representatives of public or private interests, those who are on the receiving end of community policy. The reservations that some MEPs have towards lobbying have, however, led the EP to be selective in its choice of lobbyists and to crack down on any abuses by imposing strict rules (Nordmann, Ford and Stubb reports) aimed at ensuring transparency.

How the EP's powers have evolved is another major field of study. In the second part of this volume, the authors will focus on the evolutionary nature of parliamentary law,

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<sup>4</sup> Pascal Delwit, Philippe Poirier, *Parlement puissant, électeurs absents? Les élections européennes de juin 2004*. Brussels, Ed. de l'Université de Bruxelles, 2005, p. 11.

<sup>5</sup> Nicolas Clinchamps, *Parlement européen et droit parlementaire*, op. cit., p. 4

<sup>6</sup> Pascal Delwit, Erol Kulahci, Cédric De Van Valle (ed.) *Les fédérations européennes de partis. Organisation et influence*. Brussels, Ed. de l'Université de Bruxelles, 2001, p. 27.



amplified by the proactive approach of the European Parliament, which has to some extent been successful in fleshing out its powers.

While there is no doubt that the European Parliamentary Assembly (EPA) originally presented itself as the successor to the Common Assembly, it soon stood out in view of its dealings with other institutions and its budgetary powers.

Of course, the articles of the Treaty of Rome were directly inspired by the corresponding articles of the Treaty of Paris<sup>7</sup>. Article 137 (1957) reproduces the wording of Article 20 (1951), which states that ‘the Assembly, which shall be composed of representatives of the peoples of the States united within the Community, shall exercise the powers of deliberation and of control which are conferred upon it by this Treaty’. In terms of the powers of control of the EPA, Article 144 of the EEC Treaty and Article 114 of the Euratom Treaty confirm the right, initially given to the ECSC Assembly, to censure the Commission and force it to resign. However, both the EEC and Euratom Treaties extend this right of censure beyond a simple examination of the Commission’s annual report to include, implicitly, all aspects of the Commission’s activities. Yet it was only very gradually that the parliamentary institution developed a power of scrutiny over the activities of the Council under Article 140 of the EEC Treaty. As for the control that the Parliament exercises over the Community budget, this was reinforced by Article 203 of the EEC Treaty and by Article 177 of the Euratom Treaty, which made it the jointly responsible budgetary authority of the European Community<sup>8</sup>.

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Until the early 1970s, control was extended by ‘underground’ means, outside of any revision of the Treaties, to include communication procedures: the institutionalisation of written or oral questions submitted to the Council, and no longer just to the Commission, the Luns-Westerterp procedure introducing a duty of information for the European Parliament for trade agreements signed with third countries, an obligation for the Council and the Commission to keep the Parliament regularly informed of the follow-up to resolutions.

Conversely, between 1970 and 1975 it was through treaty reform (the Treaty of Luxembourg and the Treaty of Brussels) that the European Parliament obtained a crucial power – budgetary power – as a logical consequence of giving the Community its own resources. The European Parliament and the Council thus shared budgetary power, depending on the type of expenditure and whether or not it was compulsory. The Treaty amending certain financial provisions (signed in Brussels in 1975) gave the EP the right to reject the budget by a two-thirds majority of its members. In spite of this safeguard for the Council, on 15 December 1979 the new European Parliament, elected by universal suffrage, used this power for the first time, rejecting the budget by a crushing four-

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<sup>7</sup> On the origins of the EPA, see *Towards a single parliament: the influence of the ECSC Common Assembly on the Treaties of Rome*. European Parliament, Directorate-General for the Presidency Archive and Documentation Centre (CARDOC), 2007.

<sup>8</sup> David Judge, David Earnshaw, *The European Parliament*, London, Palgrave Macmillan, 2003, p. 34.

fifths majority<sup>9</sup>. In the 1980s, the Parliament and Council were in perpetual conflict over the classification of budgetary expenditure and the application of the maximum rate of increase of expenditure, a conflict from which the European Parliament emerged victorious on several occasions. For example, by increasing the appropriations for the European Regional Development Fund or the European Social Fund, the European Parliament satisfied the expectations of the public, concerned by rising unemployment, and enjoyed the support of certain Member States that benefited from the Structural Funds, such as Italy and Ireland. Since 1988, tensions have gradually eased, with the introduction of the 'financial perspective' – aimed at financial discipline and limiting agricultural expenditure – and, more importantly, the increase in the legislative powers of the EP. Since then, the EP's budgetary campaign has focused on the scrutiny of expenditure, in the hope that one day it is given a vote on revenue.

Since its election by direct universal suffrage in June 1979, the European Parliament, taking advantage of the increased prestige conferred by popular suffrage, has steadily extended its powers of control over the European executive. Drawing from national parliamentary traditions (such as question time in the House of Commons and the continental practice of temporary committees of inquiry and right of petition), it was gradually assigned a power of investiture of the Commission under the Maastricht, Amsterdam, Nice and Lisbon Treaties. Interinstitutional agreements have informally increased these powers even further. Often adopted on the initiative of the parliamentary institution, these 'framework agreements' or 'codes of conduct' outline the powers of the institutions in certain areas, providing a formal basis for cooperation or recognising the status or the ways in which certain supervisory bodies, such as the Ombudsman, exercise their powers, the right of petition or the right of inquiry<sup>10</sup>.

The need to improve the democratic functioning of the European Union means that the EP is now part of an auspicious movement, an assembly with an aggressive attitude, particularly towards the Commission. With their Parliament safe from dissolution, MEPs have opted for a strategy of affirmation, the most striking instance of which was the collective resignation of the Santer Commission in the spring of 1999, without the EP needing to resort formally to the 'atomic weapon' of censure. More recently, in 2004, the Buttiglione affair confirmed that the balance of power had tipped in the EP's favour, since its members had made the President of the Commission and the Council of the European Union give way by forcing the replacement of the prospective Commissioner for Freedom, Security and Justice<sup>11</sup>.

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<sup>9</sup> Jean-Louis Burban, 'Les députés de l'an II', in *Revue du Marché commun*, Sept. 1980.

<sup>10</sup> Joël Rideau, *Droit institutionnel de l'Union et des Communautés européennes*, Paris, LGDG, 3rd edition, 1999, pp. 690-692.

<sup>11</sup> Thierry Chopin, François-Xavier Priollaude, 'La modernisation de la Ve. République et les "affaires européennes": le parlementarisme rationalisé est-il euro-compatible?', in *Fondation Robert Schuman, European issues*, No 74, 8 October 2007, pp. 4-5.

In parallel with the reinforcement and extension of control of the European Parliament, the national parliaments have acquired a power of scrutiny over the European activities of their respective governments and have improved cooperation with the EP. At European level, the national parliaments are indispensable according to the principle of subsidiarity<sup>12</sup>: they transpose Community laws into domestic legislation and are the natural partners for intergovernmental policy<sup>13</sup>. Looking at the parliamentary bodies that specialise in European affairs in the various Member States, this volume will describe how their powers have evolved since the 1990s. Irrespective of their remit, whether purely informative or legally binding, these ‘committees’ or ‘delegations’ are now formidable weapons of political influence<sup>14</sup>. The governments of the Member States themselves encouraged this development: following the adoption of qualified majority voting in the Council in accordance with the Single European Act, which further marginalised national parliaments, the Maastricht and Amsterdam Treaties recognised the authority of these parliaments to participate, albeit indirectly, in the functioning of the Union<sup>15</sup>. The Treaty of Lisbon strengthens their power to scrutinise subsidiarity and involves them in the creation of the area of freedom, security and justice. Nevertheless, while national parliaments may have become players in the Community decision-making process rather than simple bystanders, the ‘Europe of parliaments’ has still not become a reality. From the first Conference of the Parliaments (or ‘Assizes’) held in Rome on 29 and 30 November 1990 and involving both the European Parliament and national parliaments, interparliamentary cooperation has grown steadily, although it still remains marginal and fragmented. The Conference of Speakers of European Union Parliaments (1981) was compromised as a result of the differing political status of the presiding officer of each parliament; the Conference of Community and European Affairs Committees of Parliaments of the European Union (COSAC), a body set up in 1989 to liaise between the committees of national parliaments specialising in European affairs and those of the European Parliament, is a more structured forum, although its contributions are not binding on the national parliaments and do not prejudice their positions<sup>16</sup>. In reality, although accepted in principle, interparliamentary cooperation is undermined by the differences of opinion and interests that inevitably arise between a European Parliament guided by a supranational approach and which has steadily become more powerful, and national parliaments, motivated by the protection of national interests and which have been gradually stripped of some of their ‘sovereign’ powers.

<sup>12</sup> Mentioned for the first time by the Treaty of Maastricht, the principle of subsidiarity allows the European Union to intervene ‘only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community’.

<sup>13</sup> Hubert Haenel, *Les parlements nationaux, un appui pour l’Europe ?* Memorandum from the Robert Schuman Foundation.

<sup>14</sup> Cf. Andreas Maurer, Wilfried Wessels ed., *National Parliaments after Amsterdam. From Slow Adapters to National Players?* Baden-Baden, Nomos, 2001.

<sup>15</sup> Berthold Rittberger, ‘Constructing Parliamentary Democracy in the European Union: How did it Happen?’, in Beate Kohler-Koch, Berthold Rittberger, *Debating the Democratic Legitimacy of the European Union*, New York, Rowman and Littlefield Publishers, 2007, pp. 116-117.

<sup>16</sup> Hubert Haenel, *Les parlements nationaux, un appui pour l’Europe?* Op. cit.

These differences of opinion became particularly apparent in 1995-96, when the idea put forward by the French National Assembly to create a second chamber within the EU responsible for ruling on the application of the principle of subsidiarity was rejected on the grounds that this new assembly would make the current Parliament redundant. This was followed in 2002-2003 when the Convention scrapped the proposal, much beloved of President Giscard d'Estaing, to establish a 'Congress of the Peoples of Europe', composed of Members of the European Parliament and national MPs, which would examine the state of the Union and appoint or re-elect those holding certain high-ranking positions within the EU<sup>17</sup>.

It was not until the 1980s and 1990s that the European Parliament acquired a substantial share of legislative power. Like the Common Assembly, the European Parliamentary Assembly was vested with only a consultative power in 1958. However, by adding the term 'deliberation', the Treaty of Rome already acknowledged a marginal increase in the powers of the new assembly, an increase that would eventually prove decisive. Even before it began to be directly elected, the European Parliament has over the years widened its legislative influence by adopting the working methods of a classic parliament. It has commanded the Council's respect owing to the sheer quality of its work<sup>18</sup>, to the point that approximately 15% to 40% of the EP's amendments, depending on the legislation involved, are incorporated into the definitive version of the regulation or directive adopted by the Council<sup>19</sup>. However, it was only with the Single European Act – negotiated in the mid-1980s based on the Spinelli Project and the Dooge report and which finally came into force on 1 July 1987 – that the EP legally received a share of the legislative power. By establishing the areas for which the European Parliament and the Council shared legislative power through a 'cooperation procedure', and by granting the Parliament, through the 'assent procedure', the right to ratify accession agreements and association agreements between the Community and third countries, the Single European Act established procedures that, in spite of their complexity (e.g. the second reading system), would in fact prove workable and profitable for the EP. The Treaty of Maastricht, which came into force on 1 November 1993, strengthened the legislative power of the European Parliament, which was granted a power of 'codecision' with the Council of Ministers. This entails the agreement of both parties in the areas provided by the Treaty before legislation can be adopted. A joint conciliation committee has the task of reaching a compromise in case of a lasting disagreement.

Unlike many national parliaments, the European Parliament has never considered itself part of a completed constitutional system, but rather as the champion of a dynamic

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<sup>17</sup> Peter Norman, *The Accidental Constitution. The Story of the European Convention*, Eurocomment, Brussels, 2003, p. 150.

<sup>18</sup> In a bold interpretation of the 'Isoglucose' case, the EP introduced the idea that it was sufficient, in so far as the consultation of the Parliament was essential for the validity of any regulation or directive, for Parliament to adopt its opinion, interrupt its consultation procedure and wait for the Commission to indicate its approval of the amendments, to have greater influence on proposals made to the Council.

<sup>19</sup> Jean-Louis Burban, *Le Parlement européen*, op. cit., p. 78

institutional architecture, requiring change. The European Parliament has shown an unwavering commitment to the constitutionalisation of the European Union.

Although the right to amend the Treaties lies at last resort with Member States alone, they, at the first session of the Common Assembly in 1952, recognised the authority of the European Parliament to make proposals for constitutional change, when, on a proposal of Alcide De Gasperi and Robert Schuman, the Council asked it to prepare a draft treaty with a view to the creation of a European Political Community – at which point the Common Assembly was renamed the ‘Ad Hoc Assembly’. Although the draft was a failure, owing to the refusal of the French Assembly to ratify the Treaty instituting the European Defence Community (August 1954), the majority of the proposals that it contained resurfaced in later versions.

The most renowned initiative of the European Parliament in this respect was the proposal to replace the EEC and Euratom Treaties with a new Treaty on European Union. Drawn up on the initiative of federalist MEP Altiero Spinelli and adopted by Parliament on 14 February 1984 by a large majority, the draft broke new ground both in terms of the way in which it was prepared (with the creation of an ad hoc committee and the cross-party ‘Crocodile Club’ within the European Parliament to draw up and promote the draft) and in terms of the content of its provisions (it was a new treaty and not just a revision of existing treaties, overcoming opposition through cooperation and integration, introduction of the principle of subsidiarity and the legislative codecision procedure, extension of common policies, entry into force of the Treaty following ratification by a majority of Member States representing two thirds of the population of the Community). With French President François Mitterrand having guaranteed support for the Treaty, the Dooge Committee, set up by the Heads of State or Government (reminiscent of the old Spaak Committee) in order to prepare an intergovernmental conference, had borrowed its main provisions. However, the European Parliament still only had limited involvement in the negotiations that followed the Milan European Council (June 1995). Although MEPs considered the results of the IGC insufficient (in a famous speech he gave in Strasbourg, Altiero Spinelli, echoing Ernest Hemingway’s *The Old Man and the Sea*, compared them to what was left of the marlin (i.e. its backbone) after the sharks had eaten it), these were ratified by the European Parliament in January 1986. This led to the Single European Act, which would create additional pressure for further integration and open up the path to negotiation of the Treaties of Maastricht, Amsterdam and Nice<sup>20</sup>. Following this example and keen to broaden the democratic basis of the revision of the Treaties, still informed by an intergovernmental approach, MEPs were the first to call for a Convention, initially to draft the Charter of Fundamental Rights of the European Union (1999-2000), and later to draft a European Constitution (2003-2004). MEPs vigorously supported the Belgian Presidency of the Council in the preparation of the Laeken

<sup>20</sup> Jean-Marie Palayret, ‘Spinelli, entre cellule carbonara et conseiller des princes. Impulsions et limites de la relance européenne dans le projet Spinelli d’union politique des années 1980’, in Gérard Bossuat (ed.), *Inventer l’Europe. Histoire nouvelle des groupes d’influence et des acteurs de l’unité européenne*, P.I.E. Peter Lang, Brussels, 2003, pp. 356-382.

Declaration<sup>21</sup>. In his account of the preparation of the Treaty establishing a Constitution for Europe, Andrew Duff says that ‘it was the parliamentary ingredient which saved the Convention’<sup>22</sup>. In fact, during the Convention, and despite being a small contingent (16 out of a total of 105 Convention members), MEPs were particularly active and influential. Along with their regular attendance at meetings, the special relationship they had with civil society and the media, the advantage of ‘playing at home’ and having their own people among the Convention (half of the members of the Praesidium, Valéry Giscard d’Estaing among them, were or had been Members of the European Parliament), the organisation of political ‘components’ or ‘caucus’ within the Convention had the effect of broadening their influence<sup>23</sup>. More accustomed to cross-party coalitions and transnational majorities than their national colleagues, Members of the European Parliament showed themselves able to reach a compromise on issues that divided national delegations, which became particularly apparent in the open forum of the Convention. In June and July 2003, it was the alliance between Mr Giscard d’Estaing, national integrationist MPs and leaders of political groups within the European Parliament that allowed the presidency to come up with a final draft<sup>24</sup>. In doing so, MEPs had achieved the main objectives they had set themselves. Standardisation of the legislative codecision procedure, the effective abolition of the three pillars of the Maastricht Treaty, the enlargement of the EP’s budgetary powers, the EU Charter of Fundamental Rights: all of these points, which were to be incorporated into the Constitution, had for a number of years been a priority in the resolutions issued by the EP<sup>25</sup>.

The third part of this volume focuses on ‘values’. A symbol of democracy in Europe, the European Parliament has since the birth of the Community presented itself as an undisputed forum for the advocacy and protection of human rights. Reflecting public opinion and a sounding box for the human rights movement, the European Parliament, which in this arena has limited legislative power but the power to impose sanctions, plays a key role in defining EU policy. It uses a number of committees to wage this campaign. The Subcommittee on Human Rights (DROI), a subcommittee of the Committee on Foreign Affairs, is responsible for handling human rights cases in conjunction with other parliamentary committees (such as the Committee on Foreign Affairs, the Committee on Development, the Committee on Civil Liberties, Justice and Home Affairs, the Committee on Women’s Rights and Gender Equality and the Subcommittee on Security and Defence), as well as delegations from the European Parliament or from the parliaments of third countries<sup>26</sup>. In addition, the Committee on Petitions and the European Ombudsman often bring human rights to the fore.

<sup>21</sup> Peter Norman, *The Accidental Constitution. The Story of the European Convention*, op. cit., pp. 49-50.

<sup>22</sup> Andrew Duff, *The Struggle for Europe’s Constitution*. London, The Federal Trust, 2007, p. 27.

<sup>23</sup> Peter Norman, *The Accidental Constitution. The Story of the European Convention*, op. cit. pp. 149-150.

<sup>24</sup> Andrew Duff, *The Struggle for Europe’s Constitution*, op. cit., pp. 26-27.

<sup>25</sup> Ibid., p. 28.

<sup>26</sup> Defending Human Rights and Democracy, fact sheet No 6.1.2 published by the Directorate-General for Information at the European Parliament.



For a long time, the European Parliament has applied pressure for human rights to feature among the direct sources of Community law. Its approach has alternated between support for the European Convention on Human Rights and drawing up a list of fundamental rights to be recognised by the Treaties. Since 1953, the Ad Hoc Assembly, charged with preparing a draft treaty for a European Political Community, proposed including the provisions of the European Convention on Human Rights. In 1975, in its resolution on European Union (Tindemans report), the European Parliament voiced the need to give the future Union a Charter of Fundamental Rights. In 1984, the draft Treaty on European Union (Spinelli draft) stated that the EU would adopt its own declaration of fundamental rights which Community institutions would have to observe. This was achieved in 1989<sup>27</sup>. The EP's campaign for values was provisionally recognised by Article 6 of the Treaty on European Union, which states that the 'Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law'. Finally, during the 2000 IGC, the EP took an active part in drafting the EU Charter of Fundamental Rights (promulgated on 7 December 2000), and has since continued to call for the Charter to be incorporated into the Treaties. The Treaty of Lisbon, by making the Charter binding, went some way towards satisfying the demands of Parliament. At the same time, the European Parliament continued to lobby for EU support for the European Convention on Human Rights, 'so as to establish close cooperation with the Council of Europe, whilst ensuring that appropriate action is taken to avoid possible conflicts or overlapping between the Court of Justice of the European Communities and the European Court of Human Rights'<sup>28</sup>. The EP has made a valuable contribution in areas such as women's and minority rights, combating racism, anti-Semitism and homophobia, stimulating discussion and incorporating human rights into European legislation. In issues relating to the protection of privacy and right to information, the Parliament has campaigned on behalf of European citizens against the lack of institutional transparency and against threats resulting from the use of new technologies such as the Internet.

The European Parliament is also involved in monitoring respect for fundamental rights by the Member States. Article 7 TEU, which suspends the voting rights of any Member State in case of serious and persistent breach of fundamental rights or democratic principles, requires the assent of MEPs in the first phase of infringement proceedings. The EP intervenes in the follow-up procedure leading to any sanction, its rules of procedure allowing it to adopt recommendations for the Council<sup>29</sup>. The Ombudsman's reports or petitions allow the Parliament to highlight human rights violations involving European citizens by a Member State or Community institution. Finally, the EP had an active part in establishing the European Union Agency for Human Rights in 2007.

<sup>27</sup> Resolution of 12 April 1989 (De Gucht report), OJ C 120/51.

<sup>28</sup> European Parliament Resolution No C5-0058-99 of 16 March 2000 on the drafting of a European Union Charter of Fundamental Rights.

<sup>29</sup> Nicolas Clinchamps, *Parlement européen et droit parlementaire*, op. cit., p. 682.

The European Parliament has always been proactive in defending personal dignity and human rights around the world.

In Europe, in the early days of the Communities, the European Parliamentary Assembly denounced infringements of fundamental rights and voiced its constant support for freedom fighters both in countries under the Soviet mantle (support for the 1975 Helsinki Agreements, debate over the situation in Czechoslovakia after the crushing of the 'Prague Spring' and in Poland following the creation of 'Solidarity') and in military dictatorships in southern Europe (Birkelbach report, insisting in March 1962 that the application by Franco's Spain to join the EC be rejected, the freeze on the association agreement with Greece following the military coup d'état in May 1967). These countries, freed from authoritarian regimes, later embarked on the EU accession process. The European Parliament, which is called on to give its assent for accession treaties, has a right of scrutiny over the progress achieved by candidate countries in terms of democratisation and respect for human rights and minorities in order to reach Community level.

Outside Europe, the European Parliament, alongside the Commission and the Council, engages in genuine 'parliamentary diplomacy' to promote democracy and the rule of law, in the context of the special relations that the EU has with regions such as Africa, Latin America and the Mediterranean. Following the Lomé IV Convention (1989), it was the European Parliament that insisted that association agreements contain human rights clauses. Since the 1970s, the EU has engaged in dialogue with all of its partners, negotiating policies to be implemented jointly by the EU and by third countries: human rights issues and democracy are among the topics addressed in these dialogues. These are particularly important in the negotiations that the EU conducts with countries such as China, Iran and Russia. Although not officially involved, the EP's Subcommittee on Human Rights influences the content of these consultations, organising public hearings of opponents and NGOs. Parliament may also use its budgetary powers: the financial instrument par excellence is the European Initiative for Democracy and Human Rights (EIDHR), which offers direct financial support to NGOs working in the field of human rights and democratic support, without requiring approval from the authorities in the third countries where they operate, although the European Parliament can also champion the human rights dimension in foreign relations programmes such as MEDA (Euro-Mediterranean Partnership) or TACIS (Technical Assistance to the Commonwealth of Independent States).

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The EP uses various tools to lobby for the protection and promotion of human rights and democracy. The most common of these are resolutions, public declarations and delegations. Often adopted under the urgent procedure (Rule 115 of the Rules of Procedure of the European Parliament), resolutions issued by the EP (or public declarations signed by the requisite number of members) mainly concern the general human rights situation in a particular region or country. These usually call on the Council and the Commission, in addition to the authorities in the country concerned, to act, remind-



ing them of their international human rights obligations. Parliamentary delegations are received in all third countries and are seen as representing the entire European Union. A visit from an EP delegation raises expectations that cannot always be fulfilled in reality. The European Parliament has other specialist tools in the human rights arena: the annual Sakharov Prize is awarded for efforts<sup>30</sup> in the field of fundamental freedoms, providing protection, financial support and international visibility for the prize-winner, which may be an individual or a project. The annual human rights report defines the priorities of the European Parliament in this area and facilitates dialogue both within and outside the EU<sup>31</sup>.

Although the resolutions adopted have no legal effect and are not properly followed up, the EP's actions still help to reaffirm and consolidate international law and to define the position of the EU in this area. The reports raise public awareness on issues such as the rights of minorities, women and children and freedom of expression, as well as on modern-day slavery. The reactions of the third countries criticised, in spite of the objections they might raise, are in most cases constructive<sup>32</sup>.

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Looking back, the list of parliamentary achievements is impressive. In around 20 years, the European Parliament has acquired powers that some national parliaments took centuries to obtain<sup>33</sup>. The enhanced role of the Strasbourg Parliament, as set out in the Treaties, with the transition to a proto-parliamentary system, today poses a major challenge to political leaders in the Member States. In political terms, MEPs have already acquired an authority that transcends their powers. In recent years, it has been the European Parliament that has often resolved the deadlock between governments. This was the case both with the Bolkestein Directive on services in the internal market and REACH (Registration, Evaluation, Authorisation and Restriction of Chemicals).

As with previous presidencies, the French Presidency, which began on 1 July 2008, was careful to involve the leaders of the European Parliament and its political groups in preparations for the country's six-month tenure<sup>34</sup>. France is thus exhibiting an unprecedented degree of involvement with the European Parliament, joining the ranks of other leading European countries, especially Germany (since Chancellor Kohl), which have made the EP central to their strategy of influence in Europe.

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<sup>30</sup> Three of the recipients, Nelson Mandela (1988), Aung San Suu Kyi (1990) and Kofi Annan and staff at the UN have also received the Nobel Peace Prize.

<sup>31</sup> EP's Subcommittee on Human Rights: 'The impact of the resolutions and other activities of the European Parliament in the field of human rights outside the EU', EIUC study of 10 July 2006.

<sup>32</sup> Ibid. and European Inter-University Centre for Human Rights and Democratisation (EIUC), *Beyond Activism. The impact of resolutions and other activities of the European Parliament in the field of Human Rights outside the European Union*, October 2006, pp. 87-99.

<sup>33</sup> Paul Magnette, 'la difficile parlementarisation de l'Union européenne', in Pascal Delwit, Philippe Poirier (ed.), *Parlement puissant, électeurs absents*, op. cit., p. 296.

<sup>34</sup> *Le Monde*, 11 July 2008.

The progress is so remarkable that some, such as German Foreign Affairs Minister Joschka Fischer, speaking at Humboldt University in 2000, predicted that it would lead to ‘full parliamentarisation’ of the EU. In actual fact, judging by its formal powers alone, as reinforced by the Treaty of Lisbon currently undergoing ratification, the foundations for this parliamentarisation already seem to be in place. In institutional terms, the Treaty of Lisbon states that governments, ‘taking account’ of the political balances within the Parliament, will put forward a candidate for the President of the Commission, who will be ‘elected’ by MEPs. The Treaty also deepens the budgetary powers of the EP: Parliament must adopt a long-term outlook and will be on an equal footing with the Council when it comes to deciding expenditure, with revenue remaining within the purview of the Member States. Above all, with the extension of the codecision procedure, the Treaty of Lisbon makes the EP co-legislator alongside the Council.

In reality, there is little risk of the European parliamentary regime so feared by some becoming a reality. Both the organic criteria (representation and parliamentary procedure) and functional criteria (sources and powers) of parliamentary law are still in their infancy.

In terms of organic criteria, MEPs have from the outset been organised in the conventional sense, imitating the practices of national parliaments. The administration of the EP (staff and services) is directly inspired by national parliamentary law. Most of the work is done by political groups and parliamentary committees.

According to Rule 29 of the Rules of Procedure of the European Parliament (1999 version), all political groups must be composed of several Member States. Single-party groups are prohibited. An amendment introduced in May 2008 stipulates that all political groups must be composed of at least one fifth of Member States (i.e. seven Member States) and have a minimum of 20 members. The rules therefore prohibit any groups being organised based on nationality and prevent the proliferation of small groups. The influence of the D’Hondt system on the distribution of seats, staff and budgets between the different groups tends to favour large groups, and thus encourages the formation of large political groups in the EP. However, the partisan structure of the European Parliament remains more fluid than that of most national parliaments: subject to national electoral developments, European representation still varies a great deal from one ballot to another, and the cohesion of partisan groups is weaker than in their national counterparts<sup>35</sup>.

The EP’s focus on legislative work, with a view to full implementation of the cooperation and codecision procedures, has in practice meant strengthening the role of the parliamentary committees and their working methods. The importance that these procedures place on first reading increases the influence of committees in the decision-making

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<sup>35</sup> Simon Hix and Christopher Lord, *Political Parties in the European Union*, London, Basingstoke. Macmillan, 1997.

process, since they are charged with examining proposals for regulations and Community directives and selecting all amendments before the plenary sitting. The committees of the European Parliament are unequal in terms of size and responsibility – the Committee on Foreign Affairs covers an area in which the European Parliament only has a formal power, but its members have always included influential and prominent figures, while the Committee on Budgets has a strong position in an area where the European Parliament has had real power since 1970-1975, when the arrival of codecision strengthened the position of legislative committees such as the Committee on the Environment, Public Health and Food Safety or the Committee on Transport and Tourism. The committees (12 before direct election, 20 in 2007) are sometimes consulted on the merits and sometimes for an opinion. Each Member of the European Parliament is in principle a full member of one committee and an alternate member of another, the increase in legislative responsibilities of the institution going hand-in-hand with the growing specialisation of MEPs. Unlike national parliaments, the absence of a government majority means that the outcome of debates is not determined by the executive, but results from opposition and dialogue between the various political groups. The choice of members of the Bureau (President and Vice-Presidents) and the political composition of each committee are therefore determined by prior arrangement between the groups according to the number of members (D'Hondt system). Since direct election, some committees, such as the Committee on Employment and Social Affairs, the Committee on the Environment, Public Health and Food Safety and the Committee on Women's Rights and Gender Equality, have allowed 'outsiders' such as journalists and lobbyists to attend their meetings. All committees without exception have now opened up to the public, as in the case of the Committee on Budgetary Control when it investigates cases of fraud. The European Parliament increasingly uses committees of inquiry, while standing committees have increased the number of hearings<sup>36</sup>.

Created in the early 1970s, parliamentary delegations have become the preferred means of making contact with parliaments in third countries. They facilitate interparliamentary communication and control over the EU's external relations. Their members must reflect the composition of the political groups and, to a lesser extent, the size of the Member States.

The main change introduced by the Strasbourg Parliament was multilingualism, requiring strict rationalisation of procedures and causing a certain apathy in proceedings. Conversely, the President of the European Parliament has a political stature unrivalled by that of his national counterparts. Since 1988, he has attended European Councils (he presents the views of Parliament during the opening session). He meets each month with the presidents of the Commission and the Council of Ministers (trialogues). He

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<sup>36</sup> Simon Hix and Christopher Lord, *Political Parties in the European Union*, London, Basingstoke. Macmillan, 1997.

signs off on the EU budget and co-signs, together with the President-in-office of the Council, all legislation adopted within the framework of the codecision procedure<sup>37</sup>.

While the European Parliament has been able to obtain the means of functioning as an ordinary assembly, representation has posed a greater problem. The obstacles that it continues to face, confirmed by wide-scale abstention during the European elections in June 2004, could eventually weaken Parliament. We might have criticised the Strasbourg Parliament for being an ineffectual ‘talking shop’ over the years, but its steady expansion over the last 20 years undermines this argument<sup>38</sup>. Although Parliament has become a powerful co-legislator in all matters linked with the single market, it remains excluded from areas that concern citizens: employment, welfare, taxation, security and defence. The European elections place the national parties in a difficult position by forcing them to decide whether to campaign on a European platform which is necessarily fragmented, or whether to focus on hype, ignoring the subtle hierarchy of governance. European elections have struggled to galvanise the public, uninterested in voting for a parliament that, owing to the nature of its political groups and rules of procedure, is almost completely dominated by a centre coalition, with no direct impact on the European executive. Voters, who already find it hard to see the issues at stake, know that they have little influence over European politics<sup>39</sup>. In addition, although its election by direct suffrage since 1979 makes the EP the only European institution to have direct popular legitimacy, if we look closer, it is not representative of a ‘European people’, but of the peoples of Member States. This equivocation by the authors of the Treaties means that representation embraces all of European society, with two consequences: Member States remain the preferred forum for politics; the divide between representatives and European citizens persists, accentuated by the absence of any European electoral division in a number of Member States<sup>40</sup>. The Treaty of Lisbon, which in Article 8A(2) states that ‘citizens are directly represented at Union level in the European Parliament’, could, if it came into force, be an enormous step forward in this area.

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In terms of functional criteria (sources and powers), the pro-constitutional movement – echoed by the European Parliament, which for a long time has been trying to constitutionalise the Treaties – could be realised in the Treaty of Lisbon. However, many commentators observe that the Treaty strips the European Parliament of too many of its powers. In fact, although the Treaty extends the parliamentarisation of the European Union by recognising the election of the President of the Commission by the European Parliament, it also confirms intergovernmental leadership by establishing a permanent

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<sup>37</sup> Richard Corbett, Francis Jacob, Michael Shackleton, *The European Parliament*, 7th edition, London, John Harper Publishing, 2007 pp. 114-115 and 321.

<sup>38</sup> Some commentators even go as far as to consider the European Parliament to be one of the most powerful elected chambers in the world. Cf. Berthold Rittberger, ‘Constructing Parliamentary Democracy in the European Union: How did it Happen?’, in Beate Kohler-Koch, Berthold Rittberger, *Debating the Democratic Legitimacy of the European Union*, op. cit., p. 112.

<sup>39</sup> Paul Magnette, ‘la difficile parlementarisation de l’Union européenne’, in Pascal Delwit, Philippe Poirier (ed.), *Parlement puissant, électeurs absents*, op. cit., pp. 297-299.

<sup>40</sup> Nicolas Clinchamps, *Parlement européen et droit parlementaire*, op. cit., p. 686.

presidency of the European Council. Although the privilege of nominating governments seems to have worn thin, the position of Commission President is not always the subject of open competition and the creation of the Santer Commission in 1995, the Prodi Commission in 1999 and the Barroso Commission in 2004 revealed that, in spite of their threats and injunctions, MEPs are unable to oppose the choice of governments<sup>41</sup>. The Council, which is the decision-making body par excellence, can only be challenged by the EP through indirect control (judicial remedy) or specific checks (budgetary control). In any case, the Treaty of Lisbon continues to give the Council considerable powers not only in terms of foreign and security policy, where it remains the dominant body, but also in the broader landscape of Economic and Monetary Union and ‘open coordination’ of social and employment policy. The influence of MEPs still remains marginal over matters that remain within the exclusive remit of the Commission, such as competition policy, or that require the unanimous consensus of the Council, such as taxation and common foreign and security policy.

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The European Parliament is also redefining its role in the increasingly complex institutional architecture of the EU.

Anxious to safeguard its legitimacy, it has sometimes tried to stem the tide of new and competing representative bodies (such as the Economic and Social Committee and the Committee of the Regions), which over the years have demanded a voice in the Community. This self-preservation instinct is no doubt natural, considering that the EU is a political entity in the making and that some still hope to transform it into a federal system in which the European Parliament would have a major role, like the United States Congress or German Bundestag. The European Parliament’s strategy of careful rapprochement with national parliaments ultimately poses the question of its evolution into a bicameral system. As a corollary to constitutionalisation, some commentators and politicians believe that the inherently federalist changes called for by the Strasbourg Parliament will eventually lead to a bicameral parliament, taking into account the various layers of representation. Alongside a lower house corresponding to the current Parliament, there would be a new upper house, representing not only the Member States but also the regions<sup>42</sup>.

Faced with the crisis of representative democracy, the Commission, in its White Paper on European Governance published in the summer of 2001, takes into consideration the strengthened roles of non-government actors, by involving civil society in the decision-

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<sup>41</sup> Half of the Prodi Commission consisted of dedicated members of the Party of European Socialists at a time when this group had just lost the June 1999 elections. In June 2004, the governments had difficulty choosing between a candidate from a small group (Liberal Guy Verhofstadt) and another candidate from a marginal faction of the Group of the European People’s Party (Christian Democrats) (British Conservative Chris Patten).

<sup>42</sup> This architecture would be along the lines of the participatory democracy outlined by the Commission in its White Paper on European Governance, COM (2001) 428 final, Brussels, 25 July 2001, pp. 16-20, and in Nicolas Clinchamps, *Parlement européen et droit parlementaire*, op. cit., p. 691.

making process through direct and open participation of organised interests and civil associations (citizens' conferences). This approach is clearly a bid to make the decision-making process more open and transparent, while emphasising the need to 'democratise expertise' in an increasingly difficult scientific and technical context. During the work of the Convention, the European Parliament defended the idea of a citizens' initiative. In 2004, the principle of 'participatory democracy' was introduced into the Constitutional Treaty (Article I-47), while the Treaty of Lisbon makes provision for a tangible means of action: the right of popular initiative<sup>43</sup>.

The European Parliament now takes decisions that affect the everyday lives of citizens, something that is not highlighted enough in European elections. The public needs to be more aware of this. Contrary to the expectations of federalists, the determination shown by Parliament in recent decades to make the European system more accessible and visible has not yet led to the emergence of a European public area. European party federations have become established in nearly all of the political families, galvanised by the European elections. However, they remain weak federations of national parties with little involvement in European electoral campaigns, and seem to be structured more around European Councils<sup>44</sup> than the European Parliament<sup>45</sup>. Although the EP has made a real effort to communicate with the press, radio and television in order to publicise its proceedings more<sup>46</sup>, coverage of the EP's activities by national and international media remains poor, with newsworthy material more readily sourced from the summits of Heads of State or Government than from the Chamber<sup>47</sup>. Coverage of this news, considered slow, dull, soft, and at times technocratic, according to the editor of *Le Monde*<sup>48</sup> discourages viewers and readers. According to Eurobarometer surveys, the lack of information about the parliamentary institution remains one of the main causes of abstention during European elections.

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<sup>43</sup> Paul Magnette, 'European Governance and Civil Participation: Beyond Elitist Citizenship?', in *Political Studies*, 51/1, 2003, pp. 139-156.

<sup>44</sup> One of the signs of this are the 'pre-summits' for heads of governments, political leaders, members of the Commission and the chairman of the EP group belonging to the same political family. These meetings can have a major impact, as was the case in October 1990, when the leaders of the PPE agreed to impose a strict timetable for Economic and Monetary Union on the future European Council in Rome. This resulted in the ambush of Margaret Thatcher, who found herself isolated at the Summit from other Heads of State or Government who approved the timetable for EMU.

<sup>45</sup> Pascal Delwit, Erol Kulahci, Cédric de Van Valle (ed.) *Les fédérations européennes de partis. Organisation et influence*.

<sup>46</sup> Fully equipped press rooms and TV and radio studios have been provided for 1200 accredited journalists both in Brussels and Strasbourg, while a press conference is held every Friday before the Strasbourg part-session to inform journalists about the work of Parliament in the following week, and television crews are allowed to film plenary sessions and certain committee meetings.

<sup>47</sup> F. Heyndericks, *L'Europe des médias*, Brussels, éd. de l'Université de Bruxelles, 1998, and Klaus Eder, Hans-Jörg Trenz, 'Prerequisites of Transnational Democracy and Mechanisms for Sustaining it. The case of the European Union' in Beate Kohler-Koch, Berthold Rittberger, *Debating the Democratic Legitimacy of the European Union*, op. cit., pp. 167-173.

<sup>48</sup> Cited in Olivier Costa, Paul Magnette, *Une Europe des élites? Réflexions sur la fracture démocratique de l'Union européenne*, Brussels, Editions de l'Université de Bruxelles, 2007, p. 57.



The proliferation of sites (Strasbourg, Brussels and Luxembourg) adds to the confusion: this disorients the public, which loses contact with the 'nomadic institution'<sup>49</sup>. Finally, one wonders whether the disdain shown by certain political leaders towards the institution (considered a 'second choice', hence the high turnover rate) is a factor in tarnishing the image of the institution and fuelling latent anti-parliamentarism.

In this regard, not everything has to do with the powers of governments or institutions. The creation of real European political parties and their visibility is primarily a matter for political leaders. Every effort must be made to encourage this process (institutionalisation of European parties, role and status of MEPs, teaching in schools), if necessary through better media coverage of European issues.

Finally, although the European Parliament is undeniably the pillar institution of the EU's judicial system, and although it seems destined for a great future, we would do well to mind the words of political scientist Paul Margette, according to whom the European Parliament has become a key player in the EU political game, but has not replaced inter-governmental forums as the centre of gravity<sup>50</sup>. Some would like to see more emphasis placed on the original structures of the Union and a search carried out for suitable forms of democratisation. Such is the ambition of those who, in academic circles, defend what should be innovative concept built around the idea of 'democratic governance'.

Should we therefore consider the European Union as the place where a new principle of representative government is defined, to paraphrase Bernard Manin<sup>51</sup>? Notwithstanding the complexity of the lobbying system and the disappointing outcome of attempts to control access by these parties to decision-making processes, the experimental approach towards European integration should involve a study of new solutions to prevent the contradiction between efficiency and democracy from becoming a virtuous cycle (efficient democracy), reconciling deliberation and expertise<sup>52</sup>. As for the European Parliament, it has already engaged in a debate on the balance that must be found between representative, participatory and deliberative democracy.

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<sup>49</sup> As Emanuele Gazzo, Editor-in-Chief of Agence Europe explained, 'we need a single site where Europe can work and with which it can identify. This is also necessary to allow the media to work.' Speech by Emanuele Gazzo during the symposium on *Le Parlement européen dans l'évolution institutionnelle*, published by Jean-Victor Louis, Denis Waelbroeck (ed.), Editions de l'Université de Bruxelles, 1988, pp. 170-171.

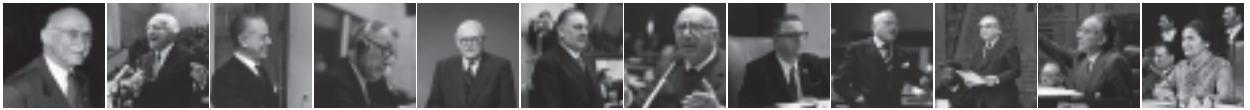
<sup>50</sup> For a literary review on the subject, see Paul Margette, *Le régime politique de l'Union européenne*, Paris, presses de Science-po, 2003, p. 240 et seq.; Céline Belot; Fabienne Greffet 'Une Europe en quête d'électeurs. Retour sur les différentes lectures de l'abstention aux élections européennes à l'occasion du scrutin de juin 2004', in Pascal Delwit, Philippe Poirier (ed.), *Parlement puissant, électeurs absents*, op. cit., p. 200.

<sup>51</sup> Bernard Manin, *Les principes du gouvernement représentatif*, Paris, Flammarion, 1995.

<sup>52</sup> On this question, see Sabine Saurugger, 'Démocratiser l'expertise?. Acteurs non étatiques et fabrication d'un savoir légitime', in Olivier Costa, Paul Margette, *Une Europe des élites?*, op. cit., pp. 225-239.









## PART I: THE EUROPEAN PARLIAMENT REAFFIRMS ITS LEGITIMACY

### I. The European Parliament asserts its political legitimacy

#### A. Direct elections and legitimacy of the European Parliament

The lengthy debate over the future of the European Community/European Union (hereinafter referred to as the EU in the interests of clarity), which dates back to the period before the foundation of the European Coal and Steel Community (1954), has always been marked by profound scepticism regarding the capacity of European nations to overcome their age-old differences and unite within a fully integrated political community. The strength of this sentiment has even convinced the most inveterate supporters of Europe to dismiss any immediate plans for a federation. This is the same realism that made them accept the principle of staggered integration in the 1950s and 1960s. In 1958, this process led to the creation of European Atomic Energy Community (Euratom) and the European common market. The argument used was that before any political integration could take place, crucial progress was needed in terms of the integration of vital sectors of the economy. The merger of the three Communities in 1965 did little to change these views.

Fifty years after the signing of the Treaty of Rome, European integration has made remarkable progress in various sectors: the abolition of nearly all customs tariffs; har-

monisation of fiscal legislation; completion of the EU internal market and to a certain extent the money markets, with more than half of Member States (15 out of 27) sharing the same currency. Yet contrary to the expectations of those in favour of phased integration, none of these accomplishments, in addition to the various waves of enlargement that have increased the number of Member States from six to 27, seems to have completed the process of European political integration. On the contrary, the extent of the malaise that has swept through the EU now seems to threaten the very preservation of some of its achievements. The failed ratification of the Constitutional Treaty in 2005 is one illustration of this; Ireland's rejection of the Treaty of Lisbon in 2008 is another.

These problems are hard to understand for many observers and are difficult for Europhiles to accept. The Treaty of Rome provided the foundations for European political union founded on democratic principles common to the Member States. Specifically, the Treaty makes provision for the creation of an institution universally recognised as the basis for the legitimacy of modern political systems in general, and western democracies in particular: a representative assembly, a European Parliament (EP) destined to become the pivotal institution of political integration in Europe<sup>53</sup>.

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In Europe, this choice is a natural step in the evolution of political systems. In a democratic regime, politicians are authorised by the institution that they represent, the parliament, the true representative of the national community. Even in situations where legislative powers are held almost exclusively by the executive, the legitimacy of the regime is preserved by control over the executive by the 'sovereign' representative institution. Obviously, elections are an essential prerequisite for this process.

### **A.1 From indirect to direct legitimacy**

The Treaty of Rome already contained provisions on the direct election of the European Parliament. The founding fathers were convinced that without a strong parliament, an EU destined to be politically integrated could not realistically assert its authority over the Member States. In fact, this supranational authority in the making had to have a level of democratic credibility comparable to that enjoyed by the governments of its Member States. Paul Reuter, one of the architects of the institutions of the ECSC, confesses that Jean Monnet gave him, during a meeting on 12 April 1950, the long-harboured idea of creating a Franco-German Parliament, which would prefigure the Parliamentary Assembly of the ECSC<sup>54</sup>. This project made no immediate provision for its direct election, taking into account the resistance of most of the national leaders towards any federal proposal. Consequently, the first direct election of the European Parliament did not take place until 1979. It was only after 20 years of existence that the Community acquired this

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<sup>53</sup> See Leon Lindberg, 'The Role of the European Parliament in an Emerging European Community', in Elke Frank ed., *Lawmakers in a Changing World*, Englewood Cliffs, N.J., Prentice Hall, 1966, and Willard N. Hogan, *Representative Government and European Integration*, Lincoln, University of Nebraska Press, 1967.

<sup>54</sup> Paul Reuter, *La naissance de l'Europe*, Fondation Jean Monnet pour l'Europe, Centre de recherches européennes, Lausanne, 1980, p. 19.

legitimacy, which many believe to be, in the western democratic tradition, an essential characteristic of the state.

The Treaty of Rome did not provide any timetable for election of the EP by universal suffrage. Given the emphasis placed on economic integration, holding direct elections was not considered a priority at the time; some even considered it superfluous or possibly dangerous. It was decided that Members of the European Parliament would provisionally come from the ranks of national representatives and would be designated by their respective parliaments. The indirect legitimacy enjoyed by the European Parliamentary Assembly, for this is what it was called in 1958, thus seemed more than adequate at the time. However, the decision taken in 1962 by its members to call it the European Parliament, in order to underscore its potential political role in the future of the Union, did not have the desired effect of expediting the transition to direct elections.

The limitations of this system were immediately apparent. The most obvious limitation was the reluctance of the parliamentary executive, particularly in France and Italy, to designate representatives from parties considered at the time as anti-European, or even to designate representatives from opposition parties. Therefore, communist members were not appointed until 1969 by Italy and 1973 by France.

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The representativeness and therefore the legitimacy of the institution suffered as a result. A second more serious problem derived from the amount of time that MEPs could spend on EP activities, given that their overriding commitment was to voters in their own country. In this regard, the objections raised had more to do with the merits than the principle. How could the legitimacy of an institution depend on the presence of members – regardless of the level of representativeness of their respective electorates – when at times their commitment was limited or even non-existent? Without direct elections, the Parliament was seen as distant even by those European citizens who knew of its existence, while others were utterly oblivious of it. Some were not even aware that their national MPs held this second office<sup>55</sup>.

It was not until a crisis emerged in European integration that the focus began to shift towards the EP as the institution able to resolve it. This crisis emerged in the second half of the 1960s and continued until the first elections in 1979, and even until the adoption in 1987 of the Single European Act (SEA). It was a two-sided problem: on the one hand, there was too much bureaucracy, criticised for example in the report by the Three Wise Men, who in 1980 commented that ‘this general phenomenon of an excessive load of business aggravated by slow and confused handling may be summed up in the one French word, *lourdeur*<sup>56</sup>; and on the other, a more deeply-rooted problem than admin-

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<sup>55</sup> For more about the advantages and disadvantages of the dual national/EP mandate, see Valentine Herman and Juliet Lodge, *The European Parliament and the European Community*, New York, St. Martin's Press, 1978.

<sup>56</sup> Council of the European Communities, report of the Three Wise Men on the European Institutions, Brussels, 1980, p. 11.

istrative inefficiency: the lack of legitimacy of the European decision-making process. In fact, the introduction of qualified majority voting had diluted the accountability of governments towards their national parliaments. This situation, where some countries would be forced to adopt decisions to which they had not agreed, was contrary to the democratic principles to which the EU and its Member States had subscribed<sup>57</sup>.

This situation explains the renewed interest in the European Parliament. Supporters of integration saw it as an institution that would play a fundamental role in the political integration of Europe. Most of the proposed reforms of the EU in the 1970s and 1980s thus made provision for a strengthening of the role of the EP in the decision-making process<sup>58</sup>. However, more important still was awareness of the 'democratic deficit' affecting the Community decision-making process. This fuelled demands for the election of the EP by direct universal suffrage, an objective that the Parliament had always defended: the convention that it prepared in 1960 to launch the procedure that would lead to direct elections is evidence of this. This initiative was not crowned with success, mainly due to the hostility of President de Gaulle. Yet the EP was not discouraged by the failure. It proposed, in vain, organising an intergovernmental conference with a view to holding direct elections in 1970.

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Nevertheless, the idea gained ground as the Community evolved. The first enlargement of the EU, when Denmark, Ireland and the UK joined, fuelled the debate over the nature of democracy within the Union. This was followed by the shift in attitude resulting from the election in March 1974 of Valéry Giscard d'Estaing as French President. He was in favour of direct election and, from December that year, the final communiqué of the Summit of Heads of State or Government in Paris (the future European Council) confirmed that the direct elections to the European Parliament ought to take place 'as soon as possible'. To this end, the document instructed the Council of Ministers to reach a decision in 1976, and on 20 September 1976, in Brussels, it adopted the Act concerning the election of the representatives of the Assembly by direct universal suffrage. The first round of elections in 1978 could not take place owing to the amount of time taken by the French Constitutional Council to reach a decision. The Constitutional Council had placed two conditions on its approval: the direct elections to the European Parliament should not automatically mean an increase in the EP's powers; these could only be modified by formal reforms of existing treaties.

Following this lengthy process, the first direct elections took place from 7 to 10 June 1979. The European Parliament, with its 410 members, held its constituent session between 17 and 20 July 1979. However, did these direct elections really change matters for the European Parliament?

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<sup>57</sup> David Marquand, *Parliament for Europe*, London, Jonathan Cape, 1979, pp. 36-39.

<sup>58</sup> In addition to the numerous reports prepared by special EU committees before the first EP elections, the most important of these proposals came after the first elections to the European Parliament with the 1981 Genscher-Colombo initiative and the 1984 Draft Treaty on European Union, conceived and drafted by Altiero Spinelli (see below).

## **A.2 1979, a democratic revolution: first elections to the European Parliament**

Although the powers of the European Parliament have barely evolved, the first direct elections were hailed as a fundamental, indeed revolutionary, event. In total, 185 million voters turned out and the polling rate was almost 63%. This first direct election was like a breath of fresh air for the concept of European democracy. Straightaway, Parliament was able to use its new legitimacy to consolidate its powers and to play its full role in the Community decision-making process, which at that time was, to say the least, opaque.

The first step it took in this direction was the rejection in December 1979 of the 1980 draft budget. This was to a large extent a symbolic demonstration of Parliament's determination to use its budgetary powers to gain legislative power.

For all that, the debate over its democratic potential was only just beginning. Naturally, it had democratic performance on its side, but this was necessarily hindered by the mere fact of the objective difficulties encountered by the process of building a multinational democratic entity such as the European Union.

In this political and electoral process, four areas effectively posed a problem: electoral participation; the nature and pertinence of the elections and campaigns in the Member States; the distribution of seats between Member States; and the impact of electoral laws on seat allocation. The last two points will be covered in more detail further on. For the time being, we will concentrate on the first two points.

### **1. Electoral participation**

Electoral participation was quite high (approximately 63%) for such a young institution, although quite poor by comparison with national legislative elections. For some commentators, it signalled a lack of interest in this historic election among European voters in several countries. Denmark and the UK had a particularly low turnout (less than 48% and 33% respectively). However, excluding countries where voting was compulsory, there was a decent turnout in other Member States such as Germany (66%), Ireland (64%) and even France (61%). In any case, the issue of participation immediately sparked a debate. Optimists argued that the results of the 1979 elections were similar, and in some cases even better than those observed in major federal democracies such as the United States. Ultimately, participation in the first EP elections was considered satisfactory, particularly taking into account the trend of decreasing voter turnout in the majority of European countries during various elections. Successive European elections have seen a steady fall in participation, which is a source of serious concern. This could be considered to be directly linked to the weak image of the EU among citizens. If the campaign issues were truly European, if the political dimension of the EU had been highlighted, then voter turnout would inevitably have been greater, since the importance of the EU would have been more apparent.

## 2. Nature and relevance of European elections

We have just shown that low turnout is in large part due to the absence of a truly European debate. Despite the determination of pro-Europeans to begin a debate on this subject, it has to be said that in nearly all Member States, electoral campaigns have always focused on national political issues and candidates. The parties' strategies have often consisted of exploiting the European elections; in other words, using European electoral platforms for national ends.

When nominating candidates, parties have at times 'tried out' up-and-coming members in what they see as a less important political arena, or conversely used the nomination as a way of thanking members approaching the end of their career.

All of these factors are part of a well-known phenomenon – second-order elections<sup>59</sup> – the results of which have no impact on the stability of the national government. As a result, a number of voters use this type of election to express political choices that they want to see taken into consideration on the 'first-order' political scene (in other words, by their national government). By voting for the opposition, voters are issuing a 'free' warning to their governments.

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Representativeness is also undermined by another aspect: the parties themselves have often 'nationalised' debate and have sometimes made European elections a test bed for cross-party alliances.

Together, these factors have meant that European elections are often perceived as having less political impact than local and regional elections, which are also second-order elections. Conversely, unlike most of these elections, European elections involve the entire national electorate. They therefore represent an opportunity to test new national strategies in real life.

Alongside these negative factors, positive aspects have increased the level of representativeness of the European Parliament. Direct popular investiture has given it an indisputable political legitimacy (see Part II). The gradual disappearance of the dual mandate has increased the effectiveness of parliamentary work, which is now predominantly European. This has enabled direct links to be established between European elected representatives and European voters<sup>60</sup>.

The dual mandate (where a member has a seat both in a national parliament and the European Parliament) was banned in 2002 during the revision of the Act of 20 September 1976, with effect from the 2004 European elections. However, two exceptions still

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<sup>59</sup> Karlheinz Reif and Hermann Schmitt (1980) 'Nine Second-Order National Elections; A Conceptual Framework for the Analysis of European Election Results'. *European Journal of Political Research*. 8:3-44.

<sup>60</sup> During the 1994-1999 parliamentary term, this still concerned eleven Italian MEPs and four British MEPs.

remain. The one concerning Ireland has been obsolete since the national elections in May 2007. The one relating to British MPs who were already members of the EP during the 1999-2004 legislature and who will continue to serve until the 2009 elections now only concerns two members.

Many of the MEPs elected during the first elections were quick to realise that their career depended more on their re-election to the European Parliament than their presence on other platforms, and so have invested in the European aspect of their office. Paradoxically, this is even more true for European MEPs unfairly referred to as 'minor', who, according to some critics, were elected during the first European elections instead of national political leaders who were well established and who had no wish to have a seat in the European Parliament.

As we have seen, these implicit and explicit criticisms were ultimately justified by three interrelated facts: the continuing lack of importance ascribed to the EU by national political leaders; the lack of awareness among citizens of the European Parliament and its work; and the inadequacy of the EP's powers. For some observers, the feeling then was that if the EU could prove its usefulness and if the powers of the EP were stepped up, greater importance would be placed on European elections, and the level of media and voter interest (participation) would increase. All of this would have an impact on candidates' profiles by attracting first-class politicians. They even claimed that if these two conditions were not met, direct elections would prove to be a futile exercise, or even a 'waste' of democracy.

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The first elected parliament managed to avoid this pitfall thanks to clever use of its informal powers, thus discrediting these pessimistic forecasts.

The second part of this volume is devoted to this aspect of the EP's history, although it is worth mentioning the emblematic example of the draft Treaty on European Union. Following the failure of the Genscher-Colombo Plan in 1981, it was the turn of Italian MEP and Federalist leader Altiero Spinelli to take the initiative and propose, in 1983, the reform of Community institutions. Mr Spinelli's initiative proved much more important than that of the two eminent ministers on at least two points. Firstly, it incorporated a better institutional concept, which allowed the possibility of promoting an irreversible acceleration of this process towards supranational political integration of the EU. Secondly, this text was approved on 14 February 1984 by the EP by an overwhelming majority (237 for, 31 against and 43 abstentions), which gave it a democratic legitimacy that Member States could not ignore. The draft Treaty also received the formal support of certain national parliaments (Italy and Belgium) and the political support of national and European parties.

Several governments were keen to rise to Mr Spinelli's challenge. French President François Mitterrand declared his support for the proposal during his speech to the EP



on 26 May 1984. Although Mr Mitterrand's initial enthusiasm was tempered by the lukewarm or indeed negative response at national and international level, his stance marked the start of a process that would lead to the ratification in 1986 of the Single European Act (SEA). The SEA eschewed many of the modern institutional changes proposed by Mr Spinelli and was harshly criticised at the time by champions of integration, including the rapporteur, who declared that it was a bit of an anti-climax.

Still, with hindsight, the importance of the SEA was universally recognised. It considerably boosted the powers of the EP and represented the first global reform of the Treaty of Rome after almost 30 years of stagnation. It also allowed the internal market to be created (31 December 1992). It marked the start of a wave of reforms that, from the Maastricht Treaty to the Treaty of Lisbon – provided that this is ratified – has seen enormous progress within the EU and a deepening of its democratic nature.

As such, the SEA is quite simply revolutionary. It is thanks to the legitimacy derived from its direct election that the European Parliament was able to force the hand of the Member States. Most analysts believed that the Single European Act was the smallest possible concession to the supranational aspirations contained in the Spinelli draft treaty. National leaders could no longer continue to ignore, as they had done previously, the aspirations defended by an institution acting on the authority of universal suffrage. Thanks to the popular legitimacy derived from its election by direct universal suffrage, the European Parliament was able to stake out a significant increase in its powers, without this being expressly provided by any law or treaty.

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### **A.3 Electoral standards and representativeness of the European Parliament**

The ability of elected institutions to represent citizens and to be vested with legitimacy depends on the laws governing their elections. Although a uniform electoral law is an objective that dates back to preparations for the first direct elections to the EP, the election of MEPs in each Member State is still subject to very different electoral laws: 28 in total, given that the United Kingdom applies two (one for Northern Ireland and one for Great Britain).

As a result, doubts have arisen as to the homogeneity and, indirectly, the representativeness of the EP. However, Article 138 (paragraph 3) of the Treaty establishing the European Community stated that the EP had to be elected by 'direct universal suffrage in accordance with a uniform procedure in all Member States'. In 1960, the report of a working group chaired by Ferdinand Dehousse stated that the term 'uniform' did not mean 'identical', and that therefore the Treaty of Rome did not make provision for the adoption of a single electoral system for all Member States.

Despite repeated calls from Parliament, Member States have failed to adopt a truly common electoral system. In 2002, the Council, conscious of the legitimacy of these requests, amended the provisions of the Act of 20 September 1976 concerning the election

of the Members of the European Parliament by direct universal suffrage, introducing a number of principles common to all national laws: election of MEPs by the party-list system or by single transferable vote; the possibility of preferential voting; and a maximum threshold for list allocation of no more than 5%. As Andrew Duff, EP rapporteur on the electoral procedure in 2008<sup>61</sup>, points out, ‘the EU has already made substantial progress in establishing the basic conditions for the uniform election of the European Parliament in spite of the absence of a single electoral law’.

This aside, national laws have several things in common: the election period (elections must all take place in the same week); the democratic principles applicable to the right to vote and eligibility; the fair and free nature of the elections; the principle of a tied vote; incompatibility with other offices; the principle whereby votes are converted into seats at national level based on proportional representation (PR).

Originally, the differences between the various electoral systems were considerable, which was not without consequences for the representativeness of the EP. This was particularly the case with the British electoral system. With the exception of Northern Ireland, where the proportional representation system was applied, European elections took place – like national elections – based on a two-ballot majority poll. This system was scrapped in the 1999 elections, when English laws, imposing proportional representation for European elections nationwide, became aligned with those of other Member States. For 20 years, the majority poll system magnified the victories and defeats of the two main parties – Labour and Conservative – who shared seats. Conversely, it penalised the Liberals and Social Democrats; these two parties, which had formed an alliance in the 1984 elections, obtained 18.5% of the vote, but no seats. The advantage that Labour and the Conservatives had under this system probably explains their continued resistance to the adoption of proportional representation.

Other aspects also help to distinguish the electoral systems. Without going into details, the most important are: minimum percentage of votes, number of electoral districts, and party list system versus preferential voting. Table 1 summarises the key features of the 28 electoral systems and classifies them based on these three criteria.

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<sup>61</sup> Source: European Parliament.

TABLE 1  
KEY FEATURES OF THE ELECTORAL LAWS OF THE MEMBER STATES  
FOR EUROPEAN ELECTIONS

Country	Number of MEPs	Constituencies	Proportional representation	Threshold	Average constituency size	Preferential voting
Austria	18	1	yes	4%	18	yes
Belgium	24	4	yes	no	6	yes
Bulgaria	18	1	yes	5%	18	no
Cyprus	6	1	yes	1.8%	6	yes
Czech Republic	24	1	yes	5%	24	yes
Denmark	14	1	yes	no	14	yes
Estonia	6	1	yes	no	6	no
Finland	14	1	yes	no	14	yes
France	78	8	yes	5% at regional level	9,75	no
Germany	99	1	yes	5%	99	no
Greece	24	1	yes	3%	24	no
Hungary	24	1	yes	5%	24	no
Ireland	13	4	STV	STV	3,25	STV
Italy *	78	5	yes	no	78	yes
Latvia	9	1	yes	no	9	yes
Lithuania	13	1	yes	5%	13	yes
Luxemburg	6	1	yes	no	6	yes
Malta	5	1	STV	STV	5	STV
Netherlands	27	1	yes	no	31	yes
Poland	54	1	yes	5%	54	no
Portugal	24	1	yes	no	25	no
Romania	35	1	yes	5%	35	no
Slovakia	14	1	yes	5%	14	yes
Slovenia	7	1	yes	no	7	yes
Sweden	19	1	yes	4%	19	yes
Spain	54	1	yes	no	54	no
UK	75	11	yes	no	6,8	no
Northern Ireland	3	1	STV	STV	3	STV

Source: EP

\* There are in fact five electoral districts in Italy: candidates stand in one constituency, but votes are calculated nationwide.

## 1. Minimum threshold: application and percentage

The first criterion concerns the adoption of specific thresholds. These have a direct impact on the number of parties that win seats: the higher the threshold, the fewer parties are represented. Overall, 13 Member States have set these thresholds at between 3% and 5% (the maximum authorised by the 2002 Council decision). This practice is generally justified by the need to prevent representation from becoming overly fragmented, although it is criticised because it stops parties representing significant minorities from being elected to the EP, particularly in regional elections. According to numerous commentators, the presence or absence of thresholds in the various electoral laws of the Member States influences democratic representation within the EP. As Table 1 shows, formal thresholds exist in 13 out of the 27 countries. Depending on the Member State, this can cause differences, sometimes considerable, in terms of the number of parties present in the European Parliament. In the eyes of some, these imbalances are particularly worrying as the EP is becoming increasingly important within the EU.

## 2. Number of constituencies

The second criterion is a more flexible tool for influencing the proportional allocation of seats within the EP: whether the national territory is divided into different electoral districts. We need to make a distinction here between countries where these are used solely to present different candidate lists in the various regions and those where they are used to calculate the distribution of seats between parties. The latter are what we call ‘true’ constituencies. An example from the first group is Italy, where five electoral districts are used for the presentation of different groups of party candidates, but where the distribution of seats is calculated for the entire country, as if there was only one district. Germany has introduced a slightly different system: parties can choose to present regional lists, even if there is no official constituency. In both countries, these systems encourage local MEPs to stand without undermining the proportionality of the results obtained by the various parties. The situation is quite different in countries where there are several true constituencies, particularly when these are relatively small. In these cases, taking into account the small number of seats to fill, the proportionality of distribution is significantly reduced. In terms of representativeness, the clearest advantage compared with the minimum threshold system is that regional parties that do relatively badly compared with the national level but which score highly in a particular region can win seats. The UK is a good example of this. The distribution of seven seats on average per constituency has similar effects to a threshold of 14% or 15%. Disproportionate results are also seen in some of the smallest Member States, even in the absence of regional constituencies. The threshold effect of a single national constituency in Member States such as Latvia, Slovenia or even Ireland, and in general in countries where there are no more than 20 members in EP delegations, is very similar to the British system of sub-national electoral districts.

The combined effect of thresholds and/or electoral districts in some Member States means that national delegations to the EP are composed very differently. Some, such as the countries mentioned earlier, generally only have representatives from major parties, capable of obtaining at least 10-12% of the vote; others, such as the Italian delegation, may include parties that obtained less than 1% of the vote<sup>62</sup>. However, it is difficult to find a solution to this problem, partly because Member States have very different populations and sizes.

In the years following the 1979 election, while there were urgent calls for a single electoral law, mainly due to the British anomaly, two other innovations came to light. One, inspired by federalism, was to create transnational constituencies which would allow a more balanced structuring of the EU; however, this was never formally proposed. The other consisted of proportional allocation of a certain percentage of seats in a single constituency covering the entire territory of the Member States. In July 1998, the EP embraced this idea, adopting the Anastassopoulos report. However, subsequent amendments to the Treaties have made no difference in this area, since some national leaders were outraged by the idea. The European Parliament reopened this debate in 2008 when a report was published on the subject of its election; rapporteur Andrew Duff proposed that the number of Members elected from this transnational list should be the same as the number of States. The transnational lists would be composed of candidates drawn from at least a quarter of the States and would be gender balanced. Each elector would be able to cast one vote for the EU-wide list in addition to their vote for the national or regional list. Voting would be preferential according to the 'semi-open' list system, and seats would be allocated according to the Sainte-Laguë method<sup>63</sup>.

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MEPs will have to vote on this text in plenary before the 2009 elections.

### 3. Fixed party lists and preferential voting

A third and final criterion helps distinguish between the various forms of proportional representation according to the extent to which they are fixed or open. The European Parliament has always believed that fixed party lists distance the elected representative from the voter. It prefers preferential voting, which is more likely to persuade citizens to vote in view of the choices it offers.

Preferential voting can be used to change the order in which candidates appear on their party's lists, thereby undermining the party's choices and creating, some believe, a more direct relationship between MEPs and voters. Preferential voting exists in Austria, Bel-

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<sup>62</sup> This is also due to other more technical aspects of electoral law, which allocates seats to parties who obtain the second highest number of votes, even if this is less than the average percentage theoretically needed to win a seat. In Greece, similar aspects of electoral law have allowed parties with less than 2% of the vote to obtain seats in the European Parliament, whereas in theory around 4% was needed.

<sup>63</sup> The Sainte-Laguë method uses the dividers 1, 3, 5, 7 etc., and will be used for the 2009 European elections in Germany, Latvia and Sweden. It gives a slightly more proportional result than the D'Hondt method.

gium, Cyprus, Czech Republic, Denmark, Finland, Italy, Latvia, Lithuania, Netherlands, Slovakia, Slovenia and Sweden. Other rules that create competition within the same party exist in Ireland, Malta and Northern Ireland, where single transferable voting (STV) has been adopted, and in Luxembourg, where voters can split their vote between different candidates (*panachage*). Systems that allow this type of competition within parties are often criticised for their tendency to encourage parties to fragment. However, this potential disadvantage could be offset by the fact that preferential voting seems to be the only means by which voters can really influence the election of specific candidates in European elections. In fixed party list systems, the order in which the parties present their candidates determines who is actually elected.

## **B. Composition of groups within the European Parliament**

### **B.1 Increase in the number of MEPs between 1958 and 2009**

Although the European Parliament had a predecessor, the Common Assembly of the European Coal and Steel Community (ECSC), which met for the first time in 1952, it was not until the Treaty of Rome and the creation of a European Parliamentary Assembly for the three Communities of the time (ECSC, EEC and Euratom) that it really became possible to talk about a European Parliament. This name was only adopted by the Assembly in 1962. In 1958 the first European Parliament had 142 members; during successive enlargements of the Union, from six to 27 Member States and from a population of 276 million to one of 496 million, the number of Members of the European Parliament steadily rose, and today stands at a provisional 785 Members (see Table 2). The only real resemblance between the appointed Parliament and the current Parliament, although this similarity has been attenuated somewhat over the years, is the fact that the number of seats allocated to Member States has more to do with size than the application of a ratio to the actual population. Within the original Parliament there were three categories of Member States: the three 'large' countries (France, Germany and Italy), with 36 representatives each, the two 'medium' countries (Belgium and Netherlands), with 14 representatives each, and one 'small' country (Luxembourg), with six representatives.

The 'size' factor was never openly questioned and countries of a similar size have until recently always had the same number of seats in the European Parliament. During the first enlargement of the European Union, the United Kingdom obtained the same number of seats as the three large Member States; the two other new members, Denmark and Ireland, made up a new category and were allocated 10 seats each. Consequently, during the last six years of its existence, the appointed Parliament was composed of 198 MEPs. The 1979 direct elections were an opportunity to increase the number of representatives, which shot up to 410. In the first elected European Parliament, the four 'large' Member States were allocated 81 seats each in order to better reflect the size of their population; Belgium and the Netherlands had 25, Ireland and Denmark 15. Luxembourg, which

was already considerably overrepresented (see below) kept its six seats. Faced with the intransigence of Denmark, which demanded an additional seat for Greenland, Belgium offered one of its own seats in a conciliatory move. Accordingly, 24 Belgian MEPs and 16 Danish MEPs were elected in 1979. When Greenland left the EU in 1985, this seat was not transferred back to Belgium.

TABLE 2  
NUMBER OF MEPS (1958-2009) – TOTAL AND BY COUNTRY

Country	1958	1973	1979	1984	1987	1994	1995	2004	2007	2009	
										Nice (revised)	Lisbon
Austria							21	18	18	17	19
Belgium	14	14	24	24	24	25	25	24	24	22	22
Bulgaria									18	17	18
Cyprus								6	6	6	6
Czech Republic								24	24	22	22
Denmark		10	16	16	16	16	16	14	14	13	13
Estonia								6	6	6	6
Finland							16	14	14	13	13
France	36	36	81	81	81	87	87	78	78	72	74
Germany	36	36	81	81	81	99	99	99	99	99	96
Greece				24	24	25	25	24	24	22	22
Hungary								24	24	22	22
Ireland		10	15	15	15	15	15	13	13	12	12
Italy	36	36	81	81	81	87	87	78	78	72	73
Latvia								9	9	8	9
Lithuania								13	13	12	12
Luxemburg	6	6	6	6	6	6	6	6	6	6	6
Malta								5	5	5	6
Netherlands	14	14	25	25	25	31	31	27	27	25	26
Poland								54	54	50	51
Portugal					24	25	25	24	24	22	22
Romania									35	33	33
Slovakia								14	14	13	13
Slovenia								7	7	7	8
Sweden							22	19	19	18	20
Spain					60	64	64	54	54	50	54
UK		36	81	81	81	87	87	78	78	72	73
<b>TOTAL</b>	<b>142</b>	<b>198</b>	<b>410</b>	<b>434</b>	<b>518</b>	<b>567</b>	<b>626</b>	<b>732</b>	<b>785</b>	<b>736</b>	<b>751</b>



Since then, successive enlargements have led not only to a steady rise in the number of MEPs, but also to an increase in the number of 'categories' of Member States. In 1987, for example, a fifth category, which could be described as the 'medium to large' category, was created during the accession of Spain, which obtained 60 seats. During Poland's accession in 2004, the number of Polish MEPs was aligned with Spain, which at that time had 54 seats (reduced as a result of the previous enlargement). Portugal and Greece, where European elections were held in 1983, joined Belgium with 25 MEPs. The three waves of enlargement that followed and which increased the number of Member States to 27 meant a shift towards a distribution that was more representative of the population of each country. This trend will continue in the June 2009 elections regardless of which criteria are used (i.e. the Treaty of Nice or the Treaty of Lisbon, which is still to be ratified) (see Table 2). Member State delegations in the current European Parliament, composed of 785 MEPs, are divided into 14 different categories. This allows a fairer ratio of population to members than in the past. The original idea of applying the general principle whereby small Member States have a larger relative weighting has created enormous differences in terms of the number of citizens represented by each MEP, depending on the Member State concerned. Within the first elected European Parliament, each German MEP represented around 750 000 citizens, whilst a Luxembourg MEP represented only 60 000.

Although there is still an enormous difference between the two extreme values (with a ratio of around 11 to 1 in 2008, compared with 12.5 to 1 in 1979), the representation of large countries is today slightly more balanced than in the past (see Table 3). Only the Member States with the six largest populations (the four 'large' countries and the two below them) are underrepresented, although for two countries, Italy and Poland, the distortion is less than 20%. However, things will only get worse for these two countries after the 2009 elections, particularly if the Treaty of Nice criteria are applied. Two other Member States, the Netherlands and Romania, are represented almost equally, whereas the 19 other Member States are all over-represented to varying degrees, with Luxembourg topping this category. If the Treaty of Lisbon is ratified before the next European elections, this distinction will fall to Malta, which, with a smaller population, will have the same number of seats as Luxembourg (i.e. six).

TABLE 3  
RATIO OF POPULATION TO MEPS IN THE 27 MEMBER STATES IN 2007

Member State	Number of MEPs	Population per MEP (in thousands)	Ratio of Member State/ average population per MEP
Germany	99	831	1.32
France	78	813	1.29
United Kingdom	78	779	1.24
Italy	78	757	1.20
Spain	54	824	1.31
Poland	54	705	1.12
Romania	35	617	1.02
Netherlands	27	607	0.96
Greece	24	466	0.74
Portugal	24	441	0.70
Czech Republic	24	429	0.68
Belgium	24	442	0.70
Hungary	24	421	0.67
Sweden	19	479	0.76
Austria	18	461	0.73
Bulgaria	18	423	0.67
Denmark	14	386	0.61
Slovakia	14	386	0.61
Finland	14	379	0.60
Ireland	13	331	0.53
Lithuania	13	261	0.41
Latvia	9	256	0.41
Slovenia	7	286	0.45
Estonia	6	217	0.34
Cyprus	6	130	0.21
Luxembourg	6	83	0.13
Malta	5	80	0.13
<b>TOTAL</b>	<b>785</b>	<b>630</b>	

This table illustrates a long-term trend: the imbalance in the population/number of MEPs ratio, and indirectly the degree of representativeness of the European Parliament.

The following example illustrates the complexity of the problem: Malta has five MEPs, the lowest number ever allocated to a Member State. To reduce it would be unacceptable for the Maltese and would seriously distort voter representation. However, each elected Maltese representative only represents 80 000 citizens; if we were to apply this ratio to all Member States, the European Parliament would have more than 6 000 members.

Since the number of seats has steadily increased with each successive enlargement, it seems essential to limit the size of the Parliament once and for all. The Treaty of Amsterdam (1991) introduced the idea of a ceiling of 700 members, but this was thrown out by the Treaty of Nice (2001), which made provision for 732 members, and by the accession treaties. On the eve of the 2009 elections, the European Parliament therefore has 785 members. Following a lengthy negotiation process, the European Council of 17 October 2007 set a limit (via the Treaty of Lisbon) of 750 members plus the President, the extra seat being allocated to Italy. The Treaty also sets a minimum threshold of six members per Member State and a maximum threshold of 96.

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The European Council reached this decision by unanimously adopting the report submitted to it by Parliament. In June 2007, the European Council invited it to present a proposal based, inter alia, on the principle of degressive proportionality. The report by Alain Lamassoure and Adrian Severin on the composition of the European Parliament, adopted by the EP on 11 October 2007, explains how this principle should be applied. The report stresses that the minimum and maximum thresholds indicated in the Treaty should actually be used, such that the range of seats in the European Parliament reflects the population of the Member States in the best way possible. Since populations are constantly changing, the European Parliament also insisted that seats be reallocated in time for the 2014/2019 elections. Finally, as was the case for Bulgaria and Romania, it is believed that if further accession should take place, seats should not be reallocated during the parliamentary term.

The European Parliament has made a proposal based on the best possible calculation of demographic situation and European citizenship. Effectively, during the period of reflection that followed the rejection of the draft Constitutional Treaty by the French and Dutch in 2005, it emerged that a deepening of the concept of European citizenship could help bring EU citizens closer together. The Treaty of Lisbon makes an important change to how the composition of Parliament is decided: whereas before it was composed of 'representatives of the peoples of the Member States of the Community', the new treaty states that henceforth it will be composed of 'representatives of the Union's citizens'. Representation of citizens is degressively proportional.

In its report, the European Parliament tried to flesh out this objective. MEPs deplored the decision of the Council to award an extra seat to Italy – to which they finally came around – since it infringed the strict application of the principle of degressive proportionality. The table below illustrates this idea of Parliament.

MS	Population <sup>(1)</sup> (in millions)	% of the population of EU 27	Seats until 2009	Rev. 'Nice' <sup>(2)</sup> 2009-2014	Rev. 'Nice' - population/MEP ratio	New <sup>(3)</sup> 2009-2014 rapporteurs' proposal	'New' - population/MEP ratio	Rapporteurs' proposal <sup>(4)</sup> (effects)
DE	82.438	16.73%	99	99	832 707	96	858 729	-3
FR	62.886	12.76%	78	72	873 417	74	849 811	+2
UK	60.422	12.26%	78	72	839 194	73	827 699	+1
IT	58.752	11.92%	78	72	816 000	72	816 000	
ES	43.758	8.88%	54	50	875 160	54	810 333	+4
PL	38.157	7.74%	54	50	763 140	51	748 176	+1
RO	21.61	4.38%	35	33	654 848	33	654 848	
NL	16.334	3.31%	27	25	653 360	26	628 231	+1
EL	11.125	2.26%	24	22	505 682	22	505 682	
PT	10.57	2.14%	24	22	480 455	22	480 455	
BE	10.511	2.13%	24	22	477 773	22	477 773	
CZ	10.251	2.08%	24	22	465 955	22	465 955	
HU	10.077	2.04%	24	22	458 045	22	458 045	
SE	9.048	1.84%	19	18	502 667	20	452 400	+2
AT	8.266	1.68%	18	17	486 235	19	435 053	+2
BG	7.719	1.57%	18	17	454 059	18	428 833	+1
DK	5.428	1.10%	14	13	417 538	13	417 538	
SK	5.389	1.09%	14	13	414 538	13	414 538	
FI	5.256	1.07%	14	13	404 308	13	404 308	
IE	4.209	0.85%	13	12	350 750	12	350 750	
LT	3.403	0.69%	13	12	283 583	12	283 583	
LV	2.295	0.47%	9	8	286 875	9	255 000	+1
SL	2.003	0.41%	7	7	286 142	8	250 375	+1
EE	1.344	0.27%	6	6	224 000	6	224 000	
CY	0.766	0.16%	6	6	127 667	6	127 667	
LU	0.46	0.09%	6	6	76 667	6	76 667	
MT	0.404	0.08%	5	5	80 800	6	67 333	+1
	<b>492.881</b>	<b>100.00%</b>	<b>785</b>	<b>736</b>	<b>669 675</b>	<b>750</b>	<b>657 175</b>	

1) Population data as officially submitted by the Commission to the Council on 7 November 2006: see doc. 15124/06 containing the statistics compiled by Eurostat.

2) Rev. Nice. Distribution of seats in accordance with Article 189 EC as amended by Article 9 of the Act of Accession concerning Bulgaria and Romania.

3) New: new proposal based on Article 9A of the new TEU (I-20).

4) The new figures concerning Germany and Malta automatically derive from the draft treaty reform.

These figures are based on the official statistics supplied by Eurostat, used by the Council to verify its own majorities. The number of ‘inhabitants’ is counted, i.e. the total population residing in each Member State, including non-nationals. The EP sees this as emblematic of the lack of harmonisation of the concept of citizenship in the Union. This is why it asks, again in the Lamassoure/Severin report, for a study of the technical and political feasibility of replacing the number of inhabitants by the number of European citizens, the definition of which is to be decided.

## **B.2 Political composition of the European Parliament (1958-2008)**

Being divided into transnational political groups, which makes the current Parliament unique, is a legacy from the ECSC Assembly. In 1953, members designated by national parliaments decided to sit in Parliament not in national delegations, but according to their political affiliation. Three political groups, representing – in decreasing order of size – the Christian Democrats, Socialists and Liberals, were created. Between 1965 and 1973, these groups were gradually joined in the Common Assembly by three other groups representing the Conservatives, Communists and what were known at the time as ‘Gaullists’.

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Following the first direct election of the European Parliament, new political movements slowly emerged that were not represented within national parliaments. European electoral laws differed in fact from national laws, enabling political movements outside the ruling parties to obtain representation in the European Parliament. Broadly speaking, the configuration of European elections often proved favourable to protest parties.

Despite the boom in new ways of thinking, the number of groups within the European Parliament remained remarkably stable: whereas six groups were already present on the eve of the 1979 direct elections, there were only seven in September 2008, peaking at 10 in July 1989 (see table in annex: Distribution of MEPs within the political groups). In the meantime however, the EU expanded from nine to 27 Member States, the number of members from 410 to 785 and the number of national parties with elected representatives in the European Parliament from 54 in 1979 to 182 in September 2008.

The reasons for this stability during the wave of enlargements are mainly political. The elected representatives of new members were in fact integrated within their respective political families as they arrived in Parliament. Some groups even incorporated elected representatives from parties that did not belong to their European party. By becoming a member of the group, they sometimes acquired associate status.

### **1. Political groups in the appointed Parliament**

In 1999, the Group of the European People’s Party (Christian Democrats) and European Democrats (PPE-DE) again became the leading party of the European Parliament in terms of number of members. Its parliamentary roots go back to 1953, when the

Christian Democrat group was created within the ECSC Assembly. In 1958, the ECSC Assembly became the European Parliamentary Assembly, of which Robert Schuman, father of Europe and a key figure in the European Christian Democratic movement, became the first President. In 1978, it changed its name to the 'Christian Democrat Group (European People's Party)' in order to signal its direct link with the European party of the same name. During the first direct elections in 1979, it took the name 'Christian-Democratic Group in the European Parliament (Group of the EPP)'. Finally, during the constituent session in July 1999, it became the Group of the European People's Party (Christian Democrats) and European Democrats (PPE-DE). This development resulted from all members of the European Democrats (ED) joining the EPP in 1992. This group had existed since 1973 under the name of the European Conservatives and acted as an umbrella organisation for the British and Danish Conservative Parties. During the 1994-1999 parliamentary term, these representatives negotiated a special status within the EPP, which resulted in the addition of the acronym 'ED' to 'EPP'. During the 1994 elections, the ranks of the EPP were swelled by members of the French UDF party, who had not yet joined it and who were still sitting with the European Liberal, Democrat and Reform Party (ELDR). In 1996, the Portuguese Liberals (PDS) followed suit. In July 1998, members of Forza Italia and the UPE Group joined the EPP. Following the 1999 elections, it was the turn of the French RPR, a member of the European Political Union (EPU) during the previous parliamentary term. Due to the continuing expansion of its political sphere, the PPE-DE Group is by far the leading party in the European Parliament, with 288 members as of October 2008.

The Party of European Socialists (PSE) was also created in 1953 within the ECSC Assembly under the name of the Socialist Group. It became the largest group in 1975, when it was joined by Labour MPs who had previously refused to sit in Parliament during the 1973 accession and who remained with it until July 1999. It kept this name until 1993, when it switched to the 'Group of the Party of European Socialists'. In 2004, it took its current name, 'Socialist Group in the European Parliament'. These name changes correspond to developments in the European Socialist family towards more integration, particularly following the recognition by the Treaty of Maastricht of a framework for the creation of European political parties. Its composition has remained extremely stable over the years and during successive enlargements, incorporating Socialist parties and Social Democrats from new Member States. In 2002, the PSE Group set up the Willy Brandt Programme to prepare for each wave of enlargement and integrate partners from accession candidate countries. Suffice to say that in 1993, Italian PDS (formerly PCI) members decided to leave the GUE Group to join the ranks of the Socialists. In September 2008, the PSE had 217 members and was the second largest group in the European Parliament.

The Group of the Alliance of Liberals and Democrats for Europe (ALDE) is the third group to be present since 1953. Over the years, its name has also evolved, from the Liberal and Allies Group in 1953, the Liberal and Democratic Group in 1976, the Lib-

eral and Democratic Group (L) in 1979, the Liberal, Democratic and Reformist Group (LDR) in 1985 and finally the Group of the European Liberal Democratic and Reformist Party (ELDR) in 1994. It assumed its current name during the 2004 constituent session. The ELDR Group saw a significant rise in the number of its members following changes to the election system in the UK; during the 1999 elections, British Liberals largely benefited from the transition to proportional representation (see the analysis of electoral laws in paragraph 1.A3), increasing the number of members from three to 10 in one fell swoop. During the 2004 elections, the ELDR Group formed the ALDE Group with members of the PPE-DE Group who wanted to voice their commitment to federal integration and who believed that they could not do so properly within their original party, particularly French UDF members and some Italian members from the *Uniti nell'Ulivo* party list (DL – La Margherita and MRE). In September 2008, the ALDE Group had 100 members and was the third largest group in Parliament.

The GUE/NGL Group (Confederal Group of the European United Left – Nordic Green Left) has its roots in the Communist and Allied Group created in 1973. At the time it included members from the Italian, French and Danish Communist parties, who were joined by members of the Greek Communist Party (KKE) following the country's accession to the European Community. Following changes in the international communist movement and differences of opinion regarding its future, the group split during the 1989 constituent session. The French, Portuguese, a majority of Greeks from the Coalition of the Left of Movements and Ecology (SYN) and one Irish representative created the Coalition of the Left (Coalition des Gauches, or CG), while the Italians, Danish and one member of the Greek SYN founded the Group for the European United Left (GUE). This was dissolved in January 1993 after the Italian PDS joined the Socialist Group. Following the 1994 elections, the GUE Group was reformed by members of the former CG, a few ex-members of the old GUE, newly elected Spanish representatives of the United Left (IU) Party and members of Italy's Rifondazione Comunista Party (RC). Following the accession of the Scandinavian countries and Austria in 1995, the group expanded to include members of Sweden's Nordic Green Left, Swedish left-wing party VP, and Finland's Vas (Left Alliance). In September 2008, the GUE/NGL Group had 41 members, making it the sixth largest group in the EP.

## 2. Groups that emerged following the first direct elections

The Group of the Greens/European Free Alliance (Verts/ALE) consists of representatives from the green and regionalist movements. In 1984, the first German and Belgian representatives sat with the Rainbow Group (see below), there not being enough of them to form an independent group. In July 1989, they founded the Green Group in the European Parliament following successful results obtained in five other countries (France, Italy, Netherlands, Portugal and Spain). In 1999, regionalist politicians from the Group of the European Radical Alliance (ARE) joined the Greens, and the group took the name Verts/ALE, which it still retains to this day. In 2008, it had 43 members, making it the joint fourth largest group together with the Union for Europe of the Nations Group.



The Union for Europe of the Nations Group (UEN), created during the July 1999 session, was originally composed largely of members of Fianna Fáil (which belonged to the Group of European Progressive Democrats (1973-1979), who adopted the name DEP (1979-1984), then RDE (1984-1995) and finally UPE (1995-1999)), members of the AN (Alleanza Nazionale) and French members of the RPF (Rassemblement pour la France). During the 2004 elections, the elected representatives of the new Member States predominantly included those of the Polish PiS Party, the Latvian TB/LNNK Party and two Lithuanian parties, the LDP and VNDPS. In 2008, the UEN had 43 members, making it the joint fourth largest group with the Verts/ALE.

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The Independence/Democracy (IND/DEM) Group originates from the Group for the Technical Coordination and Defence of Independent Groups and Members (CDI), created in 1984. Its members, who did not necessarily share the same political affinity, wanted to coexist within the same group in order to take advantage of the attendant technical, logistical and political advantages (see Court of Justice judgment of 2001, which put an end to this possibility). The group mainly consisted of Belgian and Italian regionalist MPs, Danish supporters of devolution and Italian radicals. In July 1984, it was joined by the first German and Belgian elected representatives of the green movement, and changed its name to the Rainbow Group. In July 1989 it split up, with the Greens setting up their own group. In the 1994 elections, its regionalist contingent also formed its own group, the European Radical Alliance (ERA), consisting of French and Italian radicals. The other members of the Rainbow Group, together with French sovereigntists from the Other Europe party, formed a new group, the Group of Independents for a Europe of Nations (I-EN). In 1999, it took the name Group for a Europe of Democracies and Diversities (EDD), to which the UKIP party belongs, which in the UK campaigns for the country's withdrawal from the EU. In 2004, it was renamed the Independence/Democracy Group (IND/DEM). In 2008, it had 22 members, making it the seventh largest group.

### 3. Groups that no longer exist

Established in 1965, the European Democratic Union Group (UDE) was composed of Gaullist members of the UDR (Union of Democrats for the Fifth Republic, later renamed the Union of Democrats for the Republic). In 1973, it adopted the name Group of European Progressive Democrats (DEP) with Irish Fianna Fáil representatives, and then, during the 1984 constituent session, Group of the European Democratic Alliance (RDE). In July 1995, the RDE merged with Forza Europa (FE), a single party group composed of members of Forza Italia, to create the Union for Europe Group (UPE). These MEPs joined the EPP in 1998. The group was not reformed for the 1999 constituent session, so Gaullist members of the RPR joined the PPE-DE and Fianna Fáil representatives became the founder members of the new Union for Europe of the Nations Group (UEN).

Several nationalist groups have been created within the Parliament since direct elections began. The Group of the European Right (ER), which existed between 1984 and 1989, consisted of representatives from the French National Front, the Italian Social Movement (MSI) and the Greek National Political Union (EPEN). This was succeeded by the Technical Group of the European Right (DR) from 1989 to 1994, when the French representatives were joined by German Republicans (REP) and members of Belgium's Vlaams Blok Party (VL BLOK). In January 2007, following the first direct elections in Bulgaria and Romania, elected representatives from France's National Front, Romania's PRM, Bulgaria's ATAKA, Italy's Lista Mussolini, Belgium's Vlaams Blok and Austria's FPÖ parties created the Identity, Tradition and Sovereignty Group (ITS), although this was dissolved in November of the same year, having failed to retain enough Members.

As mentioned earlier, the Rainbow Group was created during the 1994 constituent session. It was composed of Belgian, Spanish and Scottish regionalists from the European Free Alliance, as well as French and Italian radicals. It did not reform after the 1999 elections, with members of the EFA joining the Greens and the Italian radicals joining the Technical Group of Independent Members (TDI).

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The TDI Group was founded during the 1999 constituent session by Italian radical MPs and members of the Lega Nord (Northern League), French National Front and Belgian Vlaams Blok. It was dissolved in 2001 following a Court of Justice decision (see below).

The Technical Group for the Defence of Independent Groups and Members (CTDI) also had a fleeting existence between September 1987 and November of the same year. It was composed of the Spanish Democratic and Social Centre Party (CDS), Italian radicals, Belgian SP (Socialistische Parti) and the Dutch Reformed Political Party (SGP).

However, political reasons are not the only reasons why the number of political groups remains stable: other aspects of a more legal nature are also a factor.

First, there are the requirements of the Rules of Procedure of the European Parliament. Faced with the continual rise in the number of MEPs following new accessions, the Rules of Procedure have gradually tightened the rules relating to the creation of political groups, both with regard to the number of Member States and the number of members (Rule 29). In May 1999, the right to create a group with representatives from a single Member State was revoked (see enclosed table). In July 2004, following the accession of 10 new Member States, the rules stipulated that all groups had to be composed of at least one fifth of the Member States (six Member States since 2007, when Bulgaria and Romania joined the EU) and a minimum of 20 members. From 2009, the conditions will be even more stringent, since the threshold will be one quarter of Member States (seven Member States) and 25 MEPs.

The impact of the case law of the European Court of Justice (ECJ) should also be underlined in this regard. The ECJ has in fact been called on to enforce the provisions of Article 29 of the EP's Rules of Procedure, which states that 'members may form themselves into groups according to their political affinities'. The Technical Group of Independent Members – mixed group (TGI) lodged an appeal with the Court following the decision of the European Parliament to dissolve it on the grounds that its members did not share any political affinity. Effectively, the group was mainly composed of representatives from the French National Front and Italian radicals. Its members, using the example of the mixed groups of the Italian and Spanish parliaments, claimed that it had formed the group to take advantage of shared physical resources (e.g. secretariat, documentation, etc.) and political resources (e.g. reports, influential positions within the EP, increased ability to table amendments at the plenary, etc.), which non-attached members did not have. The Court upheld the interpretation of the European Parliament and the group was dissolved on 2 October 2001.

**TABLE 5**  
**NUMBER OF MEMBER STATES REPRESENTED WITHIN CURRENT GROUPS OF THE EUROPEAN PARLIAMENT (1979-2008)**

	1979	1984	1989	1994	1999	2004	2008
<b>PPE-DE</b>	7/9	9/10	12/12	12/12	15/15	25/25	27/27
<b>PSE</b>	9/9	9/10	12/12	12/12	15/15	23/25	25/27
<b>ALDE</b>	8/9	7/10	10/12	10/12	10/15	20/25	22/27
<b>GUE/NGL</b>			4/12	5/12	10/15	14/25	14/27
<b>VERTS-ALE</b>			7/12	7/12	12/15	13/25	14/27
<b>IND/DEM</b>						9/25	9/27
<b>UEN</b>						6/25	6/27

Overall, groups in the European Parliament have evolved towards increasing institutionalisation. All groups now have a clear transnational nature; this was already the case for the first three in 1953, but is relatively new for those established between 1965 and 1973.

The PPE-DE is the only group to include MEPs from all 27 Member States (see Table 5). However, this has not always been the case: during the first two legislative terms of the elected European Parliament, the group suffered from the absence of Christian Democrat parties in some countries, and more importantly of elected representatives from the British Conservative Party. The PSE had the opposite problem: it initially had members from all Member States, but later had difficulty in finding partners, particularly among the 'smallest' of the new Member States. It now has representatives from 25 Member States. A similar problem affects the ALDE Group, which in the past has had members from nearly all Member States, but which now only has MEPs from 22 Member States. The Verts/ALE and GUE/NGL Group, also present since 1979, both include representatives from 14 Member States. As the electoral success of these political families is not as important as for the major groups, they have found it harder to be represented in Member States where the number of MPs is limited, and where they must therefore obtain high scores in order to win one or more seats. This problem is accentuated with the UEN and IND/DEM Groups, which have representatives from six and nine of the 27 Member States respectively. This is caused by the relatively young age of these parties and by the fact that they have political sympathies that do not exist in all Member States. Nevertheless, they are also on the road to consolidation and have an increasingly diversified membership.

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The ban on single-party groups since 1999, as well as changes in the Rules of Procedure, have accentuated the consolidation trend. Generally, the Rules of Procedure and the nature of EP proceedings tend to give a significant advantage to the largest groups.

The evolution of the EP group system is also revealing. Note for example that the number of groups has remained stable over the years. The first elected European Parliament had seven groups, plus several non-attached members. Following the second enlargement of the EU and national developments leading to the realignment of political groups within the European Parliament, the number of groups peaked at 10 in 1989. Subsequent elections saw this number start to fall, returning to its 1979 level in 2004. This seemingly trivial fact is another remarkable demonstration of the capacity of the EP's political groups to incorporate newcomers, despite the increase in the number of parties represented. Several enlargements of the EU and increasing fragmentation of national partisan systems during European elections – particularly in France, the UK and Italy – have caused a threefold increase in the number of national parties with elected representatives. In 2008, 185 parties were represented in the European Parliament. At the same time, despite one or two fluctuations, the number of groups has remained constant.

Consequently, the ratio of groups to parties has steadily risen over the years to stand at 26.4:1 in 2008, compared with 7.7:1 in 1979<sup>64</sup>.

### C. By its involvement in European representative democracy

Europe is a 'parliamentary area' where even relative homogeneity fosters a European model of parliamentary democracy<sup>65</sup> and 'multilevel parliamentarism'<sup>66</sup>. The European Parliament symbolises the democratic legitimacy of the institutional system of the European Union, while the parliaments of Member States represent the national face of European representative democracy. This multilevel character results from the manifestation of political will and institutional strategies of parliamentary assemblies bearing two distinct and complementary democratic powers, which try to balance the national and European executive bodies. Nevertheless, we should not be tempted by a simplistic view of a face-off between parliamentary bodies on the one hand and members of the executive on the other. National parliaments usually provide political support to their own government both at the national level and within the EU system. It should also be noted that the functioning of the EU's institutional system is based on a functional collaboration between the European Parliament, the Commission and the Council, and ignores the principle of distribution of executive and legislative power. The Commission thus holds a monopoly on legislative initiative (in Community affairs) while exercising most of the executive power, while the Council acts both as an upper house and an executive, particularly in intergovernmental matters.

The emergence of EU parliamentary law<sup>67</sup> is a formal manifestation of the parliamentarisation of European integration. This has translated as the strengthening of control of European and national parliaments (1), as well as by the development of interparliamentary cooperation within the European Union (2). This dual process is a political and institutional response to the phenomenon of 'double democratic deficit'<sup>68</sup>.

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<sup>64</sup> For more about EP groups, see Simon Hix and Christopher Lord, *Political Parties in the European Union*, New York, St. Martin Press, 1997.

<sup>65</sup> On the emergence of European parliamentarism, see in particular W. Wessels (ed.), *The European Parliaments, the National Parliaments and European Integration*, Oxford University Press, 1999.

<sup>66</sup> With reference to the idea of multilevel constitutionalism, see I. Pernice, 'Multilevel Constitutionalism in the European Union', *European Law Review*, 2002, pp. 511-529.

<sup>67</sup> See N. Clinchamps, *Parlement européen et droit parlementaire. Essai sur la naissance du droit parlementaire de l'Union européenne*, Paris, L.G.D.J., 2006, p. 776.

<sup>68</sup> In the history of European construction, the idea of 'democratic deficit' derives, on the one hand, from the fragile power of the European Parliament in the political structure of the Communities and the European Union and, on the other, the marginalisation of national parliaments in their political systems, mainly due to their inability to monitor the actions of their respective governments in European affairs.

## C.1. European and national parliaments and the democratic deficit

In parallel with the reinforcement and extension of control of the European Parliament, national parliaments have developed specific means of scrutinising the European activities of their respective governments. The landmark development in this respect was the election of the European Parliament by direct universal suffrage in June 1979.

### 1. The rise to power of the EP

#### a. From 1958 to 1979: asserting control

Inherent in parliamentary functions, control was included among the original powers of the European Assembly<sup>69</sup>. The ECSC Treaty of 18 April 1951 created a European Parliamentary Assembly whose main task – apart from acting as a symbol – was to exercise democratic control over the High Authority. The EEC and Euratom Treaties extended the power of control of the European Parliament, which became competent for all three Communities (ECSC, EEC and Euratom).

The structure and functions of the ECSC Assembly were defined by Articles 20 to 25 of the Treaty. Article 22 made provision for an annual session of the Assembly so that it could issue an opinion on matters referred to it. The High Authority (and later the Commission) had to respond orally or in writing to questions submitted to it by the Assembly, while the Council of Ministers did not have such an obligation. Furthermore, the Assembly already had a means of political sanction: a motion of censure against the High Authority, carried by a two-thirds majority, following the presentation by the High Authority of its annual report.

The entry into force of the EEC Treaty did not fundamentally alter the control mechanism, but extended the right of censure of the European Parliament to the Commission, which meant that it could intervene at any time. The Council of Ministers continued to enjoy a lack of political accountability towards the European Assembly, but agreed, in 1958, to answer questions from members. The parliamentary institution gradually developed a right of scrutiny over the activities of the Council based on Article 140 of the EEC Treaty<sup>70</sup>: participation of the Council in question time (1973); questions followed by a debate if not closed by a vote; and the opening of a dialogue on political cooperation. The power of control originally assigned to Parliament was thus gradually transformed into a less restrictive power, allowing members to take part in a wider debate on the activities of the Community.

<sup>69</sup> In 1962, the Assembly proclaimed itself the 'European Parliament', a name that would be officially recognised by the Single European Act in 1986.

<sup>70</sup> On 2 December 1954, the European Assembly adopted a resolution (based on the report of P.-H. Teitgen) whereby it undertook to examine the means by which it could extend its 'political control' to the High Authority.

## b. From 1979 to 2008: institutionalisation of real parliamentary control

Following its election by direct universal suffrage in June 1979, scrutiny of the work of the European executive – represented by both the Commission and the Council – and policies implemented by the European Communities<sup>71</sup> would increase. By now the European Parliament had a full complement of instruments that it could use to exercise control, although these still varied in terms of how binding they were.

First of all, they included the Parliament's information tools, such as written and oral questions, the possibility of forming temporary committees of enquiry<sup>72</sup> to examine allegations of infringement or mismanagement in the application of Community law.

There are also other aspects to parliamentary control. Based on an informal practice that began in 1981, the European Parliament has a power of investiture of the Commission based on its right to adopt declaratory resolutions. This practice was institutionalised by the Treaty of Maastricht, which made the nomination by national governments of the President and Commissioners as a collegiate body conditional on the prior approval of the European Parliament. This power has been recognised and has been steadily reinforced. The Treaty of Amsterdam made the appointment of the President of the Commission conditional on the separate approval of the European Parliament, before that of other members, who are now interviewed by the relevant parliamentary committees. Since the entry into force of the Treaty of Nice, the appointment of the President of the Commission by a qualified majority of the Council, meeting as Heads of State or Government, must be ratified by the European Parliament based on the majority of votes cast. The same procedure applies for the appointment of other commissioners. This power of investiture is further reinforced by the Treaty of Lisbon, which permanently recognises the vote of confidence of the European Parliament and describes the investiture of the President of the Commission as an 'election'<sup>73</sup>. Once appointed, the Commission may still be removed from office by the European Parliament by a two-thirds majority of votes cast and by a majority of its Members. This procedure has been used on several occasions on the initiative of minority groups or to express the dissatisfaction of the European Parliament, but has never succeeded. The criticisms of the European Parliament are in fact levelled more at the Council than the Commission. Furthermore, the required majority and nature of relations between the European Parliament and the

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<sup>71</sup> At the request of the European Parliament, since 1984 the Commission has submitted an annual report on monitoring the application of Community law.

<sup>72</sup> See M. Shackleton, 'The EP's new Committees of Enquiry: Tiger or Paper Tiger?', *Journal of Common Market Studies*, Oxford, Boston, Blackwell Publishers Ltd., March 1998, pp. 115-130.

<sup>73</sup> Under the terms of Article 17(7) of the Treaty on European Union, amended by the Treaty of Lisbon (Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union), 'taking into account the elections to the European Parliament and after having held the appropriate consultations, the European Council, acting by a qualified majority, shall propose to the European Parliament a candidate for President of the Commission. This candidate shall be elected by the European Parliament by a majority of its component members. If he does not obtain the required majority, the European Council, acting by a qualified majority, shall within one month propose a new candidate who shall be elected by the European Parliament following the same procedure.'



Commission – which are not based on any partisan logic – make a vote of no confidence unlikely.

Joint declarations and, more importantly, interinstitutional agreements have been a means of informally increasing the powers of the European Parliament. These are often adopted on its own initiative and mainly concern the arrangements for introducing controls such as the European Ombudsman<sup>74</sup>, the right of petition<sup>75</sup> or the right of inquiry<sup>76</sup>. The European Parliament has also used interinstitutional agreements to formalise the budgetary powers it has obtained from the Commission and the Council.

## 2. The gradual mobilisation of national parliaments

In parallel with the extension of control of the European Parliament, Member State parliaments have been forced to step up their own scrutiny of the European activities of national executives. This enables them to take part indirectly in the EU decision-making process. Since traditional forms of control were unsuitable for monitoring European affairs<sup>77</sup>, national parliaments developed specific mechanisms. Binding control, which was neutralised by parliamentarianism and the majority requirement, has been replaced by a range of ‘soft control’ measures, amounting to modernisation of the decision-making and cognitive function of parliamentary institutions.

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Improved control over European governance also led to a structural adaptation of national parliaments. European affairs committees in the Member States can be categorised according to three criteria: whether specialist committees are kept systematically informed by the national government of proposed Community legislation; whether they must be consulted in advance on areas within the jurisdiction of the EU; whether these parliamentary opinions are binding on the executive. Based on these criteria, it is possible to identify two categories of national parliament.

### a. Parliaments with binding powers

In the first category, parliamentary control of the European operations of the executive is binding and is based on close ties between the specialist committee and the government. The Danish Folketing case is traditionally cited as an example. Its European Affairs Committee must be consulted by the government before any decision of the EU Council. The Danish government is thus vested with an imperative mandate: it is bound by the position of its parliament and must report back to it on the outcome of Community negotiations, particularly if the government has had to deviate from the positions laid down by the parliamentary authorisation. In Germany, the Bundesrat was the first government to set up a specialist committee in 1957 (the European Affairs Committee). According to the federal nature of the German State, the *Länder* each have one vote. With

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<sup>74</sup> OJ C 91, 28.3.1994, p. 60.

<sup>75</sup> OJ C 120, 12.4.1989, p. 90.

<sup>76</sup> Decision of 6 March 1995, OJ L 78, 6.4.1995, p. 1.

<sup>77</sup> See D. Judge, ‘Failure of National Parliaments?’, *West European Politics*, 18/3, 1995, pp. 79-100.



its fundamental competence to deliberate on all documents originating from Brussels, the recommendations made by this specialist committee to the Bundesrat determines the opinion that this gives to the federal government. Some of these opinions are binding in nature, since the government must inform the Bundesrat of the fundamental reasons why, in EU negotiations, it intends to depart from its position on a matter within the jurisdiction of the *Länder*. In the UK, the House of Commons European Scrutiny Committee has an even more favourable status: apart from scrutinising information, this specialist committee can table a proposal to the House for a debate on any European issue that it considers important. The House of Lords also has a European Union Committee, which has a broad mandate. As with the House of Commons, the government is required to follow up reports within two months of their publication, even for those that are not debated in the plenary. The Finnish Parliament – the Eduskunta – also has a strong position since it influences the Community decision-making process through a system of constitutional control. In European affairs, the government’s accountability towards the parliament is twofold. The government has a legal obligation to ensure that all necessary documents and any other information about matters within the remit of parliament are communicated to the Eduskunta. When it comes to the negotiating position of Finland, the government has a political obligation to take into account the views expressed by the Eduskunta.

Among the new Member States, a case in point is Slovakia, where the parliament is closely involved in deciding the official position of the government during negotiations in Brussels. The main task of the European Affairs Committee of the Slovak Parliament is to examine and adopt, after amendments if necessary, draft ‘Community opinions’ sent to it by the government. These opinions determine what the government’s position will be in negotiations and how it will vote within the Council of the European Union. The government may depart from these only in crucial cases in the public interest. In Poland, in both the Sejm (lower house) and the Senate, a standing committee on EU affairs is charged with monitoring Community projects. Opinions issued by the Sejm committee must in principle represent the basis for a position within the Council of Ministers during negotiations conducted with its European partners. If it does not comply with this opinion, one of its representatives immediately has to explain the reasons for the departure to the committee. Conversely, the opinion of the Senate committee is in no way binding on the Council of Ministers.

#### b. Parliaments without direct coercive measures

In the second category of national parliament, specialist committees have only consultative and advisory powers. This remains the case with the majority of national parliaments. In Belgium, for example, delegations from both houses form the Federal Advisory Committee on European Affairs. This can draft opinions, consult the Federal Government before and after each European Council and evaluate how the Member State’s executive role has been fulfilled each year. Similarly, the Joint Committee for the European Union in Spain has a vital role in informing Spanish MPs about the Commu-

nity laws being drafted and the national implementing regulations. It may in this respect submit a report to the bureau of each Assembly. In these reports, it expresses an opinion on European laws in the process of being drafted, although this position is not binding on the government.

In France, the law of 6 July 1979 created a parliamentary structure responsible for monitoring European affairs within the National Assembly and the Senate. These 'EU delegations' are institutional tools used to inform parliamentary assemblies about the European activities of the government and EU institutions. Apart from questions to the government and other plenary debates organised, delegations can produce preliminary reports and interview members of the French government and EU institutions. This cognitive dimension of control gradually evolved and took on a new dimension ahead of the entry into force of the Maastricht Treaty. In 1992, following a constitutional reform, Article 88-4 was added to the French constitution, allowing each of the two houses to vote on resolutions on European laws submitted to it by the government<sup>78</sup>. Although these parliamentary resolutions are not legally binding for the government, they remain formidable instruments of political influence. This system has been adopted by several other parliaments in the new Member States.

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In the Czech Republic, the two houses adopt a position on European draft legislative acts through resolutions addressed to the government. In each of the two houses, European affairs come under the special jurisdiction of the Standing Committee on European Affairs. Before the houses adopt a position on European legislation, the government is required to inform the two houses of the position that it intends to take at that stage. Finally, before each meeting of the Council and at the request of the Standing Committee on European Affairs, the government is required to present the position that it will defend and if necessary answer questions raised by the resolution adopted by the House. However, the House is not bound by these, although politically it must take them into account.

The European integration process has had repercussions on the way national parliaments are organised. This process is often presented as a source of weakening of national parliaments due to the transfer of competences between the national and European level and the significant influence of national executives within the Council and the European Council. However, they are also behind a review of their ability to monitor executives. The treaties themselves advocated this change, seen as a way of remedying the 'democratic deficit' of the EU. The Maastricht Treaty was thus accompanied by a declaration relating to national parliaments and interparliamentary cooperation, as

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<sup>78</sup> Article 88-4(1) of the 1958 French constitution, amended by constitutional law No 2008-103 of 4 February 2008, states that 'the Government shall lay before the National Assembly and the Senate drafts of or proposals for Acts of the European Communities and the European Union containing provisions which are of a statutory nature as soon as they have been transmitted to the Council of the European Union. It may also lay before them other drafts of or proposals for Acts or any instrument issuing from a European Union Institution.'

early recognition of their right to participate, albeit only indirectly, in the functioning of the Union. The Treaty of Amsterdam took this a step further with a protocol dedicated to the 'role of national parliaments in the European Union'<sup>79</sup>. The quantum leap is yet more apparent again with the Treaty of Lisbon, which contains a specific provision on the role of national parliaments. The new Article 12 of the Treaty on European Union recognised for the first time the contribution of national parliaments to the 'good functioning' of the EU and introduced new forms of intervention.

The Treaty of Lisbon creates a new system for the monitoring of subsidiarity by national parliaments. If a draft legislative act is challenged on the grounds of subsidiarity by a simple majority of the national parliaments and if the European Commission decides to uphold this challenge, the Council and the European Parliament must issue a decision on the compatibility of the draft with the principle of subsidiarity. If the Council (acting by a majority of 55% of its members) or the European Parliament (acting by a simple majority) give a negative response, the draft is rejected. Secondly, in terms of the simplified revision procedures, the provisions of the Treaty concerning 'internal policies' (all those that do not concern the external affairs of the EU) can be modified without having to convene an intergovernmental conference. The decision lies with the European Council ruling unanimously, although it may not enter into force until it is 'approved by the Member States in accordance with their respective constitutional requirements'; in other words, ratified by each national parliament.

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Furthermore, the Treaty of Lisbon contains several provisions relating to the involvement of national parliaments in the introduction of the area of freedom, security and justice. National parliaments are informed of the content and results of the evaluation of the conditions under which the Member State authorities have implemented EU policies in relation to the area of freedom, security and justice; they are kept informed of the work of the standing committee in charge of promoting coordination between Member State authorities responsible for internal security; they are involved in the evaluation of Eurojust's activities and monitoring the operations of Europol. Finally, depending on the different systems, national parliaments have a right of opposition whenever a 'gateway clause' is used and when the Council identifies a list of aspects of family law with a cross-border impact and on which the EU can legislate.

Of course, the Europeanisation of parliamentary structures in the Member States does not entail a change in their respective political regimes. The rise to power of European and national parliamentary institutions brings about a significant increase in control over the executive, both at European and national level, however. The consolidation of European representative democracy also depends on strategic and organised interparliamentary cooperation in response to the emergence of a European political area and European parliamentary diplomacy.

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<sup>79</sup> A. Maurer and W. Wessels (eds.), *National Parliaments after Amsterdam: From Slow Adapters to National Players?*, Baden-Baden, Nomos, 2001.

## C.2. The European Parliament and national parliaments at the service of European democracy

Although interparliamentary cooperation was now allowed in principle, differing views and interests unmistakably emerged between the supranational approach, spearheaded by the European Parliament, and the protection of national interests, which still to a certain extent drives the parliaments of Member States. For the same reason, national parliaments do not speak with one voice and are often divided on issues. Although the outlines of a transnational parliamentary force were emerging, tensions still prevailed in interparliamentary relations.

The various assemblies do not form a uniform political entity, but a 'Europe of parliaments' is becoming an institutional reality, a structured, interconnected ensemble. With their new democratic legitimacy, the European Parliament and national parliaments have developed the ways and means of strategic interparliamentary cooperation, seen as a political way of reinforcing their respective positions in European and national institutional systems. Historically, for as long as the European Parliament has been composed of delegations from national parliaments<sup>80</sup>, these have been institutionally involved in European integration. In 1979, the question of interparliamentary cooperation did not arise, although the election of the European Parliament by direct universal suffrage marked a new era in this respect. Following several joint initiatives by national and European parliamentarians, the Treaties have persuaded them to embark on the dual road to multilateral cooperation (between national parliaments, with or without the involvement of the European Parliament) and bilateral cooperation (between national levels and European levels of representation)<sup>81</sup>. Yet it was only in the 1990s that real interparliamentary cooperation began. While the unique experience of the 1990 Conference of Parliaments (or 'Assizes') in Rome did not offer a suitable response to the structural problem of democratic deficit within the EU, other forms of parliamentary cooperation provided a more effective solution. Interparliamentary cooperation is now defined by three main frameworks.

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### 1. Bilateral parliamentary cooperation

First, there is horizontal bilateral cooperation (between national parliaments) and vertical cooperation (between the European Parliament and each national parliament). These are traditional and informal methods of cooperation, taking the form of the exchange of documents and information-sharing<sup>82</sup>, joint meetings and parliamentary hearings. Due

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<sup>80</sup> A. Maurer and W. Wessels (eds.), *National Parliaments after Amsterdam: From Slow Adapters to National Players?*, Baden-Baden, Nomos, 2001.

<sup>81</sup> See O. Costa and M. Latek, 'Paradoxes et limites de la coopération interparlementaire dans l'Union européenne', *Journal of European Integration*, Vol. 23, No 2, 2001, pp. 139-164, and particularly pp. 140-141.

<sup>82</sup> IPEX, the Interparliamentary EU Information Exchange, was created following a recommendation made by the Conference of Speakers of the Parliaments of the European Union at its meeting in Rome in 2000. The aim of IPEX is to strengthen interparliamentary cooperation in the European Union by providing a platform for the electronic exchange of information between parliaments.

to certain obstacles (both physical and political), bilateral relations between specialist committees of national parliaments and the European Parliament only developed from the 1990s. This practice proved enormously useful for understanding the mechanisms and concerns specific to each parliament. Among national parliaments, specialist committees invite MEPs to participate in their work, mainly in the form of hearings. There are also bilateral ‘meetings’ between specialist committees, which are effectively workshops<sup>83</sup>. Cooperation between national parliaments and more specifically between their specialist European committees has however proved less structured than that existing with the European Parliament. For this, bilateral relations remain the dominant form of contact used by national MPs. ‘Visits’ and other ‘round tables’, ‘conferences’ and ‘symposiums’ have taken place at the instigation of the European Parliament and represent a method of traditional and informal cooperation, allowing political exchange to take place on issues decided by the European Parliament.

## 2. Multilateral parliamentary cooperation

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In parallel with this bilateral, vertical and horizontal cooperation, multilateral interparliamentary cooperation within the European Union has been progressively institutionalised.

The Conference of Parliaments, or ‘Assizes’, which took place in Rome on 29 and 30 November 1990, marked a turning point. For the first time, the European Parliament and national parliaments met on the eve, no less, of the Intergovernmental Conference held to review the founding treaties of the Communities. Nevertheless, even during preparations for these Assizes, it soon emerged that national parliaments and the European Parliament had different ideas of what this interinstitutional meeting should be. The national parliaments wanted the Assizes to be institutionalised, while the European Parliament favoured more limited involvement. The final resolution<sup>84</sup> adopted by the Conference was a political triumph for the European Parliament, since it incorporates most of its claims. Conversely, references to national parliaments are kept to a strict minimum: the document states that the European activities of national parliaments must concentrate on monitoring governments and lays down the principle of reinforced cooperation between national parliaments and the European Parliament through meetings of specialist committees. However, the idea of a second representative chamber of national parliaments within the EU was ruled out in accordance with the wishes of the European Parliament. Despite its formal recognition by Declaration 14 annexed to the Treaty of

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<sup>83</sup> The first inter-committee experience dates back to 15 April 1970. Meeting in Rome at the invitation of the Bureau of the Subcommittee on Social Affairs of the European Assembly, the bureaux of the competent committees of the various parliaments of the Six jointly examined the question of harmonisation of social regulations with European regulations. However, it was not until the actual implementation of the conclusions of the Cravinho report that a real manifestation of political will conducive to the development of this type of multilateral meeting emerged.

<sup>84</sup> Prepared and drawn up by a drafting committee composed of the chairmen of 20 specialist parliamentary committees and eight Members of the European Parliament.

Maastricht, the Conference of Parliaments was never held again. Nevertheless, other frameworks of interparliamentary cooperation did develop.

The Conference of Speakers of the Parliaments of the European Union<sup>85</sup> has taken place every year since 1999. This 'mini-conference' keeps the original ambition of the early conferences alive, namely to promote close cooperation between the parliaments of the European Union. The aim is essentially to look for ways of fostering cooperation between the various parliaments, chiefly by looking at how to organise permanent relations between national parliaments and the EP. The relative anonymity surrounding the Conference of Speakers is partly explained by its lack of status. Despite the adoption in September 2000 of guidelines relating to its functioning and purpose, the political scope of its work remains limited. The adoption of a resolution by the Conference requires the agreement of all members, consensus being the overarching rule of this body. The other major obstacle to the effectiveness of its work consists of the varying legal and political status (and therefore powers) of the presiding officer of each parliament. Despite its lack of uniformity and statutory limitations, the Conference in some cases manages to adopt conclusions which make it a driving force in interparliamentary cooperation. For example, it was the Conference of Speakers that pushed for the development of relations between the committees of national parliaments and the European Parliament's committees in the early 1980s. More importantly, it was the Conference of Presidents, meeting in Madrid in May 1989, that, as well as reminding us of the need for bilateral collaboration between national parliaments and the European Parliament, mooted the idea of periodic meetings of an interparliamentary Conference of European Affairs Committees (COSAC).

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COSAC rapidly became the reference framework for interparliamentary cooperation, so much so that the question of its institutionalisation swiftly arose. It is the most structured form of interparliamentary cooperation, liaising between committees of national parliaments specialising in European affairs and representatives from the European Parliament who meet every six months at the invitation of the parliament of the Member State holding the EU Presidency.

COSAC – which met for the first time in Paris in November 1989 – is primarily seen as a discussion forum. In some cases, meetings are preceded by questionnaires about the items on the agenda, sent out to specialist committees so that written contributions can

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<sup>85</sup> The Conference of Speakers is a different form of interparliamentary cooperation, an informal forum which has demonstrated its ability to act as a driving force. After two one-off conferences in Rome in 1963 and Strasbourg in 1973, the Presidents of the European Parliament have met regularly since 1975 at two conferences: the 'mini-conference' of speakers of EU parliaments and the President of the European Parliament, and the 'large conference' of speakers of parliaments in the 47 Member States of the Council of Europe and the Presidents of the Parliamentary Assembly of the Council of Europe, of the Assembly of Western European Union and of the European Parliament. This 'large conference' generally only meets every two years and discusses general European issues. However, the 1997 Conference established the European Centre for Parliamentary Research and Documentation (ECPRD), whose task it is to facilitate cooperation between the different parliaments attending the Conference.



be submitted ahead of the debate. Institutional issues, particularly the role of national parliaments in the European Union and relations between national parliaments and the European Parliament, are recurring themes. Topics such as enlargement of the European Union, democratic scrutiny of Economic and Monetary Union, as well as issues concerning intergovernmental cooperation, including common foreign and security policy, are often debated at these meetings.

The Protocol on the Role of National Parliaments in the European Union annexed to the Treaty of Lisbon only makes limited amendments to Protocol 13 annexed to the Treaty of Amsterdam, supplementing Declarations 13 and 14 of the Maastricht Treaty. It states that the powers of COSAC are purely advisory and non-decision-making. It 'may submit any contribution it deems appropriate' to EU institutions and must guarantee an 'exchange of information and best practice between national Parliaments and the European Parliament'. However, 'contributions from the conference shall not bind national Parliaments and shall not prejudge their positions'. The Lisbon Treaty does not review the scope of these opinions. Incidentally, delegations from national parliaments have no power or authority to bind national parliaments. Although the work of COSAC in no way binds national parliaments, it may still provide the European Parliament, the Council and the Commission with clarification on how the national representatives of Member States perceive certain issues.

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### 3. The Convention method

In spite of these institutional advances, the prospects for development of interparliamentary cooperation continue to depend on the fundamental principles and balances of European integration, still informed by an intergovernmental approach. However, this approach was overturned by the experimental conventional method used for the drafting of the EU Charter of Fundamental Rights and later for the draft European Constitution.

The composition of the European Convention, or the Convention on the Future of Europe, was a testimony to the determination to extend the democratic model to the way in which treaties are amended<sup>86</sup>. In this, the dual crisis of 'legitimacy' and 'effectiveness' affecting the intergovernmental approach towards drafting treaties found the conventional method to be a novel institutional response. In terms of its composition, the Convention's originality lies less in its multinational nature than in its organic balance: members of national and European parliamentary committees sit alongside representatives of national executive bodies and the European Commission. This aspect broke with the diplomatic tradition that dominated the formal revision of the Treaties<sup>87</sup>. The Convention consisted of two representatives from the national parliament (and an equal

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<sup>86</sup> K. Leanaerts and M. Desomer, 'New Models of Constitution-Making in Europe: the Quest for Legitimacy', *C.M.L. Rev.*, 2002, pp. 1234-1243.

<sup>87</sup> See J. Ziller, *La nouvelle Constitution européenne*, Paris, Editions La Découverte, 2005, 122 pages, particularly p. 61.

number of alternates) of each Member State and candidate country, or a contingent of 56 members out of a total of 207 Convention members. Representatives of national parliaments were on an equal footing with representatives of the national executive, called on to examine ways of recasting Europe. This parliamentary legitimacy was strengthened by the extent of the political representativeness of its members.

The same attitude prevailed during the appointment of members to the 'Convention' charged with drafting the Charter of Fundamental Rights of the European Union: for the first time, national MPs were involved in drafting a text of unquestionable political scope. Members of the 'Convention' charged with drawing up the draft EU Charter of Fundamental Rights were mainly selected on the principle of representation of national parliaments of the Member States. The French government even expressed a preference for a body composed solely of European and national MPs. While the proposal was not adopted, the contingent of national representatives still had the most members within the Convention. The rule whereby each national parliament had two representatives allowed bicameral parliaments – by far the majority within the European Union – to designate one representative for each house. The presence of two representatives per Member State, essential in order to honour the constitutional choices of states with a bicameral parliament, also allowed representation of both ruling and opposition parties. This had the effect of conferring a majority representation on national parliaments, which alone made up almost half of the members of the Convention. The high proportion of parliamentary representatives largely explains why the 'European constitution' encroached on the powers of the European Parliament and the participation of national parliaments. Still, the European Convention did not adopt the idea of a 'Congress of the Peoples of Europe', involving national parliaments and the European Parliament, nor that of establishing a second independent chamber composed of representatives of national parliaments.

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Following the failure of the European Constitution, the recasting of the European Union began again along the lines of classic intergovernmental methods. The 2007 IGC that led to the signing on 13 December 2007 of the Treaty of Lisbon was not therefore preceded by a meeting of the Convention. Despite this setback, the European Parliament, with three representatives<sup>88</sup>, was involved more closely than before in the treaty negotiation process. As well as the compulsory opinion issued on the IGC (in accordance with the provisions of Article 48 of the Treaty on European Union), three MEPs also attended the Conference. Their main task was to maintain a link and a permanent dialogue with

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<sup>88</sup> The Conference of Presidents of the European Parliament composed of presidents of political groups and the President of the European Parliament appointed three members to take part in all meetings of the IGC. They were Elmar Brok (PPE-DE, DE), Enrique Barón Crespo (PSE, ES) and Andrew Duff (ALDE, UK). In addition, EP President Hans-Gert Pöttering joined the IGC when it met with the Heads of States or Government.



national parliaments<sup>89</sup> and civil society during the IGC and the treaty ratification process<sup>90</sup>. In this context, the European Parliament and national parliaments demonstrated their capacity for convergent, transnational and cross-party political expression. The joint call from the European Parliament<sup>91</sup> and the national parliaments of the 27 EU Member States for the Heads of State or Government meeting within the European Council of 21 and 22 June 2007 to preserve the substance of the Constitutional Treaty within the Lisbon Treaty reflects this.

During the third joint parliamentary meeting on the ‘Future of Europe: together...but how?’, national MPs also insisted on respect for subsidiarity and proportionality and argued for a strengthening of the role of the national parliaments in scrutinising the Community legislative process, although without overstepping the provisions of the draft constitutional treaty. Substantively, the Treaty of Lisbon eventually reprised most of the provisions originating from national and European representatives during the Convention on the Future of Europe.

72 This political and institutional chain of events underscores the commitment and contribution of the European Parliament towards the constitutionalisation of the European Union, to which we will return in more detail later on. Since the early 1980s, the European Parliament, and particularly some of its members, have tried to promote this kind of project in order to deepen European integration and reinforce its democratic nature. Although the initiatives of the European Parliament did not succeed as such, they contributed to the public debate on the meaning of European integration and mapped out the thinking of national political leaders on the way forward and on democracy – most notably by drafting the Constitution.

Today’s European Parliament has nothing much in common with the Assembly that existed in the early days of European integration, whether in terms of its powers, its composition or its functioning. More importantly, over the last 50 years, this Parliament has gained unquestionable legitimacy, allowing it to speak out on behalf of European citizens in the institutional triangle, in the European public area currently under construction and on the international stage. It would be too simplistic to associate this ability with the direct election of MEPs alone: we must also underline the efforts that MEPs have made over the past two decades to structure a dialogue with civil society and its organisations.

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<sup>89</sup> National parliaments were kept informed of the progress of the work of the 2007 IGC, both through the organisation of hearings of ministers for foreign and European affairs, and by debates held in open session, usually preceded by preliminary reports. For example, the EU delegation from the National Assembly (France) organised a hearing on 19 September 2007 on the work of the IGC in the presence of three representatives from the European Parliament. Anxious to provide French politicians with detailed information, they described the various issues underpinning the negotiations of the reform treaty.

<sup>90</sup> European Parliament resolution of 11 July 2007 on the convening of the Intergovernmental Conference: the European Parliament’s opinion (Article 48 of the EU Treaty) (11222/2007 – C6-0206/2007).

<sup>91</sup> Brussels, 12/06/2007 (Agence Europe).

**Annex:****Tables of Members of the European Parliament since March 1958 –  
Distribution of MEPs by political group and Member State**

PARLIAMENTARY ASSEMBLY – CONSTITUENT SESSION – MARCH 1958  
MEMBERS OF THE EUROPEAN PARLIAMENT AS OF 19/03/58 –  
DISTRIBUTION BY MEMBER STATE AND MEMBERSHIP OF  
POLITICAL GROUPS

	<b>BE</b>	<b>DE</b>	<b>FR</b>	<b>IT</b>	<b>LU</b>	<b>NL</b>	<b>Total</b>
<b>CD</b>	6	19	6	25	3	8	<b>67</b>
<b>S</b>	6	13	8	4	2	5	<b>38</b>
<b>L</b>	2	4	20	7	1	1	<b>35</b>
<b>NI</b>			2				<b>2</b>
<b>TOTAL</b>	<b>14</b>	<b>36</b>	<b>36</b>	<b>36</b>	<b>6</b>	<b>14</b>	

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OUTGOING EP – FINAL SESSION OF THE ELECTED EP – MAY 1979  
MEMBERS OF THE EUROPEAN PARLIAMENT AS OF 15/05/79 –  
DISTRIBUTION BY MEMBER STATE AND MEMBERSHIP OF  
POLITICAL GROUPS

	<b>BE</b>	<b>DK</b>	<b>DE</b>	<b>IE</b>	<b>FR</b>	<b>IT</b>	<b>LU</b>	<b>NL</b>	<b>UK</b>	<b>Total</b>
<b>S</b>	5	4	15	1	10	5	2	6	18	<b>66</b>
<b>CD</b>	7		18	3	3	15	1	5		<b>52</b>
<b>L</b>	2	1	3		9	2	3	3	1	<b>24</b>
<b>COM</b>		1			5	12				<b>18</b>
<b>C</b>		2							16	<b>18</b>
<b>DEP</b>		1		5	9					<b>15</b>
<b>NI</b>		1				2			1	<b>4</b>
<b>TOTAL</b>	<b>14</b>	<b>10</b>	<b>36</b>	<b>9</b>	<b>36</b>	<b>36</b>	<b>6</b>	<b>14</b>	<b>36</b>	<b>197</b>

EP – CONSTITUENT – 1ST PARLIAMENTARY TERM (1979-1984)  
MEMBERS OF THE EUROPEAN PARLIAMENT AS OF 17/07/79 – DISTRIBUTION  
BY MEMBER STATE AND MEMBERSHIP OF POLITICAL GROUPS

	BE		DK		DE		FR		IE		IT		LU		NL		UK		EP
<b>S</b>		7		4		35		21		4		13		1		9		18	<b>112</b>
	PS SP	4 3	S Siumut	3 1	SPD	35	PS MRG	19 2	Lab.	4	PSI PSDI	9 4	POSL	1	PvdA	9	Lab. SDLP	17 1	
<b>PPE</b>		10		0		42		9		4		30		3		10		0	<b>108</b>
	CVP-EVP PSC-PPE	7 3			CDU CSU	34 8	UFE	9	FG	4	DC* SVP	29 1	PCS	3	CDA	10			
<b>ED</b>		0		2		0		0		0		0		0		0		61	<b>63</b>
			KF	2													Cons. UUP	60 1	
<b>COM</b>		0		1		0		19		0		24		0		0		0	<b>44</b>
			SF	1			PCF	19			PCI Ind. Sin.	19 5							
<b>L</b>		4		3		4		17		1		5		2		4		0	<b>40</b>
	PRL PVV-ELD	2 2	V	3	F.D.P.	4	UFE PR	16 1	Ind.	1	PLI PRI	3 2	DP	2	VVD	4			
<b>DEP</b>		0		1		0		15		5		0		0		0		1	<b>22</b>
			FRP	1			DIFE	15	FF	5							SNP	1	
<b>CDI</b>		1		4		0		0		1		5		0		0		0	<b>11</b>
	V.U.	1	FolkB.	4					Ind.	1	PR DP PDUP	3 1 1							
<b>NI</b>		2		1		0		0		0		4		0		2		1	<b>10</b>
	FRF-RW	2	CD	1							MSI-DN	4			D66	2	DUP	1	
<b>TOTAL</b>		<b>24</b>		<b>16</b>		<b>81</b>		<b>81</b>		<b>15</b>		<b>81</b>		<b>6</b>		<b>25</b>		<b>81</b>	<b>410</b>

OUTGOING EP – 1ST PARLIAMENTARY TERM (1979-1984)  
MEMBERS OF THE EUROPEAN PARLIAMENT AS OF 31/05/84 – DISTRIBUTION  
BY MEMBER STATE AND MEMBERSHIP OF POLITICAL GROUPS

	BE	DK	DE	EL	FR	IE	IT	LU	NL	UK	EP		
<b>S</b>		7	4	35	10	23	4	14	1	9	17	<b>124</b>	
	PS SP	4 3	S Siumut 1	3 SPD	35 PASOK	10 PS MRG UFE	21 1 Lab.	4 PSI PSDI PR	9 4 1	1 POSL	1 PvdA	9 Lab. SDLP	16 1
<b>PPE</b>		10	1	42	8	9	4	30	3	10	0	<b>117</b>	
	CVP-EVP PSC-PPE	7 3	CD	1 CDU CSU	34 8 N.D.	8 UFE	9 FG	4 DC SVP	29 1 PCS	3 CDA	10		
<b>ED</b>		0	2	0	0	0	0	0	0	0	61	<b>63</b>	
			KF	2							Cons. UUP	60 1	
<b>COM</b>		0	1	0	4	19	0	24	0	0	0	<b>48</b>	
			SF	1	KKE	4	PCF	19	PCI Ind. Sin.	19 5			
<b>L</b>		4	3	4	0	15	1	5	2	4	0	<b>38</b>	
	PRL PVV-ELD	2 2	V	3 F.D.P.	4	UFE	15 Ind.	1 PLI PRI	3 2 DP	2 VVD	4		
<b>DEP</b>		0	1	0	0	15	5	0	0	0	1	<b>22</b>	
			KF	1		DIFE	15	FF	5		SNP	1	
<b>CDI</b>		2	4	0	0	0	1	4	0	0	1	<b>12</b>	
	V.U. FDF-RW	1 1	FolkB.	4			Ind.	1 PR DP PDUP	2 1 1		Lab.	1	
<b>NI</b>		1	0	0	2	0	0	4	0	2	1	<b>10</b>	
	FRF-RW	1			KO.DI. SO KP	1 1		MSI- DN	4	D66	2 DUP	1	
<b>Total</b>		<b>24</b>	<b>16</b>	<b>81</b>	<b>24</b>	<b>81</b>	<b>15</b>	<b>81</b>	<b>6</b>	<b>25</b>	<b>81</b>	<b>434</b>	



OUTGOING EP – 2ND PARLIAMENTARY TERM (1984-1989)  
MEMBERS OF THE EUROPEAN PARLIAMENT AS OF 31/05/89 –  
DISTRIBUTION BY MEMBER STATE AND MEMBERSHIP OF POLITICAL GROUPS

	BE	DK	DE	EL	ES	FR	IE	IT	LU	NL	PT	UK	EP
<b>PSE</b>	8		3	33	10	29		0	12	2	9	7	33 166
	PS SP	5 3	3 SPD	33 PASOK	10 PSOE	29 PS	20	PSI PSDI	9 POSL	2 PvdA	9 PS Ind.	6 1 SDLP	32 1
<b>PPE</b>	6		1	41	8	1	8	6	27	3	8	4	0 113
	CVP PSC	4 2	1 CDU CSU	34 7 N.D.	8 CIU	1 UDF UDF-CDS	7 1 FG	DC SVP	26 1 PCS	3 CDA	8 CDS	4	
<b>ED</b>	0		4	0	0	17	0	0	0	0	0		45 66
		KF	4		PP	17						Cons.	45
<b>COM</b>	0		2	0	4	3	10	0	26	0	0	3	0 48
		SF	2	3 KKE EAR	1 IU	3 PCF	9	PCI Ind.Sin.	25 1		PCP	3	
<b>LDR</b>	5		2	0	0	2	13	1	6	1	5	10	0 45
	PVV PRL	3 2	2 V		CIU	2 PR UDF-PR LUDE-PSDI	7 3 1 1 1	PRI PLI	4 2 DP	1 VVD	5 PSD	10	
<b>RDE</b>	0		0	1	1	0	20	8	0	0	0		1 30
				Ind.	1		16					SNP	1
<b>ARC</b>	4		4	7	0	1	0	0	2	0	2	0	0 20
	VU Agalev Ecolo	2 1 1	4 Grüne	7	EA	1		DP UV-PSdA	1 1	CPN PSP	1 1		
<b>DR</b>	0		0	1	1	0	9	0	5	0	0		1 16
				E.P.EN	1	DR	9	MSL-DN	5			UUP	1
<b>NI</b>	1		0	0	0	7	1	0	3	0	1		1 14
	SP	1			CDS HB	6 1	1	PR	3	SGP	1	DUP	1
<b>TOTAL</b>	24		16	81	24	60	81	15	81	6	25	24	81 518

EP – CONSTITUENT – 3RD PARLIAMENTARY TERM (1989-1994)  
MEMBERS OF THE EUROPEAN PARLIAMENT AS OF 25/07/89 –  
DISTRIBUTION BY MEMBER STATE AND MEMBERSHIP OF POLITICAL GROUPS

	BE	DK	DE	EL	ES	FR	IE	IT	LU	NL	PT	UK	EP
<b>PSE</b>		8	4	31	9	27	22	14	2	8	8	8	46
	PS SP	5 3	4 SPD	31 PASOK	PSOE PSC	PS app. PS MRG s.e.	18 2 1 Lab.	PSI PSDI	2 POSL	PvdA	8 PS	Lab. SDLP	45 1
<b>PPE</b>		7	2	32	10	16	6	27	3	10	3	3	1
	CVP PSC	5 2	2 CDU CSU	25 7 N.D.	PP GIJ	CDS s.e. UDF	4 1 1 FG	DC SVP	3 PCS	CDA	10 CDS	UUP	1
<b>LDR</b>		4	3	4	0	6	13	3	1	4	4	9	0
	PRL PVV	2 2	3 F.D.P.	4	CDS GIJ	PR UDF Rad CNI UDF-Clubs P. UDF-PSD	5 3 2 1 1 Ind.	PRI PRI-PLI-Fed	2 DP	VVD D66	3 PSD	9	1
<b>ED</b>		0	2	0	0	0	0	0	0	0	0	0	32
			2									Cons	32
<b>V</b>		3	0	8	0	1	8	7	0	2	2	1	0
	Ecolo-V. Agalev	2 1	Grüne	8	IP	1 Les Verts	8	Verdi ARCOB DP L.A.DROGA	3 2 1 1	Regenboog/ CFN Regenboog/ PPR	1 Verdes	1	0
<b>GUE</b>		0	1	0	1	4	0	22	0	0	0	0	0
			1		1	4		PCI	22				0
<b>RDE</b>		0	0	0	1	0	13	0	0	0	0	0	0
							12 FF						
<b>DR</b>		1	0	6	0	0	10	0	0	0	0	0	0
	Vl. Blok	1	REP	6		DR	10						0
<b>CG</b>		0	0	0	3	0	7	0	0	0	0	3	0
					3	PCF	7 WP				CDU-PCP	3	0
<b>ARC</b>		1	4	0	0	2	1	3	0	0	0	1	1
	VU	1	FolkB.	4	EA PA	1 Vers UPC	1 Ind	LL UV-PsDA	2 1			SNP	1
<b>NI</b>		0	0	0	0	4	1	5	0	1	0	0	1
						2 Agr. Ruiz Mateos HB CN	1 1 1 s.e.	MSI-DN PRI-PLI-Fed	4 1	SGP	1	DUP	1
<b>TOTAL</b>		24	16	81	24	60	81	81	6	25	24	81	518

OUTGOING EP – 3RD PARLIAMENTARY TERM (1989-1994)  
MEMBERS OF THE EUROPEAN PARLIAMENT AS OF 31/05/94 –  
DISTRIBUTION BY MEMBER STATE AND MEMBERSHIP OF POLITICAL GROUPS

	BE	DK	DE	EL	ES	FR	IE	IT	LU	NL	PT	UK	EP
<b>PSE</b>	8		3	31	9	27	21	1	34	2	8	8	46
	PS SP	5 3	3	PASOK	PSOE PSC	PS app. PS 24 Ass. Dém. 3 MRG 1 s.e.	1 Lab.	PDS PSI PSDI	20 12 2	PvdA	8	7 1 SDLP	45 1
<b>PPE</b>	7		4	32	10	17	12	4	27	3	10	3	33
	CVP PSC	5 2	2 2		PP CDS CIU	CDS UDF RPR 1 s.e. UDF-PPDF UDI	6 2 1 FG	DC SVP	26 1	CDA	10	3 UUP	32 1
<b>LDR</b>	4		2	5	0	5	9	2	4	1	4	9	0
	PRL VLD	2 2	2		CDS CIU	PR Rad. UDF UDF-adh. dir. UDF-Rad	5 1 Ind. 1 PD	PRI L.A. GROGA PRI-PLI-Fed	2 1	VVD D66	3 1	9	
<b>V</b>	3		1	6	0	1	8	0	6	0	2	0	0
	Ecolo-V. Agalev	2 1	1		IP	1 Les Verts	8	Verdi ARCOB DP	3 2 1	De Groenen GroenLinks	1 1		0
<b>RDE</b>	0		0	0	1	2	11	6	0	0	0	0	0
					AGR. Ruiz- Mateos	2 RPR	11 FF						0
<b>ARC</b>	1		4	1	0	3	1	1	1	0	0	1	1
	VU	1 Junib. FolkB.	3 1		CEP-ERC CN PA	1 1 0	1 Ind	1 UV-PSGA	1		PRD	1 SNP	1
<b>CG</b>	0		0	0	3	0	7	0	0	0	0	3	0
					KKE NAR SYN	1 1 1	7				CDU-PCP	3	
<b>DR</b>	1		0	2	0	0	9	0	0	0	0	0	0
	VI. Blok	1	2	2	1	5	3	1	9	0	1	0	1
<b>NI</b>	0		2	4	1	4	1	1	4	1	1	1	27
		Loesgaenger	2	2	1 IU HB	4 1 UDF	1 DL	MSP-DN LL RC	4 2 2	SGP	1	DUP	1
<b>TOTAL</b>	24	16	16	81	24	60	81	15	81	6	25	24	81
													518







EP – CONSTITUENT – 5TH PARLIAMENTARY TERM (1999-2004)  
MEMBERS OF THE EUROPEAN PARLIAMENT AS OF 22/07/99 –  
DISTRIBUTION BY MEMBER STATE AND MEMBERSHIP OF POLITICAL GROUPS

	BE	DK	DE	EL	ES	FR	IE	IT	LU	NL	AT	PT	FI	SV	UK	EP
<b>PPE-DE</b>		6	1	53	9	28	21	5	34	2	9	7	9	5	7	37 233
	CVP	3				UDF	9	Forza It PPI	22							
	PSC	1				RPR	6	UDEUR	4							
	MCC	1	KONS	43	PP	DL	4	CCD	1				KOK	4	5	36
	CSP	1		10	UDC	SC	4	CDU	2	CDA	ÖVP	7	SKL	1	2	1
						GE	1	RI/Dnri SVP	1							
							1	Pension	1							
<b>PSE</b>		5	3	33	9	24	22	1	17	2	6	7	12	3	6	30 180
	SP	2	SOC	33	PSOE	PS	18	DS	15	LSAP	6	7	12	3	6	29
	PS	3		Pasok	PDNI	PRG	2	SDI	2	PvdA	SPÖ	7	SDP	3	LAB SDLP	1
						MDC	2									
<b>EELDR</b>		5	6	0	0	3	0	1	7	1	8	0	0	5	4	10 50
	VLD	3	V					PR/LIB	1							
	PRL+FDV	2	RV	7	CDC	2		Democrat	6	VVD	6		KESK	4	1	10
					CC	1			DP	D66	2		SFP	1	3	
<b>VERTS/ALE</b>		7	0	7	0	4	9	2	2	1	4	2	0	2	2	6 48
	AGALEV	2			PA	1										
	EGOLO	3			EA	1		Fed.Verdi	2	Groen	4		VIHR	2	GreenP	2
	VU-ID21	2			BNG	1	GP		2	Links	Grüne	2		MP	SNP	2
					PNV	1			2						PCymru	2
<b>GUE/NGL</b>		0	1	6	7	4	11	0	6	0	1	0	2	1	3	0 42
<b>UEN</b>		0	1	0	0	0	12	6	9	0	0	0	2	0	0	0 30
<b>TDI</b>		2	0	0	0	0	5	0	11	0	0	0	0	0	0	0 18
<b>EDD</b>		0	4	0	0	0	6	0	0	0	3	0	0	0	0	3 16
<b>NI</b>		0	0	0	0	1	1	0	1	0	0	5	0	0	0	1 9
<b>TOTAL</b>		25	16	99	25	64	87	15	87	6	31	21	25	16	22	87 626

OUTGOING EP – 5TH PARLIAMENTARY TERM (1999-2004)  
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	PPE-DE	PSE	ELDR	GUE/ NGL	Verts/ ALE	UEN	EDD	NI	TOTAL							
<b>BE</b>	5	6	5	0	6	0	0	3	25							
	CD & V edH MR (mcc) CSP-EVP	2 1 1 1 1 1 1 1	sp.a PS	3 3	VLD MR (prl)	3 3 2	ECOLO Ind Groen! SPIRIT	3 1 1 1 1	VL Blok Lib Appel	2 1						
<b>CZ</b>	13	7	1	3	0	0	0	0	24							
	ODS KDU-CSL US-DEU Ind.	8 3 1 1 1	CSSD	7	Ind	1	KSCM	3								
<b>DK</b>	1	2	6	3	0	1	3	0	16							
	KF	1	SD	2	V RV	5 1	SF Ind FolkB	1 1 1	DF	1 Juni.B	3					
<b>DE</b>	53	35	0	7	4	0	0	0	99							
	CDU CSU	43 10	SPD	35	PDS Ind	6 1	Grüne	4								
<b>EE</b>	2	1	2	0	0	1	0	0	6							
	IL RP	1 1	SDE	1	ER K	1 1		ERL	1							
<b>EL</b>	9	9	0	7	0	0	0	0	25							
	ND	9	PASOK	9		KKE SYN DIKKI	3 2 2									
<b>ES</b>	28	24	2	4	5	0	0	1	64							
	PP UDC	27 1	PSOE	24	CDC UV	1 1	IU	4	PAR ERC BNG PNV BNV	1 1 1 1 1	ex EH	1				
<b>FR</b>	21	18	1	15	9	4	9	10	87							
	UMP UDF Ind	13 6 2	PS PRG	17 1	PR	1	PCF Ind LO LCR MRC Ind	3 3 3 2 2 2	VERTS	9	RPF UMP	2	CPNT Ind	6 3	FN MPF Ind	5 4 1
<b>IE</b>	5	1	1	0	2	6	0	0	15							
	FG Ind	4 1	Lab.	1	Ind	1		GP	2	FF	6					
<b>IT</b>	34	16	8	6	2	10	0	11	87							
	Forza It DL-La Margh UDC UDEUR - AP SVP Pension	22 4 4 2 1 1 1	DS SDI	15 1	D L - L a Margh ldV MRE NPSI	4 2 1 1 1	RC PdCI	4 2	Fed. Verdi	2	AN Patto	9 1		Bonino LN Ind	7 3 1	
<b>CY</b>	2	1	1	2	0	0	0	0	6							
	DISY	2	EDEK	1	DIKO	1	AKEL	2								
<b>LV</b>	5	1	0	0	2	1	0	0	9							
	JL TP LPP	2 2 1	TSP	1				0	ZZS PCTVL	1 1	TB/ LNNK	1				
<b>LT</b>	3	5	5	0	0	0	0	0	13							
	TS LKD VNDPS	1 1 1	LSDP	5	NS LCS LDP	2 2 1										
<b>LU</b>	2	2	1	0	1	0	0	0	6							
	CSV	2	LSAP	2	DP	1		Greng	1							
<b>HU</b>	12	10	2	0	0	0	0	0	24							
	Fidesz-MPSZ MDF	9 3	MSZP	10	SZDSZ	2										
<b>MT</b>	3	2	0	0	0	0	0	0	5							
	PN	3	MLP	2												
<b>NL</b>	9	6	8	1	4	0	3	0	31							
	CDA	9	PvdA	6	VVD D.66	6 2	SP	1	Groen Links	4		Rpf/Sgp/Gvp	3			
<b>AT</b>	7	6	0	0	2	0	0	0	21							
	ÖVP	7	SPÖ	6				Grüne	2				FPO Ind	3 3		
<b>PL</b>	13	27	0	0	0	4	0	10	54							
	PO PSL Blok Senat SKL RS AWS	5 5 1 1 1 1	SLD U S D P L	22 2 3					PiS	4			SO LPR PLD PBL RKN	4 3 1 1 1		

	PPE-DE	PSE	ELDR	GUE/ NGL	Verts/ ALE	UEN	EDD	NI	TOTAL
<b>PT</b>		9	12	0	2	0	2	0	25
	PPD-PSD	9 PS	12	PCP	2	CDS-PP	2		
<b>SI</b>		3	1	3	0	0	0	0	7
	SDS SLS NSI	1 1 1 ZLSD	1 1 1 LDS	3 3 3					
<b>SK</b>		7	2	1	1	0	1	0	14
	KDH SDKU SMK-MKP	2 3 2 SMER	2 2 2 ANO	1 1 1 KSS	1 1 1	LU	1 1 1	HZDS	2
<b>FI</b>		5	3	5	1	2	0	0	16
	KOK	5 SDP	3 KESK SEP	4 1 VAS	1 1	VIHR Ind	1 1		
<b>SE</b>		7	6	4	3	2	0	0	22
	M KD	5 2 S	6 1 FP C	3 1 V	3 3 MP	2 2			
<b>UK</b>		37	29	11	0	6	0	3	87
	Conserv UUP	36 1 Lab. SDLP	28 1 LD	11		Green P. SNP Plaid	2 2 2	UKIP	3 DUP
<b>TOTAL</b>		295	232	67	55	47	30	18	788

EP – CONSTITUENT – 6TH PARLIAMENTARY TERM (2004-2009)  
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	EPP-ED	PES	ALDE	UEN	Greens/ EFA	GUE/ NGL	IND/ DEM	NA	Total
<b>BE</b>		6	7	6	0	2	0	3	24
	CD&V-N-VA cdH CSP-EVP	4 1 1 PS SP.A-Spirit	4 3 3 open VLD MR MR (mcc)	3 2 1	Groen! Ecolo	1 1		Vl. Belang	3
<b>BG</b>		5	5	5	0	0	0	3	18
	GERB BANU-PU	4 1 PES	5 1 DPS NDSV	4 1				Attack	3
<b>CZ</b>		14	2	0	0	0	6	1	24
	ODS SNK ED KDU-ČSL	9 3 2 ČSSD	2			KSCM	6	Nez/Dem	1
<b>DK</b>		1	5	4	1	1	1	1	14
	C	1 A	5 Y	3 1	O	1 F	1 N	1 J	
<b>DE</b>		49	23	7	0	13	7	0	99
	CDU CSU	40 9 SPD	23 1 FDP	7	B.90/Die Grünen	13 1 Die Linke	7		
<b>EE</b>		1	3	2	0	0	0	0	6
	IL	1 SDE	3 K ER	1 1					
<b>IE</b>		5	1	1	4	0	1	1	13
	FG	5 Lab	1 Ind	1 FF	4	SF	1 Ind	1	
<b>EL</b>		11	8	0	0	0	4	1	24
	ND	11 PASOK	8			KKE SYN	3 1	L.A.O.S	1
<b>ES</b>		24	24	2	0	3	1	0	54
	PP	24 PSOE	24 CDC PNV	1 1	Los Verdes ICV-EUA EA	1 1 1	IU	1	
<b>FR</b>		18	31	10	0	6	3	3	78
	UMP NC	17 1 PS	31 MoDem AD	7 3	Les Verts	6 1	PCF PCR	2 1	MPF MPF- RIF
<b>IT</b>		24	17	12	13	2	7	0	78
	FI UDC Pensionati SVP	20 2 1 1 PD PS SD Ind (liste IdV) Ind	8 4 3 1 1 PD Lista Bonino Ind (liste IdV)	9 2 1 AN LN Ind AS	8 3 1	Fed. Verdi	2 4 2 1 RC PdCI Ind (liste RC)	AS-L.M. MSFT Uniti nell'Ulivo	1 1 1

	EPP-ED		PES		ALDE		UEN		Greens/ EFA		GUE/ NGL		IND/ DEM		NA		Total
<b>CY</b>		3		0		1		0		0	2	0		0		<b>6</b>	
	DI.SY Gla Tin Evropi	2 1			DLKO	1					AKEL	2					
<b>LV</b>		3		0		1		4		1		0		0		<b>9</b>	
	JL TP	2 1			LC	1	TB/ LNNK	4	PCTVL	1							
<b>LT</b>		2		2		7		2		0		0		0		<b>13</b>	
	TS	2	LSDP	2	DP Ind LCS LRLS	4 1 1 1		1	LDP LVLS	1 1							
<b>LU</b>		3		1		1		0		1		0		0		<b>6</b>	
	CSV	3	LSAP	1	DP	1			Déi Greng	1							
<b>HU</b>		13		9		2		0		0		0		0		<b>24</b>	
	FIDESZ- MPSZ MDF	12 1	MSZP	9	SZDSZ	2											
<b>MT</b>		2		3		0		0		0		0		0		<b>5</b>	
	PN	2	MLP	3													
<b>NL</b>		7		7		5		0		4		2		2		<b>27</b>	
	CDA	7	PvdA	7	VVD D'66	4 1			Groen Links ET Ind	2 1 1	SP	2	CU/SGP	2			
<b>AT</b>		6		7		1		0		2		0		0		<b>18</b>	
	ÖVP	6	SPÖ	7	LIF	1			GRÜNE	2					Martin EPÖ	1 1	
<b>PL</b>		15		9		6		19		0		0		3		<b>54</b>	
	PO PSL	14 1	SLD SdPL Ind UP	4 2 2 1	PD Ind	4 2	PiS NP Piast SO Ind	8 4 4 2 1					Ind LPR	2 1	LPR NP	1 1	
<b>PT</b>		9		12		0		0		0		3		0		<b>24</b>	
	PPD-PSD CDS-PP	7 2	PS	12							PCP B.E	2 1					
<b>RO</b>		18		10		6		0		1		0		0		<b>35</b>	
	PD-L UDMR	16 2	PSD	10	PNL	6			Ind	1							
<b>SI</b>		4		1		2		0		0		0		0		<b>7</b>	
	SDS NSi	2 2	SD	1	LDS	2											
<b>SK</b>		8		3		0		0		0		0		0		<b>14</b>	
	SDKÚ-DS KDH SMK-MPK	3 3 2	SMER-SD	3											LS-HZDS	3	
<b>FI</b>		4		3		5		0		1		1		0		<b>14</b>	
	KOK	4	SDP	3	KESK SEP	4 1			VIHR	1	VAS	1					
<b>SE</b>		6		5		3		0		1		2		2		<b>19</b>	
	M KD	4 2	SAP	5	FP C F!	1 1 1			MP	1	V	2	Junilistan	2			
<b>UK</b>		27		19		11		0		5		1		8		<b>78</b>	
	Cons UUP	26 1	LAB	19	LibDems	11			GP SNP Plaid	2 2 1	SF	1	UKIP	8	UKIP Cons TUV IND	3 2 1 1	
<b>Tot.</b>		<b>288</b>		<b>217</b>		<b>100</b>		<b>43</b>		<b>43</b>		<b>41</b>		<b>22</b>		<b>31</b>	<b>785</b>

## II. THE EUROPEAN PARLIAMENT ESTABLISHES ITS LEGITIMACY BY OPENING UP TO CIVIL SOCIETY

The political regime of the European Union is characterised by the intricacies of its many levels of authority. Originally, the European Communities derived their legitimacy from respect for the Treaties, the participation of Member States in decision-making through the Council and the expertise of the Commission. Over time, the levels of authority that prevail in contemporary democratic regimes – political control and electoral representation – have become important at the European level<sup>92</sup>. As we have just seen, the European Parliament has been central to this process. However, the increasing importance of parliamentary legitimation has not posed a threat to other practices more beneficial to the Commission and the Council. Today, the political system of the European Union still relies on interaction between three very separate institutions (the European Parliament, the Commission and the Council), which are constantly competing to claim the legitimacy of their actions and proposals. To MEPs who adduce electoral representativeness, members of the Commission offer a counter-argument of their expertise and contact with the beneficiaries of EU policy, while members of the Council put forward their authority to represent the European people and their accountability to their respective national parliaments.

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Since the mid-1990s, these levels of authority have been embellished by references to ‘civil society’. The rise to power of the European Parliament has failed to satisfy the need for legitimation of the European Union, as testified by the level of abstention during European elections<sup>93</sup>, the public’s criticisms of the European institutions and the difficulties encountered since the early 1990s in trying to get new European treaties ratified at a national level. There have been calls for citizens’ views to be more fully taken into account by the European institutions, while the subject of European civil society has generated considerable interest. In a difficult political climate where the elitism of EU actors and their bias towards the most powerful lobbyists are under attack, the European institutions – and particularly the EP – have tried to foster interaction with and become more open to civil society.

To account for this change, we first need to examine the meaning of a concept which is as old as it is hackneyed. The concept of civil society dates back to Aristotle, and at various times throughout history, its role in the functioning of contemporary democratic regimes has been intensely debated. The concept essentially refers to the section of society outside the political classes and – according to some definitions – the economic world. The term ‘civil society’ thus refers to all citizens who do not have specific political responsibilities in a regime, and represents a more concrete alternative to the

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<sup>92</sup> ‘L’Union européenne, une démocratie diffuse?’ *Revue française de science politique*, special edition, Vol. 51, No 6, December 2001.

<sup>93</sup> Blondel, J., Sinnott, R., Svensson, P., *People and Parliament in the European Union: Participation, Democracy, and Legitimacy*, Oxford, Clarendon Press, 1998.

concept of ‘the people’. Yet defined in this way, the notion of ‘civil society’ is as elusive and abstract as the term ‘the people’. Accordingly, the concept more commonly refers, in the metonymic fashion, to civil society organisations other than institutions, parties and private interest groups; in other words, to associations, non-governmental organisations, grassroots organisations, trade unions and churches, which unite citizens and provide a public forum in which they can act.

The concept of civil society at the supranational level only emerged relatively recently, even though contact with its organisations existed long before that, particularly in the European Parliament. Early studies dedicated to consultation with associations were conducted by the European Commission’s Directorate-General for Employment, Social Affairs and Equal Opportunities in 1995 and by the European Economic and Social Committee in 1996<sup>94</sup>. For its part, the European Parliament launched a broad-based dialogue with civil society organisations during the intergovernmental conference (IGC) in 1997, which would culminate in the Treaty of Amsterdam<sup>95</sup>. Around the same time, certain organisations tried to organise their activities in the name of European civil society. In 1995, for example, we saw the creation of the Permanent Forum of European Civil Society, set up to defend plans for a Europe that was closer to its citizens in the context of treaty reform. Some economic interest representatives also began claiming membership of ‘civil society’, conscious of the hazy definition of this concept and how well its members were received by EU institutions.

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A detailed definition of the concept of ‘European civil society’ was provided by the European Economic and Social Committee<sup>96</sup> and widely circulated in public debate by the Commission’s White Paper on European governance<sup>97</sup>. This defined European civil society as ‘trade unions and employers’ organisations (“social partners”); non-governmental organisations; professional associations; charities; grassroots organisations; organisations that involve citizens in local and municipal life with a particular contribution from churches and religious communities’. Much of the debate within the European Convention was devoted to the involvement of civil society in the functioning of the EU. The Treaty of Lisbon echoes this concern and mentions civil society and the principle of openness of the institutions in several places. More specifically, it states that they ‘shall maintain an open, transparent and regular dialogue with representative associations and civil society’ (Article 8 B).

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<sup>94</sup> Smisman, S., (ed.), *Civil society and legitimate European governance*, Cheltenham UK/Northampton USA, Edward Elgar, 2006.

<sup>95</sup> Smisman, S., (ed.), *Civil society and legitimate European governance*, Cheltenham UK/Northampton USA, Edward Elgar, 2006.

<sup>96</sup> European Economic and Social Committee, ‘Opinion of the Economic and Social Committee on the role and contribution of civil society organisations in the building of Europe’, OJ C 329, 17.11.1999, p. 30 et seq.

<sup>97</sup> European Commission, *European Governance – A White Paper*, 25.7.2001, COM(2001) 428 final.



Before analysing the various aspects of the EP's dialogue with civil society, we must first emphasise two points.

First of all, we must stress the importance of dialogue with civil society in a political system that struggles to find mediators between citizens and institutions. Taking account of the public's lack of familiarity with European parties and the absence of local ties, as well as the lack of interest of national parties and opinion leaders in European issues, dialogue with civil society represents a real opportunity for the EU's political leaders. However, history has shown that the emergence of civil society in a political system is a slow and gradual process, taking place over several generations. In the European Union, it was hastened by 'social integration' policies introduced in the 1970s and by the opportunities that the European institutions offered to civil society organisations keen to enter into a dialogue with them. There thus exists a deliberate civil dialogue orchestrated by the institutions, an 'organised' European civil society and the phenomenon of 'Europeanisation' of civil society in the Member States, although we will not be talking about the civil society of the European Union in the full sense.

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Secondly, we need to highlight the impact of the various actors who claim to represent civil society, and the European institutions that purport to dialogue with it, and the conflicts that exist over the very definition of this idea. Some define European civil society as all citizens and grassroots organisations of the European Union, while others offer a more limited definition, restricted to organisations represented within the EU institutions. The importance ascribed to European civil society therefore carries a risk: whereas some believe that the democratic nature of the EU is now measured according to how open it is towards civil society, it is extremely difficult to decide which organisations can legitimately claim this, ensure their representativeness and guarantee the democratic nature of their internal operation. We must also bear in mind that, pushed to the extreme, the idea of dialogue with civil society could seem incompatible with the very concept of political representation. Some MEPs, committed to the principle of electoral democracy, thus find it paradoxical that the elected representatives of the people must use civil society to assert their point of view in interinstitutional dialogue.

Having made these points, we will approach the issue from three angles. First, we need to remember a simple fact, all too often neglected: the European Parliament, as an elected assembly, is by definition a forum for representation of civil society. More precisely, MEPs cannot be considered members of a European elite detached from territories and citizens; they are first and foremost elected representatives, many of them closely connected with their constituency and frequently contacted by their constituents and by civil society organisations. Secondly, we need to look at which actors monitor the activities of the European Parliament in Brussels and Strasbourg and at how Parliament manages its relations with them and tackles the issue of lobbying in general. Finally, we will look at how the EP has sought to broaden the range of representatives it deals with,

apart from lobbyists, and at how it interacts with European citizens, in parallel with the contact that MEPs have with them on an individual basis.

## **A. MEPs: from constituencies to Chamber**

The obligation to deal with requests made by citizens is one of the inevitable aspects of parliamentary office in all democratic systems, regardless of the concept of representation that elected representatives believe they are defending. However, MEPs differ from their national counterparts in two diametrically opposed ways: citizens rarely request things from their MEPs, and MEPs are in theory unable to provide them with a service on a daily basis, as national MPs do. MEPs are also less visible than their national counterparts and not as well known, so citizens tend to contact them less frequently. Nevertheless, things have changed in recent years, and MEPs are in no way insulated from the national and local situation.

### **A.1. First and foremost elected representatives**

The European Parliament now has 785 members, elected every five years by direct universal suffrage, who sit within seven political groups. As we have seen, MEPs were originally delegates of national parliaments who held dual national and European office. Since 1979, they have been elected in elections held simultaneously in the Member States on a national or regional basis. The practice of holding dual office has gradually declined and is now proscribed, so that MEPs can concentrate on their EP commitments. However, some continue to combine their European mandate with local or regional office, as their national counterparts do. The first generation of directly elected members soon realised how weak the EP's powers were and actively set about strengthening them. Today, thanks to their efforts, the raft of treaty reforms and improved relations between the institutions, the situation is very different. MEPs belong to a powerful and influential institution that has a significant role in EU policy-making, can rein in the Commission and acts as the EU's main discussion forum. MEPs have emerged on the European, national and local scene, making them the first port of call for all European stakeholders.

MEPs are often considered as simple cogs of EP decision-making, contributing to its legislative, budgetary and supervisory functions according to the party line of their respective political groups. Yet this does not give us the full picture, since political groups are as much about striking a compromise between members as about peddling their own views of what needs to be done. Lobby groups and civil society organisations know this, and now pay considerable attention to the work of the European Parliament and to dialogue with MEPs.

The importance of specialisation in the debates of the European Parliament, the priority given by the EP to policy-making and the limited media coverage of its work should not hide the fact that MEPs are elected representatives just like any other, bound by the

same constraints and driven by similar motives. However, this view is often distorted by the physical distance between the European Parliament and the majority of Member States, on the one hand, and the history of the institution, on the other. Initially, the vast majority of MEPs were selected from 'fixed party' national lists. This gave considerable power to national political parties, which determined who was on the lists and could allocate the safest places to the candidates of their choice. The representatives thus elected had little incentive to become involved in electoral campaigns or to build relationships with citizens and civil society organisations. In fact, they could avoid this if they had strong party backing or had no hope of or interest in being re-elected.

This situation has been shaped by two things: the first is the increasing focus on the work of the EP, particularly since its rise to power. Although participation in the European elections has not increased, numerous actors (citizens, civil society organisations, local, regional and national political leaders, economic operators) are now aware of the influence of the Parliament. MEPs are therefore increasingly sought out by all levels of government. Secondly, European elections have become regionalised in an increasing number of Member States, and preferential voting has become more widespread, and is now in place in 16 of the 27 Member States. Holding elections in small constituencies or allowing voters to vote for one or more candidates encourages members to spend more time campaigning on the ground. Of course, their ties with the constituency cannot be likened to those of national MPs: taking account of the limited number of elected representatives per country, and thus the high ratio of citizens to each representative, these ties are not as close. We must also take into account the logistical difficulties posed by travel by representatives between their constituency and the European Parliament, as well as their overcrowded schedules. The European Parliament is in permanent session and has 12 four-day sittings a year, plus six 'part-sessions', each lasting two days. MEPs are also required to attend meetings of parliamentary committees for around 14 weeks of the year, and meetings of their political groups for around 12 weeks of the year. For the past few years, the European Parliament has set aside an increasing number of weeks (two in 2004, four in 2006, seven in 2008) for 'external activities', when MEPs can spend time in their own constituency or national parliament.

## **A.2. Just like any other elected representative?**

We can see three fundamental changes in the behaviour and profiles of MEPs.

The first concerns their relationship with their constituents. MEPs now spend a few days a week in their constituency, just like their national counterparts. Yet the way they 'cover' their constituency differs; some MEPs are content to stay in the town or province where their home base is, particularly if they are elected from a national electoral district, although this is becoming increasingly rare. Others try to travel around the entire constituency. However, all are in regular contact with their constituents. Their activities on the ground are varied and are similar to those of national MPs, mainly consisting of meetings with citizens and local actors, contact with local lobbies, electoral or referen-

dum campaigns (particularly where the European treaties are concerned), interest in various markets, new openings, contact with local media and public seminars (such as debates, conferences on the European Union, speeches in academic institutions, meetings with economic and social actors, and so on). Most MEPs now have a permanent office in their constituency, usually run by one or more staff who remain in the constituency in order to establish links with local actors and citizens, take care of the member's communication (website, newsletter, press relations and so forth) and stay on top of 'regional issues'.

The need for elected representatives to spend more time in their constituency has also led them to adapt their communication policy, although how they handle this remains fairly disparate at present. Nevertheless, there are some similarities. Most MEPs now have a 'newsletter' or contribute to party newsletters at a national or constituency level. They also have websites, either personally or under the umbrella of their political group, which provide a lot of coverage for a Member's activities in relation to his or her constituency or seat. Of course, this development forms part of the wider trend of switching to 'electronic' communication by representatives.

The increasing focus among MEPs on their constituency has also affected how they behave in the European Parliament. As they become more established as players on the local or national political scene, citizens, activists and political, economic and social actors turn to them to discuss issues concerning the European Union. MEPs now give priority to requests from their constituency. National delegations of the various parties in the European Parliament have introduced systems aimed at streamlining how correspondence from citizens – mainly to do with grant applications or requests to visit Parliament – is handled, forwarding it to the MEP from the constituency concerned. Yet MEPs still find it hard to raise local issues in Parliament. Before 1999, we saw the problems faced by British MEPs – at the time elected in uninominal elections in small constituencies – in raising local issues within the assembly. Neither the rules of procedure of the EP (where debating time is limited during the plenary) nor the nature of its powers (in that it is unable to deal with individual cases) lend themselves to this. However, the commitment of MEPs to local or regional issues is expressed by the choices they make within the EP. It determines which parliamentary committees they ask to sit on and which reports they volunteer for, and is echoed in many of their written and oral questions or contributions during debates. As we will see, the territorial dimension of parliamentary office is also reflected in the intergroups that MEPs create or to which they belong.

Finally, changes in European elections (regionalisation and the spread of preferential voting) and the increasing focus on these among the political classes have altered the profile of European parliamentarians. For a long time, the 'second-order' nature of European elections and the use of the party list system allowed political parties to promote candidates who would not otherwise have been eligible. These atypical representatives – representatives of 'civil society', the rising stars of politics, political heavyweights with-

out office – certainly added something to the debates of the European Parliament, but also helped to give the EP the image of an institution out of touch with electoral reality. In recent years, we have witnessed a process of ‘normalisation’ of MEPs, who now resemble members of national parliaments in every respect (age, qualifications, political experience and socio-professional category). Although to some extent European elections are still second-order elections (more of which later), MEPs are no longer second-order representatives. They are now elected following a tough election attracting high-level candidates, and are seen as key contacts on European issues at all levels of government. In this regard, they are in touch with ‘civil society’ on a daily basis, both in their own constituency and in Brussels and Strasbourg.

MEPs are therefore in the front line when it comes to mediating between national and local political arenas, on the one hand, and European institutions, on the other. They circulate information around the European political system both from the top down and from the bottom up: from the bottom up, because MEPs promote the demands of their constituents which they have picked up on when they are in their constituency or which are sent to them directly. They also filter information from the top down, since MEPs play a central role in providing information about the EU’s institutions and policies and the issues of European integration. This role is performed within political parties and national institutions, as well as increasingly on the ground through a wide range of public activities. MEPs are also contacted by local and national media as experts able to provide clarification on European issues. The institutional architecture of the EU is particularly conducive to this function. Since the political system is not based on a permanent partisan majority, MEPs are not required either to support the actions of the EU or the Commission, or to criticise them constantly. They therefore appear credible to citizens and journalists, qualified to take their grievances and requests into account and in return provide independent – if not truly objective – information about the work of the EU.

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## **B. Lobbying in the European Parliament**

The rise to power of the European Parliament in the political system of the European Union – mainly via the codecision procedure – has led to an exponential rise in the number of requests that it receives from lobbyists and representatives of civil society. At a time when the media, opinion leaders and citizens are placing more and more importance on participation in every form (and not just elections), relations between the European Parliament and civil society are becoming the key to its legitimation and affirmation as an actor and a European public forum. Focusing exclusively on the constituent parts of the European Parliament (such as the plenary assembly, parliamentary committees, political groups and interparliamentary delegations) is not enough if we are to understand how it reaches its decisions: the institution does not operate in a vacuum and is permanently interacting with its environment through dialogue with experts, lobbyists and representatives of civil society.

## B.1. Access to the European Parliament

Originally, the European Parliament was accessible to representatives of any order, despite the lack of interest in it as an institution and the fact that it lacked powers and visibility. Early generations of MEPs developed a strong culture of openness, intended to remedy this state of affairs, as well as the physical distance separating them from their constituents. However, lobbying in the European Parliament has grown considerably since the 1950s, as the powers of the assembly have increased and lobby groups have shown more interest in the European institutions in general. Today, Brussels has thousands of lobby groups and civil society organisations, which have all included the European Parliament in their communication strategies. Consequently, the EP's culture of openness has had to be adapted gradually in order to maintain independent and orderly decision-making.

### 1. MEPs willing to deal with interest representatives

There are two main reasons why MEPs are willing to deal with interest representatives, or lobbyists. The first is the 'competitive' nature of the European decision-making process: the EP is not required to support the proposals of the Commission and the common positions of the Council, but must examine them closely through its own political and technical magnifying glass. To do this, it is crucial that MEPs have independent sources of information. In view of the technical nature of most European legislation and the limited nature of the EP's research tools, MEPs carefully examine the documents that various parties interested in a particular piece of legislation might submit to them. Even though any expert reports should be treated with caution, MEPs can get a better idea of the issues inherent in a legislative proposal by cross-referencing them with other sources. MEPs are also encouraged to develop this expertise in view of the limitations associated with claims of 'democratic representativeness' in the EU. Taking account of the existence of other levels of authority, MEPs must ensure that their amendments and proposals are also based on contact with the beneficiaries of the policies and that they have a certain amount of expertise in the matter concerned.

Lobbying in the European Parliament takes specific forms owing to the particular requirements of MEPs and the attitudes of some of them towards lobbying<sup>98</sup>. For example, the largest and most influential lobby groups in the European Parliament are not the same as in the Commission. In addition, MEPs do not have the same criteria as members of the Commission when it comes to choosing who to deal with. The European Parliament has therefore become the partner of choice of champions of general causes (such as the environment, consumer protection and European integration) within the institutional system of the Union. The 'public' nature of these interests and the fact that they are defended by representatives of civil society (e.g. associations, NGOs, trade unions, etc.) effectively renders their inclusion more acceptable by those MEPs who

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<sup>98</sup> Kohler Koch, B., 'Organized interests in the EC and the European Parliament', *European Integration Online Papers*, 1/9, 1997.



are less in favour of lobbying practices. MEPs have shown that they are selective in their contact with lobbyists. Their requirements in terms of the competencies, attitude and representativeness of their contacts, as well as the nature of the interests that they defend, tend to encourage contact with public interest representatives and key figures from the non-profit sector, and to marginalise advocates of more aggressive lobbying. In order to curb the excesses of this type of lobbying, MEPs proposed regulating it in the 1980s.

## 2. The difficulty with regulating lobbying in the EP

Although the European Parliament, like other EU institutions, does not formally distinguish between private interests and public interests, it has drawn inspiration from United States legislation by choosing to curb lobbying excesses not by regulating the use of lobbying, but by ensuring its transparency. In the United States, lobbyists are theoretically required to explain which interests they represent, to reveal their client's identity and to disclose the financial resources at their disposal. On the whole, MEPs embraced this approach, although they took a while to reach an agreement on the exact procedure.

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In 1990, a preliminary report on the supervision of lobbying in the European Parliament was entrusted to Belgian MEP Marc Galle<sup>99</sup>. After several years of debate, it was finally adopted by the Committee on Rules of Procedure, but was invalidated when the Parliament reassembled following the elections in June 1994. The Committee on Rules of Procedure of the newly-elected assembly reverted to the original procedure.

On 25 September 1995, the Committee on Rules of Procedure adopted Glyn Ford's report on the regulation of lobbying in the European Parliament and Jean-Thomas Nordmann's report on greater transparency of MEP's financial interests. These reports were passed without incident, although their inclusion on the agenda of the January 1996 session revealed how divided MEPs were on the issue, depending on their political sympathies, their understanding of parliamentary office, their parliamentary traditions and national policies and the size of their political group. Accordingly, MEPs carried a motion for the adjournment of the two committee reports so that they could be amended. It seemed unlikely in fact that they would win support from an absolute majority of MEPs, which was necessary following an amendment to the Rules of Procedure of the European Parliament. To prevent the reports from being shelved, an ad hoc working group chaired by Jean-Pierre Cot was created by the Conference of Presidents. Based on the work of this group, Messrs Ford and Nordmann each drafted a second version of their report. When these were examined during the plenary on 16 July 1996, the rapporteurs stressed how symbolic the reports were, explaining that their aim was not to put an end to the almost non-existent abuses, but to allow Parliament to obtain greater power. The rapporteurs regretted the limitations of the exercise, but reminded Parliament that this

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<sup>99</sup> Galle report, PE 200.405.

was a prerequisite for voting on texts that created new requirements. The two reports were adopted by a very large majority.

The Nordmann report (A4-177/96) stipulated that all MEPs now had to disclose details of paid professional work, financial support, staff and logistical resources and the identity of donors; the register containing these declarations is updated annually and may be consulted by the public. MEPs are also prohibited from receiving gifts or donations during their term of office. The Ford report (A4-200/96) amends the Rules, inserting a new Annex IX which defines the arrangements for obtaining permanent visitor passes and the obligations imposed on assistants. The Ford and Nordmann reports could only be adopted once certain controversial provisions had been suppressed, such as the introduction of a declaration of members' interests or scrutiny of how staff allowances were used. Similarly, provisions forcing lobbyists to disclose favours, gifts, donations or benefits given to parliamentarians, officials or assistants of more than ECU 1 000 per person per year were to be withdrawn.

Rule 9 of the Rules of Procedure of the European Parliament currently states that the 'Quaestors shall be responsible for issuing nominative passes valid for a maximum of one year to persons who wish to enter Parliament's premises frequently with a view to supplying information to Members within the framework of their parliamentary mandate in their own interests or those of third parties'. Conversely, the holders of these passes (around 5 000 at the time of writing) must observe a code of conduct and be listed in a public register. Annex IX of the Rules of Procedure ('Provisions governing the application of Rule 9(4) – Lobbying in Parliament') specifies the terms and conditions for issuing and carrying passes. Lobbyists, who were physically indistinguishable from MEPs, officials, journalists or visitors prior to the adoption of the Ford report, must now wear a pass of a certain colour indicating the full name of the pass-holder and of the firm, organisation or person for whom the holder works. The pass only grants them access to public meetings of the EP and will only be renewed if the pass-holder has abided by a code of conduct that ensures the transparency of the interests represented, outlines the proscribed practices and states that any non-compliance could lead to the withdrawal of the pass from the person concerned or from their firm. Finally, the Rules of Procedure also state that at the beginning of each parliamentary term the College of Quaestors 'shall determine the maximum number of assistants who may be registered by each Member' and that 'assistants shall make a written declaration of their professional activities and any other remunerated functions or activities'.

More recently, the EP has reopened the debate over the control and regulation of lobbying. Following the publication by the European Commission of its Green Paper on the European Transparency Initiative (COM(2006)0194), a follow-up communication (COM(2007)0127) and a draft code of ethics for lobbyists (10 December 2007), the EP's Committee on Constitutional Affairs initiated a new report on 'the development of



the framework for the activities of interest representatives (lobbyists) in the European institutions’.

Entrusted to MEP Alexander Stubb, it was adopted by the Committee on Constitutional Affairs on 1 April 2008 (2007/2115(INI)) and by the plenary on 8 May 2008. The report defines lobbying as ‘activities carried out with the objective of influencing the policy formulation and decision-making processes of the European institutions’. The European Parliament recognises that lobbyists can offer expertise useful to it in its work, but believes that it is essential to be able to identify the organisations they represent. To do this, the report recommends a handful of internal reforms and crucially proposes extending the mechanisms introduced by the European Parliament to the main EU institutions: a mandatory register of lobbyists who hold a pass to the European Parliament and a code of conduct for these representatives. It has therefore asked the three EU institutions (European Parliament, Council and Commission) to set up a joint working group tasked with drawing up, by the end of 2008, a proposal on the creation of a ‘one-stop-shop’ allowing lobbyists to register in order to be able to access the three institutions.

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With regard to the financing of lobby groups, the European Parliament is on the same wavelength as the Commission’s communication. According to the Stubb report, lobby groups who register are required to disclose financial information in order to maintain transparency with regard to their objectives and clients. However, unlike the Commission, the European Parliament is calling for a nominative register of lobbyists, as is currently the case in the assembly.

The efforts of MEPs to increase the control and regulation of lobbying in the European Parliament have already paid off. They now know whom they are dealing with, can make sure that their meetings in camera are not attended by lobbyists, and no longer have to put up with being bombarded with requests. However, the steps taken by MEPs towards better regulation of interest representation have met with three recurring problems. The first concerns the huge differences in practices, traditions and legislation between Member States in this area, differences that to some extent have an impact on the position of MEPs. The second is linked with disagreements between the European Parliament and other institutions over how best to regulate lobbying, with the EP generally being more demanding than either the Commission or the Council. Finally, MEPs are faced with the impossibility of identifying representatives of private and public interests, and thus of giving preference to civil society organisations.

The Stubb report emphasises that ‘all players, including both public and private interest representatives, outside the EU institutions’ who fall within the definition of lobbying ‘should be considered lobbyists and treated in the same way: professional lobbyists, companies’ in-house lobbyists, NGOs, think-tanks, trade associations, trade unions and employers’ organisations, profit-making and non-profit organisations and lawyers when their purpose is to influence policy rather than case-law’. Conversely, the Stubb

report states that the rule would not apply to organisations representing regions and municipalities of the Member States, national and European political parties and bodies with legal status under the Treaties.

Interest representation in the European Parliament is not just a passive phenomenon: it also stems from opportunities that the EP and its organs offer to lobby groups and civil society organisations. Alongside the debate over the regulation of lobbying, some representatives have suggested that official structures be set up for the consultation of lobby groups by committees or by the plenary assembly, with a view to cleaning up their work and removing any doubts as to the integrity of representatives. Yet the EP has shown itself to be divided over the principle and arrangements of this reform, which are likely to give rise to protests from the European Economic and Social Committee and even from the Committee of the Regions.

## **B.2. The special role of intergroups**

There is another aspect to the representation of public and private interests in the European Parliament: intergroups. These are unique to the European Parliament and play a central role in the way its members interact with certain civil society organisations and lobbyists. Intergroups have no powers or legal status; they consist of an informal gathering of members from various political groups based on their shared interest in a particular issue or case. They first appeared in 1979 with the ‘Crocodile Club’, created to offset the artificial nature of the left and right split of MEPs at a time when the distinction between supporters and opponents of a federal Europe was more important. This federalist intergroup was largely behind the draft Treaty on European Union adopted by Parliament in 1984 under the leadership of Altiero Spinelli. The EP Bureau refused to give in to demands for official recognition of intergroups so that it would not be forced to provide them with valuable logistical resources (offices, meeting rooms, secretary, interpretation, translation, printing and so forth). It also feared that official recognition might trigger an explosion in the number of parties. As an exception, the Bureau recognised the existence of the Intergroup of Elected Local and Regional Representatives in 1980 and provided it with the necessary resources so that it could hold meetings, although all other intergroups were forced to operate with minimum resources and to call on the generosity of the political groups for access to rooms and interpreters.

Historically, intergroups have varied enormously in terms of the number and identity of their members, the frequency of their meetings, their method of organisation or even their degree of influence. Some would have more than 100 members, meet regularly, arrange hearings of politicians and experts, produce numerous publications, have a permanent secretariat and enjoy wide media coverage of their activities; others would meet very rarely and have a small number of members, focusing on issues that sometimes lacked any obvious political dimension (for example rugby, cycling or mountaineering), and thus were more like private clubs.

To cope with the increase in the number of intergroups and their activities, to limit their influence and to increase the transparency of their ties with lobby groups or civil society organisations, MEPs decided to step up controls over how intergroups were formed and how they operated. The first to take this initiative was the PSE Group Bureau. At the end of 1989, it decided to limit its logistical and political support to a small number of intergroups, involved with issues considered a priority by the Group. In order that their meetings would no longer prevent MEPs from attending the plenary and committee meetings, the PSE Group Bureau provided intergroups with a conference room and interpretation on the condition that they met only at specific times.

98 After several years of discussion, and in view of the absence of a consensus between MEPs on how to proceed, the Conference of Presidents of the European Parliament decided to clamp down on the proliferation of intergroups and the lack of transparency that surrounded their goals and interaction with non-parliamentary bodies by introducing ground rules for intergroups on 15 June 1995. Intergroups had two months to declare the origin of their financial resources, to prove that they were supported by at least three political groups and to ensure that their name could not be confused with that of an official organ of the European Parliament – particularly a parliamentary committee or a delegation. After this time, those that had not complied with these conditions were denied any logistical support.

Shortly afterwards, the Conference of Presidents asked the Committee on Rules of Procedure to draw up a new report on regulating the activities of lobbyists. However, the report by Glyn Ford on the regulation of lobby groups in the European Parliament, mentioned earlier, was unable to accommodate all of the provisions relating to intergroups. MEPs were split on how to proceed, largely depending on their nationality, since national parliaments all approached the issue very differently. When he unveiled his report at the plenary on 13 July 1996, the rapporteur nevertheless urged his colleagues to stick to the task in hand and force the intergroups to submit a list of members as well as an annual report on their external resources.

Today, considering the restrictions imposed on their creation, there are no longer any intergroups that resemble members' clubs. The same applies to those intergroups that were closely linked with a particular political group or national delegation. Today, intergroups are all 'ecumenical', in the sense that they include MEPs from at least three political groups and from a variety of countries. The introduction of these rules led to a fall in the number of intergroups; taking account of the provisions relating to 'sponsorship' by political groups and the number of these, there cannot be more than 24 intergroups. At the time of writing, there were officially 23 intergroups.

Although there are fewer intergroups today, they still have extremely varied objectives. Some have wide-ranging concerns and champion great causes (European integration, world peace, anti-racism or consumer protection). Others are committed to defend-

ing minority interests and groups (national minorities, regional languages, the disabled, gays and lesbians, the elderly or young people), or seek to raise the profile of a particular sector of the economy (audiovisual, tourism, aerospace, viticulture, etc.). Some intergroups – of which there are a small number today – focus on the interests of particular regions within the EU (e.g. the Baltic) or third countries (e.g. Tibet). Finally, some intergroups represent specific organisations within the EP, such as trade unions and small and medium-sized enterprises.

Intergroups act as an interface with civil society. They are a place where its representatives are free to dialogue with MEPs – and sometimes even with the representatives of other European institutions who are invited to meetings – on specific topics. Since the early 1980s, some intergroups have focused on the implications of a citizens' Europe. They have helped to convey to the European Parliament, and to the entire institutional system of the EU, the idea that it is important to establish a dialogue with European citizens – and not just with international experts and members of the political elite – and to place them at the centre of European policy-making. Intergroups have also helped ensure that more information about the EP's work reaches citizens (or certain categories of them at least).

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The recent Stubb report 'on the development of the framework for the activities of interest representatives (lobbyists) in the European institutions', adopted by the European Parliament on 8 May 2008, reopened the debate on regulatory supervision of the activities of intergroups. The report 'calls for further clarity in relation to Intergroups', i.e. a list of all existing, registered and non-registered Intergroups on the European Parliament's website, including full declaration of outside support for their activities as well as a statement of their broad aims. However, the report stresses that 'Intergroups shall in no way be considered organs of Parliament'.

There are two recurring difficulties here in terms of the regulation of interest representation, no matter what form it takes. The first is that if the rules are too strict, then this encourages informal practices which cannot be monitored, with some intergroups continuing to exist informally, without being registered; this might simply mean that their members meet occasionally, even if it is only for lunch. The second concerns the authority that any regulatory supervision represents: some MEPs fear that excessive codification will make intergroups too powerful within the EP, legal constraint often being an incitement to act.

### **C. The European Parliament and citizens**

Apart from the contact that individual MEPs have with their constituents and various lobbyists, the European Parliament has launched numerous initiatives in order to foster a dialogue with citizens and civil society organisations. The aim is to encourage them to contact the EP and to correct the inequality that exists between the ability of private in-

terest groups and citizens' associations to arrange transnational representation of their interests in Brussels and Strasbourg.

### **C.1. Citizens' correspondence**

Like all public institutions, the European Parliament receives an enormous quantity of correspondence from citizens covering all of its spheres of activity. The rise to power of the European Parliament and the successive enlargements of the EU have triggered a spectacular increase in the amount of this correspondence. Whereas the number of enquiries (via ordinary post, using the electronic form on the EP's website, by email and by telephone) received in 2004 stood at around 10 000, it was approximately 27 000 in 2007. Within the Secretariat of the European Parliament, the Correspondence with Citizens Unit is responsible for replying to each enquiry in the language of the sender, in accordance with the provisions on European citizenship inserted in the EC Treaty by the Maastricht Treaty (1993) and the EU Charter of Fundamental Rights (2001).

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In their correspondence, citizens express their opinions or everyday concerns, or make suggestions. A wide range of topics is covered: treaty reform, enlargement, internal market, social rights, human rights, foreign and security policy, environmental protection, animal welfare, asylum and immigration policy. The public is showing a growing interest in the positions adopted by the European Parliament and the activities of the EU in general<sup>100</sup>. An analysis of the requests for information received shows that citizens are mainly interested in current affairs and recurring issues linked with the functioning of the internal market that affect them in their day-to-day lives. There are also increasing calls for the EP to adopt a position on and intervene in foreign policy. A significant proportion of the correspondence received concerns problems that are not within the remit of the European Parliament, which citizens see as a last resort when faced with an administrative or judicial decision they consider to be unjust. Finally, MEPs, who also receive an increasing amount of correspondence, now refer requests requiring more careful study to the Correspondence with Citizens Unit.

### **C.2. Examination of petitions**

The examination of citizens' petitions is another classic aspect of contact between a parliament and its electorate. This mechanism was introduced, by way of institutional imitation, in a 1953 regulation of the Common Assembly. Although seldom used at first, the right to petition the European Parliament began to generate interest among citizens in the 1970s. Following the direct election of the European Parliament in 1979, the number of petitions soared, leading to the formation of the EP's Committee on Petitions in 1987. In 1993, the Treaty on European Union 'constitutionalised' the right of petition in its provisions relating to European citizenship; that year, the number of petitions passed the thousand mark. The number of petitions accompanied by a huge number of

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<sup>100</sup> Directorate-General for Information, Directorate-General for Communication, *A year of direct communication with citizens*, 2005.

signatures – sometimes several million – has also increased. The EP today receives more than 1 000 petitions each year (1 021 in 2006), a third of which are declared inadmissible. The Committee on Petitions also receives a huge amount of correspondence (more than 2 400 letters in 2006), to which it systematically replies.

The Committee on Petitions has wide-ranging powers and enormous freedom to examine the petitions submitted to it. It might follow these with a report (rare), or seek the opinion of another committee, organise hearings, send members on missions, request information or documents from the Commission, or even ask the Commission or a Member State to intervene. Petitions received by the EP can be placed in three categories: petitions outside Community jurisdiction, which are declared inadmissible; petitions expressing opinions on social issues (these generally have a large number of signatures, the result of an orchestrated campaign by associations, NGOs or lobby groups), which are forwarded to the competent parliamentary committee, which investigates the matter or informs the first signatories of the recent positions and actions of the EP on the issue; and petitions that contain a specific grievance, usually submitted by a single complainant. These usually relate to cases of infringement of the freedom of movement of individuals and often come within the jurisdiction of the European Ombudsman (see below), but can also lead to representations being made by the European Parliament – particularly to the Commission – with a view to protecting the rights of citizens.

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The petitions procedure relates to two aspects of interaction with citizens and citizens' associations. First, it allows MEPs to improve their knowledge of EU policy and the difficulties that this raises, and to understand particular social issues and currents of thought. Second, it allows MEPs to inform both petitioners and the media about the positions and actions of the EP on a given topic.

### **C.3. The European Ombudsman**

The post of European Ombudsman was created by the Treaty of Maastricht within the framework of recognition of citizenship of the European Union. It draws heavily from the ombudsman model of Scandinavian countries and an increasing number of western democracies. By 1979, the EP had already adopted a resolution requesting the appointment of a European Ombudsman (resolution of 5 June 1979) in order to strengthen democracy and the rule of law in the Community. The Ombudsman is appointed by the European Parliament at the start of each parliamentary term for a renewable term of five years. Following a public call for candidates, the European Parliament examines applications supported by a minimum of 37 MEPs from at least two Member States. Candidates are interviewed by the relevant parliamentary committee, following which the EP elects the Ombudsman by simple majority vote. Greece's P. Nikiforos Diamandouros has been European Ombudsman since 1 April 2003.

The Ombudsman investigates complaints filed by private individuals, firms and associations of maladministration by Community institutions and organs, with the exception



of the European Court of Justice and Court of First Instance in the context of their judicial functions. Once a dispute between a citizen and a European institution has been referred to the Ombudsman, he will try to find an amicable solution. The Ombudsman can also conduct own-initiative enquiries, bringing together representatives from European institutions and fostering contact with citizens. Since the role was created, the Ombudsman has gradually defined – with the active support of the EP – the concept of ‘maladministration’ with reference to human rights, the rule of law and the principles of good administration, and has formulated proposals for reforms to improve the practices of European institutions. Finally, he ensures liaison between national ombudsmen and is involved in their collective work.

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Following a steady rise in the number of complaints referred to the Ombudsman, these have now reached a plateau, standing at 3 830 in 2006. The vast majority of complaints are filed by private individuals; only 211 came from associations or businesses. According to his 2006 report, the Ombudsman was able to help complainants in more than two thirds of cases by opening an enquiry, referring it to the relevant committee or advising the complainant on which institution to contact in order to resolve the problem. In 2006, the European Ombudsman handled 582 enquiries – half of which dated back to 2005. The majority concerned the European Commission; 13% involved the European Personnel Selection Office, 8% the EP and 2% the Council. Complainants alleged, in decreasing order of frequency, lack of transparency (refusal of information), unfairness or abuse of power, unsatisfactory procedures, avoidable delay, discrimination, negligence, legal error or breach of obligation. The Ombudsman also received 3 540 requests for information, which were all replied to personally by his staff.

In 2006, 64 disputes were resolved by the institutions following a complaint filed with the European Ombudsman. The Ombudsman may make ‘critical remarks’ when a case of maladministration has been identified which can no longer be corrected; 41 remarks of this type were issued in 2006. When maladministration is identified but is still reversible, the Ombudsman sends a ‘draft recommendation’ to the institution concerned; 13 of these were issued in 2006. In these cases, the Ombudsman can send a special report to the European Parliament; in 2006, two reports of this type were sent, one on the choice of language used on the websites of EU presidencies and the other on the inability of the Commission to make progress on the issue of sports betting. These are sent to the relevant committee, which may decide to draw up a report. Finally, the Ombudsman submits an annual report to the European Parliament on the results of his enquiries. Here too, the relevant committee prepares a report, which is presented to the plenary and debated; the committee may also interview the Ombudsman.

For the European Parliament, the European Ombudsman represents a sort of institution within an institution, actively involved in building relations with citizens and helping the EP to lend them assistance and obtain information from them about their expectations and criticisms of European integration.

#### **C.4. Visitors and communication policy**

In addition to the communication policy implemented by the Commission on behalf of the European Union, the European Parliament has devised its own strategy, specially tailored for citizens. This is no mean feat, taking account of the size of the population concerned, the strong focus of citizens on national and regional public forums, the lack of interest of the media and national parties in European institutions and the complexity of the EP's activities.

In order to tell people more about their work, at the end of the 1990s MEPs decided to be more accessible to citizens and representatives of European civil society, who can observe plenary debates and attend meetings of parliamentary committees (except when in camera) and some political groups. They also decided to introduce a more proactive visitors' policy in European Parliament buildings. Around 250 000 people visit Brussels and Strasbourg each year to attend plenary sessions, visit the premises of the European Parliament and possibly even meet with MEPs or key parliamentary figures. As a result of the enormous logistical resources deployed by the European Parliament and the partial financing of travel by some groups, the number of visitors increased tenfold in the 1990s.

The European Parliament also publishes a number of documents and brochures to inform citizens about its powers and activities, particularly in the context of European elections. It also has an elaborate website, which contains a mass of information about the EU and the activities of the European Parliament, and allows access to most of the working documents and texts adopted by the Parliament since 1999. Special care has also been taken to welcome journalists to Strasbourg and Brussels, where the EP has organised press rooms and provided all of the audiovisual facilities that they might need. Plenary sessions are also filmed by a special EP unit and are broadcast by satellite, with television channels free to use any of the images. Thanks to these efforts – as well as to the enlarged powers of the European Parliament – the number of journalists present during sessions has grown considerably; around half of the 1 000 journalists accredited by EU institutions regularly attend sessions. Finally, in September 2008, Parliament launched 'Europarl TV', through which citizens can watch the proceedings of Parliament live via the website and keep up to date with the most important issues by following the themed reports.

The EP's relations with citizens and journalists have recently benefited from certain changes to the way in which its activities are organised. A working group on EP reform was set up by the Conference of Presidents in February 2007 to study possible changes in the plenary session, parliamentary committees and delegations. The aim was to improve the functioning and efficiency of the Parliament on the one hand, and on the other to make its debates more interesting and intelligible for the general public. Although this change does not stem directly from the EP's communication policy, it still facilitates better media coverage.



In January 2008, the first wave of changes was implemented. To make legislative debate clearer, rapporteurs now have more speaking time and a final say in the discussion. For each debate, there is also a five-minute 'catch-the-eye' period which allows MEPs not on the pre-prepared list of speakers to contribute to the discussion.

The plenary agenda is now divided into distinct sections: the main legislative dossiers are covered on Tuesday, the key debate of the week takes place on Wednesday morning and Wednesday afternoon is devoted to current political issues. In accordance with the January 2008 reform, the Conference of Presidents can also decide to authorise short speeches by the heads of political groups on key issues just before the vote. Finally, if MEPs are scattered throughout the Chamber, the President can now ask them to sit in the front rows to stimulate the discussion. The working group also recommended other changes intended to increase the visibility and transparency of the EP's activities.

### **C.5. Public hearings**

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MEPs also have another way of dialoguing with citizens and representatives of civil society, in the form of public hearings. These play a crucial role in the preparation of public policy, in so far as they allow MEPs to identify needs and expectations when they draft own-initiative reports, adopt declaratory resolutions and amendments and improve their knowledge of more technical or sensitive topics. Hearings can also serve as an opportunity to draw media attention to a particular topic and to elicit a reaction from opinion leaders, other institutions, academics or citizens in general.

The EP has made increasing use of this procedure. Before its election in 1979, there were barely more than two or three hearings a year, compared with around 30 in the early 2000s and almost 100 in 2007. Some are simple 'poster sessions', while others involve a handful of experts or are open to a wide range of speakers. They can also be organised by one or more parliamentary committees. Since the end of the 1990s, the European Parliament has also organised large-scale conferences on topics as diverse as the World Trade Organisation, youth policy, rural development, disability and the Stability Pact. Some conferences are held jointly by the European Parliament and the Commission or other non-Community institutions.

The Secretariat also organises between 15 and 20 'workshops' each year to allow MEPs to meet with experts from all backgrounds on a specific issue. Finally, we should mention the numerous conferences and hearings arranged by the political groups and intergroups.

Hearings are organised by the committees, which can invite anyone to attend and take part. Originally, this would often be an independent expert. Later on, committees began to invite panels of experts from various backgrounds and then, from the end of the 1980s, representatives, whether experts or not, from all parties concerned with a particular dossier, particularly civil society. Hearings have also involved other organs or

institutions, such as the European Commission, national parliaments and international organisations. From the mid-1990s, some public hearings became conferences widely covered by the media, the main aim of which was no longer to provide MEPs with information, but to contribute to a public debate and facilitate an open dialogue with civil society.

Although the majority of hearings still have an educational role for MEPs and are not widely publicised, there has been a significant move towards media coverage of these events, which are a way for the European Parliament to improve its contact with citizens. Hearings are becoming an important aspect of the EP's social representativeness and serve as forums for various groups interested in a particular issue. The European Parliament is therefore keen to maximise the publicity given to some hearings, so that all stakeholders – particularly civil society organisations and citizens' associations not based in Brussels – can attend.

The public hearing on the European Parliament and citizens, held in 1995 and 1996 ahead of the Intergovernmental Conference that led to the Amsterdam Treaty, marked a turning point. For the first time, a hearing was open to all organisations keen to express an opinion, in this case on the objectives and policies of the EU and its institutions and decision-making process. Lasting for four days, the event boasted first-class facilities – debates were held in the Chamber of the European Parliament in Brussels in the presence of the commissioner responsible for institutional affairs and the Ambassador Extraordinary representing the Spanish Presidency of the European Council – and enjoyed wide media coverage. Many of the ideas developed at the hearing were subsequently borrowed by MEPs<sup>101</sup>, who demanded that a delegation should be involved in the negotiations, arguing that they could best express the interests of citizens since they had been elected by them, and because it was they who had organised the public hearing.

Although public hearings on this scale are still rare, it should be noted that the EP repeated the process for the adoption of the European Constitution. A 'Hearing on the Treaty establishing a Constitution for Europe, representatives of associations of regional and local authorities, employers and employees' representatives and civil society sector-based platforms' was held on 25 November 2004 to allow members of the Committee on Constitutional Affairs to hear representatives from regional and local authorities, social partners and various sectors (social affairs, environment, human rights, development, youth, gender equality, education and training, arts and culture, consumer affairs, social economy, faith and belief, citizens and European institutions). The hearing was broadcast live by satellite and formed the basis of contributions made by EP delegates to the European Convention and statements of position of the European Parliament on the European Constitution and the Treaty of Lisbon.

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<sup>101</sup> Resolution of 13.3.1996, adopted based on the Dury-Maij-Weggen report on Parliament's opinion on the convening of the IGC and an evaluation of the work of the Reflection Group and the definition of the political priorities of the European Parliament with a view to the Intergovernmental Conference. A4-0068/96.

The proliferation of public hearings open to other institutions or citizens and conferences on specific topics is a marked change in the communication policy and functioning of the European Parliament. Parliamentary committees now systematically organise hearings on legislative proposals with particular importance in order to launch a debate with all stakeholders, rather than only those groups capable of lobbying. These events allow it to secure media coverage for much of its activities and to form close ties with lobby groups, institutions and civil society organisations. In a European political system whose image remains tarnished by exclusivity and elitism, the European Parliament now emerges as a leading forum for the least powerful and least institutionalised actors.

This is mainly because MEPs focus on two aspects of lobbying. The first is the public or private nature of the interests represented: since MEPs are first and foremost elected representatives, called upon to further the interests of citizens, they pay special attention to public interest groups and representatives of civil society. By opening up public hearings and conferences organised by the European Parliament, they help address the imbalances that stem from the unequal resources (funding, staff, expertise, networks, etc.) of some private interest groups and public interest groups. MEPs are also sensitive to the conditions in which debates take place and are keen to ensure the transparency of the consultation process and the circulation of information about the public hearings and conferences taking place, so that these are not confined to operators based in Brussels. MEPs have pursued these goals as part of the internal functioning of the Parliament and have promoted them in the context of intergovernmental conferences and the European Convention. Since the mid-1990s, they have made closer involvement of citizens and civil society in the EU decision-making process one of the aims of treaty reform<sup>102</sup>, numerous traces of which can be found in the Treaty of Lisbon (references to civil society and the need for institutions to be open, citizens' right of initiative, etc.). The recent European Parliament resolution of 8 May 2008 on the development of the framework for the activities of interest representatives (lobbyists) in the European institutions also addresses concerns in terms of transparency, openness and fairness.

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### **C.6. The European Parliament opens up to public debate**

The idea of creating a permanent dialogue between the European Parliament and citizens arose at a time of uncertainty surrounding the rejection of the Treaty establishing a Constitution for Europe by the French and Dutch in May and June 2005. This was a time of deep reflection within all European institutions on the causes of the malaise expressed by citizens about European integration. A consensus emerged to find that the failure of the European Constitution should not be seen as a rejection of the European project as such, but as a call for European integration more in keeping with the concrete aspirations of citizens and involving them more closely in defining its objectives and policies. The EU institutions each reacted differently to this crisis. The Council called for

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<sup>102</sup> The own-initiative resolution of 10.12.1996 on participation of citizens and social players in the European Union's institutional system thus called for the inclusion in the EC Treaty of a general principle proclaiming the right of each citizen and representative body to formulate opinions and put these across.

a break in the constitutional process and set up different forums in the Member States, which in the end were relatively successful. The Commission unveiled its Plan for Democracy, Dialogue and Debate ('Plan D'), although neither the media nor civil society embraced this. The EP also called for a dialogue between European institutions and citizens, mainly through the adoption of the Duff-Voggenhuber report (January 2006).

As part of its examination of the proper structural responses to the European integration crisis, the EP's working group envisaged the creation of permanent places of dialogue on Europe involving citizens and civil society organisations that did not have a special relationship with European institutions. In other words, MEPs were keen to move away from traditional communication to citizens, and towards consultation with them, making them players in European integration and no longer simply bystanders or consumers. By combining representative democracy and direct democracy, MEPs hoped to bridge three gaps: the divide between institutions and citizens, the divide between the various sectors of European civil society, and the divide between national identities.

### 1. Citizens' forums

To do this, the EP first of all introduced a new communication tool: citizens' forums. The aim of these was to learn more about the perceptions of citizens on the ground ('go local'), to foster interaction with national, regional and local authorities, to ensure extensive media coverage of these forums and to bring to the fore key issues for the regions concerned. The overarching ambition was to organise a permanent dialogue with citizens and to develop the right channels so that their expectations and points of view could be gauged.

During a pilot phase involving the information offices of six Member States, 16 public events were held. In view of the success of these citizens' forums and the positive feedback from EP staff, in June 2006 the Conference of Presidents invited the information offices to continue the initiative. Around the same time, the European Council encouraged the institutions to continue and to step up the reflection process. In the second period, the EP organised forums in four other Member States. Information offices were also invited to develop cross-border cooperation initiatives.

In view of the success of this new communication strategy, on 12 September 2006, the working group decided to make citizens' forums a permanent tool for decentralised communication. All information offices were now required to include forums in their annual programme. Thus, in 2007, no fewer than 68 citizens' forums were held in 20 Member States, attracting more than 10 000 citizens and print and broadcast journalists. In addition, 130 MEPs actively participated in these events. The forums provided an opportunity to tackle a wide range of subjects<sup>103</sup>.

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<sup>103</sup> For a summary of the topics covered, see *Citizens' forum annual report*, European Parliament, 2007.

The EP aims to continue and develop this still relatively unknown tool, using it as a means of improving communication on the one hand, and as a way of creating synergy with similar or related activities, such as the Agora, on the other.

## 2. The Citizens' Agora

Following the working group's study of the EP's information and communication policy, on 12 June 2006 the EP Bureau decided to create a 'Citizens' Agora' in parallel with local forums. It stated that the dates and themes of Agora meetings would be the responsibility of the Conference of Chairmen, which would ensure that the points of view of all political groups were taken into account. The EP's committees have the task of identifying which parties might be interested in taking part in the Agora and accrediting the organisations concerned, with MEPs able to propose changes to the list of possible contributors. All MEPs and European institutions are invited to take part in the work of the Agora and to submit contributions via an Internet forum.

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The Agora has three main functions. First, it is a place of consultation, where a wide range of supporters and opponents of European integration can have a dialogue and debate. Since these actors are often the most critical towards the institutions and policies of the EU, the aim is to persuade them to set aside their opposition and to suggest alternatives to existing practices. Apart from an exchange of views, the Agora should also allow various options to be identified on a specific subject, or even a consensus to be reached. These options and positions are designed to fuel the discussions of parliamentary committees and the plenary, to be adopted in turn by MEPs during the drafting of reports, amendments or questions, or even to inspire other EU institutions. In this regard the Agora guarantees the kind of transparency that traditional lobbying practices lack. Thirdly, the involvement of a wide range of actors in the Agora broadens MEPs' knowledge of various issues, in the same way as public hearings. The Agora can also be seen as a large public hearing open to civil society, and in this respect is part of the process that began in the mid-1990s. However, the scale of the event is altogether different: 500 organisations are invited to Agora meetings, or 50 times more than attend a traditional parliamentary hearing. The Agora also differs from public hearings to the extent that it is cross-party and seeks to combat the fragmentation that sometimes accompanies the parallel hearings that take place in different committees in charge of the same dossier. Holding a single debate on the most important legislative proposals should help to make proceedings within the EP more uniform and prevent sector-based, partisan and national divisions.

In practice, the Agora is organised as follows. The European Parliament first decides on a theme for the debate, identifies the organisations to invite (based on a limit of 500 participants), sets up a website for contributions from the various actors and circulates technical information relating to the theme and the organisation of the event. The Agora itself takes place at the European Parliament over two days. The first morning consists of a constituent session in the Chamber. This is devoted to contributions from representatives of European institutions and to the responses of civil society. In the afternoon,

parallel debates take place in five thematic workshops; in the evening, drafting teams composed of members of civil society prepare a written synthesis of the work done. These short texts, summarising discussions or the range of options emerging from the debates, are finalised in workshops the following morning. The concluding session in the Chamber takes place in the afternoon and is followed by a press conference. The plenary sessions are interpreted in the 23 working languages of the European Parliament; the proceedings of the workshops are translated into six languages. All of the Agora's work is public and its sessions are webstreamed.

There have been two Agoras so far. The first was on the future of Europe (Brussels, 8 and 9 November 2007). Participants examined five issues: how new tools should be used by the Union; the future stages of European integration; the strengthening of the geopolitical role of the Union; the definition of new rights; the launch of new topics and the creation of new solidarities. In the opinion of the participants and the EP, the first Agora was a success. The second Agora on climate change took place on 12 and 13 June 2008 in Brussels. More than 400 participants examined five issues: protection and access to resources; techniques; guaranteed fairness and solidarity; economic aspects; citizens and governance. Following this second Agora, an assessment was carried out. It is possible that the Agora will become a permanent citizens' forum specific to the European Parliament or common to all EU institutions.

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It is still too early to produce a complete review of the first two Agoras. However, if we compare these two Agoras with the criteria of virtuous debate, as defined by authors such as John Elster or Jürgen Habermas, the result is more than satisfactory. The Agora debates have shown, like the European Convention<sup>104</sup>, the ability of participants from various backgrounds to dialogue constructively on European issues. Participants in the Agora have demonstrated a real ability to hold a civilised debate, despite their marked differences of opinion, to show respect for one another and to develop a discussion driven by an exchange of views. The Agora thus satisfies the various criteria of 'good' debating, whether in terms of inclusion (involvement of contributors, mutual respect), argumentation (adaptability, powers of persuasion) or contradiction.

Despite the growing interest that the European Parliament has aroused among civil society, the increasing involvement of elected representatives with their constituencies and the strategies they have developed in order to form ties with citizens' organisations, the European Parliament suffers from a lack of profile. Since the first direct election, most MEPs have believed that only the adoption of a constitution will solve the ambiguities that undermine their position and set them at odds with citizens. Does the Treaty of Lisbon live up to these expectations?

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<sup>104</sup> Magnette, P., 'Convention européenne: argumenter et négocier dans une assemblée constituante multinationale', *Revue française de science politique*, 2004-1 (Vol. 54), pp. 5-42.



In terms of the EP's position in the political system of the Union, and the mandate of MEPs, the new treaty blows hot and cold. Regarding the nature and powers of the Parliament, it evokes for the first time the 'multidisciplinary' nature of the legislative, budgetary and supervisory competences and vests the EP with the power to 'elect' the President of the Commission. However, the Treaty continues to limit the powers of the European Parliament in key areas without any precise justification. In other respects, the choice of candidate for Commission President remains within the remit of the European Council; even though it must take the results of the European elections into account, this competence considerably undermines the extent to which the President is 'elected' by the European Parliament. The same applies to the choice of members of the Commission.

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In terms of the European mandate, the Lisbon Treaty states that the European Parliament is composed of representatives of the 'citizens of the Union', and no longer peoples united within the Union. This change seems to clarify the position of MEPs by setting out the principle of the 'general nature' of their mandate (MEPs represent all citizens, considered as an indivisible whole, and not their people). However, the Treaty confirms the national nature of European elections and the distribution of seats, and thus preserves the ambiguity in terms of the identity of the appointers. Moreover, the Lisbon Treaty seems to grant the European Parliament a competence in principle, stating that the 'functioning of the Union shall be founded on representative democracy' and that 'citizens are directly represented at Union level in the European Parliament'. Nevertheless, it also mentions the Council and the European Council as outlets for this representative approach, on the grounds that the Heads of State or Government and governments are 'democratically accountable' either to their national parliaments or to their citizens. Furthermore, while it recognises for the first time the principle of participatory democracy, it also emphasises the role of civil society and the need for the institutions to open up to this. Finally, it also provides the possibility for one million citizens to invite the Commission to submit a proposal.

The Treaty of Lisbon – following the Constitution – thus sets out the principle of democratic representativeness of the European Parliament, immediately placing this in perspective by recognising the importance of the other institutions and of European civil society. MEPs are thus called on to pay particular attention to civil dialogue at all times.

The direct election of MEPs and their close links with European civil society have allowed the European Parliament to assert its legitimacy and to make itself heard. It now has a significant influence over nearly all European laws and over the EU budget. It is also the leading protagonist in a European public forum in the making. However, the influence of the European Parliament is not limited to content: it has also asserted its legitimacy by playing a crucial role in the deepening of European integration and the constitutionalisation of its treaties.

### III. THE BATTLE FOR THE CONSTITUTIONALISATION OF THE UNION

Since it was first elected by direct universal suffrage in 1979, the European Parliament (EP) has actively campaigned for the consolidation of the integration process at European level. For the Parliament, this aim presupposed clarification of the institutional framework of the Community, a strengthened role for directly elected representatives, greater efficiency of decision-making procedures and the extension of qualified majority voting (QMV) to the Council. The EP has always defended the role of the European Commission as the powerhouse of the integration process and specifically its exclusive right of legislative initiative in the general interest of citizens over any national interest.

Under the Treaties, the European Parliament has no constitutional powers. In fact, the EP has used its right to adopt resolutions and its democratic legitimacy to campaign for the constitutionalisation of the European Union in the name of its citizens. MEPs eventually managed to secure an active role for themselves within the Convention on the future of Europe.

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The constitutionalisation process of the EU can be divided into three different periods. The first began in 1979, when the first direct elections to the European Parliament took place, and ended in 1990, when a draft European Constitution was launched by Altiero Spinelli. He played a crucial role during this period, championing the idea of a constitution for Europe and plans for an almost federal Union. The second period began in 1990, when the Cold War ended and new prospects for European integration opened up, and lasted until 2004, when the Treaty establishing a Constitution for Europe was signed and the European Parliament adopted its own draft constitution (1994). The third period began in 2005, with the rejection of the Constitutional Treaty during the referendums in France and the Netherlands, and the ‘period of reflection’ that followed, and lasted until 2008, when a more restrained approach led to the start of the ratification process of the Treaty of Lisbon.

#### A. Parliament, advocate of a European constitution (1979-1990)

Former Commissioner and MEP Altiero Spinelli (1907-1986) played a crucial role in promoting a Constitution for Europe. As an MEP, he campaigned to make the European Union an integrated community. Spinelli was an anti-fascist activist who became an MEP in 1976 and remained an active European campaigner until his death in 1986, mainly as Chairman of the Committee on Institutional Affairs. He had already expressed his constitutional ideal for Europe in the ‘Ventotene Manifesto’ in 1941, during his exile imposed by the fascist regime: ‘The fall of the totalitarian regimes will have the sentimental meaning for entire populations as the coming of “liberty” ... Their crowning dream is a constitutional assembly, elected by the broadest suffrage and with the most



scrupulous respect of the rights of the electors, who must decide upon the constitution they want.’<sup>105</sup>

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Following his election to the European Parliament, Spinelli denounced the inability of national governments to cope with the challenges represented by Europe. Alongside other activist MEPs, notably Piet Dankert, rapporteur for the EP’s Committee on Budgets (who would later become President of the European Parliament from 1982 to 1984), he was involved in the rejection of the 1980 Community budget presented by the Council. In this, MEPs hoped to state, categorically, that in their opinion the European budget had not been properly prepared to face the challenges of the Community. They also wanted the views of the European Parliament to be taken into consideration on budgetary issues. During the debates on the 1980 budget, Altiero Spinelli argued that an overly conciliatory attitude on the part of the EP could only delay the drafting of a European constitution, effective reform of the Treaty of Rome and the creation of real European democracy indefinitely. He believed the European Parliament should play a key role in the Community’s development in order to satisfy the expectations of citizens. This would only be possible if the European Parliament could show some conviction. Failing this, the preponderance of the intergovernmental vision would paralyse the potential for a real European Union. ‘... the people of Europe sent us here to cooperate in working out a policy for the development and advancement of the Community and ... we have tried to ensure that this is recognized by all concerned. If, however, we accept this budget and the crumbs offered us by the Council, we shall be telling Europe, the governments, our institutions and ourselves that we have given up trying to mean anything’<sup>106</sup>. Evidently, the strength of the European Parliament was derived from the election by direct universal suffrage in 1979: following the first European elections based on universal suffrage, the EP was vested with the legitimacy conferred on it by the citizens of the Community and MEPs were aware that they represented the hopes of those citizens<sup>107</sup>.

On 11 December 1979, Spinelli announced that he intended to overhaul the Rome treaties<sup>108</sup> and became rapporteur for a resolution on a Treaty establishing a European Union. He decided to propose a new treaty rather than modify the Treaty of Rome. He also suggested the term ‘European Union’ and argued for the transfer of several new competences to the European level. In 1982, Spinelli declared that he was convinced that public opinion was well informed and would vigorously support efforts towards

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<sup>105</sup> Spinelli, Altiero; Rossi, Ernesto, *The Ventotene Manifesto*. Ventotene: Institut d’études fédéralistes Altiero Spinelli, [no date], p. 79.

<sup>106</sup> Mr Spinelli’s speech during the sitting of Tuesday 11.12.1979, in *Debates of the European Parliament*, p. 98.

<sup>107</sup> European Parliament, session documents 1979-1980, 1-347/79. Motion for a resolution tabled by Messrs Van Aerssen, Klepsch, Colombo, Tindemans, Simonnet, Beumer, Ryan, Fischbach and Aigner on behalf of the Group of the European People’s Party (Christian Democrats) in accordance with Article 25 of the regulation on the extension of the legal basis of the European Community, 27.9.1979, p. 1.

<sup>108</sup> Mr Spinelli’s speech during the sitting of Tuesday, 11.12.1979, in *Debates of the European Parliament*, p. 97.

the achievement of European Union<sup>109</sup>. The EP adopted the resolution by a large majority, based on his report of 14 February 1984. The same day, after criticising the watering down by Member States of the Genscher-Colombo Plan<sup>110</sup>, Spinelli stressed that the EP had to fight harder in order to go forward with integration<sup>111</sup>. In certain respects this was a taste of what was to come with the 2004 European Constitution<sup>112</sup>. Still, Spinelli was aware that any change would only be possible within the framework of the intergovernmental process, and had concerns for the future of the EP's draft in view of its inherent limitations<sup>113</sup>.

Spinelli's statements marked a turning point. The European Parliament has since been considered as the incarnation of European democratic legitimacy: Spinelli claimed that the initiative emphasised the strength of their legitimacy as elected representatives of the citizens of the Community, responsible for the most authentic aspects of the new European democracy<sup>114</sup>. Spinelli's approach ushered in a transition from national priorities to a European political scene, shifting the focus to the European perspective<sup>115</sup>.

One of Altiero Spinelli's most valuable contributions was recognition of the representative legitimacy of the European Parliament, which would later become a symbol of democratisation within the European Communities. He claimed that the EP was conscious of being the only European institution where citizens of Europe were represented in their own right by the same political groups as in their own country. He was convinced that the European Parliament was the only European institution able to draft a constitution without losing sight of the European perspective and with the participation of all political forces from all Member States<sup>116</sup>. Spinelli also believed that the future success of a European constitution would depend on the determination of a European Parliament committed to fighting until a constitution had been established<sup>117</sup>.

As the Member States, with the exception of Italy, did not want to adopt the EP's draft, this remained a simple political declaration. Nevertheless, it played an important role in the reframing of the debate over the constitutionalisation of the EU until the 1990s. The 'Spinelli draft' was not the first proposal for reform, but marked a fundamental turning

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<sup>109</sup> Resolution on the European Parliament's position concerning the reform of the Treaties and the achievement of European Union, in OJ C 238/25, 13.9.1982, p. 25.

<sup>110</sup> For more information about the Genscher-Colombo Plan, see the draft European Act, in the *Bulletin of the European Communities*, November 1981, No 11, pp. 87-91.

<sup>111</sup> See the draft Treaty establishing the European Union, in the *Bulletin of the European Communities*, February 1984, No , pp. 8-26.

<sup>112</sup> Spinelli's speech, in Debates of the European Parliament, No 1-309/30, 14.2.1984, p. 29.

<sup>113</sup> Spinelli's speech, in Debates of the European Parliament, No 1-309/30, 14.2.1984, p. 30.

<sup>114</sup> Spinelli's speech, in Debates of the European Parliament, No 1-309/30, 14.2.1984, p. 29.

<sup>115</sup> Ibid.

<sup>116</sup> Spinelli's speech, in Debates of the European Parliament, No 1-309/30, 14.2.1984, p. 29.

<sup>117</sup> Spinelli's speech, in Debates of the European Parliament, No 1-309/30, 14.2.1984, p. 30.

point in the discussions relating to Community reform<sup>118</sup>. Although many of his proposals were too radical for national governments, some provisions of the report were incorporated into the Single European Act (SEA), the treaty negotiated between 1985 and 1986, which represented a milestone in the history of the European Community.

Spinelli had argued for the EP to be one of the main protagonists of treaty reform, since the EP's participation was an assurance for all European citizens – who it represented – that it would make every effort to use institutional procedures to improve the supra-national nature of the Community and to find a common will. Accordingly, he believed that it was crucial that the EP be involved in drafting the final version of the Treaty<sup>119</sup>. According to Spinelli, the recognition of the EP's role was essential for the future of Europe: only a balanced interinstitutional framework would allow the European Union to function properly<sup>120</sup>.

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Spinelli contributed actively to the SEA, but the European Parliament was not directly involved in the negotiations or in the ratification process. The SEA, which was signed by the Member States in February 1986 and which came into force in July 1987, borrowed Spinelli's proposal to create an internal market (by early 1993) and procedures facilitating closer cooperation in foreign affairs. The new treaty improved decision-making procedures by replacing unanimity with qualified majority voting for issues relating to the common customs tariff, freedom to provide services, the free movement of capital and the common sea and air transport policy. Qualified majority voting was also applied to several new areas: the internal market, social policy, economic and social cohesion, research and the environment. The idea was to facilitate the creation of the internal market and to avoid delays caused by the search for a consensus between the 12 Member States. Unanimity was no longer required for single market policies, except for measures relating to taxation, the free movement of persons and the right to work. Although satisfied with the increased emphasis on qualified majority voting in the SEA, Spinelli was critical of the fact that the Council would retain unanimity, despite its paralysing effect on key political decisions<sup>121</sup>. Under the 'cooperation' procedure, the EP finally acquired a legislative role, albeit a modest one. Parliament's 'assent' was also now needed for association and enlargement agreements. All of this still fell short of the original ambitions of the Spinelli plan, although these would gradually be fulfilled by subsequent treaties.

Spinelli was conscious of the fragility of the European integration project, which had been difficult to get off the ground and could easily be derailed. In an address to the Eu-

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<sup>118</sup> See AA.VV., *L'Europa di Altiero Spinelli: sessant'anni di battaglie politiche: dall'antifascismo all'azione federalista*, Il Mulino, Bologna, 1994, and Luciano, A., *Le forme dell'Europa: Spinelli o della federazione; Il manifesto di Ventotene, Il memorandum sull'esercito europeo, Il trattato di Unione europea*, Il Melangolo, Genoa, 2003.

<sup>119</sup> Spinelli's speech as Chairman of the Committee on Institutional Affairs, in Debates of the European Parliament, No 2-237/80, 11.6.1985, p. 81.

<sup>120</sup> Spinelli's speech as Chairman of the Committee on Institutional Affairs, in Debates of the European Parliament, No 2-333/154, 11.12.1985, p. 155.

<sup>121</sup> Spinelli's speech as rapporteur, in Debates of the European Parliament, No 2-334/241, 6.1.1986, p. 241.

ropean Parliament, he referred back to his earlier allegory during the vote on the draft Treaty on European Union, when he described Hemingway's *The Old Man and the Sea* and the old fisherman who captures the largest fish imaginable, only to find on his way home that the fish had been devoured by sharks and only the skeleton remained. He likened the story to the European Parliament, which had also returned home to find that only the bare bones of its prize catch remained. He exhorted the EP not to lose hope or to give up on the project, telling MEPs that they needed to venture forth again, and that this time they would protect their haul from attack<sup>122</sup>.

Spinelli underlined the need to win the support of European citizens, for example through a referendum. He said that the constitution of the European Union, once ratified by the European Parliament, would naturally be for further consideration; in other words, it would be ratified by the national parliaments or through referendums. It could not be manipulated by diplomatic conferences. For this Constitution to come into force, it had to be approved by a critical mass, namely two thirds of the population<sup>123</sup>.

In 1990, a time of great upheaval in Europe with the fall of the Berlin Wall and the end of the Cold War, the European Parliament re-examined the issue and found that 'the establishment of the European Union is an urgent requirement for achieving an ever closer union of the peoples of the Member States, as stipulated in the Treaties, harmonious development of their economies and societies,...'<sup>124</sup>. This would lead to the drafting of a European constitution. In a resolution of 11 July 1990, the EP decided to draft a constitution for the European Union based on the key points of Spinelli's draft treaty of 14 February 1984<sup>125</sup>, and in accordance with the position defined by the EP in light of the experience with the SEA. The EP declared that 'The European Union meets the aspirations of the democratic peoples of Europe to tighten the links established hitherto to create a Europe united by the awareness of a common destiny and by the will to affirm the European identity, and capable of assuming the responsibilities which derive from its economic potential and its political role, especially in the face of the profound changes which are transforming the European continent and require a new foundation based on the principles of freedom, democracy and cooperation; the Union has its basis

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<sup>122</sup> Ibid.

<sup>123</sup> Working document of the Committee on Institutional Affairs of the European Parliament on Parliament's strategy for implementing paragraph 7 of the resolution of 16.1.1986 on the Single European Act, ratified by the Intergovernmental Conference. Author: Altiero Spinelli, Committee Chairman. PE 103.514, 24.1.1986, p. 3.

<sup>124</sup> Resolution on the European Parliament's guidelines for a draft constitution for the European Union, in OJ C 231/92, A3-165/90, 17.9.1990, p. 92.

<sup>125</sup> It should be underlined that the adoption of the draft treaty was fundamental to the self-confidence and efficiency of the EP. This is a key factor that will be discussed further on in this book. See also Jacqu , J. P., "The Draft Treaty, an Overview" in Bieber, R., Jacqu , J.P. and Weiler, J. (eds.), *An ever closer union: A critical analysis of the Draft Treaty establishing the European Union*, Office for Official Publications of the European Communities, Brussels, 1985.

in a constitutional system inspired by the principles of democracy and guaranteeing the necessary balance between the Member States and the Union<sup>126</sup>.

According to the draft, the amendments to the constitution, including new accessions to the EU, would be subject to a procedure involving the consent of the EP and Council and ratification by the parliaments of the Member States. The draft constitution would identify cases of constitutional amendments able to form the subject of a decision based on a simplified procedure. In addition, the text stated that ‘the European Parliament shall propose the procedures under which the draft Constitution, drawn up on the basis of the mandate assigned to it, shall be converted into a European Constitution, by decisions of the European institutions and the responsible bodies of the Member States’<sup>127</sup>.

In addition, the possibility that some Member States would oppose the Constitution was also anticipated: ‘Should certain Member States not be prepared to accept this Constitution, provision shall be made for procedures to ensure that it may nevertheless enter into force in the Member States that have accepted it, while at all events safeguarding the close ties between all the Member States’<sup>128</sup>.

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A European constitution was Spinelli’s dream. Francis Wurtz, Chairman of the Confederal Group of the European United Left – Nordic Green Left, remembers Spinelli as ‘a man who was obsessed with his war-experience and who saw a European Constitution as a way to guarantee peace forever’<sup>129</sup>. Hans-Gert Pöttering, EP president, said that the topics discussed in 2006 would have been inconceivable without people like Spinelli<sup>130</sup>.

## **B. Parliament’s role in preparing a constitution**

After the fall of the Berlin Wall, the Member States decided in the early 1990s to pursue European integration and to open up to countries from Central and Eastern Europe, combining the processes of deepening and enlargement of the Community. Two IGCs were organised in order to reform the Treaties again, to prepare for Economic and Monetary Union and to transform the Community into a political union. The Maastricht Treaty, signed on 7 February and which entered into force on 1 November 1993, represented considerable progress in the integration process, particularly in the field of monetary, foreign, justice and internal affairs policies. Many of these policies remained incomplete however, given their intergovernmental nature, the need for unanimity and

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<sup>126</sup> Resolution on the European Parliament’s guidelines for a draft constitution for the European Union (11.7.1990): A3-165/90, OJ C 231 17.9.1990.

<sup>127</sup> Ibid.

<sup>128</sup> Resolution on the European Parliament’s guidelines for a draft constitution for the European Union (11.7.1990): A3-165/90, OJ C 231, 17.9.1990, p. 91.

<sup>129</sup> Ibid.

<sup>130</sup> ‘Altiero Spinelli: a great advocate of a European Integration’, EP Press Service European Citizenship, 23.5.2006, p. 1.

the absence of real parliamentary control. The European Parliament was finally granted legislative power for 'codecision'<sup>131</sup> with the Council, but only in certain areas.

Yet many MEPs were dissatisfied with this latest attempt at 'politicising' European integration, and decided to launch a new internal campaign for the adoption of a constitution. On 9 February 1994, Belgian MEP Fernand Herman, rapporteur for the Committee on Institutional Affairs, submitted a draft constitution to the European Parliament. This document highlighted the role of the European Parliament in fighting for a European constitution. The importance of transparency and the role of public opinion were yet again underlined: 'having regard to the need which has been restated on several occasions during Parliament's current term of office to provide the European Union with a democratic Constitution to enable the process of European integration to continue in accordance with the needs of European citizens, whereas the Treaty on European Union does not fully meet the requirements of the European Union with regard to democracy and efficacy, whereas the Constitution must be accessible and readily comprehensible to the citizens of the Union and must constitute the democratic alternative for revision of the Treaty as opposed to intergovernmental negotiation, whereas the above-mentioned report of the Committee on Institutional Affairs makes an important contribution to the debate on democracy and transparency in the European Institutions which will be opened both within the European Parliament and within the national parliaments and public opinion', the European Parliament 'notes with satisfaction the work of the Committee on Institutional Affairs which has resulted in a draft Constitution for the European Union and calls on the European Parliament to be elected in June 1994 to continue that work with a view to deepening the debate on the European Constitution, taking into account the contributions from the national parliaments and members of the public in the Member States and the applicant countries.'<sup>132</sup>

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In addition, the 1994 draft Constitution tackled the question 'Why a Constitution rather than a treaty?' and suggested that 'in calling for the adoption of a constitution which would progressively replace the Treaties, the Parliament is doing no more than adapting vocabulary to facts and texts to reality. Such a Constitution would foster clarity and truth by putting an end to the fiction of the abiding intact sovereignty of the Member States, and to the ambiguity which allows national governments to take the credit for Community activities when they are popular or successful and to blame Brussels when they are a failure'. 'Community activities should, in contrast, be able to rely on an independent structure, with bodies which are autonomous but under democratic control, such as could be produced by a constitution'<sup>133</sup>. However, once again, the draft Constitution, the result of a parliamentary initiative, failed to inspire the Member States and had no real impact or follow-up.

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<sup>131</sup> For more information about the term 'codecision', see the Europa glossary at the following address [http://europa.eu/scadplus/glossary/codecision\\_procedure\\_en.htm](http://europa.eu/scadplus/glossary/codecision_procedure_en.htm).

<sup>132</sup> Second report of the Committee on Institutional Affairs on the Constitution of the European Union. Rapporteur: Fernand Herman, A3-0064/94, PE 203.601/fin.2. [no place]: European Parliament, 9.2.1994.

<sup>133</sup> Ibid.



The Heads of State or Government recognised that the reform of the Maastricht Treaty was incomplete. The treaty had made provision for the convocation of a new IGC in 1996 to address issues said to be ‘outstanding’, mainly of an institutional nature. Accordingly, the Treaty of Amsterdam was signed on 2 October 1997 and came into force on 1 May 1999. The Heads of State or Government, aware of the shortcomings of the Treaty in terms of preparations for enlargement, decided to hold a new IGC following the Helsinki European Council of the same year. The discussion centred on the adoption of a new decision-making process, focusing on qualified majority voting in the Council, the number of commissioners and finally the composition of the European Parliament.

The EP had high expectations of this new reform, set out in a report adopted in April 2000. Its members, mainly interested in the changes to the Council voting system, suggested that all of the previous treaties should be merged into a single text. This new text would be composed of an initial constitutional section reprising the political aims of the Union, a Charter of Fundamental Rights (which would be binding), the functioning of the institutions and a clear division of competences between the EU and Member States, as well as all of the necessary decision-making procedures.

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The European Parliament also called for the abolition of the ‘pillar structure’ inherited from the Maastricht Treaty, and the extension of the ‘Community method’. It also proposed replacing the Council’s complex weighted voting system with a much clearer double majority system based on Member States and size of population. Finally, MEPs were in favour of combining the functions of High Representative for the common foreign and security policy (CFSP) and the Commissioner for External Relations into the portfolio of a Vice-President. In terms of the Community budget, they proposed doing away with the distinction between compulsory and non-compulsory expenditure, and incorporating the financial perspective in the Treaties, based on an amount to be agreed between the Council and Parliament.

The Treaty of Nice, signed on 26 February 2001, came into force on 1 February 2003. It proposed a limited institutional reform (far from the initial aims of simplification) and advocated greater efficiency and strengthened democracy, although without offering any concrete measures. On the whole, MEPs were disappointed by the new treaty, declaring that ‘the Treaty of Nice removes the last remaining formal obstacle to enlargement’, but that ‘a Union of 27 or more Member States requires more thoroughgoing reforms’<sup>134</sup>. The EU had not gained anything in terms of increasing its ability to act or reducing its ‘democratic deficit’<sup>135</sup>. In the eyes of the EP, ‘the Treaty of Nice marks the end of a progression that began in Maastricht (...) and demanded the opening of a constitutional development process culminating in the adoption of a European Union

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<sup>134</sup> DG INFO, Direction de l’information - Service de presse. *Constitutional affairs*. Historical review: *The constitutional ambitions of the European Parliament*, PE-BR/05/4 (no place): European Parliament, (no date), p. 3.

<sup>135</sup> For more information about the term ‘democratic deficit’, please see the Europa glossary at [http://europa.eu/scadplus/glossary/democratic\\_deficit\\_en.htm](http://europa.eu/scadplus/glossary/democratic_deficit_en.htm).

Constitution<sup>136</sup>. Regardless, the Treaty of Nice was clear proof of the numerous limitations of the intergovernmental negotiation method, as the EP had always maintained.

In October 2000, the EP began calling for the formation of a 'Convention': a forum that would not be restricted to representatives of governments, but open to national MPs, MEPs and the European Commission. The 'Duhamel report' called for the 'constitutionalisation' of the Treaties into a single readable, brief framework text<sup>137</sup>. It referred to the previous valuable experience of the Convention, convened in 1999 by the European Council in order to draft an EU Charter of Fundamental Rights<sup>138</sup>.

The opinion of MEPs, in favour of the creation of a new Convention, was welcomed by the Heads of State or Government, conscious of the shortcomings of the Treaty of Nice. During the Laeken European Council which took place on 14 and 15 December 2001, Belgian Prime Minister Guy Verhofstadt unveiled a draft declaration defining the objectives and proposing a working method for the preparation of a European constitution. National governments were divided on the issue, although some members were determined to push forward, despite having failed to obtain a consensus in terms of the aims of a united Europe<sup>139</sup>. Many Member States were hesitant, fearing the creation of a political entity dominated by the largest countries. The United Kingdom wanted this to be limited to a strengthening of the Council of Ministers, as did Spain and the Scandinavian countries. Finally, the 'Declaration on the Future of the European Union', or 'Laeken Declaration', was adopted and annexed to the Presidency Conclusions.

The main aims of this declaration were to establish better powers and to define competences at the European level, with simplification of EU instruments, as well as to strengthen democracy, transparency and efficiency at the Community level. The reasons for a Constitution for Europe were as follows: 'For centuries, peoples and States have taken up arms and waged war to win control of the European continent. The debilitating effects of two bloody wars and the weakening of Europe's position in the world brought a growing realisation that only peace and concerted action could make the dream of a strong, unified Europe come true. In order to banish once and for all the demons of the past, a start was made with a coal and steel community. Other economic activities, such as agriculture, were subsequently added in. A genuine single market was eventually established for goods, persons, services and capital, and a single currency was added

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<sup>136</sup> DG-INFO, Direction de l'information - Service de presse. *Constitutional affairs. Historical review: The constitutional ambitions of the European Parliament*, PE-BR/05/4 (no place): European Parliament, (no date), p. 3.

<sup>137</sup> Ibid.

<sup>138</sup> It should be underlined that the Convention on the Constitutional Treaty is institutionally separate from the Convention of the Charter of Fundamental Rights, which was convened as a simple working group.

<sup>139</sup> Amato, G., 'La Convenzione europea. Primi approdi e dilemmi aperti', in *Quaderni Costituzionali*, 2002, pp. 439 et seq.



in 1999. On 1 January 2002, the euro is to become a day-to-day reality for 300 million European citizens<sup>140</sup>.

To achieve these objectives, the Council decided to form a Convention, which would be charged with organising a future IGC and drafting a final document outlining various options or recommendations if a consensus was reached. This text, together with the results of national debates on the future of the Union, would feed into the debate during the IGC, which would have the final say.

The 'Laeken Declaration' defined the composition and working methods of the Convention. The Council appointed Valéry Giscard d'Estaing, former French President, as Chairman of the Convention, assisted by two Vice-Chairmen: former Italian prime minister Giuliano Amato and former Belgian prime minister Jean-Luc Dehaene. The European Convention also included 15 representatives of Heads of State or Government (one per Member State), 30 members of national parliaments (two per Member State), 16 members of the European Parliament and representatives from the European Commission. The 10 accession candidate countries were represented in the same way and could take part in discussions, but did not have the power to block a consensus. The Convention elected a Praesidium (Bureau), which, with the Chairman, provided momentum. In order to widen the debate and involve citizens in it, the European Convention asked for contributions from organisations representing civil society (including social partners, commerce, NGOs and universities). The Convention began its work on 1 March 2002 and would take a year to complete it. During this time, the Chairman of the European Convention submitted a progress report at each European Council, enabling the latter to participate in the discussions.

MEPs also played an active role in the Convention, given their number, their knowledge of the subject and their close links with national parliamentarians<sup>141</sup>. They also played an important role so that a large number of the positions and conclusions of EP reports could be incorporated within a treaty that was essentially a constitution in all but name<sup>142</sup>. For their part, representatives of national governments acted increasingly as if they were already at the IGC, which was difficult for the European Parliament and national parliamentary delegates to accept. With numerous amendments and compromises, the draft text – a complete constitution – was adopted almost unanimously on 13 June 2003.

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<sup>140</sup> Presidency Conclusions, Laeken European Council (14 and 15.12.2001): Annex I: Laeken Declaration on the Future of the European Union, *Bulletin of the European Union*. 2001, No 12, pp. 19-23.

<sup>141</sup> Costa, Olivier, "La Convention dans la stratégie constituante du Parlement européen: aboutissement ou recul?", in Beaud, O., Lechavalier, A., Pernice, I., and Strudel, S. (eds.), *L'Europe en voie de constitution. Pour un bilan critique des travaux de la Convention*, Bruylant, Brussels, 2004, pp. 201-218.

<sup>142</sup> As defined by Giuliano Amato. For further information, see G. Amato, 'Will it be a New Europe after the Constitution?', in Kaddous, C. and Auer, A. (eds.), *Les principes fondamentaux de la Constitution européenne*, Bruylant, Brussels, pp. 3-15.

The European Council decided that the IGC would be composed of Heads of State or Government assisted by foreign ministers. The European Parliament was to be involved, although not the national parliaments or the Chairman of the European Convention.

On 24 September 2003, the EP adopted a resolution on the Treaty establishing a Constitution for Europe. The European Parliament ‘welcomes the progress towards European integration and democratic development represented by the Convention’s proposed “Constitution for Europe”, to be established through a Treaty establishing a Constitution for Europe enshrined in a text expressing the political will of the European citizens and the Member States in a solemn and comprehensive way; notes with satisfaction that the draft Constitution entrenches to a significant extent the values, objectives, principles, structures and institutions of Europe’s constitutional heritage, so that, to a great extent, the draft not only assumes the character of a constitutional text but also provides for its continuous evolution’ and ‘greatly welcomes the inclusion of the Charter of Fundamental Rights as an integral, legally binding part of the Constitution (Part II)<sup>143</sup>. The resolution also welcomed the new ‘legislative procedure’, which would become the general rule. This was an essential step towards increasing the democratic legitimacy of the Union’s activities<sup>144</sup>.

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During the IGC in Rome on 4 October 2003, the President of the European Parliament, Pat Cox, asked the Heads of State or Government to sign the Constitution: ‘Notwithstanding certain limits and contradictions, the result of the Convention should be endorsed, representing as it does an historic step towards a European Union that is more democratic, efficient and transparent’<sup>145</sup>.

In November 2003, Andrew Duff, European Parliament representative at the European Convention, warned Member States that a selective approach would be a mistake: ‘Unpick one element of the draft Constitution and the whole scheme could fall apart. The verdict of public opinion on a failure by Europe’s collective leadership to grasp such a historic opportunity to refound the Union on a more democratic and legitimate basis would be, quite rightly, harsh. Europe awaits its Constitution and the leaders must deliver it’<sup>146</sup>.

In the same sense, Elmar Brok, European Parliament representative at the European Convention, also invited the Heads of State or Government to adopt the draft Constitutional Treaty in its entirety. He stressed that ‘an integrated draft constitution without alternatives was presented in consensus which strengthens the symbolic character of the

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<sup>143</sup> European Parliament resolution on the draft Treaty establishing a Constitution for Europe and the European Parliament’s opinion on the convening of the Intergovernmental Conference (IGC), OJ C 77 E, 26.3.2004, pp. 255-261.

<sup>144</sup> Ibid.

<sup>145</sup> Address given by Pat Cox at the extraordinary EU summit for the opening of the IGC, 4.10.2003, Brussels: European Parliament, p. 1.

<sup>146</sup> Duff, Andrew, ‘The Constitution takes shape’, in *The Federalist Debate*, November 2003, No 3, pp. 45-47.

European Union as a union of citizens and states’ and that the ‘result also showed the advantages of the Convention method over the usual, unanimity based conferences of civil servants at the government level. The Convention, the majority of whose members were MEPs, achieved politically far-reaching compromises through public discussion compelling the exchange of arguments instead of premature national “nos”<sup>147</sup>. He added that ‘the European Parliament is further strengthened by the newly introduced consultation by the European Council in the choice of candidate for Commission President, taking into account the result of the European elections, and by his subsequent election’, and that ‘close cooperation on the part of the European Parliament and the national parliaments in the final phase led to a limitation of the functions, more specifically, that the European Council may not exert legislative competence’<sup>148</sup>.

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The European Council of December 2003 failed to reach a consensus, mainly over the issue of qualified majority voting in the Council. Eventually, after six months of uncertainty and negotiations, the European Constitution was adopted with several amendments by the European Council in Brussels on 17 and 18 June 2004, shortly after the European elections. The ‘Treaty establishing a Constitution for Europe’ was formally signed in Rome on 29 October 2004 by representatives of the 25 Member States, in the room where the Rome treaties were signed by the six founder members of the European Communities in 1957. During the official ceremony, Josep Borrell Fontelles, President of the European Parliament at the time, underlined the role played by the EP in the preparation of the draft Constitution: ‘By establishing a Constitution for Europe, we are acknowledging the virtual existence of a “European Society”, the citizens of which make their voices heard in a political Europe that champions the values upon which its Union is based. It is not a new idea, but the European Parliament was the first to ignite the spark and keep it burning. In his resolution adopted by Parliament in 1984, Altiero Spinelli had already sowed the political and conceptual seeds of this idea. Four years ago, the European Parliament adopted a resolution calling for a Constitution for Europe, outlining what it should contain and proposing that a Convention be convened to draft it. Within the Convention, for the first time in the history of the European Union, representatives of national parliaments, the European Parliament, the Commission and the governments of the Member States – 105 people from 25 countries – publicly debated the draft and drew up a text that, in the end, was amended and accepted by the European Council’<sup>149</sup>.

Unlike earlier IGCs, the European Parliament believed that the proceedings of the European Convention should be transparent and allow interaction with representatives

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<sup>147</sup> Brok, Elmar, ‘The Convention for a European Constitution’, in *The Federalist Debate*. November 2003, No 3, pp. 48-50.

<sup>148</sup> Ibid.

<sup>149</sup> Address given by Josep Borrell Fontelles at the ceremony held to mark the signing of the Constitutional Treaty, 3.5.2005, Brussels: European Parliament, p. 1.

from civil society, who could participate fully in its work<sup>150</sup>. Thanks to this new treaty and the extension of the codecision procedure to new areas such as justice and internal affairs, the European Parliament became a real colegislator. The EP's consent was required for the adoption of the multiannual financial framework for the EU budget and the appointment of members of the Commission, particularly its President. As a result, the democratic nature of the Union would be significantly strengthened. The Constitution allowed the possibility of citizen initiatives and greater transparency, two historic demands of the EP. Parliament had also proposed, for example, that debates and voting on legislation in the Council of Ministers should be public. As Josep Borrell explained during the signing ceremony, the 'European Parliament fought for this, and that is why ratification of the Constitution by the people – however this takes place – is so important. The governments signing this Treaty today do not have the last word on it: that lies with the people, who will be called upon to ratify the Treaty through their Parliaments or via referenda (...) Europeans can rest assured that for its part, their Parliament will embrace its responsibility for this issue, which is of key importance for our future'<sup>151</sup>.

The EP ratified the Treaty establishing a Constitution for Europe by a large majority, although MEPs believed that the future of the Constitution was not etched in stone. It would provide a stable and lasting framework for the future of the EU, although numerous improvements would be needed. Furthermore, the EP adopted an amendment stating that it intended to use its new right of initiative to table amendments to the Constitution. Article I-47.4 of the European Constitution gave citizens a right of initiative similar to Parliament's right to submit suggestions to the Commission. This clause would allow EU citizens (on the condition that their initiative was supported by one million signatures) to invite the Commission to submit a legislative proposal. This measure would improve the democratic nature of the EU and encourage the involvement of citizens in the work of its institutions<sup>152</sup>. In the short-term, MEPs demanded that European citizens should be clearly and extensively informed about the content of the Constitution. They also invited the European institutions and Member States, when informing citizens, to make a clear distinction between the parts already in force in existing treaties and the new provisions introduced by the Constitution. MEPs also adopted an amendment inviting the European institutions and Member States to recognise the role of civil society organisations during debates on ratification and to provide adequate support for the promotion of active engagement of citizens in discussions on ratification<sup>153</sup>, which represented a new democratic approach towards consolidating European integration.

<sup>150</sup> See Floridia, G. and Scannella L., *Il cantiere della nuova Europa - Tecnica e politica nei lavori della Convenzione Europea*, Il Mulino – Saggi, Bologna, 2003.

<sup>151</sup> Ibid.

<sup>152</sup> See Kaddous, C., 'L'initiative citoyenne: un instrument de démocratie directe à l'échelle de l'Union européenne', in Kaddous, C. and Auer, A. (eds.), *Les principes fondamentaux de la Constitution européenne*. Bruylant, Brussels, 2006, pp. 301-307.

<sup>153</sup> Corbett, Richard (PSE, R-U) and Méndez de Vigo, Íñigo (PPE-DE, ES), 'Un OUI clair à la Constitution'. Report on the Treaty establishing a Constitution for Europe (2004/2129(INI)), European Commission, Brussels, 28.4.2005, PE-DN/05/31, p. 1.

After the signature, 13 old and new Member States<sup>154</sup>, representing the majority of EU countries, ratified the Constitution in accordance with their own particular constitutional procedures, including two referendums in Spain and Luxembourg. However, in France and the Netherlands, where referendums were held on 29 May and 1 June 2005 respectively, citizens refused to ratify the Constitution, causing the ratification process to stall. Since under Article 48 of the Treaty on European Union, the Constitution will not enter into force unless and until it is ratified by all Member States, the constitutionalisation process found itself in a deadlock.

### C. Parliament's reaction to the constitutional deadlock (2005-2008)

Following the rejection of the European Constitution in France and the Netherlands, the EP took the view that the wishes of the Member States and their citizens, whether for or against the Constitution, should be fully taken into consideration. It also recommended that the reasons for non-ratification by these two countries be analysed carefully<sup>155</sup>. The EP was also of the opinion that the 'no' votes appeared to have been more an expression of dissent at the state of the Union than a specific objection to the constitutional reforms. Yet ironically the effect of the vote was to maintain the status quo and block reform<sup>156</sup>.

On the evening of 29 May 2005, following the announcement of the results of the French referendum, the Presidents of the EP, the European Council and the European Commission published a joint declaration in Brussels underlining the need for a period of reflection: 'The French voters have today, Sunday 29 May, chosen to say no to the ratification of the Constitutional treaty. We take note of this. We regret this choice, coming as it does from a Member State that has been for the last 50 years one of the essential motors of the building of our common future. We completely respect the expression of the democratic will that has made itself felt at the end of an intense debate. The result of the French referendum deserves a profound analysis, in the first instance, on the part of the French authorities. The Institutions of the European Union should also, for their part, reflect on the results of the collected ratification processes. The tenor of the debate in France, and the result of the referendum also reinforce our conviction that the relevant national and European politicians must do more to explain the true scale of what is at stake, and the nature of the answers that only Europe can offer. We continue to believe that a response at the European level remains the best and the most effective in the face of accelerating global change. The building of Europe is, by its nature, complex. Europe has already known difficult moments and it has every time emerged from them strengthened, better than before, ready to face its challenges and its responsibili-

<sup>154</sup> Germany, Greece, Spain, Italy, Cyprus, Latvia, Lithuania, Hungary, Malta, Austria, Slovenia and Slovakia.

<sup>155</sup> See Hooghe, L. and Gary, M., 'Europe's Blues: Theoretical Soul-Searching after the Rejection of a European Constitution', *PS: Politics and Political Science* 39(2), 2006, pp. 247-250.

<sup>156</sup> European Parliament resolution on the period of reflection: the structure, subjects and context for an assessment of the debate on the European Union (2005/2146 (INI)), P6\_TA (2006) 0027, p. 2.

ties. Today Europe continues, and its institutions function fully. We are aware of the difficulties, but we have confidence that once again we will find the means to move the European Union forward. Together, we are determined to contribute to this<sup>157</sup>.

Again, in the evening on 1 June 2005, following the rejection of the constitution by Dutch voters, the Presidents of the EP, the European Council and the European Commission announced that a thorough analysis of the situation was called for: "The people of the Netherlands, like the voters of France, have chosen to say no to the ratification of the Constitutional Treaty. This is a choice that we respect. The result of the democratic ballot taken in the Netherlands comes at the end of a rich and intense debate and deserves a profound analysis, to which we must now dedicate the necessary time. We remain convinced that the Constitution makes the European Union more democratic, more effective and stronger, and that all Member States must be able to express themselves on the project of the Constitutional Treaty. The fourteen Member States that have not yet had the chance to bring to a conclusion the process of ratification are today faced with a situation in which, although nine member states have ratified the constitutional treaty, two Member States have rejected it. For this reason, the Presidency has decided that the Council of 16 and 17 June could usefully carry out a serious collective analysis of the situation. Furthermore, we hear the messages sent by the citizens of France and the Netherlands on the European project and we note them well. The European Institutions will listen to the concerns of European citizens and they will come together to offer a response. We are confident that together and in partnership – national governments, European institutions, political parties, civil society – we will know how to find the means to move the European Union towards an enduring consensus as to its identity, its objectives and its means. Because Europe goes on, and its institutions will continue to function fully<sup>158</sup>.

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A few days later, during the European Council on 16 and 17 June 2005, the Heads of State or Government decided to embark on 'a period of general reflection' on the concerns expressed by French and Dutch citizens and agreed to adapt a timetable for ratification if necessary. Nevertheless, they agreed that the rejection of the Treaty by these two Member States would not undermine the question of the legitimacy of the ratification process: 'This Treaty is the fruit of a collective process, designed to provide the appropriate response to ensure that an enlarged European Union functions more democratically, more transparently and more effectively [...] We have noted the outcome of the referendums in France and the Netherlands. We consider that these results do not

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<sup>157</sup> Joint Declaration of President of the European Parliament Josep Borrell Fontelles, President of the European Council Jean-Claude Juncker and President of the European Commission José Manuel Barroso on the results of the French Referendum on the European Constitutional Treaty, Brussels, 29.5.2005. Brussels: European Commission, published 8.6.2005, IP/05/627, p. 1.

<sup>158</sup> Joint Statement of President of the European Parliament Josep Borrell Fontelles, President of the European Council Jean-Claude Juncker and President of the European Commission José Manuel Barroso on the results of the referendum in the Netherlands on the Treaty establishing a Constitution for Europe, Brussels, 1.6.2005. European Commission, Brussels, published 8.6.2005, IP/05/653, p. 1.



call into question citizens' attachment to the construction of Europe. Citizens have nevertheless expressed concerns and worries which need to be taken into account. Hence the need for us to reflect together on this situation. This period of reflection will be used to enable a broad debate to take place in each of our countries, involving citizens, civil society, social partners, national parliaments and political parties. This debate, designed to generate interest, which is already under way in many Member States, must be intensified and broadened. The European institutions will also have to make their contribution, with the Commission playing a special role in this regard. The recent developments do not call into question the validity of continuing with the ratification processes. We are agreed that the timetable for the ratification in different Member States will be altered if necessary in response to these developments and according to the circumstances in these Member States<sup>159</sup>.

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This 'period of reflection' lasted two and a half years and ended with the adoption of the Treaty of Lisbon in December 2007. In the meantime, in June 2006, the European Council had invited the future German Presidency to prepare a report to take the work forward. A year later, the European Council, at its meeting on 21 and 22 June 2007, agreed to convene a new IGC in order to draw up a 'reform treaty' which would amend the existing treaties, without trying to establish a Constitution for Europe. The EP sent three delegates to the IGC<sup>160</sup>. Any reference to a Constitution replacing all previous treaties and symbolising the federal nature of the Union was avoided, and a more modest aim of amending the earlier treaties was put forward. This document was renamed the 'Treaty on the Functioning of the European Union' (TFEU). However, while they may have abandoned their constitutional ambitions, the negotiators intended to resurrect the main provisions of the Constitutional Treaty on the reorganisation of powers and institutional procedures. The proposed reforms could still be favourable to the EP. If the Lisbon Treaty comes into force, the codecision procedure between Parliament and the Council will become the general rule when it comes to lawmaking. The EP will then have powers equivalent to those of the Council of Ministers in numerous areas, including the EU budget, justice and internal affairs. This extension of the EP's powers also includes the right to elect the President of the European Commission – acting on the proposal of the European Council based on the results of the European elections – and the High Representative of the Union for Foreign Affairs and Security Policy.

The vast majority of MEPs believe that the Lisbon Treaty will increase the democratic accountability of the EU, better protect the rights of citizens and improve the functioning of the European institutions. MEPs have urged the Member States to ratify the Treaty by the end of 2008, ahead of the European elections in June 2009. Despite its diminished

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<sup>159</sup> Declaration of the Heads of State or Government of the Member States of the European Union on the ratification of the Treaty establishing a Constitution for Europe, European Council, 16 and 17.6.2005. SN 117/05. Published 18.6.2005. Council of the European Union, Brussels.

<sup>160</sup> See 'Roadmap for the European Union's constitutional process'. European Parliament resolution of 7.6.2007 on the roadmap for the Union's Constitutional Process. (2007/2078 (INI)), 7.7.2006, P 6\_TA-PROV (2007) 0234.

status, the European Parliament still sees the Treaty of Lisbon as giving it and national parliaments a more important role in the decision-making process, thus accentuating the democratic nature of the EU. National parliaments would have the right to oppose a proposal if they thought the principle of subsidiarity had not been respected. The EP also welcomes the increase in citizen's rights (right of initiative).

The new treaty is also meant to be clearer and to give citizens a better understanding of the role and functions of the EU (although this is probably wishful thinking, judging by the results of the Irish referendum). MEPs also welcome the provisions aimed at increasing the efficiency of the Union. The increased use of qualified majority voting instead of unanimity could facilitate agreements within the Council. The creation of the post of President of the European Council and High Representative should improve the cohesion and visibility of the EU's foreign policy activities.

Today, many citizens still believe that the EU has few prospects and few projects able to excite interest in the Union. According to opinion polls, many would like Europe to become a global player able to help tackle global issues. However, these hopes are yet to be realised.

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As we have seen, the European Parliament has been a key player in European constitutionalisation. Yet recent developments have shown that this has been a laborious process, and in September 2008, it is still difficult to predict the future of even a modest treaty. This could become even harder if no clear solution is found before the 2009 parliamentary elections. History is sure to repeat itself, given that the European Constitution in 2004 was not adopted until after the parliamentary elections. What clearly emerges from the chaos is that treaty ratification in the 27 Member States is not appropriate when the Treaty is more concerned with constitutional issues than with other aspects. Following the 'no' vote of the Dutch and French, constitutional ambitions were pruned back to a simple revision of the Treaties by the Treaty of Lisbon. Yet again, the road to ratification is full of pitfalls: the negative result of the Irish referendum, the reluctance of the Polish President to sign the Treaty and the confusion that reigned in the Czech Republic where the Czech President and the Czech Parliament adopted an opposing stance on the issue. Despite criticising the limitations of these texts, the European Parliament has again called for ratification by the 27 before the June 2009 elections.

The Irish 'no' vote in the referendum on the Treaty of Lisbon still threatens the chances of completing the ratification process by the end of 2008, as hoped. Hans-Gert Pöttering, President of the European Parliament, has pointed out that the Lisbon Treaty would strengthen the European Parliament, give national parliaments more responsibility in defining European policies, give European citizens a right of initiative with regard to European institutions and guarantee respect for the principle of subsidiarity. This is why it is difficult to understand why, in the opinion of the EP, one of the main reasons why



the Irish voted 'no' was 'the desire to protect Irish identity' and 'a wish to safeguard Irish neutrality in security and defence matters'<sup>161</sup>.

According to the EP, without the reforms provided by the Lisbon Treaty, the accession of other countries to the European Union is difficult to envisage. It argues that the ratification process must continue unconditionally since the majority of countries have already approved the Treaty and their ratification remains valid and must be respected in the same way as the Irish 'no' vote.

The challenge for the EP consists of preventing voters from penalising candidates for the June 2009 European elections due to the eventful institutional reform process. There is the risk that a large part of the electorate will opt for abstention or for a protest vote. In a climate dominated by a financial crisis, economic recession accompanied by inflation and an uncertain institutional and political future, this eventuality should not be underestimated. Unfortunately, the worst-case scenario here is also the most likely one, and the European Parliament finds itself in a situation over which it has little control.

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Many European citizens still believe that the EU lacks future prospects, ambition and plans that can generate interest. Some would like it to become a global player able to resolve new, potentially conflicting global challenges. Satisfying these expectations is the main challenge of the EU institutions, whose aim is to build an inclusive entity while safeguarding the somewhat contradictory goals of unity and European diversity.

Today, 67 years after Altiero Spinelli's 'Ventotene Manifesto', the dream of the European Constitution has still not become a reality.

It might be worth looking to the past to draw inspiration from the ideas that originally presided over the adoption of a Constitution for Europe. As Mr Spinelli said, it is not just about a treaty: it is a question of a fundamental law that already exists to allow us to become a true Union. This law, founded on the principles of good democracy, must be approved by an assembly that legitimately represents the citizens of the Community<sup>162</sup>.

This vision is probably still utopian and unrealistic, but it steers us towards the right path at a time when it is becoming very difficult, perhaps even impossible, to modify the political framework established by international rules on treaties.

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<sup>161</sup> See Flash Eurobarometer 245 'Post-referendum survey in Ireland', carried out on behalf of the representation of the European Commission in Ireland by Gallup Hungary.

<sup>162</sup> Spinelli's speech as Chairman of the Committee on Institutional Affairs, in Debates of the European Parliament, No 2-328/51. 9 July 1985, p. 52.

## Conclusion to the first part

The history of the European Parliament is that of the slow but sure rise to power of a new kind of parliamentary assembly. Similar at first to the parliamentary assemblies of a number of international organisations (such as NATO, WEU, Council of Europe, UN), the European Parliament soon set itself apart by adopting the method of operation and structure of national parliaments and seeking legitimacy among citizens, mainly by holding direct elections from 1979 onwards. The EP has also seen its powers steadily grow since its direct election through a combination of the efforts of MEPs to tip the balance of powers with the Commission and the Council and through regular treaty reform<sup>163</sup>. This treaty reform was mainly prompted by the need to find solutions to the democratic deficit that has penalised the Community and to accommodate the demands of the European Parliament. As we have seen, these developments are enshrined in the Treaty of Lisbon. The EP has also earned its stripes by playing an active role in the deepening of European integration and in the constitutional process, even though it had no formal remit to do so. Although it has not yet been possible to complete the constitutional process, the European Parliament has still inspired the major developments that have marked the European integration process since the mid-1980s and has helped the European Union establish itself as a political system in its own right.

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Nevertheless, the European Parliament remains a 'badly elected' assembly. The first direct election of the EP in June 1979 was accompanied by a relatively high abstention rate (37% of the Community), and this rate has continued to rise ever since; it reached almost 55% in 2004 in the EU as a whole, climbing to more than 80% in Slovakia. Some people believe that the Lisbon Treaty will help spark interest in the European elections among citizens. The treaty expands the powers of the European Parliament and makes the elections rather more exciting, stipulating that the election results will determine who is 'elected' by the European Parliament as President of the Commission. Yet these developments seem unlikely to change the situation. They do not alter the hybrid nature of the EU's institutional system, which sets it apart from a parliamentary regime. As for the 'election' of the Commission President, the EP has already held a right of investiture for some time. There is nothing to suggest that the entry into force of the Lisbon Treaty will revive the interest of citizens in the European elections. Yet this must be placed in context, since the relevance of direct elections and, more importantly, the legitimacy of the EP's actions, still hold good.

For a start, it has to be said that owing to the supranational nature of the European Parliament, the European elections suffer from a number of structural disadvantages. Studies have shown that at all levels of government, abstention is closely related to three factors. The first is 'civic competence' and the degree of social insertion of voters: in the case before us, it is patently obvious that citizens know little about the European Union,

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<sup>163</sup> Corbett, R., *The European Parliament's Role in Closer European Union Integration*, Basingstoke, Macmillan Press, 1998.

its Parliament or the implications of the European elections. Voters who do not fully understand the scope or procedures of European elections are less inclined to make the effort to vote. In addition, citizens have little sense of belonging to the European Union as a political system; they therefore lack motivation to take part in the European elections. Secondly, abstention depends on ideological aspects such as the rejection of the representative system or political class: here too, there are numerous reasons why citizens stay away from the ballot box during European elections. In countries where political life is strongly polarised, they do not always appreciate or fully understand the functioning of the European Parliament. Even in countries where the consensus approach holds sway, the complexity of the texts submitted for discussion by the European Parliament, the subtleties of this discussion and the uncertain nature of its impact on the policies and decisions of the EU help maintain public apathy. Finally, abstention depends on the economic climate and political scene, and therein lies the rub when it comes to European elections, which in general are seen as having no real impact. First of all, they are not likely to bring about great political change: the President of the Commission is not a head of government and the idea of a majority coalition makes no sense in the Union. In other respects, support from the media, political parties and governments during the electoral campaign is traditionally poor. Finally, European elections, which take place simultaneously in all Member States, often run counter to national political life, with the result that they are frequently used as a substitute referendum on government policy or mass opinion poll.

We can only regret the lack of interest of citizens in an institution whose task it is to represent their interests in the political system of the EU. Nevertheless, we need to make sure, as many EU commentators and actors do, that the abstention that plagues the European elections does not endanger the EP or the Union itself. Bear in mind that the functioning of the EU does not depend on the ability of the EP to support and authorise the action of a government to conduct a given policy, but on interaction between three institutions that are independent of each other: the European Parliament, the Commission and the Council. In addition, the legitimacy of this political system and its activities does not stem purely from electoral participation, but from a range of different forms of representation (national, regional, economic and social), recourse to expert opinions and close scrutiny of respect for the law and rules of procedure. In terms of the impact this abstention has on the EP itself, note that, although 'badly elected', it remains the institution that citizens consider most able to defend their interests at the EU level. In addition, the legitimacy of an elected institution is not necessarily measured by the participation rate. If this were the case, there would be a question mark over the legitimacy of institutions such as the United States Congress. The simple answer would be in any case to make voting compulsory in all Member States, as is the case in Belgium, Luxembourg, Greece and the Austrian province of Vorarlberg. In the current climate, the legitimacy and representativeness of the European Parliament are more reliably measured in light of its ability to reflect the concerns of citizens and to defend their interests effectively, than to muster their support on election day.

It is not a case of talking down the implications of voting in European elections. Evidently the European Parliament would have more authority within the institutional system and a better public image if it could galvanise voters more. However we also need to take account of the specific nature of these supranational elections – which should not be compared to legislative elections, which are much more crucial for citizens – and steer clear of any alarmist discourse, which is not without its own agenda. Abstention during the European elections is used by opponents to European integration and by advocates of a European Union that attaches little importance to the interests and expectations of citizens. What matters, therefore, is that we take a more comprehensive approach towards the legitimacy of the European Parliament, explaining to what extent it contributes towards the functioning of the Union and the process of European integration.

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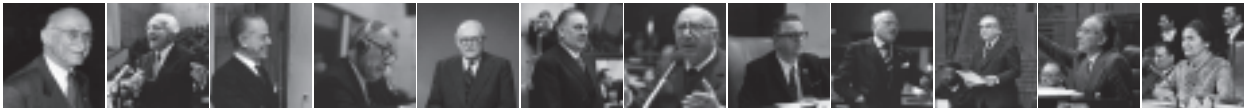
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## PART II: THE EUROPEAN PARLIAMENT ASSERTS ITS POWERS

The journey taken by the European Parliament since 1958 to obtain the powers it has today is not dissimilar to that of national parliaments asserting their prerogatives over sovereign power during the formation of nation states (just look at the lengthy battle waged by the UK House of Commons to glean powers from the Crown)<sup>165</sup>.

The European Parliament has had to fight hard for most of its powers, rarely offered up willingly by Member State governments. As integration has increased, so Parliament has used every tool available to it, regardless of whether or not provision was made for this in the Treaties in force. The European Parliament has prompted other institutions (the Council and the Commission, and the Commission on its own) to sign interinstitutional agreements (IIA) or framework agreements not specifically provided by the Treaties (see Chapters III.1 and III.2 below), just as it has introduced control mechanisms enabling it to take full advantage of the powers recognised by them (see, for example, the hearings of Commissioners that take place before the European Parliament approves the Commission).

Furthermore, the European Parliament has also fully capitalised on the instruments granted to it by the Treaties, such as rejecting the budget or taking proceedings in rela-

<sup>165</sup> As described in *The Governance of England*, by Law S., T. Fisher Unwin, London, 1904, p. 10: 'the story of English history is the record of the struggle of the House of Commons, first for freedom, then for power'.



tion to the Council's action or inaction (see the proceedings for failure to act in the area of transport policy, or the appeal against the Council's decision in the 'Isoglucose' case to sanction non-compliance with its right to be consulted). In terms of the delegation of its powers to the Commission (see Chapter IV below), the European Parliament has been swift to reject legislative acts and/or to block the use of budget appropriations to force the Council to amend the existing rules.

Finally, the European Parliament has used its powers (from resolutions submitted to the other institutions to unilateral amendments of its Rules of Procedure) to force the other institutions to accept new obligations towards it (see, for example, the rule allowing the President of the European Parliament to postpone a vote at the plenary and to refer the dossier to a parliamentary committee if the European Commission refuses to adopt certain amendments considered essential by the European Parliament). This procedure delays the opinion of the European Parliament while placing maximum pressure on the Commission to accept its amendments.

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In several cases, treaties granting new powers to the European Parliament have formally recognised a *de facto* situation where the Parliament has already prepared the ground for the future extension of its powers, either through interinstitutional agreements or through its own actions. We need only look at the abolition of the third reading stage in the codecision procedure, obtained following the rejection of agreements confirmed by the Council against the wishes of MEPs.

At the same time, the new powers granted to the European Parliament have represented an essential political requirement that seeks to make up for some of the democratic deficit of the European Union, or even to facilitate the ratification of a new treaty in certain Member States (such as in Germany, where the Constitutional Court considered the strengthening of democratic legitimacy to be a prerequisite for the granting of new powers to the Union<sup>166</sup>). It is also worth noting that, in numerous rulings of the European Court of Justice, the Court refers to the fundamental democratic principle whereby the people should participate in the exercise of power through a representative assembly<sup>167</sup>. The increased powers of the European Parliament are evidenced by the following:

a) The Treaty establishing the European Community made provision for the mandatory consultation of the Parliamentary Assembly (the term 'European Parliament' has only existed since 1986) in 22 of its provisions, while the European Parliament is today colegislator with the Council in 44 areas and the Treaty of Lisbon almost

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<sup>166</sup> See decision of the German Constitutional Court concerning the ratification of the Treaty of Maastricht (Judgment of 12 October 1993 – 2BvR 2134/92 and 2 BvR 2159/92, Decisions of the Bundesverfassungsgericht [German Federal Constitutional Court], Vol. 89, p. 155).

<sup>167</sup> According to the Court ruling, 'such a power represents an essential factor in the institutional balance intended by the Treaty. Although limited, it reflects at Community level the fundamental democratic principle that the peoples should take part in the exercise of power through the intermediary of a representative assembly' (cited in *The Institutions of the European Union*, by Peterson, J. and Shackleton, M., 2nd edition, Oxford University Press, Chapter 6, p. 108).

doubles this to 87, adding to the four cases of cooperation and 30 cases of obligatory consultation;

- b) In the Treaty of Rome, the budgetary power of the European Parliament was limited to a vote on amendments, without the Council being obliged to accept these or to reject the entire budget (which happened for the first time in 1980 after the 1970 and 1975 treaties gave the European Parliament new budgetary powers)<sup>168</sup>;
- c) The right of censure of the Commission, granted to the European Parliament in 1952 for the High Authority and enshrined in the Treaty of Rome in 1957, was not really a deterrent, as Member States could appoint a new Commission of their choice without the European Parliament being able to ratify or reject this decision. This situation changed after the European Parliament was granted the right to vote on the approval of the Commission.

The European Parliament therefore had no real powers in the institutional triangle at the start of the integration process, despite the claims of Chancellor Adenauer in 1952, comparing the Council and the Parliamentary Assembly to two chambers of a bicameral parliament<sup>169</sup>. In reality, the institutional triangle was initially an isosceles triangle (with two long poles, the Commission and the Council), and not an equilateral triangle<sup>170</sup>.

In the early 1950s, the institutional mechanisms of the integration process were effectively based on the Monnet method; in other words, largely on a dialectic between a supranational institution, independent from governments and holding a virtual monopoly on legislative initiative (the High Authority, later the Commission of the European Communities), and an institution representing the Member States with a virtual monopoly on decision-making (the Council of Ministers). In this system, the European Parliamentary Assembly only had an advisory role towards the Council and political control of the Commission, although this power of censure was not truly effective, as evidenced by the fact that it was never exercised – or even raised convincingly – until the dispute with the Santer Commission.

Nevertheless, the authors of the Treaty of Rome had prepared the ground for a future increase in the powers of the European Parliament by incorporating into Article 138 of the EEC Treaty the principle of its future election by direct universal suffrage. Consequently, the vicious circle whereby the European Parliament could not have new pow-

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<sup>168</sup> See Chapter II below on 'The evolution of the powers of the European Parliament'.

<sup>169</sup> Taken from Corbett, R., Jacobs, F. and Shackleton, M., *The European Parliament*, 7th edition, John Harper Publishing, 2007, p. 204.

<sup>170</sup> We might ask whether the institutional triangle is still an isosceles triangle today, since the increase in powers and actual influence of the European Parliament has gone hand in hand with a deterioration in the role of the Commission (on this, see Yves Mény, 'An Institutional Triangle with only two poles?' in *Challenge Europe, Europe @50: back to the future*, February 2007, Brussels, European Policy Centre, pp. 18-25.

ers because it was not elected, and could not be elected since it had no real powers, was destined to be broken eventually<sup>171</sup>.

The increase in the powers of the European Parliament went hand in hand with the need to make up for the democratic deficit that plagued the Community, and later the European Union, due to the progressive transfer of competence from the Member States to supranational bodies and the concomitant loss of political control by the national parliaments<sup>172</sup>. In this respect, budgetary powers seemed a priority, for the introduction of the first common policies posed the problem of political control by the European Parliament of the Communities' own resources (see the proposals of the Hallstein Commission in 1965 relating to the financing of the common agricultural policy). Although the empty chair crisis in 1965 prevented the European Parliament from orchestrating an initial quantum leap in terms of its political control, the gradual introduction of the system of the Communities' own resources made the strengthening of the EP's budgetary powers inevitable (1970 and 1975 treaties).

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In other respects, the Vedel report commissioned in 1971 by the Commission confirmed the need for a gradual increase in the budgetary, legislative and supervisory powers of the European Parliament<sup>173</sup>. The Member States tried, however, to restrict the budgetary power of the European Parliament to 'non-compulsory expenditure'<sup>174</sup> which at the start of the process represented a tiny part of the Community's overall budget (see Chapter II.B below).

Giving the European Parliament final say on non-compulsory expenditure, as well as the right to reject the entire budget, necessitated the introduction of new procedures for the adoption of legislative acts with significant financial implications. This led to the introduction of the conciliation procedure for the adoption of the acts in question. This procedure, introduced in 1975, made the first holes in the absolute decision-making power of the Council and the purely advisory role of the European Parliament, since the Council was now supposed to adopt legislative acts with significant financial implications only when its position and that of the European Parliament had been sufficiently aligned. In other words, the conciliation procedure ushered in the enormous changes that the 1986 cooperation procedure (the Single European Act) and the 1993 codecision procedure (the Treaty of Maastricht) respectively represent.

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<sup>171</sup> During the Summit of Heads of State or Government in October 1972, the authors of the Treaty of Rome asked the Commission to draw up proposals aimed at strengthening the powers of the European Parliament.

<sup>172</sup> This partly explains why Member State governments agreed during the intergovernmental conferences to develop the powers of the European Parliament (either by granting it new rights or by officially recognising those that had already been exercised).

<sup>173</sup> See Chapter II.B, 'The budget as leverage to obtain legislative powers'.

<sup>174</sup> Non-compulsory expenditure is expenditure that does not necessarily derive from the Treaty or from an associated legislative act and on which the European Parliament has final say, subject to half of the maximum rate of increase (MRI) fixed each year by the Commission (for more details, see Chapter II.A below).

The European Parliament was not entirely satisfied with the cooperation procedure however, as the Council continued to have the last word and could therefore reject, based on unanimity, amendments that the European Parliament considered important<sup>175</sup>. Still, this procedure helped prepare the ground for the codecision procedure, based on equal rights between the European Parliament and the Council. There is no doubt that the Council did not initially realise the full implications of the new procedure, for it believed that it could keep the European Parliament happy simply by adopting a few amendments during the conciliation phase<sup>176</sup>.

Once the European Parliament had shown its determination to make full use of its new powers, the Council realised that it needed to play the procedure game by accepting an increasing number of amendments from the European Parliament (compromise amendments) at first reading (often through informal talks with the Commission and the EP rapporteur). This explains why the number of codecided acts adopted at first reading rose from around 25% in the early years to more than 64% in recent times.

As a result of the codecision procedure, the European Parliament has in recent years established itself as a true colegislator, able to impose politically significant solutions on the Council. These include the Services Directive (dubbed the 'Bolkestein Directive'), or the Regulation on the registration, evaluation, authorisation and restriction of chemicals (REACH). The European Parliament's victory with the Services Directive is due in large part to its political group structure, which helps bridge certain national and ideological divides. The European Parliament has managed to find a balance between old and new Member States, acting as a sort of clearing house for enlargement (a role that the Council, too often marked by differences between national positions, is unable to perform). The same can be said for the REACH Regulation, where the political groups managed to strike a balance between the economic interests of the various Member States.

At the same time, the European Parliament has tightened its political control over the European Commission through the power of investiture of Commissioners, officially granted to the European Parliament by the Treaty of Maastricht<sup>177</sup>. The EP exercises this power by organising individual hearings of Commissioners-designate. Although the Treaty made no specific provision for this procedure or for the possibility of individual censure of members of the Commission, the European Parliament has used this instrument to exert maximum pressure on the Commission and on its President in cases where, in the opinion of the Parliament, certain members of the Commission have

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<sup>175</sup> The European Parliament succeeded only once – in the case of the Directive on the protection of workers from benzene – in preventing the adoption of a legislative act due to a lack of unanimity within the Council (see Chapter II.2.B below).

<sup>176</sup> The Council also tried to 'sterilise' second reading by unanimously defending its common position at first reading, without the qualified majority rule for adopting the EP's amendments accepted by the Commission being effectively applied (see Chapter II.B below).

<sup>177</sup> The Solemn Declaration on European Union, made by the Heads of State or Government in Stuttgart in 1983, already gave the EP a vote on the composition of the Commission, although this vote had no legal consequences.

not fulfilled their obligations. This led to the mass resignation of members of the Santer Commission in 1999, replacing a motion of censure that would doubtless have been carried by the European Parliament (see Chapter II.2).

The political influence of the European Parliament on the composition of the Commission was further enhanced with the confirmation of the Barroso Commission in 2004, when the European Parliament threatened to cancel the vote on the investiture of the College if the Commission President refused to make changes to his team by forcing certain Member States to replace individual candidates (see in particular the case of Rocco Buttiglione, whom the Italian government was forced to replace with Franco Frattini). Although the Treaty does not make provision for the individual censure of Commissioners, the European Parliament now had a precedent allowing it to intervene in the selection of individual Commissioners, in addition to having a vote approving the College as a whole.

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Another area in which the European Parliament has clawed back powers from other institutions is scrutiny of the Commission's executive activity. For years, the Commission not only adopted measures to enforce legislative acts, assisted by the Permanent Representatives Committee (namely executive measures in the strict sense), but also extended its executive power, on the authority, no less, of the Council or legislator, to measures designed to supplement or even amend legislative acts without the European Parliament being able to influence these measures. Eventually, the European Parliament obtained a right of scrutiny over the executive measures of the Commission, followed later by a right of veto on measures designed to supplement or amend legislative acts (see Chapter IV below).

The European Parliament has built up a direct relationship with the Council, even though its political influence has materialised more through the adoption of legislative acts and the Community budget. The fact remains however that the European Parliament now enjoys a peer-to-peer dialogue with the President-in-Office of the Council, can call on the Presidency at any time and on any subject and insist on its presence at politically significant events.

To get an idea of how far this relationship has come, bear in mind that the Council only agreed to answer questions from the European Parliament in 1960, and initiated consultation with the European Parliament on proposals from the Commission in 1971<sup>178</sup>. Nowadays however, the President-in-Office of the Council generally attends the Wednesday plenary sitting of the European Parliament and answers questions addressed to the Council during question time, either directly or through his replacement. In addition, each Presidency submits its work programme to the European Parliament

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<sup>178</sup> See Council response to a written question from Mr Vedreling. In reality, the Council automatically approves the answers given to the European Parliament or requests for consultation made by officials and the Working Party on General Affairs of the Council.

at the start of the six-month period and reports back on its results at the end of the period. It has also become common practice since the 1980s for the President-in-Office of the European Council to report to the European Parliament on the results of Council meetings, just as it has recently become commonplace for the President of the European Parliament to outline the position of the Parliament at the start of the European Council (and to be present at meetings concerning the revision of the Treaties).

### **The role of parliamentary committees**

It is within the parliamentary committees that the European Parliament performs most of its duties and power-building strategies are formulated. As in any other parliament, while resolutions, reports and other acts of the institution are voted on at the plenary, when MEPs' initiatives are also approved or rejected, most of the parliamentary work – and, more importantly, the formulation of strategies concerning other institutions – is done by parliamentary committees. These committees (of which there were 20 in 2007) are composed based on the size of the different political groups within the European Parliament, so that each parliamentary committee reflects the respective weighting of the various political forces.

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Although this proportional representation of the main political groups within the European Parliament generally ensures respect for the prevailing political orientation of the EP, it does not prevent some MEPs from having a greater influence within the committees than the size of their political group would suggest. Take for instance the role played by Altiero Spinelli in the Committee on Institutional Affairs to persuade the European Parliament to adopt in plenary a strategy relating to the draft Treaty on European Union on 16 February 1984, despite the fact that he belonged to a minority political group.

Most of the work done by committees consists of adopting the opinions and reports of the European Parliament in relation to its legislative and budgetary powers. The committees are responsible for issuing an opinion on proposals for legislative acts (or draft executive measures) prepared by the Commission, as well as on the common positions or other documents issued by the Council when it exercises its own powers. The key role here is played by the parliamentary committee that is chiefly responsible (the 'lead committee'), which has ultimate responsibility for the drafting/adoption of the EP's position. Other parliamentary committees may be consulted for an opinion, but cannot vote on a Commission proposal in its entirety<sup>179</sup>.

The importance and influence of parliamentary committees cannot be measured by the number of legislative reports or own-initiative reports they draft. For example, the

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<sup>179</sup> There are a few exceptions, whereby parliamentary committees other than the one chiefly responsible are authorised to table amendments at the plenary in parallel with the lead committee (for example, in 2005-06, the Internal Market and Industry Committees influenced the adoption of amendments relating to the REACH regulation, in parallel with the Environment Committee, which was the lead committee (cited by Corbett, R., Jacobs, F. and Shackleton, M. in *The European Parliament*, 7th edition, J. Harper Publishing, p. 137).

Committee on Budgets had a much greater influence than the 34 reports prepared by it during the 1999-2004 parliamentary term would imply. Just look at the crucial role played by the chairman and rapporteur of the Committee on Budgets (COBU) during the budgetary conciliation with the Council (particularly during the periodic conflict over the renewal of the multiannual financial perspective). In terms of influencing the legislative activity of the European Union, it should be noted that the Environment Committee prepared 219 reports during the 1999-2004 parliamentary term on the Commission's proposals, followed by the Civil Liberties Committee with 150 reports during the same period. The Environment Committee played a major role in codecision, given the high number of related procedures<sup>180</sup>.

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The chairmen of parliamentary committees can exert considerable influence over the work of the committees, depending on their determination and the reputation they enjoy within the European Parliament. Take Ken Collins, the British MEP who chaired the EP's Committee on the Environment for 15 years, and the influence he had over the general attitude of the European Parliament towards the environment. More recently, the same could be said for Diemut Theato, who for 10 years (1994-2004) chaired the powerful Committee on Budgetary Control (COCOBU) and played an important role, first in the BSE crisis and later during the resignation of the Santer Commission in 1999.

Another key role in the exercise and affirmation of the powers of the European Parliament is performed by rapporteurs, appointed by the parliamentary committees to draft reports on a particular subject. The rapporteur system originates from the Continental parliamentary tradition, rather than the Anglo-Saxon tradition. In effect, the rapporteur not only has the task of initiating discussions within the committee, preparing the draft report and amending it to take account of the comments of his colleagues or other developments, but is also responsible for conducting formal or informal negotiations with other institutions during the codecision procedure. It is the rapporteur who must propose or facilitate compromise solutions that will help secure an agreement within the European Parliament and later with the other institutions during the legislative procedure. The EP's rapporteurs have even been criticised for wielding too much influence during the drafting of compromise amendments at first reading in the codecision procedure, since it is becoming politically difficult for the European Parliament to disavow its strategy at the plenary, whereas the rapporteur can prevail on the informal agreement of the other institutions.

The rapporteur therefore has considerable room for manoeuvre to consult pressure groups and/or the relevant experts on the amendments to be made to a Commission proposal by the European Parliament (provided that it maintains the appropriate con-

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<sup>180</sup> In total, 191 reports by the Environment Committee came under the codecision procedure, while 135 reports of the Civil Liberties Committee concerned proposals submitted for the consultation procedure.



tact with the qualified representatives of the political groups). A historic example of the rapporteur's influence over the drafting and implementation of the EP's strategy is Piet Dankert, rapporteur for the Committee on Budgets during the first rejection of the budget by the European Parliament in 1979. A more recent example is Klaus-Heiner Lehne, rapporteur for the Committee on Legal Affairs for the Takeover Bids Directive, a dossier won by the European Parliament for the first time with the support of a large majority of Member States within the Council<sup>181</sup>.

When drafting reports on a particular issue or legislative proposal, parliamentary committees can organise hearings of experts or representatives from the sectors concerned. This technique, which is common in the Anglo-Saxon parliamentary tradition, allows MEPs to form an opinion by calling on recognised experts or representatives of lobby groups ('stakeholders'). The Commission's proposals are of course normally preceded by consultation with representatives of civil society or lobby groups, although the European Parliament forms its own opinion using techniques such as hearings, which are more transparent than those employed by the other institutions. Some hearings are also an opportunity to bring together consumers and industry and union representatives affected by the issue being examined by the European Parliament. This was the case, for example, with the pivotal hearing on the REACH proposal held in January 2005, attended by several thousand people<sup>182</sup>.

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Temporary committees and committees of inquiry, which may overlap, are another means of control available to the European Parliament.

Temporary committees are responsible for a specific and urgent topic (such as the unification of Germany or the BSE crisis) and exist for a limited period (normally 12 months). There have been 13 temporary committees since 1979, some of which have also acted as committees of inquiry<sup>183</sup>.

Committees of inquiry conduct a wide range of investigations on a particular theme, or examine cases of maladministration within the institutions of the European Union or the Member States. In the case of BSE, the European Parliament's committee of inquiry was able to gauge the extent of the epidemic and made a major contribution to the adoption of adequate measures in terms of health warnings, control and prevention<sup>184</sup>.

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<sup>181</sup> These two cases are cited in the recent work by Julian Priestley, *Six battles that shaped Europe's Parliament*, John Harper, 2008.

<sup>182</sup> See Corbett, Jacobs and Shackleton, *op. cit.*, p. 314.

<sup>183</sup> Such as the Temporary Committee of Inquiry into BSE (1997) or the Temporary Committee on the ECHELON system (2000/2001). Conversely, the Temporary Committee on German Unification and the Temporary Committee on the Delors II Package were temporary committees, not committees of inquiry.

<sup>184</sup> The BSE Committee allowed the European Parliament to pressure the Commission to pay more attention to health issues and to modify its internal administrative structure (see Chapter III.1 below).



Another example is the Temporary Committee on Climate Change, which is still active. This organises numerous meetings with all stakeholders, including scientific experts, and is also involved in raising public awareness.

To conclude, it can be argued that parliamentary committees play a central role in establishing the position of the European Parliament on all dossiers referred to it, whether legislative acts or own-initiative parliamentary reports. As Corbett, Jacob and Shackleton observe (see aforementioned citation), ‘the absence of a governmental majority means that the outcome of committee debates is not determined by the executive but as a result of the interplay between the positions of the different Political Groups’. Furthermore, the work of the parliamentary committees is accessible to the public, and this is now a trademark principle of the European Parliament that sets it apart from both the majority of national parliaments and from the other institutions of the European Union.

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In the chapters that follow, we will look more closely at the history of the European Parliament’s powers, first by studying their development, and then by focusing on the changes to Parliament’s role in the context of interinstitutional relations.

The following chapters will look at how the European Parliament’s powers have evolved, showcasing both the development of its formal powers and its general role in the context of interinstitutional relations.

## I. THE HISTORY OF THE EUROPEAN PARLIAMENT'S POWERS

Today's European Parliament is a very different institution from its predecessor, the Common Assembly. This volume has already looked at how the Parliament changed when it ceased to be an appointed parliament and became a parliament elected by European citizens. This chapter will examine the powers of the European Parliament and how these have evolved since it was created. It will begin with an analysis of the EP's budgetary powers, which for a long time represented its core competence. It will then cover the history of the Parliament's legislative prerogatives, before looking at how its competence began to extend to more political sectors through the assent procedure. The analysis will show how the European Parliament has actively laboured to develop its own powers over the years and how it has made good use of various types of competence as a springboard to other responsibilities. The European Parliament has become a parliament in the true sense of the word, much more akin to national legislative bodies than to the assemblies of international organisations.

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### A. Budgetary powers

Each year, the same 'ceremony' takes place within the European institutions: the vote on the annual European budget. This annual 'ceremony' involves the three major European institutions: the European Commission, the European Parliament and the Council of Ministers (also known as the Council of the European Union). Every February, the Commission officially opens proceedings by unveiling its Annual Political Strategy (APS), a document setting out the political priorities for the following year and defining the budgetary framework necessary for their implementation. The European Parliament and the Council, which make up the two branches of the budgetary authority, adopt a position on this text in order to provide the Commission with guidelines with a view to preparing the Preliminary Draft Budget (PDB). A trilogue between the Chairman of the European Parliament's Committee on Budgets (currently Reimer Böge), the President of the Council (Budgets) and the Member of the Commission with responsibility for budgets (currently Dalia Grybauskaitė) allows an initial exchange of views to take place before the adoption of the PDB by the European Commission.

As a rule, the European Commission sends the PDB to the two other institutions at the beginning of May following a lengthy internal consultation. The preliminary draft budgets of the other institutions (European Parliament, Council of Ministers, etc.) are prepared by each institution and sent to the European Commission, which generally adopts them as they stand, the Commission's budget accounting for nearly all of the total budget. The PDB is sent to the Council and to the European Parliament in May, although Article 272 of the EC Treaty indicates July as the deadline. In practice, the entire budget timetable is brought forward by several weeks in order to give the two

branches of the budgetary authority time to prepare their positions and to reach a compromise<sup>185</sup>.

The annual budgetary procedure begins with the adoption of the draft budget by the Council in mid-July (the 'first reading by the Council'). Before this reading, a second tripartite dialogue or 'trialogue' takes place. The role of the European Commission at these meetings can be crucial, particularly towards the end of the procedure, when it is expected to act as mediator and to recommend compromises where necessary.

After the first reading by the Council, it is the turn of the European Parliament to adopt its first reading. The Committee on Budgets (COBU) plays a decisive role here, in so far as the general rapporteur called on to defend the position of the European Parliament in the interplay between the institutions is a member of that committee. In theory, the draft budget is sent to the Parliament at the beginning of September. However, in practice, the Committee on Budgets starts working on the dossier at the end of July (pragmatic timetable). The two rapporteurs (a second rapporteur examines the budget for the other institutions) outline the response to be given to the Council; an intense debate follows within the Committee on Budgets between the various political groups before the adoption of a common position. The European Parliament can modify non-compulsory expenditure (NCE), but can only table amendments to compulsory expenditure (CE)<sup>186</sup>. The Parliament vote generally takes place during the October session, although the report of the Committee on Budgets is adopted in September, and the Council generally commences its second reading before the final plenary vote.

The Council has a fortnight in which to adopt the text at second reading. A new triologue is then called to allow both branches of the budgetary authority to discuss compromise solutions. The conciliation meeting represents a decisive stage during which delegations from the three institutions try to agree on a global compromise for both compulsory and non-compulsory expenditure before the final readings in the Council and the Parliament. This meeting generally takes place either the day before the second Council reading, or on the same day. Negotiations can be very lengthy and may continue late into the night. Once the Council has completed its second reading, the European Parliament has a fortnight in which to adopt the amendments to the non-compulsory expenditure, although it may no longer amend compulsory expenditure. The budget is considered adopted when the President of the European Parliament signs the document at the end of the second reading of the European Parliament, which takes place in December.

### **A.1. From conflict to interinstitutional partnership**

Although this procedure seems to work well today, the situation used to be very different. As we will explain later on, the European Parliament was not initially allowed to alter the amount of expenditure and, even after it had obtained this right, it had to battle

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<sup>185</sup> It was in 1977 that the three institutions decided to introduce the 'pragmatic timetable'.

<sup>186</sup> This distinction will be examined in more detail in the following chapters.

with the Council to obtain full recognition and extension of its powers. Although budgetary power has been a key competence of the European Parliament for a long time, we must not forget that there was a time when the Parliament was a body without any real power in this area. In fact, the European Parliament is not granted definite budgetary powers by the Treaty establishing the European Coal and Steel Community (ECSC, 1952), the Treaty establishing the European Atomic Energy Community (EURATOM, 1957), or the Treaty establishing the European Economic Community (EEC, 1957), in Article 272 (ex Article 203). The early treaties granted the Assembly advisory powers, which were limited to tabling amendments to the budget, while the final say on expenditure and resources rested with the Council of Ministers. The European Commission (and the High Authority, in the case of the ECSC) was responsible for drafting the initial proposal (preliminary draft budget) and for ‘negotiating’ with the Council during the budgetary procedure. The situation changed dramatically in the 1970s when the Parliament demanded that its budgetary powers be increased following two major reports, the Spenele report (1970) and the Vedel report (1972).

In 1970, the signing of the Treaty amending Certain Financial Provisions (more commonly known as the Treaty of Luxembourg) introduced the codecision procedure of the Assembly with the Council in budgetary matters following a lengthy parliamentary campaign. The Assembly thus won the right to modify non-compulsory expenditure subject to a maximum rate of increase (MRI<sup>187</sup>) and to table amendments to compulsory expenditure (with the Council continuing to have the final decision for this category of expenditure at second reading). The Treaty introduced the annual budgetary procedure based on the timetable described earlier. This timetable and the corresponding procedure have remained unchanged ever since.

Following new demands made by the European Parliament, the Treaties were amended again in 1975 with the adoption of the Treaty amending Certain Financial Provisions (the ‘Treaty of Brussels’). This Treaty supplemented the prerogatives recognised by the 1970 Treaty, mainly by granting the Parliament the formal power to reject the budget and to codecide with the Council, where necessary, by applying the provisional one-twelfth system<sup>188</sup>.

Initially deprived of any budgetary powers at all, the European Parliament suddenly found itself on an equal footing with the Council of Ministers. For all that, this ‘victory’

<sup>187</sup> The MRI is set each year by the European Commission. It is calculated based on ‘the trend, in terms of volume, of the gross national product within the Community, the average variation in the budgets of the Member States, and the trend of the cost of living during the preceding financial year’ (Article 272(9) of the Treaty establishing the European Community).

<sup>188</sup> Article 273 (ex Article 204) of the Treaty establishing the European Community states that ‘If, at the beginning of a financial year, the budget has not yet been voted, 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 or other subdivision of the budget in accordance with the provisions of the Regulations made pursuant to Article 279; this arrangement shall not, however, have the effect of placing at the disposal of the Commission appropriations in excess of one twelfth of those provided for in the draft budget in course of preparation.’

was hard won. The Parliament had been calling for enhanced powers for some time and had no qualms about exercising these, as we will see later on, even beyond the provisions of the Treaties. For a long time, relations between the European Parliament (EP) and the other branch of the budgetary authority, the Council of Ministers, were stormy. Having won the right to vote on the budget in the 1970s, the EP decided to make use of all of the options provided by the various treaties to make the Council see things from its point of view. The two branches of the budgetary authority were in permanent conflict in the 1980s, with the lack of legal clarity of the Treaties largely helping to fuel tensions.

It was not until the end of the 1980s that the situation eased. The signing of the inter-institutional agreement between the Commission, the Parliament and the Council of the European Union introduced the principle of financial perspective and resolved the conflict over the classification of compulsory and non-compulsory expenditure. Since then, budgetary relations between the European Parliament and the Council have calmed down.

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### 1. The profound changes brought about by the 1970 and 1975 treaties: the use of the margin for interpretation in terms of the classification of expenditure and MRI

Bolstered by its new powers and the resulting decision (1976) to elect MEPs by direct universal suffrage, the European Parliament was keen to flex its budgetary powers. As evidenced by the adoption of the 1974 to 1978 budgets, the new annual budgetary procedure introduced by the Treaty of Luxembourg unfolded without incident in the first few years.

The two branches of the budgetary authority seemed keen to make sure that the system worked, although the illusion of calm quickly gave way to tensions between the Council and the Parliament at the end of the 1970s. In fact, things did not go quite the way the Council had planned. The Council had hoped that, by granting budgetary powers to the European Parliament and establishing a conciliation procedure<sup>189</sup> in response to the demands of the Parliament, which wanted to combine budgetary and legislative power, the parliamentary assembly would continue to be cooperative and would abide by the Council's interpretation of the Treaties. However, the Parliament adopted an opportunistic strategy, exploiting the margin for interpretation that the texts allowed it to extend its powers and to defy the Council on one particular battlefield: the classification of non-compulsory expenditure and use of the maximum rate of increase (MRI).

The wording of the treaty provisions that define compulsory expenditure is anything but precise. Compulsory expenditure is in fact defined indirectly as 'expenditure necessarily resulting from this Treaty or from acts adopted in accordance therewith'. The

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<sup>189</sup> The Joint Declaration of the European Parliament, the Council and the Commission of 4.3.1975 (OJ C 89, 22.4.1975) was intended to help find an agreement between the EP and the Council of Ministers on the adoption of 'Community acts of general application which have appreciable financial implications, and of which the adoption is not required by virtue of acts already in existence' (see Chapter I.B.).

final say concerning this category of expenditure lies with the Council of Ministers, while the European Parliament for its part can decide, at second reading, the level of non-compulsory expenditure within the limits of the MRI set each year by the European Commission. Compulsory expenditure represented around 84% of total expenditure in the early 1970s. Conscious of the weakness of its role in the annual procedure, the European Parliament decided to adopt an opportunistic approach towards this classification by inventing the concept of the ‘right of third parties’ in order to challenge the idea of the ‘circumscribed powers’ of the Council. According to the Council’s interpretation of the definition of compulsory expenditure, first expressed in 1974, compulsory expenditure was considered to be that which, by law, could not be determined by a budgetary authority, be it the Council or the Parliament<sup>190</sup>. The Parliament offered its own definition whereby compulsory expenditure corresponded to rights that third parties could exercise before a court based on the legal acts adopted by the Council<sup>191</sup>. According to this definition, expenditure was compulsory if third parties had the right to receive funding from the EU budget<sup>192</sup>.

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The European Commission’s interpretation was somewhere in between, based on the notion of the automatic nature of expenditure arising from a legal act or, alternatively, based on predetermined amounts incorporated into legislative acts, a practice that sparked intense debate between the two branches of the budgetary authority (cf. Chapter I.B). In practice, however, the distinction was clearly a political one rather than a technical one. As we have seen, the margin for interpretation of the Treaties and the Council’s reluctance to amend the corresponding provisions in the interests of clarification led to a unilateral interpretation by the two institutions.

Tensions mounted between 1974 and 1978, with the first disagreement over the classification of the Regional Fund and the contribution to the United Nations for the 1975 budget. The European Parliament also had to opt for an opportunistic interpretation for the 1982 and 1984 budgets; in the latter case, by severing the compromise reached at the start of the year, it classified all correction mechanisms for the United Kingdom and Germany as non-compulsory expenditure and banked them. The climate surrounding budgetary negotiations deteriorated further with the subsequent disagreement over the maximum rate of increase of non-compulsory expenditure.

The debate over the classification of expenditure is incomprehensible unless the parallel debate over the maximum rate of increase, or MRI, of non-compulsory expenditure is taken into account. The fact that the European Parliament decides non-compulsory expenditure as a last resort does not mean that it is free to enter any increases in the budget as it sees fit. The MRI can be modified only by an agreement between the two branches of the budgetary authority. The classification of non-compulsory expenditure, which

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<sup>190</sup> Regnier-Heldmaier, C., ‘La distinction DO-DNO, instrument de lutte pour le pouvoir budgétaire’, *Revue du Marché commun de l’Union européenne*, No 375, 1994, p. 95.

<sup>191</sup> Ibid.

<sup>192</sup> Ibid.

the European Parliament was particularly keen to increase, is now closely linked to the use of the MRI. During the budgetary conflict of the 1970s and 1980s, the European Parliament revised the classification of several types of expenditure – both compulsory and non-compulsory – by amending the nominal amount that could ‘legally’ be increased within the limits of the MRI. This conflict over the MRI tarnished relations between the two institutions until 1988.

In 1978, the European Parliament adopted at first reading a budget exceeding the MRI. The Commission implemented the budget, with the budgetary authority subsequently adopting an amending budget in order to ‘legalise’ ex ante the adoption of the budget by Parliament. During the 1980s, tensions over the calculation of the MRI continued to escalate, the conflict between the two branches of the budgetary authority becoming the rule rather than the exception.

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Buoyed by its 1978 victory (in relation to the 1979 budget), the European Parliament pursued its opportunistic strategy in the 1980 and 1981 budgetary procedures. In 1980, the Parliament rejected the budget for the first time in its history. In 1981, its President declared that the budget had been adopted, despite the fact that the Council had refused to increase non-compulsory expenditure. The European Parliament continued this strategy in 1982 (for the 1983 budget), forcing the Council to give way again and, just as it had for the 1979 budget, legalising the increase in the MRI that the EP had unilaterally adopted.

In 1982, the Council of Ministers, the European Parliament and the Commission tried to resolve the issues linked with the classification and level of the MRI by signing a ‘Joint Declaration by the European Parliament, the Council and the Commission on the budgetary procedure’<sup>193</sup>. The declaration was part of an unprecedented attempt to solve the problems that had arisen in terms of classification and the MRI. A list of compulsory and non-compulsory expenditure based on the headings and items of the 1982 budget was drawn up by common accord.

While the European Parliament abandoned certain key components of its interpretation of the MRI, the Council came closer to the parliamentary interpretation of the link between budgetary and legislative power. A new aspect of the procedure was also introduced: the Presidents of the three institutions agreed to set up a tripartite dialogue or ‘trialogue’, with formal meetings between the Council, Parliament and Commission taking place whenever conflict surfaced during the budgetary procedure. However, the procedure soon revealed its limitations regarding the structural problems described earlier. The classification of expenditure that had been adopted soon became obsolete with the creation of new budget items in subsequent budgetary procedures. In addition, the new triilogue procedure appeared ineffective, the actors remaining unconvinced of the need for them to find a solution. Similarly, the budgetary authorities did not feel bound

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<sup>193</sup> OJ C 194, 28.7.1982.



by the new agreement, and before long the rules set out in the Joint Declaration were infringed (Lindner, 2006).

Budgetary conflict resurfaced shortly after the adoption of the Joint Declaration, with both institutions returning to their old habits, namely the unilateral interpretation of the provisions of the Treaty. In 1984, the Council infringed the principle of annuality enshrined in the Treaty by submitting a budget over 10 months instead of 12. This infringement presented the European Parliament with a golden opportunity to act as defender of the Treaty, while rejecting the budget for the second time in five years. In 1985, the European Parliament opposed the Council's draft budget at first reading on the grounds that it did not contain any financial provision relating to the imminent accession of Portugal and Spain, and pronounced itself in favour of the adoption of a new, much larger budget. The Council decided to take the matter before the European Court of Justice, which annulled the budget and called on the institutions to find a solution to the structural problems described above. The time had come to resolve once and for all the recurring issue of expenditure classification and the attendant problems with the MRI. The crisis was resolved with the signing of the 1988 Interinstitutional Agreement, a document that helped instil relative budgetary peace.

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## 2. Budgetary peace, the financial perspective and the decisive role of interinstitutional agreements (IIA)

Relations between the two branches of the budgetary authority had become so stormy in the 1980s that the institutions finally resolved to settle the structural problems more effectively. At the end of 1987, the Commission, chaired at the time by Jacques Delors, proposed radically altering the budgetary procedure by introducing the principle of multiannual financial programming. The Commission proposed that the budgetary authority sign an interinstitutional agreement on budgetary discipline and improvement of the budgetary procedure<sup>194</sup>. This agreement mainly included a proposal for a multiannual financial framework (previously referred to as the 'financial perspective') for the years 1988 to 1992 with a view to setting quotas for groups of budget items in the various categories of expenditure. Far from entailing the disappearance of the annual budgetary period this framework gave the three institutions, without exception, guarantees concerning the maximum amounts that would be allocated to each sector for the following five years. The financial perspective was agreed by the governments of the Member States during the European Council of February 1988 and officially adopted in June 1988 with the official signing of the interinstitutional agreement by the three institutions. The European Parliament accepted this system for various reasons.

First and foremost, the principle of the multiannual financial framework meant that revenues allocated to Community financing rose significantly, in response to calls by the European Parliament for a substantial increase in the Community budget. The agree-

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<sup>194</sup> OJ L 185, 15.7.1988.



ment also allowed non-compulsory expenditure to be increased above the MRI in the context of the various annual budgetary procedures. This was particularly true of appropriations to the Structural Funds (cohesion policy). The European Parliament thus ensured that it had (even greater) room for manoeuvre. Thus the IIA neutralised the MRI, which had been a bone of contention in the 1980s. The EP found itself on an equal footing with the Council, as the revision of the financial perspective required the agreement of both institutions, rather than merely a green light from the Member States, as today's national media tend to believe<sup>195</sup>. However, the EP's room for manoeuvre for the adoption of the financial perspective tended to be very narrow, given that intergovernmental agreements were normally concluded at the European Council preceding the vote on the financial perspective within the European Parliament. The European Parliament made extensive use of its powers in this area to avoid the strict application of headings and quotas by revising the financial perspective. The introduction of the IIA had a dramatic effect on conflict between the European Parliament and the Council of Ministers. In fact, by comparison with the chaos that reigned at the end of the 1970s and during the 1980s, tensions began to ease considerably in 1988.

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This background is also the key to understanding the truce reached in 1988. Compared to the situation prior to 1988, the climate within the Council improved following the adoption of the financial perspective, which in large part helped eliminate calls for redistribution made by Member States that were the worst off following the annual budget decisions (Lindner, 2006). The introduction of quotas for agricultural expenditure in the financial perspective, a key element of the IIA, meant that agricultural expenditure was no longer automatic. Last but not least, the new legislative powers vested in the European Parliament by the Single European Act (1986) and the Treaty of Maastricht (1992) consolidated the role of the European Parliament in the legislative decision-making process. As a result, the European Parliament strengthened its role in legislative policy while keeping up the pressure for a change in budgetary policy.

One financial year in particular saw a partial resurgence of the conflict between the two branches of the budgetary authority. In 1990<sup>196</sup>, the European Parliament opted for an opportunistic approach in an area that it had hitherto eschewed: the Communities' own resources. It made a minor correction to the revenue of the second amending budget for the 1990 budget, originally proposed by the Commission but rejected by the

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<sup>195</sup> The last revision of the multiannual financial framework was decided by the Council of Ministers and the European Parliament during the conciliation procedure on 23.11.2007. It helped redeploy unused appropriations from heading 2 (CAP) and allocate them to the financing of the European Satellite Navigation System (Galileo) and the European Institute of Innovation and Technology. Members of the EP's Committee on Budgets deplored the way in which the national media covered this important revision by presenting it as an intergovernmental agreement between the 27 Member States of the European Union.

<sup>196</sup> Each year, the Commission proposes various amending budgets in the course of the year, either to correct forecasting errors (for both income and expenditure) or in response to an unforeseen event such as an international crisis or a natural disaster. The Commission needs the agreement of the two branches of the budgetary authority before it can implement the amending budget.

Council. However, the EP had overstepped its prerogatives. The matter was taken before the European Court of Justice, which found in the Council's favour. This strategy was based more on institutional considerations than on spending targets. By challenging the Council on its own ground, the European Parliament kept up the pressure to increase its power during negotiations of the next financial perspective, as a series of EP resolutions adopted in the early 1990s would reveal.

The success of the financial perspective encouraged the Commission to reintroduce a second 'package' in 1992 (known as the 'Delors II package') to cover the period 1993-99. The new financial perspective was negotiated by the European Council in Edinburgh in December 1992 and a new interinstitutional agreement was finalised by the three institutions in 1993, before being officially signed on 29 October of the same year<sup>197</sup>. The European Parliament took advantage of these negotiations to call for a revised classification of compulsory and non-compulsory expenditure. Some of its wishes were granted with the 'reclassification' of heading 2 expenditure (structural measures) and heading 3 expenditure (internal policies) as non-compulsory expenditure. At that point, non-compulsory expenditure represented 39% of the total budget, compared with 16% in the early 1970s. The European Parliament had also been granted the right to take part in a new ad hoc conciliation procedure with the Council, with a view to giving its opinion on compulsory (mainly agricultural) expenditure. Regarding the MRI, another bone of contention between the two institutions prior to 1988 and to a certain extent during the initial financial perspective, the European Parliament convinced the Council to accept the MRI in advance for non-compulsory expenditure resulting from budgets drawn up in accordance with the quotas fixed by the financial perspective. In return, the European Parliament agreed to allow a certain margin below the annual quotas if additional expenditure proved necessary during the year, in order to avoid a systematic revision of the financial perspective. In short, the 1993 IIA gave the Parliament additional powers by reclassifying non-compulsory expenditure, enabled parliamentary control of compulsory expenditure and consolidated the previous arrangements established under the 1988 IIA.

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Since the financial perspective system had proved effective, smoothing things between the Council and the European Parliament, a new multiannual financial framework was negotiated in 1999 for the period 2000-06. Yet again, the European Parliament found itself with very little room for manoeuvre, the Member States having already negotiated 'arrangements' on quotas during the Berlin European Council in March 1999. A new interinstitutional agreement was negotiated and adopted by the EP, by a narrow majority, reflecting the dissatisfaction of some MEPs with the sizeable budgetary constraints imposed by the agreement and the limited room for manoeuvre left to the European Parliament to renegotiate quotas. Nevertheless, the IIA contained positive elements for the European Parliament, such as the budget allocated to internal policies, which was greater than what had been provided in the Berlin agreement, as well as the Coun-

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<sup>197</sup> OJ C 331, 12.1993, p. 1.

cil's pledge to accept a revision of the financial perspective for up to 0.03% of GNP by qualified majority rather than unanimity. The agreement was concluded and signed on 6 May 1999<sup>198</sup>.

The Member States subsequently negotiated a fourth multiannual financial framework during the Brussels European Council in December 2005, which was later analysed by the three institutions during the first half of 2006. This time, the European Parliament decided to set up a temporary committee in charge of preparing its position. Conscious that some MEPs were dissatisfied with the negotiations on the previous financial perspectives, the committee concentrated on the question of whether the MRI offered the best guarantee for the development of the Union's activities, or whether the multiannual financial framework was more efficient. While expressing its reservations over the agreement signed by the Member States in December 2005, the European Parliament decided to maintain the MRI mechanism and managed to bring some quotas closer to the levels it wanted. The inclusion of a mid-term review of the multiannual financial framework from 2009 following a request by the United Kingdom, supported by the European Parliament, allowed some improvements to be made.

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The European Parliament thus succeeded in strengthening its powers in order to operate on an equal footing with the Council of Ministers in the budgetary procedure. The pressure maintained by the European Parliament on the Council in the 1980s led to an open and permanent conflict between the two branches of the budgetary authority. This situation was resolved through a radical change: the introduction of the financial perspective in the 1980s, a pragmatic system founded on cooperation between the three institutions.

## **A.2. The budget as leverage to obtain legislative powers**

In addition to these institutional powers, the European Parliament was able to use its budgetary powers to promote policies and to further increase its role on the European political and financial scene. Historically, the European Parliament obtained budgetary powers before it had any legislative powers at all. Even in the years that followed the signing of the Single European Act which, as we will see further on, granted significant legislative competence to the EP, the Parliament made considerable use of its budgetary powers to consolidate and obtain new legislative prerogatives. In addition to its new powers, the European Parliament also played a decisive role in policymaking, widening the scope of some policies and increasing their budgets.

### **1. Budgetary powers as a 'driving force': the institutional dimension**

The European Parliament campaigned for a long time to increase its budgetary and legislative powers. Once it obtained budgetary powers, the Parliament used these to obtain legislative powers. In this regard, the 1972 Vedel report provided it with arguments

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<sup>198</sup> OJ C 172, 18.4.1999, p. 1.

for the two types of competence to be considered in parallel. The report emphasised the need to grant the European Parliament legislative powers and warned against the tensions that were liable to arise from the imbalance between legislative and budgetary powers. The budgetary quarrels that punctuated the 1970s and 1980s showed how relevant and visionary the Vedel report was.

The 1975 Joint Declaration on the conciliation procedure was intended to provide assurances to the European Parliament concerning respect for its budgetary powers, thus ensuring that the application of the conciliation procedure between the two branches of the budgetary authority for 'Community acts of general application which have appreciable financial implications, and of which the adoption is not required by virtue of acts already in existence'<sup>199</sup>, was debated by the Council. The aim of this procedure was to assure the European Parliament that its opinions would be taken into consideration. The Council initially thought that the Parliament would be content with the new procedure (which only gave the European Parliament an advisory power), although the reverse was true. The Council did not help matters by insisting on the superiority of the legislative sphere since, despite the existence of a conciliation procedure, the final decision still rested exclusively with it. This imbalance between budgetary and legislative powers, combined with the tensions over the classification of compulsory and non-compulsory expenditure and the use of the MRI, added to the frustration within the European Parliament. The Parliament believed that the budget was a satisfactory legal basis to take new measures or to extend the scope of those already in place. Based on this view, fiercely contested by the Council of Ministers, the European Parliament pursued both institutional and distributive objectives.

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The 1982 Joint Declaration tried to provide an answer to this question by stipulating that the 'implementation of appropriations entered for significant new Community action shall require a basic regulation. If such appropriations are entered the Commission is invited, where no draft regulation exists, to present one by the end of January at the latest'<sup>200</sup>. The declaration also emphasised the fact that 'the fixing of maximum amounts by regulation must be avoided', thus lending weight to the arguments of the European Parliament, which demanded respect for its budgetary powers. Despite the tensions that existed throughout the 1980s, the question of the link between legislative and budgetary powers was gradually resolved by the various interinstitutional agreements. A specific interinstitutional agreement, which was signed in 1998, took account of a ruling of the European Court of Justice<sup>201</sup> favouring the Council's interpretation regarding the adoption and implementation of budget items without any legal basis.

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<sup>199</sup> Joint Declaration of the European Parliament, the Council and the Commission on the institution of a conciliation procedure between the European Parliament and the Council (OJ C 89, 22.4.1975, pp. 1-2, point 2).

<sup>200</sup> Joint Declaration by the European Parliament, the Council and the Commission of 30.6.1982 on various measures to improve the budgetary procedure, (OJ C 194, 28.7.1982, pp. 1-3, point IV, paragraph c).

<sup>201</sup> Case C 106/96.

Tensions over the link between budgetary and legislative power gradually eased with the introduction of the financial perspective in 1988, but more importantly with the strengthening of the EP's legislative prerogatives. In the 1988 Interinstitutional Agreement, the Parliament extracted the following concession from the Council: in the absence of financial provision for a legislative act, the policy in question could not be implemented until the budget had been modified accordingly, with the Parliament naturally having a say in this process. This provision was further consolidated by its inclusion in the Treaty of Maastricht (Article 270 of the EC Treaty, ex Article 201a).

In the years that followed the signing of the Maastricht Treaty, the practice whereby amounts deemed necessary (ADN) were included in legislative acts was challenged less and less by the European Parliament as it gained more influence in the legislative sphere. Following the 1999 Interinstitutional Agreement, a lasting solution was found between the two branches of the budgetary authority: where legislative acts during the codecision procedure, a 'prime reference' would be included (in other words a measure whereby the legislative authority – in this case the Council and the European Parliament – established the financial framework for the entire duration). Where codecision did not apply, the institutions agreed that it would refer to an optional figure, which would not be binding for the budgetary authority. An additional milestone was passed in 2002 with the integration within the Financial Regulation of four types of Community measure that did not require the preliminary adoption of a legal basis, namely pilot schemes designed to test the feasibility of an action, preparatory actions (or pilot schemes) designed to prepare the ground for specific legislative proposals, actions carried out by the Commission by virtue of its prerogatives (such as the communication policy of the European Commission), and measures relating to the administration of each institution (such as the European Parliament's plans to launch its own web TV channel).

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## 2. 'Distributive victories': the reconciliation of budgetary and political priorities

Apart from its 'institutional' victories, the European Parliament has also scored points in 'distributive' terms. The idea of 'distributive victories' corresponds to those areas in which the European Parliament has campaigned, with or against the Council, in the context of the budget. These victories were centre stage in the budgetary conflict of the 1970s and 1980s. The European Parliament even created new policies through the budget, such as aid for South American countries and various regional policy initiatives (the KONVER programme for the development of key defence areas, the URBAN initiative for the regeneration of urban areas and deprived neighbourhoods, and so on). The European Parliament still plays a pioneering role in the legislative sphere, exploiting the possibilities offered by pilot schemes and preparatory actions. New pilot schemes and preparatory actions are launched each year, some of which have given rise to permanent programmes.

In other areas, the European Parliament has chosen to defend policies that are underfinanced by the Council. This was the case for transport, an area in which the European

Parliament actively campaigned to increase the budget allocated to trans-European networks, as well as the multiannual programme for small and medium-sized enterprises (SMEs). However, it would not be accurate to portray the European Parliament as a staunch supporter of costly policies in opposition to a miserly Council of Ministers. In fact, on several occasions, it has acted in concert with the Council to promote common interests. This was notably the case with the programme for peace and reconciliation in Northern Ireland and, more recently (in 2007), the Galileo programme and its financing, which led to an overhaul of the financial framework that was initially opposed by some Member States, but which the European Parliament vigorously defended throughout the budgetary procedure.

Finally, the Parliament has played a key role at all levels of the decision-making process: in negotiations of the various financial frameworks (financial perspective) – during which the European Parliament has nearly always managed to renegotiate amounts fixed in advance by the Member States – and in the various annual budgetary procedures, and finally when it has called for a revision of the financial perspective in response to the objectives and priorities of the European Union.

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### 3. The discharge procedure: the budget as a means of political control

At the end of each year, all institutions are required to submit an audited statement of their accounts to the European Court of Auditors. Created in 1975, the Court of Auditors is charged with verifying the legality, regularity and sound financial management of all Community revenue and expenditure. It is on the basis of this examination that the Court of Auditors submits a report each year on the budgetary implementation of each institution as well as a ‘statement of assurance on the reliability of the accounts and the legality and regularity of the underlying transactions’. At the same time, since 1975 the European Parliament has had to decide each year whether or not to give a discharge to the Commission. By doing so, the EP voices its satisfaction concerning the implementation of the budget by the European Commission<sup>202</sup>. From 1970 until 1975, it shared this competence with the Council, although since 1975 the Council has only had to issue an opinion on the discharge, with the Parliament having the final say.

Far from being a purely formal budgetary procedure, the discharge has become a means for the Parliament to monitor the activities of the European Commission. Article 206 of the 1993 EC Treaty states that: ‘The Commission shall take all appropriate steps to act on the observations in the decisions giving discharge and on other observations by the European Parliament relating to the execution of expenditure ... At the request of the European Parliament or the Council, the Commission shall report on the measures taken in the light of these observations and comments and in particular on the instructions given to the departments which are responsible for the implementation of the budget’.

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<sup>202</sup> This procedure examines the implementation of the budget for the last but one financial year. In 2008 therefore, the European Parliament will analyse the implementation of the 2006 budget.



The discharge thus allows the Parliament (mainly in the context of the Committee on Budgetary Control, or COCOBU) to exercise control over the activities of the European Commission and to engage in a frank and open debate on the political and budgetary priorities of the Union.

The use of the discharge procedure and the way it is applied have given rise to differing interpretations by the European Parliament and the European Commission. The Parliament had effectively assumed the right to refuse to give discharge to the Commission. This occurred in 1984, when the Parliament refused to give the Commission discharge for 1982, thereby expressing its disapproval of the European Commission, which had not made sufficient use of its right of initiative in order to further European integration.

Similarly, Parliament regularly defies the Commission by threatening to postpone its vote on the discharge. It did this in 1987, 1992 and 1994, as well as during the 'Santer crisis' in 1998 and 1999, when the decision had far-reaching implications. In 1999, it refused to give the discharge for 1996, after deciding in 1998 to postpone the vote on the 1996 financial year. By refusing, the Parliament wanted to signal its dissatisfaction about the irregularities and the accusations of fraud against the Santer Commission. That same year, for the same reason and despite the resignation of the Santer Commission, it again refused to give the discharge for the 1997 financial year.

In 2002, the Rules of Procedure of the European Parliament were amended. The Parliament would now vote in April each year on whether to give or postpone the discharge. If it decided to postpone the vote, a new (and final) vote would take place in October. This two-step procedure was designed to place maximum pressure on the Commission to take adequate measures between the April and October votes. In 2008, the discharge procedure underwent numerous changes following the publication of the Court of Auditors report in November 2007, in which the Court was highly critical of the implementation of the Structural Funds in 2006. The Commission had to show that it was willing to cooperate and agreed to take immediate steps to improve the situation.

### **A.3. The Treaty of Lisbon and the future of the European Parliament's budgetary powers**

The Treaty of Lisbon, signed on 13 December 2007, will signal major changes for the current procedure. After Irish voters rejected the Treaty during the referendum on ratification, a solution must be found so that it can come into force.

In practice, the changes remain limited, as the new Treaty will only formalise practical arrangements established over the past 20 years. The Treaty repeals the MRI and will officially recognise the annual spending quotas fixed on a multiannual basis (Article 270a of the Treaty of Lisbon). The most important aspect for the European Parliament is the suppression of the distinction between compulsory and non-compulsory expenditure,

which in reality means that it can now ‘codecide’ on an equal footing with the Council for all expenditure, including agricultural expenditure.

It is still too early to say whether these changes will have a major impact on the annual budgetary procedure. The two branches of the budgetary authority will each have to make further concessions in order to reach an agreement at the end of the procedure. This will be even more evident as the budgetary procedure itself will undergo profound changes. A conciliation procedure of a maximum of 21 days (as for the third reading stage in the legislative procedure) will effectively replace the current two-reading system (the Council currently proceeding with the second reading before the EP).

The European Parliament therefore has much greater budgetary powers than it did in 1970. Totally absent at first from the budget ‘battlefield’, the European Parliament has managed to take centre stage, using its powers wherever it can to win victories that are both institutional and distributive. It now adopts decisions in both budgetary and legislative areas on an equal footing with the Council of Ministers. Having constantly defended the budgetary priorities of European citizens, its final ‘battle’ will now be to obtain powers in relation to revenue, which remains the exclusive preserve of the Member States.

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## **B. Legislative powers**

As mentioned earlier, the European Parliament, in the early years of its existence, had no more legislative powers than it did budgetary powers; indeed it took even longer for it to obtain legislative powers. As we have seen, the European Parliament found itself in a situation where the only way that it could meet its legislative goals was through the budget, and where its strategy consisted of seeking a solution to what it considered to be an imbalance between its budgetary and its legislative powers. However, the Single European Act (SEA) provided the momentum for increasing the legislative powers of the European Parliament. The SEA marked a turning point in the perception of the EP’s legislative role, acting as a springboard for its future involvement.

The EP for its part was ready to rise to these challenges and endeavoured to use its new powers responsibly. It was granted increasing responsibility in a relatively short space of time. The European legislative process has thus witnessed changes on an unprecedented scale over the last 20 years, the role of the European Parliament being very different today from what it was before the adoption of the SEA.

### **B.1. Consultation and ‘right of postponement’**

At first, the involvement of the European Parliament in the Community’s legislative affairs was limited to the right to be consulted in certain areas. The Treaty establishing the European Coal and Steel Community (ECSC, 1952) made no provision for any



legislative powers of the European Parliament, unlike subsequent treaties. The Treaty establishing the European Atomic Energy Community (EURATOM, 1957) contained 11 articles prescribing consultation with the European Parliament, while the Treaty establishing the European Economic Community (EEC, 1957) made provision for this right of consultation in 22 of its articles.

In practice, consultation meant (and still means) that the Council is obliged to listen to the European Parliament before reaching a decision on a proposal by the Commission, although it is in no way obliged to adopt the opinions expressed. The consultation procedure is not described in any particular article of the European treaties, but in the practical arrangements that form the legal basis for the adoption of rules. The procedure begins with a proposal from the Commission on which the European Parliament expresses an opinion based on a majority of the members present (who generally table amendments to the text), before the Council reaches its decision. To begin with, the Council paid little attention to the position of the European Parliament. In many cases, the Council had already reached a political compromise before the European Parliament submitted its opinion on a particular subject, and simply waited for the European Parliament to submit its opinion before adopting the final act.

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From the outset therefore, the consultation procedure mainly represented a symbolic power of the European Parliament which in no way corresponded to the legislative powers that the parliaments of the EU Member States generally had. In the early days of its existence, the European Parliament thus appeared to be a parliament with very few powers.

However, as it did with its other competences, the European Parliament did its utmost to take full advantage of its right to be consulted, notably by joining forces with the Commission in an attempt to influence the final decisions of the Council. It put pressure on the Council so that the provisions of the Treaty would be applied<sup>203</sup>, allowing the Commission to incorporate the EP's amendments in a revised proposal submitted to the Council<sup>204</sup>. To increase the pressure on the Commission, in 1964 the European Parliament made a formal request to the Commission to notify it of the accepted amendments, and more specifically to explain why a particular proposal by the European Parliament has been rejected. The Parliament even went so far as to adopt a resolution in October 1966 specifically inviting the Commission to incorporate its amendments in a revised proposal.

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<sup>203</sup> Article 149(2).

<sup>204</sup> Kreppel, A., *The European Parliament and Supranational Party System. A Study of Institutional Development*, Cambridge University Press, Cambridge, 2002. The advantage of this strategy for the European Parliament following the introduction of qualified majority voting by the Single European Act resided in the fact that the amended proposal of the Commission required the unanimity of the Council in order to be amended, while it could be adopted by a qualified majority. However, this strategy had limited use. In reality it is often impossible for the Commission to oppose a decision taken by the Council by qualified majority for political reasons.

## 1. The ‘right of postponement’

It was only a few years later that the consultation procedure would be put to the test with the landmark ‘Isoglucose’ ruling. The European Parliament had decided to take the Council to court since the Council had not only reached a political compromise before the European Parliament could resubmit its opinion, as it had done many times before, but had actually adopted a final decision. The Court of Justice took the side of the European Parliament, annulling the legislative instrument in question. More specifically, the Court defined the provisions relating to the consultation as follows:

*‘... the means which allows the Parliament to play an actual part in the legislative process of the community. Such power represents an essential factor in the institutional balance intended by the Treaty’* (European Court of Justice, cases C 138/79 and C 139/79).

The Isoglucose ruling was a landmark ruling because it established the necessity of the European Parliament being involved in the political process in areas for which the Treaty required it to be consulted. In the case in question, the European Parliament had begun negotiations on the dossier, but had decided to postpone the final debate and refer the matter back to committee. The ruling stated that, even if the consultation procedure granted it only limited direct powers concerning the outcome of the policy as decided by the Council, it still granted it a right of postponement. Following the Isoglucose ruling, the European Parliament ‘formalised’ this right of postponement in its Rules of Procedure, assuming the right to refer a matter back to committee instead of taking a final vote if the Commission refused to adopt the EP’s amendments. This right of postponement, which still features in the Rules of Procedure of the European Parliament (Rule 53), can serve as useful leverage for applying pressure on the Council, particularly when the legislative proposal in question cannot be delayed further.

The reason why consultation can turn into the European Parliament having a right of postponement resides in the procedure itself, which does not allow the Council to set a date by which the Parliament must have submitted its opinion. In this the consultation with the European Parliament differs for example from the consultation with the European Economic and Social Committee, which has to meet deadlines if it wants its position to be considered.

That said, a later ruling of the Court, this time on the subject of enlargement of the generalised system of tariff preferences, clearly stated that the European Parliament could not postpone matters indefinitely<sup>205</sup>. In the latter case, the European Parliament tried to obtain the annulment of a regulation adopted by the Council on the grounds that it had not yet submitted its opinion. Unlike the Isoglucose case, the Court did not agree with the EP’s interpretation, but instead found that the EP had not demonstrated sincere cooperation during the legislative procedure. The measure required an urgent decision as it had not been introduced until the end of October 1993 and the regulation in ques-

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<sup>205</sup> Case C 65/93.

tion expired at the end of that year. Despite this, the European Parliament had decided to postpone the examination on two occasions, which meant that it would effectively be unable to submit an opinion before the following year, when the regulation in force would already have expired. Given these factors, the Court rejected the application of the European Parliament to annul the Council's decision, thus ruling that the European Parliament could not suspend cases indefinitely<sup>206</sup>.

## 2. Optional consultation versus compulsory consultation

- The scope of the consultation procedure has widened over the years, the **Council** having decided to proceed with voluntary consultation with the European Parliament in areas for which the Treaty does not make provision for formal consultation<sup>207</sup>. In March 1960, the Council promised the European Parliament to consult it on major legislative issues, even though the Treaties did not specifically make provision for this. In February 1964, provisions other than legislative provisions on key issues were included (although their exact content was not defined); in November 1968, the Council also began to consult the European Parliament on non-legislative texts. Consequently, by 1975 the European Parliament was consulted on a number of issues representing the core legislative agenda.

Apart from these optional consultations, the Council also showed more interest in cooperating with the European Parliament. In several letters written in November 1969, March 1970 and July 1970, it promised the European Parliament that, upon request, it would immediately inform it of the reasons why it had not taken the EP's opinion into account. It also agreed in 1973 that it would endeavour to consult the European Parliament within a week of receiving the Commission's proposal and as a rule to wait for the opinion of the Parliament before engaging in a debate on the proposal in question within the Council, contrary to what had so often happened in the past.

- The **Commission** also assumed a series of new obligations towards the European Parliament in the early 1970s. For example, at the 1973 Summit, it promised to send its proposals directly to the European Parliament and not just to the Council, so that the Parliament did not have to postpone its internal debate until it had received the proposals from the Council. The Commission also promised to disclose its opinion on the Parliament's amendments and to consult it on a wide range of issues. Finally, the matter of further consultation was addressed with the Commission and the Council. Both agreed on the need to consult the Parliament again on proposals that had significantly changed since the EP was first consulted on them. Together, all of these commitments allowed the EP to consolidate its position in the procedure.

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<sup>206</sup> Corbett, R., Jacobs, F. and Shackleton, M., *The European Parliament*, John Harper, London, 2007.

<sup>207</sup> *Ibid.*

- The scope of the consultation procedure expanded over the years with 'optional consultation', but also with new areas of competence assigned to the Community. For example, the Treaty of Amsterdam made provision for consultation rights for the EP in eight new articles, and also added a new form of consultation for issues coming under the third pillar on police and judicial cooperation. This type of consultation differed from the general procedure, since the Treaty allowed the Council to set a time limit (a minimum of three months) in which the European Parliament had to submit its opinion. In the absence of a response from the European Parliament within this time, the Council could continue with the procedure and adopt the decision.

Despite its wider scope, consultation had to make way over the years for new cooperation and codecision procedures, as we will see later on. Consultation still applies to key areas of Community competence such as the common agricultural policy and the customs union, as well as to issues such as the harmonisation of indirect taxes and excise duty, provisions governing European citizenship and binding measures to tackle discrimination. Nevertheless, the ratification of the Treaty of Lisbon will further reduce the number of areas subject to the consultation procedure, transferring these to the codecision procedure. Codecision will become the ordinary legislative procedure, while consultation will simply be one of the two 'special' legislative procedures.

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## **B.2. Agenda-setting in the cooperation procedure**

The legislative powers of the European Parliament made a quantum leap with the Single European Act, which introduced the cooperation procedure. Since the Treaty of Amsterdam, the scope of this procedure had been assimilated by the codecision procedure, except for four articles relating to Economic and Monetary Union<sup>208</sup>. This procedure will disappear altogether with the Treaty of Lisbon. However, it merits our attention, because without it the European Parliament would not have become a colegislator in its own right.

The EP had hoped to get more from the Single European Act than what the cooperation procedure initially seemed to offer it. However, over the years, it realised that cooperation was far from being devoid of interest. On the other hand, being able to prove to the Council, mainly through efficient management of its own organisation, that it could be a responsible legislative partner, helped the Parliament gain other legislative powers. Although cooperation only concerned a small part of European legislation, it involved some of the key legislative instruments that at the time were essential for the achievement of the single market<sup>209</sup>. Therefore, around one third of legislation relating to the single market was subject to the cooperation procedure. One of the explanations for

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<sup>208</sup> These provisions are: Article 99(5) (multilateral surveillance procedure), Article 102(2) (definitions for the application of the prohibition of privileged access), Article 103(2) (definition of guarantees against Community liability) and Article 106(2) (measures to harmonise the denominations and technical specifications of all coins intended for circulation).

<sup>209</sup> Corbett, R., Jacobs, F. and Shackleton, M., *The European Parliament*, John Harper, London, 2007.

the success of the European Parliament is the fact that the procedure was introduced at the same time as qualified majority voting in the Council. In the words of political commentator George Tsebelis<sup>210</sup>, this gave the European Parliament the possibility, in certain circumstances, of controlling the political agenda by acting as the conditional ‘agenda setter’.

Professor Tsebelis is referring to the right of the European Parliament to submit amendments that the Council can reject only based on unanimity, whereas if they are accepted by the Commission, they can be adopted by qualified majority. In other words, while legislative texts amended by the EP were easier to adopt than to reject, other legislative texts – such as the Benzene Directive – rejected by the European Parliament could not be annulled by the Council (see below).

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To clarify this point, it is worth taking a quick look at the cooperation procedure. The first stages are similar to the consultation procedure. The procedure begins with a proposal from the Commission on which the European Parliament issues an opinion before it is debated by the Council. However, while the decision of the Council was definitive in the consultation procedure, the same cannot be said for the cooperation procedure. The Council instead adopts a common position, sent to the European Parliament for a second reading. At this point, three options are available to the European Parliament: it can approve the text (or do nothing, which amounts to the same thing), reject it by an absolute majority of its members, or table amendments to it, again based on an absolute majority of its members. If Parliament decides to reject the text, unanimity of the Council is required if Parliament’s decision is to be overturned and the text adopted. If the European Parliament decides to table amendments to the text, the Commission will draw up a revised proposal incorporating those amendments that it accepts. The Council can modify the proposal only based on unanimity, which in theory gives the Commission the role of ‘gatekeeper’ and possibly even a certain amount of influence in the European Parliament, depending on the position that both the Commission and members of the Council adopt. In short, if the Council does not reach unanimity on the issue and if the EP’s amendments have the support of the Commission, the European Parliament can have more influence over the final decision.

In practice, the European Parliament has managed to use the cooperation procedure to exert this influence by tabling amendments that end up being approved, thanks to the

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<sup>210</sup> Tsebelis, G., ‘The Power of the European Parliament as a Conditional Agenda Setter’, *American Political Science Review*, 88(1), 1994, pp. 128-42.

support of the Commission, while the Council remains divided<sup>211</sup>. The EP has also tried to use this prerogative to reject proposals, although it has made limited use of this option. Most of the time, the European Parliament has failed to secure a sufficient majority to reject the proposal. However, it has succeeded in seven cases, achieving its objectives for some of them. This is what happened, for example, with the Benzene Directive<sup>212</sup>, where the Council failed to obtain unanimity to overrule the European Parliament, as well as with the directives on sweeteners for use in food (May 1992)<sup>213</sup>, the incineration of hazardous waste (November 1994) and the disposal of hazardous waste (May 1996), when the Commission decided to withdraw proposals that had previously been rejected by the European Parliament.

However, there have been some examples, such as the proposal on the limitation of emissions of certain pollutants into the air from large combustion plants (November 1994), where the Council adopted the final text by disregarding the opposition of the European Parliament. Empirical data about the degree of success of the European Parliament in the cooperation procedure therefore seems mixed, although the Parliament realised that this procedure was much more useful than it had initially thought. We should note that the opposition of the European Parliament in this procedure was justified not only by the need to influence actual policy, but also from an institutional point of view. For example, a proposal on energy consumption was rejected by the European Parliament because the Council had turned the proposed comitology procedure into a type IIIb regulatory procedure, which in fact would have left the Commission very little room for manoeuvre to enforce the legislation. It should come as no surprise to learn that institutional bickering between the European Parliament and the Council continues today in the context of the codecision procedure.

The formal changes ushered in by the cooperation procedure have had a considerable impact on relations between the European Parliament and the Council. Whereas up until that point the Council had shown little interest in the European Parliament, the cooperation procedure signalled the start of a closer relationship between the two

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<sup>211</sup> Earnshaw, D. and Judge, D., 'The Life and Times of the European Union's Co-operation Procedure', *Journal of Common Market Studies*, 35(4), 1997, pp. 543-64; Judge, D., Earnshaw, D. and Cowan, N., 'Ripples and Waves: The European Parliament and the European Community Policy Process', *Journal of European Public Policy*, 1(1), 1994, pp. 27-52; Hubschmid, C. and Moser, P. 'The Co-operation in the EU: Why was the EP influential in the Decision on Car Emission Standards?', *Journal of Common Market Studies*, 35(2), 1997, pp. 225-42; Tsebelis, G., 'Conditional Agenda-Setting and Decision-making inside the European Parliament', *Journal of Legislative Studies*, 1(1), 1995, pp. 65-93; Tsebelis, G. and Kalandrakis, A., 'The European Parliament and Environmental Legislation: The Case of Chemicals', *European Journal of Political Research*, 36(1), 1999, pp. 119-54.

<sup>212</sup> OJ C 290, 14.11.1988.

<sup>213</sup> The withdrawal of the proposal was surrounded by uncertainty, with the Commission leaving the proposal before the Council while Commissioner Bangemann announced to MEPs that the Commission was going to withdraw it. In June 1992, it submitted three new proposals reprising the content of the existing proposal; this could be considered as a de facto withdrawal. Cf. Earnshaw, D. and Judge, D., 'The European Parliament and the Sweeteners Directive: From Footnote to Inter-Institutional Conflict', *Journal of Common Market Studies* 31(1), 1992, pp. 103-116.

institutions. Naturally the Commission continued to act as the main liaison, but the procedure allowed the EP and the Council to get to know each other and to cooperate more effectively. The fact that the Council could no longer disregard the positions of the Parliament when it was divided on an issue and the fact that the EP enjoyed the backing of the Commission encouraged the Council to be more disposed towards cooperating with the European Parliament.

### **B.3. The right of veto in the codecision procedure**

Yet it was not until the introduction of the codecision procedure that the European Parliament became fully involved in the legislative process and began to interact with the Council in a more bilateral context. This procedure was introduced by the Treaty of Maastricht and applied to a total of 15 legal bases, or approximately one quarter of the legislative texts adopted by the European Parliament<sup>214</sup>. Throughout the various treaties, there are now 44 areas that come under the codecision procedure (mainly the internal market, most of the environmental provisions, the research and development framework programme, certain social provisions, consumer protection and public health).

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However, sectors such as agriculture, fisheries, taxation, trade, state aid, competition and Economic and Monetary Union remain excluded, as do instruments adopted under the second and third pillars. With each new treaty, the scope of the procedure has expanded, a process that culminated in the Treaty of Lisbon. As a corollary to this, the number of closed codecision cases has steadily risen over the years. In total, 165 acts were adopted in accordance with the provisions of the Treaty of Maastricht (1993-99), while no fewer than 403 cases were closed under the Amsterdam and Nice Treaties (1999-2004). There is no indication that this figure has fallen in the current parliamentary term: 196 procedures were concluded in the first three years (July 2004 to July 2007)<sup>215</sup>.

Although the Treaty of Lisbon in no way alters the formal structure of the procedure (as set out in Article 251 of the current Treaty), it will extend codecision to virtually all areas in which the Council decides by qualified majority. All in, 40 new codecision areas will be added, while the procedure will be renamed the 'ordinary legislative procedure of the EU'. It will apply to new areas of Community action such as humanitarian aid, European space policy and judicial cooperation in civil matters having cross-border implications. In addition, some measures currently covered by the assent procedure, such as matters relating to the Structural Funds and Cohesion Fund, will be transferred to the codecision procedure. Finally, codecision will also be extended to areas that are currently covered by the consultation procedure. For example, in the field of justice and home affairs, it will soon embrace border control, asylum, immigration, Eurojust and Europol<sup>216</sup>. Finally, essential legislative measures in the fields of agriculture and trade will also be subject to codecision.

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<sup>214</sup> Corbett, R., Jacobs, F. and Shackleton, M., *The European Parliament*, John Harper, London, 2007.

<sup>215</sup> EP (2007), 'A Guide to how the Parliament co-legislates', DV\684001EN.doc.

<sup>216</sup> European Policy Centre (2007), *The European Parliament: Reassessing the Institutional Balance*.



## 1. The codecision procedure

The ‘Maastricht version’ of the codecision procedure resembles the cooperation procedure until second reading. After the Council has adopted its common position at second reading, the European Parliament can still continue its examination of the text and table amendments, as in the cooperation procedure. The key difference is that whereas amendments that were not incorporated into the amended proposal of the Commission in the cooperation procedure could be left out, codecision requires the Council to accept them all. Failing this, the Council and the European Parliament must meet face to face within a Conciliation Committee at the third reading stage. The Commission always expresses its opinion on the EP’s amendments at second reading, an opinion that still counts, given that the Council needs a unanimous position in order to adopt amendments by the Parliament that the Commission opposes<sup>217</sup>. However, if there is a single amendment on which the Council cannot obtain the necessary majority, the act concerned cannot be adopted at second reading and codecision will be needed. Generally, the Council tends to reject the amendments of the European Parliament supported by the Commission so that it can avoid a situation in which it might have to decide by qualified majority. With its hands tied and forced to adopt decisions based on unanimity, the Council is in a stronger position when it comes to bargaining with the European Parliament at third reading, the final stage.

The Conciliation Committee set up for the codecision procedure differs from the Conciliation Committee that handles the budgetary procedure. Instead it consists of an ad hoc committee composed of representatives of the Council and of the Parliament (currently 27 from each institution), tasked with finding a compromise within six weeks (with the possibility of extending this by two weeks)<sup>218</sup>. To reach an agreement, a compromise must be found and supported by a qualified majority of a delegation from the Council and a majority of representatives from the European Parliament. If an agreement is reached, the compromise (referred to as the ‘joint text’) must then be adopted by qualified majority of the Council of Ministers (except where unanimity is required) and by simple majority of the European Parliament within six weeks (with the possibility of extending this by two weeks). Whether or not the Council supports the final compromise has no impact on the majority required in the Council in order to adopt the act.

If there is an institution that has suffered as a result of the introduction of codecision, it is without doubt the Commission, which has seen its role as mediator increase, helping

<sup>217</sup> Currently, the Treaty contains three articles requiring the unanimity of the Council, regardless of the opinion of the Commission. In the procedure provided by the Maastricht Treaty, it might also call on the Conciliation Committee immediately after the adoption of the common position of the Council, if the Parliament indicates that it intends to reject this. This ‘minor conciliation procedure’ has only been used twice (engine power in 1994 (COD 1991 371) and European capital of culture in 1999 (COD 1997 0290)).

<sup>218</sup> While the Maastricht Treaty did not set a deadline for convening the Conciliation Committee, the Amsterdam and Nice Treaties state that the Committee must be convened within six weeks (with the possibility of extending this by two weeks) after the Council has declared that it cannot accept all of the European Parliament’s amendments at second reading.



the Council and the Parliament reach a compromise during the procedure, although it has fewer formal powers in codecision than it does in cooperation. In short, the European Parliament no longer needs the Commission to have its amendments accepted by the Council.

## 2. The Council's ability to confirm its common position

The European Parliament was bound to express a certain disappointment at first with codecision, exactly as it had done with cooperation before it. Although it was the first time that the procedure had required the Council to agree on a compromise with the European Parliament, it also allowed the Council to re-establish its previous position in the event that it was unable to reach an agreement with the European Parliament within the Conciliation Committee. This position would become law unless the European Parliament managed to obtain an absolute majority to override the Council in the six weeks that followed the confirmation.

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In practice, this imbalance was less serious for the European Parliament than was first thought. The Council only actually confirmed its previous position once, not long after the introduction of codecision. This occurred on the subject of a proposal on voice telephony (COD 1994 437), when differences of opinion surrounding the question of comitology prevented any agreement from being reached within the Conciliation Committee. Following the confirmation of the Council, the European Parliament managed to obtain the absolute majority it needed to annul this and to render it null and void<sup>219</sup>. In addition, the European Parliament added Rule 61 to its Rules of Procedure, according to which it would in future ask the Commission to withdraw its proposal in the event of failure of the conciliation negotiations. Failing this, and if the text was referred again by the Council, the rule stated that the European Parliament should automatically table a motion rejecting the proposal, regardless of whether the Council text was the one it preferred compared with the status quo. It thus declared itself willing to sacrifice short-term political gains in its fight for long-term institutional advances. Although this new article lacked the formal status that would allow the European Court of Justice to enforce its implementation, it was not without impact<sup>220</sup>.

During the negotiations over the Treaty of Amsterdam, the difficulties involved in the voice telephony dossier largely explained the suppression of the provisions of the Treaty allowing the Council to confirm its common position. Since May 1999, an act has auto-

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<sup>219</sup> European Parliament (1995), 'Delegations to the Conciliation Committee (1995): Activity Report for the second half of 1994'.

<sup>220</sup> Hix, S., *The Political System of the European Union*, Palgrave MacMillan, London, 2005.

matically become null and void in the absence of an agreement between the European Parliament and the Council within the Conciliation Committee<sup>221</sup>.

### 3. Did codecision increase the European Parliament's influence in the legislative procedure?

In the early years that followed the introduction of the codecision procedure, theoreticians and practitioners clashed over the same question: did codecision really help strengthen the legislative powers of the European Parliament?

Contrary to the prevailing opinion, Professor Tsebelis defended the idea that the influence of the European Parliament over legislative acts did not increase under codecision, despite its right of veto. He believed that the codecision procedure caused the European Parliament to lose the conditional control over the political agenda that it had enjoyed in the context of the cooperation procedure (see above). In other words, the European Parliament would no longer be able to submit proposals for amendments that, if they were adopted by the Commission, would be easier for the Council to accept than to amend (as qualified majority was sufficient to accept them, whereas unanimity would be required to reject them)<sup>222</sup>.

Other theoreticians with a different interpretation of decision-making procedures have criticised this conclusion<sup>223</sup> as do a number of policymakers<sup>224</sup>. Indeed, theoretically, the Commission could adopt all amendments of the European Parliament at second reading during the cooperation procedure in order to facilitate a Council decision by qualified majority (whereas under codecision, there is still the possibility of an agreement within the Conciliation Committee). In practice, however, the Council reached a gentleman's agreement whereby the Member States would only accept the amendments of the European Parliament based on unanimity, at second reading. This automatically prevented the qualified majority rule from being used to adopt the amendments of the European Parliament accepted by the Commission (in both the cooperation and codecision procedures). Furthermore, since the Treaty of Amsterdam, the Council has no longer had the option of putting pressure on the European Parliament to accept mini-

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<sup>221</sup> In a later case that occurred after the signing of the Treaty of Amsterdam but before it came into force, namely the Transferable Securities Directive (COD 1995 188), the European Parliament and the Council failed to reach an agreement within the Conciliation Committee, again due to differences of opinion on the question of comitology. Expecting the European Parliament to oppose it, the Council decided not to confirm its common position on transferable securities (see EP (1999a), 'Delegations to the Conciliation Committee: Activity Report from 1 November 1993 to 30 April 1999').

<sup>222</sup> Tsebelis, G., 'The Power of the European Parliament as a Conditional Agenda Setter', *American Political Science Review*, 88(1), 1994, pp. 128-42.

<sup>223</sup> Scully, R.M., 'The European Parliament and the Co-Decision Procedure: A Reassessment', *Journal of Legislative Studies*, 3(3), 1997, pp. 58-73; Moser, P., 'The European Parliament as a Conditional Agenda Setter: What Are the Conditions? A Critique of Tsebelis (1994)', *The American Political Science Review*, 90(4), 1994, pp. 834-38; Crombez, C., 'The Co-Decision Procedure in the European Union', *Legislative Studies Quarterly*, 22 (1), 1997, pp. 97-119.

<sup>224</sup> Corbett, R., 'Academic Modelling of the Codecision Procedure: A Practitioner's Puzzled Reaction', *European Union Politics*, 1(3): 2000, pp. 373-81; Corbett, R., 'A response to a reply to a reaction (I hope someone is still interested!)', *European Union Politics*, 2(3), 2001, pp. 361-66.

malist solutions instead of causing the legislative act to collapse. Therefore, the conditions indicated by Professor Tsebelis do not actually exist during negotiations.

In addition, the European Parliament's own statistics show that its amendments adopted at second reading are more likely to be accepted in the context of the codecision procedure than in the cooperation procedure. In the former, 47% of them were adopted, compared with 21% in the latter<sup>225</sup>. The rate of adoption of parliamentary amendments at second reading is high, bearing in mind that a number of them are first-reading amendments that were rejected. In practice, this derives from informal discussions at first reading. In fact, Rule 62 of the Rules of Procedure of the European Parliament limits the types of amendment that can be tabled at second reading. From an analysis carried out by Kreppel of the same data, it emerges that the Parliament has a better success rate with codecision than with cooperation, even allowing for the influence of the Commission<sup>226</sup>. As a rule, it is better to treat with caution any conclusions on the influence of the European Parliament based solely on the number of amendments accepted. Specifically, simple additions do not usually take account of the *qualitative* importance of the various amendments. From a qualitative point of view, the European Parliament has acquired considerable influence over the content of the environmental legislation of the European Union (where it can impose its amendments on a Council often split between 'green' countries and those that are less 'green'). The same applies for directives relating to consumer protection and liberalisation of the energy, post and telecommunications markets. Finally, the substantial changes made to the Commission proposals relating to the freedom to provide services (the Bolkestein Directive) and the REACH regulation demonstrate the influence of the European Parliament on the quality of the legislative acts under codecision<sup>227</sup>.

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#### 4. The relative influence of the European Parliament and the Council in the context of codecision

Another important point is the relative influence of the Council and the European Parliament in the context of the codecision procedure. According to a theoretical study on the Conciliation Committee carried out by Napel and Widgren, although the legislative procedure places the Council and the Parliament on a par with each other, the Council remains the dominant legislative body<sup>228</sup>. It follows from this that the Council has more to gain from being more conservative than the Parliament and is therefore less disposed to modify the existing legislative situation.

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<sup>225</sup> EP (1997), 'Delegations to the Conciliation Committee: Activity Report from 1 August 1996 to 31 July 1997', PE 223.209.

<sup>226</sup> Kreppel, A., 'Moving Beyond Procedure. An Empirical Analysis of European Parliament Legislative Influence', *Comparative Political Studies*, 35(7), 2002, pp. 784-813.

<sup>227</sup> See the numerous press articles highlighting the creation of a real Parliament.

<sup>228</sup> Napel, S. and Widgren, M., (2003), 'Bargaining and Distribution of Power in the EU's Conciliation Committee'. CESifo Working Paper No 1029.

According to Tsebelis and Garrett, although the Council's ability to re-establish its common position if the Conciliation Committee failed to reach an agreement in the co-decision procedure (under the Treaty of Maastricht) explained the fact that it carried greater weight than the European Parliament initially, the removal of this possibility by the Treaty of Amsterdam placed the European Parliament and the Council on an equal footing as legislators<sup>229</sup>. Furthermore, the empirical analysis carried out by König et al to determine who came out top in conciliation suggests that the Parliament often defeated the Council<sup>230</sup>.

Figures published by the Secretariat of the European Parliament also confirm that the EP generally emerges as the victor in the conciliation procedure. In the 11 dossiers settled by conciliation between July 2004 and December 2006, the European Parliament tabled 311 amendments at second reading. Of these, 24% were adopted without change by the Council, 54% were adopted as compromise amendments in the final text and only 21% were withdrawn<sup>231</sup>. Finally, there are numerous examples that indicate the success of the EP in the codecision procedure. These include the Working Time Directive for the road transport sector (COD 1998 319), where the European Parliament managed, despite the open opposition of several Member States, to extend the scope of the directive to self-employed drivers (whereas the directive only initially applied to drivers working as employees). Corbett et al stress here that 'there is little question that without codecision it would have been impossible to overcome such opposition and to reach an agreement with the Council as a whole'<sup>232</sup>. In short, while codecision does not allow the European Parliament to impose its views as it would like, it provides it with the means of influencing the content of the legislative act, which it has often used to good effect.

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## 5. Infrequent use of the right of veto

It is interesting to note that the EP has rarely made use of its right of veto to block the legislative procedure. Of the 800 legislative dossiers adopted within the framework of the codecision procedure, only six have been rejected by the EP. The first two concerned voice telephony (COD 1994 437) and transferable securities (COD 1995 188), dossiers on which, as we saw earlier, the Conciliation Committee failed to reach an agreement.

In the three other cases, the joint texts accepted by the EP delegation to the Conciliation Committee were later rejected at the plenary.

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<sup>229</sup> Tsebelis, G. and Garrett, G., 'Legislative Politics in the European Union', *European Union Politics*, 1(1), 2000, pp. 9-36.

<sup>230</sup> König, T., Lindberg, B., Lechner, S. and Pohlmeier, W., 'Bicameral Conflict Resolution in the European Union. An Empirical Analysis of Conciliation Committee Bargains', *British Journal of Political Science*, 37(2), 2007, pp. 281-312.

<sup>231</sup> EP (2006), 'Conciliations and Codecision Activity Report', DV/651053.

<sup>232</sup> Corbett, R., Jacobs, F. and Shackleton, M., *The European Parliament*, John Harper, London, 2007, p. 230.

- *This initially concerned the 'Biotechnology' dossier (COD 1994 159)*, where the aim was to harmonise the legal protection of biotechnological inventions in the Member States. During the negotiations, an important issue concerning the non-patentability of the human body raised fundamental questions. A compromise was eventually reached and the Parliament managed to secure other changes. However, the report resulting from the conciliation procedure was still rejected, mainly on ethical grounds<sup>233</sup>. There was considerable uncertainty surrounding the issue, with the delegation to the Conciliation Committee struggling to identify exactly what could be accepted by Parliament. MEPs changed their minds after the second reading, following, on the one hand, intensive lobbying by environmental groups, and on the other, the election of a new European Parliament in the 1994 elections and the inflow of new members following enlargement of the EU<sup>234</sup>. The EP delegation had signalled that its ratification of the joint text depended on the Commission submitting a legislative proposal granting a derogation for farmers, 'allowing them to breed their own animals without having to pay licence fees for animal patents'<sup>235</sup>, which was submitted but judged inadequate<sup>236</sup>. The Council did not confirm its common position following the rejection by the European Parliament owing to differences of opinion between the Member States<sup>237</sup>. Since this rejection raised questions over the representative nature of the EP delegation, it was agreed that there would be closer cooperation between the political groups of the European Parliament and the delegation, mainly by ensuring better information for the groups<sup>238</sup>. Nevertheless, as we have seen there were several reasons for this rejection, and not just one.

- *The second dossier rejected by the European Parliament was the Directive on takeover bids (COD 1995 341)*, aimed at improving the clarity and transparency of solutions offered at Community level for the various legal problems raised by takeover bids and corporate restructuring. The EP delegation was divided over the issue of whether the board of directors should consult shareholders before resorting to 'defensive measures' during a takeover. Some MEPs believed that the final compromise was too far from the amendments adopted by Parliament at second reading. The delegation eventually accepted the compromise in extremis (by eight votes to six), but the subsequent plenary vote resulted in a tie (273 votes to 273, with 22 abstentions), so the text was invalidated<sup>239</sup>. Again, questions were raised over the representative nature of the delegation, with some believ-

<sup>233</sup> EP (1999), 'Delegations to the Conciliation Committee: Activity Report from 1 November 1993 to 30 April 1999'.

<sup>234</sup> Rittberger, B., 'Impatient legislators and new issue-dimensions: a critique of the Garrett-Tsebelis "standard version" of legislative politics', *Journal of European Public Policy*, 7:4, 2000, pp 554-75.

<sup>235</sup> EP (1999), 'Delegations to the Conciliation Committee: Activity Report from 1 November 1993 to 30 April 1999', p. 24.

<sup>236</sup> Commission (2000), 'The Co-decision Procedure. An information note on the operation of the co-decision procedure from Maastricht to Amsterdam', internal memo.

<sup>237</sup> Neuhold, C., 'Into the New Millennium: The Evolution of the European Parliament from Consultative Assembly to Co-legislator', EIPASCOPE, 2000:1, 2000, pp. 1-9.

<sup>238</sup> EP (1999), 'Delegations to the Conciliation Committee: Activity Report from 1 November 1993 to 30 April 1999'.

<sup>239</sup> EP (2001), 'Delegations to the Conciliation Committee: Activity Report from 1 August 2000 to 31 July 2001'.

ing that it had too many members of the same nationality, an important parameter in this specific case owing to differences in national corporate culture<sup>240</sup>.

However, according to the official report of the European Parliament, the plenary vote countered such allegations and the split delegation reflected the results at the plenary. Conversely, the report saw the failure as the result of the intransigent attitude of the Council and ineffective mediation by the Commission<sup>241</sup>.

Other sources indicate that the vote can also be understood as a sanction of the delegation by the Parliament, delegates having acted according to national interests instead of towing the party line of their respective political groups<sup>242</sup>. As for the biotechnology dossier, the rejection persuaded the Parliament to adapt some of its conciliation practices. Even more importantly, the Legal Service clarified the issue by stating that the delegation could adopt the joint text only by an absolute majority, and not by a simple majority<sup>243</sup>.

- *The third dossier rejected at the plenary after conciliation concerned a directive on market access to port services (COD 2001 47). The most controversial point concerned the authorisation granted to crew members, rather than only to professional dockers, for loading and unloading at ports. Again, only eight members of the delegation voted in favour of the final compromise<sup>244</sup>. Members opposed to the text argued that allowing non-professional dockers to load ships would compromise safety and that skilled workers risked losing their jobs. MEPs eventually rejected the joint text at the plenary<sup>245</sup>.*

- *The final text rejected by the Parliament differed from the previous cases to the extent that the rejection took place at second reading. This concerned a proposal for a directive on the patentability of computer-implemented inventions (software patents, COD 2002 47), in which the Commission wanted to 'harmonise' patent laws in the various Member States and to allow the European Patent Office to grant patents for such inventions. The proposal was the subject of an intensive campaign by both advocates of freeware and supporters of software patents. The European Parliament reworked the proposal at first reading by providing a strict framework for patentability. It feared that software patents would curb innovation and cause problems for firms. The Council then adopted a compromise proposal that annulled some of the European Parliament's amendments, on the*

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<sup>240</sup> Commission (2002), 'Codecision November 1993 to November 2002. An Analysis'.

<sup>241</sup> EP (2001), 'Delegations to the Conciliation Committee: Activity Report from 1 August 2000 to 31 July 2001', p. 14.

<sup>242</sup> Commission (2002), 'Codecision November 1993 to November 2002. An Analysis'.

<sup>243</sup> This clarification would have made no difference in this case, since the joint text only received eight votes.

<sup>244</sup> EP (2004), 'Delegations to the Conciliation Committee: Activity Report from 1 May 1999 to 30 April 2004'.

<sup>245</sup> These three cases cannot necessarily be considered as a sanction by the European Parliament of its delegation to the Conciliation Committee. Occasionally, some members of the delegation prefer to leave responsibility for the final decision with the plenary.



subject of which several countries later expressed reservations, however the Committee on Legal Affairs of the European Parliament asked the Commission to withdraw the proposal in question and to restart the procedure, but the Commission categorically refused. The common position of the Council was formally adopted. Instead of a major revision of the directive at second reading, the European Parliament decided to reject it by a crushing majority (648 votes to 14, with 18 abstentions), thereby terminating the procedure in question. The 'software camp' sensed that a sweetened proposal would not be satisfactory, whereas opponents of software patents categorically refused to make the slightest concession on the issue<sup>246</sup>.

Together these cases show that the European Parliament has been well aware of how to use its right of veto to influence the codecision procedure, even if it has not often resorted to it in practice. The mere fact that the European Parliament has this option has no doubt influenced the willingness of the Council to enter into serious negotiations with it<sup>247</sup>.

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- *It is interesting to note that on four occasions the European Parliament also rejected a Commission proposal at first reading, although the Treaty neither explicitly provides for, nor prohibits this.* The decision was not annulled in any of these cases, probably because the Commission and the Council knew that the European Parliament could only reject proposals at second reading, no matter what happened. This occurred for the first time with the proposal relating to rail freight services (COD 2004 50), against which the Parliament lodged an objection, holding the view that the measure would distort competition between rail and road freight operators. Similarly, a proposal on humane trapping standards (COD 2004 183) was rejected: the Parliament was so unhappy with the Commission's proposal that it did not even consider tabling amendments. No further measures have been taken thus far with regard to these two rejections by the European Parliament at first reading. In a third instance, a new proposal for port services (COD 2004 240) was also rejected following the failure of the first conciliation on the subject. The Commission withdrew the proposal and the procedure was thus terminated<sup>248</sup>. In the fourth case, the European Parliament rejected the proposal relating to the safety of oil stocks, which the Commission withdrew, also due to lack of interest from the Council.

## 6. Completion phase

Over the years, there has been a growing tendency to want to finalise the procedure as quickly as possible. Figure 1 shows that, although the conciliation procedure was used on average in 40% of codecision dossiers per year under the Maastricht Treaty,

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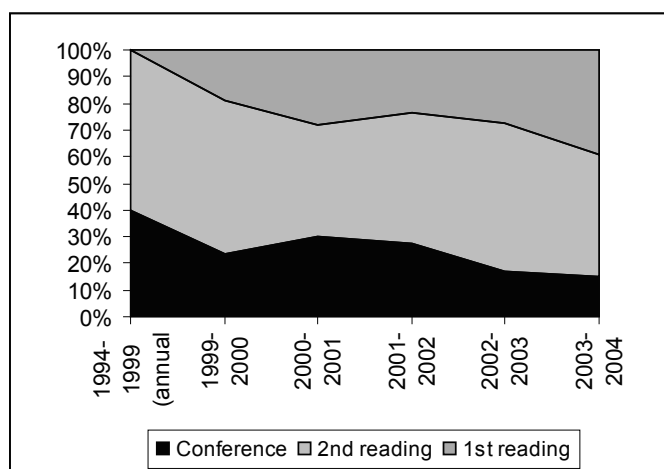
<sup>246</sup> EP (2007) 'A Guide to how the Parliament co-legislates', DV\684001EN.doc; 'IT groups win ruling on patents', *Financial Times*, 20.6.2005.

<sup>247</sup> Corbett, R., Jacobs, F. and Shackleton, M., *The European Parliament*, John Harper, London, 2007.

<sup>248</sup> EP (2007) 'A Guide to how the Parliament co-legislates', DV\684001EN.doc; EP (2006), 'Conciliations and Codecision Activity Report', DV/651053.

this figure fell to between 15% and 30% per year during the 1999-2004 parliamentary term. Several factors explain this tendency to want to conclude the procedure as soon as possible. In 1999, the option was introduced of completing dossiers at first reading, which had not been possible before. This development increased the level of contact between the EU institutions, thus leading to fast-track deals, often in a bid to conclude the legislative procedure as quickly and efficiently as possible. In addition, Mammonas suggests that the relatively high volume of completions at first reading during the last year examined below was unusual to say the least, and can be interpreted as the result of efforts made by the European institutions to complete dossiers before the final wave of enlargement on 1 May 2004 and the European elections in June 2004<sup>249</sup>.

Figure 1. Completion phase of codecision dossiers (%)



Source: EP (2004), 'Delegations to the Conciliation Committee: Activity Report from 1 May 1999 to 30 April 2004', PE 287.644, p. 13.

A study of the 401 cases of first reading carried out as part of the codecision procedure during the fifth parliamentary term of the European Parliament has revealed that the speed of completion of a dossier does not just depend on its technical nature or political importance, contrary to what the institutions initially believed. Instead it was found that the background to the negotiations played an essential role. Specifically, the tendency to complete dossiers at first reading has increased over the years, with the working relationship between the two colegislators becoming closer and negotiations between them becoming less unpredictable. The tendency to conclude the procedure more quickly denotes greater trust between the institutions. The European Parliament and the Council depend much less on the Commission than they did at the start of the cooperation procedure, and the two institutions are now accustomed to dealing directly with each

<sup>249</sup> However, there has been an increase in agreements at first reading over the last three years.



other. Finally, the results also show that completely new legislative acts, as well as directives, tend to be completed less quickly than other dossiers<sup>250</sup>.

The closer working relationship of the European Parliament and the Council is reflected in the growing tendency to adopt the EP's amendments not as they stand, but in the form of a compromise between the European Parliament and the Council. During the 1999-2004 parliamentary term, the proportion of amendments adopted without change fell from around 40% to around 20%, whereas the number of compromises based on amendments doubled, climbing from an average of 36% to 60% during the same period<sup>251</sup>.

In the three years that followed (July 2004 to July 2007), this tendency to conclude the procedure swiftly increased further (64% of dossiers were completed at first reading, 28% at second reading and only 8% following conciliation). This is also explained by the fact that during this period the Commission tabled a large number of proposals for the recasting or codification of the legislation in force<sup>252</sup>. The tendency for swift completion is particularly apparent in the fields of civil liberties and economic and monetary affairs, while the EP's Committees on the Environment, Public Health and Food Safety, as well as the Committee on Transport and Tourism, are more inclined to go through each of the three reading stages provided for by the codecision procedure<sup>253</sup>.

In addition, the current term has seen the introduction of a new mechanism for legislative negotiations: the early second reading agreement. These agreements are reached with the adoption of a common position of the Council; in other words, without an amendment being tabled by the European Parliament at the second reading stage. Conversely, the concerns expressed by the European Parliament are incorporated into the common position. This method allowed an agreement to be reached on the multiannual financial framework for all Community expenditure during the 2007-13 period. These types of agreement are now formally recognised in the Joint Declaration on the practical arrangements for the codecision procedure, which sets out the recommendations for conclusions at the 'common position of the Council stage'. During the first half of the parliamentary term, early second reading agreements represented 15% of conclusions<sup>254</sup>, a figure that remained the same in the following year, as Table 1 shows. Early second reading agreements are particularly worthwhile for the European Parliament, because it is often easier for Parliament to convince the Council to incorporate its opinion at this stage, before it adopts its official position.

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<sup>250</sup> Rasmussen, A., 'Time choices in bicameral bargaining: Evidence from the co-decision legislative procedure of the European Union', a working paper of the European University Institute, 2008.

<sup>251</sup> Corbett, R., Jacobs, F. and Shackleton, M., *The European Parliament*, John Harper, London, 2007.

<sup>252</sup> EP (2006), 'Conciliations and Codecision Activity Report', DV/651053.

<sup>253</sup> 'MEPs quick-deal concerns', *European Voice*, vol. 14, No 2, 17.01.2008.

<sup>254</sup> EP (2006), 'Conciliations and Codecision Activity Report', DV/651053.

Table 1. Period from 1/1/2006 to 1/1/2007

1st reading	Early 2nd reading	2nd reading	3rd reading
58 %	15 %	18 %	9 %

Source: Daniela Corona, 'How Does the Codecision Procedure Actually Work?', European University Institute, Florence, 2008.

## 7. Informal developments

To understand the real dynamics of the codecision procedure over the years, we need to leave formal treaty provisions behind and examine the agreements reached between the institutions. The Interinstitutional Agreement of 29 October 1993 on budgetary discipline and improvement of the budgetary procedure<sup>255</sup> and the 1999 and 2007 Joint Declarations on practical arrangements for the new codecision procedure have played a key role in this<sup>256</sup>. These agreements describe the principles underpinning the procedure, specify the role of the various institutions at the various reading stages and describe some of the practical aspects.

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Another major change that gradually became part of the codecision procedure is triologue between the European Parliament, the Council and the Commission. It was during the Spanish Presidency in the second half of 1995 that triologue became a common practice upstream of conciliation negotiations. Triologue meetings are attended by small groups of representatives from the European Parliament, the Council and the Commission<sup>257</sup>. Today, triologue meetings take place not only at third reading, but also at each stage of the codecision procedure. During the conciliation stage, some triologue meetings have a relatively formal nature, unlike those that take place in earlier legislative phases. During the first reading stage, triologue meetings have a key role in the negotiation of agreements between the institutions. While the Joint Declaration of the European Parliament, the Council and the Commission of 4 May 1999 on practical arrangements for the new codecision procedure talked about the possibility of establishing 'appropriate contacts', the 2007 agreement mentions triologue meetings for the first time while specifying the arrangements for negotiations in the early stages of the procedure.

<sup>255</sup> OJ C 331, 7.12.1993, p. 1.

<sup>256</sup> OJ C 148, 28.5.1999, p. 1 and OJ C 145, 30.6.2007, p. 5. Other interinstitutional agreements that have a central place in the codecision procedure include agreements on comitology, such as the 1994 Modus Vivendi agreement and subsequent comitology decisions (Council Decision 1999/468/EC and Council Decision 2006/512/EC), which for the first time placed the European Parliament on an equal footing with the Council in terms of scrutinising the implementation of measures adopted in codecision. The other key instruments include the 2000 and 2005 Framework Agreements on relations between the European Parliament and the Council and the 2003 Interinstitutional Agreement on Better Law-Making (OJ C 321, 31.12.2003, p. 1).

<sup>257</sup> EP (2000), 'Delegations to the Conciliation Committee: Activity Report from 1 May 1999 to 30 July 2000'.

These new informal aspects of the codecision procedure have proved effective, allowing the legislators to save time and energy thanks to a swift conclusion to the procedure. However, questions have been raised over whether democracy has suffered as a result. Democratic scrutiny is not always guaranteed in fast-track agreements, particularly at first reading<sup>258</sup>. These agreements are often negotiated within a small subcommittee, and the European Parliament – not to mention the general public – can find it hard to monitor what goes on during these informal meetings between the three institutions. These tend to strengthen the influence of negotiators from the EP and the Council (in other words the EP's rapporteur and the Council Presidency), at their colleagues' expense. The EP is fully aware of the challenges that early agreements pose in terms of democracy. A paper on internal reform, adopted by its working group in early 2008, expresses concerns over the 'potential lack of transparency and democratic legitimacy' in informal first-reading negotiations. The authors of the report are also critical of the fact that there is 'too much focus on fast-track negotiations at the expense of an open political debate within and between the institutions'<sup>259</sup>. The Commission is aware of the secondary effects of early agreements; it recently said, in its internal guide on codecision, that careful consideration should be given to completion at first reading for the more sensitive dossiers, given their important budgetary, legal or institutional aspects<sup>260</sup>.

An attempt has been made to avoid some of these problems by allowing the Conference of Presidents to introduce a series of guidelines on the adoption of agreements at first and second reading in November 2004<sup>261</sup>. These guidelines are aimed at ensuring maximum transparency of decision-making by making the EP's lead negotiators more accountable to their legislative body on negotiations with the other institution. They also encourage the EP's rapporteur to wait until a position has been adopted within the committee responsible at a particular reading stage before commencing negotiations with the Council.

These guidelines suggest various ways of handling negotiations, similar to the procedures that have been in place for several years for the conciliation stage and targeting greater control over negotiators<sup>262</sup>. However, while conciliation procedures are enshrined in the Rules of Procedure of the European Parliament, the most that has been achieved for the first and second reading stages is to promote the adoption of less formal guidelines. It is difficult to give a general idea of how these guidelines work in practice, given the different negotiating techniques in the various fields studied by the committees. Yet a trend has been observed of increasing involvement of the EP in negotiations, compared

<sup>258</sup> Bear in mind that a simple majority of the European Parliament is sufficient to adopt amendments at first reading, while an absolute majority is required for the second reading onwards.

<sup>259</sup> 'MEPs quick-deal concerns', *European Voice*, vol. 14, No 2, 17.01.2008.

<sup>260</sup> 'Conciliations and codecision. A Guide to how the Parliament co-legislates', SPI(2007)73.

<sup>261</sup> EP (2007), 'A Guide to how the Parliament co-legislates', DV\684001EN.doc.

<sup>262</sup> Rasmussen, A., 'EU Conciliation Delegates – Responsible or Runaway Agents? Principal-agent analysis and the study of delegation', *West European Politics*, 28(5), 2005, pp. 1015-34.

with past practice<sup>263</sup>. If the guidelines serve their purpose, they could become essential to the European Parliament to ensure democratic scrutiny of EU decisions. However, the European Parliament will require effective internal coordination and monitoring of its negotiators to accomplish this mission.

#### **B. 4. The assent procedure**

The assent procedure was introduced by the Single European Act. This differs from the legislative procedure in that it does not allow the European Parliament to table amendments, but only to accept or reject the proposal submitted to it. However, as with the co-decision procedure, the European Parliament also has a right of veto in this procedure, given that the Council cannot continue to examine a decision that has not been ratified by the European Parliament.

This procedure is also different due to the fact that it examines a series of issues concerning not only ordinary politics, but also aspects of high politics, such as enlargement of the European Union and certain international agreements. When it was introduced, the Union had to obtain the assent of the European Parliament for association agreements with third countries and the accession of new Member States. As in the case of codecision, however, its scope has been extended over the years. The Maastricht Treaty and the Treaty of Nice added the following areas to the procedure: sanctions for human rights violations (Article 7), enhanced cooperation (Article 11(2)), special missions entrusted to the European Central Bank (Article 105(6)), amendments to the protocol on the European System of Central Banks (Article 107(5)), the tasks, objectives, methods and organisation of the Structural Funds and creation of the Cohesion Fund (Article 161), uniform procedures for the European elections (190(4)), and finally international agreements establishing a special institutional framework, agreements with budgetary implications for the Community and agreements containing amendments to acts in codecision (Article 300(3)).

As a rule, the assent procedure requires a simple majority of the Parliament, except in three areas requiring absolute majority: the accession of new Member States, the electoral system for European elections and sanctions for human rights violations<sup>264</sup>. In both cases, the assent procedure is reversed: when Parliament issues decisions on the obligations of the Ombudsman or MEPs, the assent of the Council is required.

Before the Single European Act introduced the assent procedure, the European Parliament had very limited powers concerning the adoption of international agreements (in the same way as in Community legislation). Nevertheless, a trend emerged over the years of the increasing involvement of the European Parliament in the process. In the

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<sup>263</sup> EP (2006), 'Conciliations and Codecision Activity Report', DV/651053.

<sup>264</sup> The SEA also made provision for the absolute majority within the European Parliament so that the EP could give its assent on association agreements. This absolute majority became a simple majority under the Maastricht Treaty.

context of what became the Luns procedure, Joseph Luns, President-in-Office of the Council of the European Economic Community, agreed to keep the European Parliament informed and to involve it in the negotiation of association agreements.

A landmark ruling issued by the Court of Justice in 1971 in the AETR case<sup>265</sup> also justified the involvement of the European Parliament in other areas. In this ruling, the judges concluded that there was a need to consult the European Parliament where consultation applied in a particular area of internal policy, if the European Union negotiated external agreements in that area. For example, the European Parliament had closer involvement in external agreements relating to agriculture and transport. New aspects were included in October 1973, when the Parliament was involved in trade agreements under the Luns-Westerterp procedure, essentially a modified version of the Luns procedure mentioned earlier. In 1977, the Council went even further by promising to brief parliamentary committees on all major agreements at a special meeting, as well as on less important agreements in writing. None of these new aspects gave the European Parliament a right of veto over agreements, but they did pave the way for it to have more powers in the context of what would become the assent procedure<sup>266</sup>.

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Some observers have argued that the power of the European Parliament in the assent procedure is 'nuclear', and that MEPs hold back when it comes to using it<sup>267</sup>. There is no denying that the European Parliament would enter new territory if it were to oppose recommendations concerning, for example, the accession of new Member States to the EU. Nevertheless, as we saw during the examination of the codecision procedure, the fact that the European Parliament does not reject numerous acts does not mean that it has no influence. Consequently, the fact that the European Parliament has the option of using its veto represents a useful threat that can allow it to influence the content of agreements. Nickel claims in fact that the assent procedure is used in equal measure, in voting both for and against things<sup>268</sup>.

This procedure has been applied on numerous occasions. For example, in the two years that followed its introduction, it was used in relation to more than 30 association agreements with third countries. These consisted of both new agreements and amendments to existing agreements. The weakness of the procedure perhaps lies in the absence of integrated mechanisms, such as the Conciliation Committee in the codecision procedure, which the EP and Council can call on to find common ground.

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<sup>265</sup> Case C-22/70.

<sup>266</sup> This historical review is taken from Corbett, R., Jacobs, F. and Shackleton, M., *The European Parliament*, John Harper, London, 2007.

<sup>267</sup> Earnshaw, D. and Judge, D., *The European Parliament*, Palgrave MacMillan, London, 2003.

<sup>268</sup> Nickel, D., 'Beyond Treaty Revisions: Shifts in the Institutional Balance', a document presented at the Sixth Biennial Conference of the European Community Studies Association, Pittsburgh, June 1999.

However, several examples show that the EP knows how to use this procedure to good effect<sup>269</sup>.

### 1. Association agreements

During the negotiations on three association agreements with Israel, the European Parliament was unhappy with the arrangements for Palestinians in the occupied territories who wanted to export products to Europe, and rejected the agreement until certain concessions were made on exports from the West Bank.

The European Parliament also played a leading role during negotiations on the Customs Union Agreement between the EU and Turkey, which it opposed on the grounds of the numerous human rights violations in the country. It was not until Turkey implemented a thorough reform of its institutions and released political prisoners that Parliament gave its assent to the agreement.

As a rule, the European Parliament tries to put its competence in the area of association agreements to good use by placing agreements in this category wherever possible. Its Rules of Procedure effectively state that it will consider any significant agreement to be an association agreement. These new informal aspects have served as a stepping stone to extend the EP's formal power as represented by the assent procedure in the Treaty of Maastricht<sup>270</sup>.

### 2. Accession agreements

The European Parliament also uses this power effectively when it comes to approving the accession of new Member States. During negotiations of the accession of Austria, Sweden, Finland and Norway, one of the main issues concerned the new threshold for qualified majority in the Council. Only a minority of Member States aspired to the high figure of 68 out of 87, which the European Parliament opposed since it would complicate the decision-making process and make it harder for the EP to convince the Council to conclude agreements using the codecision procedure.

To obtain the assent of the European Parliament, the protagonists agreed on a compromise, which did not include the high majority figure advocated by a minority, but a mandatory 64 out of 87. This agreement was conditional on the following promise: if between 23 members of the Council (the old minority blocking figure) and 26 members (the new figure) indicated their intention to oppose a decision taken by the Council by qualified majority, the Council had to do everything within its power to find, within a reasonable time, a satisfactory solution that could be adopted by at least 68 votes to 87 (the 'Ioannina Compromise')<sup>271</sup>. Although this compromise did not correspond en-

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<sup>269</sup> Earnshaw, D. and Judge, D., *The European Parliament*, Palgrave MacMillan, London, 2003.

<sup>270</sup> Corbett, R., Jacobs, F. and Shackleton, M., *The European Parliament*, John Harper, London, 2007.

<sup>271</sup> Corbett, R., Jacobs, F. and Shackleton, M., *The European Parliament*, John Harper, London, 2007.

tirely to the wishes of the European Parliament, it did to tip the scales in its favour and avoided a high general majority figure<sup>272</sup>.

It has already been said that the Treaty of Lisbon, once it is ratified, will abolish the assent procedure in certain areas and make these subject to the ordinary legislative procedure. However, unlike cooperation, the assent procedure will survive, although it will be known under another name: approval. The approval procedure and the consultation procedure will represent two special procedures. As Table 2 shows, this will apply to six areas in which the Council adopts legislation and the European Parliament gives its approval, as well as to three areas in which the European Parliament adopts legislation and the Council gives its approval.

Table 2. Approval under the Treaty of Lisbon

Unanimity of the Council and approval of the European Parliament	Measures to combat discrimination
	Extension of citizenship rights
	Multiannual financial framework
	European Public Prosecutor's Office
	Uniform electoral procedure
Qualified majority of the Council and approval of the European Parliament	Measures implementing the own resources system
Proposal of the European Parliament and approval of the Council	Statute for the European Ombudsman
	Statute for Members of the European Parliament

Source: Corbett, R., Jacobs, F. and Shackleton, M., *The European Parliament*, John Harper, London, 2007.

In addition, approval will be required for all international agreements in areas subject to the internal codecision procedure. This is a vast improvement on the current powers of the European Parliament<sup>273</sup>. In reality, the fact that the Parliament is consulted, for example, on amendments to minor association agreements without being involved in other key international agreements has for a long time been seen as unfair.

The European Parliament has not only become a Parliament in its own right in the true sense of the word, but also a powerful institution in a number of areas. The approval of the European Parliament is essential for the adoption of the EU budget, and Parliament has specific powers in traditional areas of 'high politics', often controlled by the executive, and participates fully in the legislative process in practically all areas of the EU to which codecision applies.

<sup>272</sup> This decision was amended when Norway refused to join the EU.

<sup>273</sup> Corbett, R., Jacobs, F. and Shackleton, M., *The European Parliament*, John Harper, London, 2007.



The European Union functions like a domestic political system whose decisions have a considerable impact on the day-to-day lives of millions of Europeans. Furthermore, particularly in terms of its legislative work, experts agree that the EU is genuinely bicameral for ordinary legislative procedures, since the European Parliament and the Council take part in the legislative process on an equal footing. The legislative role of the Parliament is also enhanced and strengthened by the acquisition of the right of legislative initiative.

First of all, it makes active use of ‘own-initiative reports’ on particular subjects to invite the Commission to present new proposals. The Treaty of Maastricht specifically grants it the right to ask the Commission to submit legislative proposals (current Article 192)<sup>274</sup>. The Commission has agreed to respond favourably to these initiatives of the EP unless it has serious objections. Consequently, it has therefore actioned nearly all of the requests made by the European Parliament; the exceptions can be counted on the fingers of one hand.

Secondly, the Parliament has gained influence in the broader context of the European agenda by participating in debates over EU legislative programmes and expressing an opinion on the annual legislative programme of the Commission. It can thus influence their content and ask the Commission and the Council to account for the commitments they have assumed<sup>275</sup>.

The growth in the budgetary, legislative and non-legislative powers of the European Parliament is remarkable. Yet it is essentially through intelligent use of its prerogatives that the European Parliament has seen its powers increase over the years.

We hope that we have shown how the European Parliament has been the main protagonist in its own history. For the majority of the time, its strategy has consisted of looking first to extend its powers informally, and then to use these informal developments as a stepping stone to obtain new formal powers in the context of the Treaties. The Council and the Commission have allowed the European Parliament to take advantage of the periods between the different treaties to experiment with new institutional instruments. The results of these experiments have often been to their satisfaction, which has led to formal recognition of the institutional tools concerned by enshrining them in the Treaties.

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<sup>274</sup> Rasmussen, A., ‘Challenging the Commission’s right of initiative? Conditions for Institutional Change and Stability’, *West European Politics*, 20(2), 2007, pp. 244-64.

<sup>275</sup> Corbett, R., Jacobs, F. and Shackleton, M., *The European Parliament*, John Harper, London, 2007.



## **II. INTERINSTITUTIONAL RELATIONS**

### **A. A history of relations between the European Parliament and the Commission**

#### **A.1. From 1958 to 1979**

Relations between the European Parliament and the Commission can be roughly divided into three phases.

In the first phase, from approximately 1958 to 1979 – the date of the first elections to the European Parliament by direct universal suffrage – the Community decision-making process was characterised by a near-exclusive dialectic between the Commission and the Council. The Commission had a right of initiative to implement the provisions of the Treaty and gave limited consideration to the amendments of the European Parliament in the legislative process. The political obligation to reach a unanimous consensus within the Council following the Luxembourg Compromise of January 1966 automatically reduced the importance of the European Parliament's amendments. It did not really matter whether the Commission adopted these amendments, since it had to facilitate a unanimous compromise within the Council in order to reach a decision, often following lengthy negotiations (it took more than a decade to achieve the freedom of establishment of the liberal professions or to decide on the weight and dimensions for heavy goods vehicles). Yet the proposals of the Hallstein Commission for the common agricultural policy in 1965 had already recommended an increase in the budgetary powers of the European Parliament. Likewise, the Vedel report commissioned by the Malfatti Commission (mainly at the instigation of Altiero Spinelli) also called for the powers of the European Parliament to be strengthened.

#### **A.2. From 1980 to 1995**

In the second phase – from approximately 1980 to 1995 – the Commission took more notice of the European Parliament, by now elected by direct universal suffrage, which it considered as its natural ally against the Council in both the legislative procedure and the budgetary procedure (see for example the higher number of EP amendments that it adopted in its revised proposals, particularly between 1985 and 1986, when the Council began using the majority voting system and when the cooperation procedure was introduced). The Commission's attitude is confirmed by the increasing number of amendments of the European Parliament accepted by the Council under the cooperation procedure (see Chapter II.2 above). In 1991, the Commission, acting at the request of the European Parliament, did not think twice about withdrawing a proposal for a

research programme, the content of which had been diluted by the common position of the Council at first reading<sup>276</sup>.

### **A.3. From 1995 to the present day**

A third phase in the relations between the European Parliament and the Commission began with the provisions of the Treaty of Maastricht, which lent weight, for the first time, to the motion of censure against the Commission (since the European Parliament now had the power of investiture of the Commission). It is not by chance that the European Parliament signed an initial bilateral agreement with the Commission (the 1995 Code of Conduct, see Chapter III.2) and began to have increasing political control over Jacques Santer's Commission. The Parliament's actions were designed to place obligations on the Commission, first in relation to its general attitude towards the European Parliament (see Code of Conduct), and then in relation to specific behaviour, ranging from the reorganisation of its services to the resubmission of new proposals (see the BSE crisis), and finally the request for the individual resignation of some Commissioners due to administrative irregularities (see the financial mismanagement case that led to the resignation of the entire Santer Commission).

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The weakening of the Commission following the collective resignation of the Santer Commission led the European Parliament to sign new and increasingly stringent framework agreements with subsequent Commissions and to exercise a sort of censure with regard to Commissioners appointed by the Member States, using as leverage its power of investiture of the College (see the case of Rocco Buttiglione during the appointment of the Barroso Commission).

At the same time, the European Parliament increasingly looked for bilateral dialogue with the Council in the context of the codecision procedure, even going as far as concluding important political agreements at first reading (see the regulation regarding public access to European Parliament, Council and Commission documents) and acceptance by the Commission of all of its essential amendments in the case of the directive on the freedom to provide services (the 'Bolkestein Directive').

## **B. Enhanced political control of the Santer Commission**

Political control of the Commission by the European Parliament entered a new phase around the time when Jacques Santer was President of the European Executive (1995-99).

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<sup>276</sup> However, the Commission then tried to avoid an interinstitutional conflict before the Court of Justice by submitting a new document that could be considered by the European Parliament as a new proposal and by the Council as a proposal modified at second reading.

## **B.1. The BSE crisis and its impact on relations between the European Parliament and the Commission**

In July 1996, the European Parliament set up a temporary committee of inquiry to investigate allegations of infringement or maladministration in the application of Community law on BSE (bovine spongiform encephalopathy), otherwise known as ‘mad cow disease’. The BSE crisis had started in March 1996, when the British Government discovered the existence of a possible link between BSE in cows and Creutzfeldt-Jakob disease in humans<sup>277</sup>.

In its conclusions, the temporary committee of inquiry, after criticising the tendency of the institutions – particularly the Commission and the Council – to put the interests of the common agricultural policy before public health, recommended three types of measures:

1. the introduction of new administrative structures to separate the management of agricultural or industrial interests from the duty to protect public health, and specifically the creation of a European Agency for Veterinary and Plant-Health Inspection;
2. application of Article 100a EC (codecision procedure) to animal welfare measures and food safety, Article 43 (consultation procedure) being reserved for the management of agricultural markets;
3. a request for the Commission to submit proposals to the new Intergovernmental Conference aimed at modifying the legal basis of the Treaty in relation to the protection of public health.

In its resolution of 19 February 1997, carried by 422 votes to 38 with 35 abstentions, the European Parliament threatened the Commission with a motion of censure if it did not follow the recommendations contained in the report of the temporary committee of inquiry. In other words, instead of immediately proposing a vote on the motion of censure against the Commission, the European Parliament opted for the strategy of threatening a censure if the Commission did not follow the committee’s recommendations (whereas an immediate motion of censure was rejected on 20 February 1997 by 326 votes to 118, with 19 abstentions). The solution adopted by the European Parliament was designed to put pressure on the Commission<sup>278</sup> to act in accordance with its recommendations, without going as far as the atomic weapon of censure at what was seen as a difficult time for the Community. This proved to be a winning strategy, for the Commission announced that very day that it would be retabling a proposal to the Intergovernmental Conference in Amsterdam aimed at amending Article 129 of the EC Treaty to include

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<sup>277</sup> The Commission introduced a ban on the sale of British beef and beef-derived products on 27.3.1996. Following this decision, the United Kingdom not only petitioned the Court of Justice to have the ban overturned, but also decided to conduct a policy of obstructing Community decisions requiring the unanimous agreement of the Member States from 21.5 to 22.6.1996.

<sup>278</sup> Mr Santer refused to see the Commission placed under supervision (see press conference of the same day).

health policy as one of the Community's areas of competence. It also implemented most of the recommendations of the European Parliament (which led the EP to withdraw the censure proceedings on 19 November 1997). In other words, the European Parliament's demands were largely met, averting an institutional crisis that was considered unwise at that point in time.

## **B.2. From financial oversight to the 'Committee of Wise Men' and the resignation of the Santer Commission**

The strategy followed by the European Parliament in the case of the BSE crisis was not without similarities to the one adopted later on (in late 1998/early 1999) concerning, first of all, the refusal to give a discharge to the Commission for the implementation of the budget, and later the appointment of a Committee of Wise Men in charge of examining the financial management of Community programmes by the Commission, in addition to the internal financial control of the Commission in general (see below).

### **1. The 1998 refusal to give a discharge**

The satisfactory outcome of the BSE crisis for the European Parliament and the withdrawal of any immediate political sanction against the Commission were followed a year later in 1998 by a fresh dispute between the Commission and the European Parliament over the financial management of the ECHO (humanitarian aid) and MED (aid for Mediterranean countries) programmes. In October 1998, certain members of the European Parliament's Committee on Budgetary Control (COCOBU) chaired by Mrs Theato had already raised the possibility of refusing to give a discharge to the Commission for the implementation of the 1996 budget<sup>279</sup>. During the plenary debate on the Bösch report on mismanagement of certain Community programmes, the European Parliament, asking the Commission to submit an urgent proposal aimed at creating a new independent body in charge of fraud prevention (the future European Anti-Fraud Office, or OLAF), expressed its mistrust of the Commission, which had failed to provide timely information about cases of fraud affecting the Community budget and furthermore gave the impression of not wanting to sanction officials who might have committed administrative irregularities.

Relations between the European Parliament and the Commission remained strained during the December session, when Mr Santer unveiled the Commission's proposal to create the European Anti-Fraud Office as an independent fraud investigation body to replace the Unit for the Coordination of Fraud Prevention as an internal service of the Commission<sup>280</sup>. While some parliamentarians wanted the Commission to receive a formal warning to take action to improve its financial management and internal functioning (COCUBU had proposed voting on giving a conditional discharge to the Commis-

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<sup>279</sup> See Agence Europe Bulletin No 7313 of 2.10.1998.

<sup>280</sup> In response to criticisms from some MEPs suggesting that the Commission intended to shirk its political responsibility by creating a new body, President Santer invited the European Parliament to go ahead and bring a motion of censure against him (Agence Europe Bulletin No 7355 of 3.12.1998).

sion by 14 votes to 13, setting certain conditions), others believed that the refusal to give the discharge was necessary to make the Commission more accountable and to signal the dissatisfaction of the European Parliament<sup>281</sup>.

The European Parliament finally voted on the refusal to give discharge on 18 December 1998 by 270 votes to 225, with 23 abstentions. The letter written by the President of the Commission, Mr Santer, to the President of the European Parliament before the vote was seen as unacceptable pressure on the European Parliament and was probably a contributing factor in the number of MEPs opposed to the discharge. Instead of seeing the vote as a milestone in the procedure provided by the Treaty (see footnote 118), the Commission considered the decision a political act intended to undermine it and to keep it in check (contrary to its interpretation of the attitude of the European Parliament during the BSE crisis).

## 2. Appointment of the Committee of Wise Men (1999)

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In this context, the European Parliament was called on to issue a decision on two motions of censure submitted respectively by the Socialist Group in the European Parliament and by the Union for Europe of the Nations Group, each with a different agenda. While the Socialist Group wanted to express a vote of confidence in the Commission, the UEN Group actually wanted the College to resign. Conversely, the Group of the European People's Party (Christian Democrats) and European Democrats and the Group of the Alliance of Liberals and Democrats for Europe believed that these motions of censure were not the right way to deal with the situation and instead called for the individual resignation of certain Commissioners<sup>282</sup>.

The European Parliament eventually rejected the motion of censure tabled by the UEN Group by 293 votes to 232, the Socialist Group having withdrawn its motion.

Still, the European Parliament had already approved, by 319 votes to 101, a resolution tabled by the Socialist Group, the Confederal Group of the European United Left/Nordic Green Left and the Group of the Alliance of Liberals and Democrats for Europe asking the Commission to shed light on the alleged cases of fraud and calling for the creation, under the auspices of the European Parliament and the Commission, of a Committee of Independent Experts tasked with examining the way in which the Commission identified and dealt with cases of fraud, mismanagement and nepotism, and to report back on its initial findings by 15 March 1999. Mr Santer had declared that he accepted the creation of a Committee of Independent Experts, since this would allow him to re-examine

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<sup>281</sup> According to the rapporteur, James Elles, the refusal to give a discharge in no way amounted to a vote of no confidence in the Commission, but was simply part of an ongoing process, a way of conveying that the European Parliament was not entirely satisfied with what the Commission had done to put its affairs in order and intended to keep up the pressure (see Ferdinando Riccardi's editorial in the *Agence Europe Bulletin* of 5.1.1999).

<sup>282</sup> Note that the Commissioners concerned were socialists (Manuel Marin and Edith Cresson).

the management practices of the Commission. He also promised to act on the Committee's recommendations. The vote on the resolution of the European Parliament seeking the creation of a Committee of Independent Experts gave rise to several comments and institutional disputes. Was the European Parliament abdicating its responsibilities by handing effective control of the functioning of the Commission to a committee of experts? Was the Commission being placed under supervision by a committee of experts not provided for by the Treaties? Apart from these questions, the findings of the Committee of Experts were conclusive. After the Committee criticised the 'lack of sense of responsibility and the loss of administrative and management control demonstrated by Commissioners individually and by the Commission as a body', the Santer Commission had no other choice but to collectively resign. All political groups of the European Parliament had in any case considered this a logical and/or inevitable outcome.

## **C. From the resignation of the Santer Commission to the investiture of the Barroso Commission**

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### **C.1. The lessons drawn from a crisis**

The resignation of the Santer Commission called for the following points to be made:

- a) The majority of Members of the European Parliament did not initially want to censure the Commission and trigger an institutional crisis. The European Parliament preferred – as with the BSE crisis – to maintain political pressure on the Commission by refusing to give a discharge in order to persuade the Commission to improve its internal functioning and to sanction anyone guilty of fraud or other irregularities;
- b) The Commission no doubt made the tactical error of seeing the refusal to give a discharge as a political act, rather than simply conducting a more thorough review of its own financial management;
- c) The European Parliament formally raised the issue of the individual accountability of Commissioners beyond the principle of collective responsibility stipulated in the Treaty (a resolution voted on by the European Parliament stated that the report of the Committee of Independent Experts called for individual accountability of members of the Commission: this was carried by 444 votes to 16, with 57 abstentions);
- d) The collective resignation of the Santer Commission was hailed as a victory for European democracy over the bureaucracy of Brussels and as the end of political non-accountability of members of the Commission.
- e) Irrespective of this, it was now clear that the European Commission could be sanctioned by the European Parliament if its political accountability was called into question.

## C.2. The impact of hearings of candidate Commissioners on the composition of the Commission

The European Parliament again showed its determination to use its powers (even going as far as the potential refusal to vote on the investiture of a new Commission) during the approval of the Commission presided over by Mr Barroso. Parliamentary hearings of members designated by the Barroso Commission in fact led to two letters of rejection being sent by the relevant committees of the European Parliament on the subject of the Italian candidate, Rocco Buttiglione, and the Hungarian candidate, Laszlo Kovács, a question mark having also been placed over other candidates such as Ingrida Udre.

The Socialist Group in the European Parliament had asked Mr Barroso for a reshuffle of the portfolios allocated to certain members of the Commission, failing which it would recommend that the entire Commission be dismissed<sup>283</sup>. On 21 October 2004, Mr Barroso announced to the Conference of Presidents that he intended to assume personal responsibility for the portfolio of fundamental freedoms and non-discrimination (Mr Buttiglione would remain as Commissioner for Justice, Freedom and Security) and to chair a group of Commissioners with a special interest in these areas. Although Mr Barroso reminded the European Parliament in plenary that he could make changes to Commissioners' portfolios during office and that the Commission would submit new initiatives for civil rights and non-discrimination, only the Group of the European People's Party (Christian Democrats) and European Democrats and the Union for Europe of the Nations Group declared that they were willing to lend their support to a vote of confidence in the Commission<sup>284</sup>.

Given the circumstances, Mr Barroso decided not to subject his new Commission to a vote of confirmation by the European Parliament and to carry out further consultation. In the meantime, the Prodi Commission would remain in office to handle day-to-day affairs. After consulting the Heads of State or Government and making informal contact with the political groups, Mr Barroso presented the European Parliament with a reshuffled Commission (with Mr Frattini replacing Mr Buttiglione, Mr Piebalgs replacing Mrs Udre and Mr Kovács in charge of taxation instead of energy). The new Commission won the support of the European Parliament by a large majority (449 votes to 149, with 82 abstentions) following the promises made by Mr Barroso to negotiate an update to the Framework Agreement between the Commission and the European Parliament (since the Parliament had drawn up a list of points to be included in the new agreement, including the obligation for the President of the Commission to request the resignation of Commissioners who received a vote of no confidence from the European Parliament)<sup>285</sup>.

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<sup>283</sup> Since the Treaty did not allow individual Commissioners to be rejected, but only the Commission as a collective body.

<sup>284</sup> See Agence Europe Bulletin of 27.10.2004.

<sup>285</sup> See Agence Europe Bulletin of 19.11.2004.



### C.3. A greater political role

In short, for the first time in its history, the European Parliament has managed to influence the structure of the Commission and the allocation of portfolios, making this a prerequisite for its approval of the new Commission. From an institutional point of view, the European Parliament has maintained this strategy to obtain specific concessions from the Commission President rather than proceeding with immediate sanctions. Yet this time the European Parliament entered new territory, for its demands were submitted before the vote of investiture, and not to withdraw a motion of censure. Furthermore, the European Parliament indirectly influenced the changes made to the Treaties (see Article 217 of the EC Treaty) whereby the President of the Commission has more power to organise the Commission, allocate portfolios and request a Commissioner's resignation. Consequently, the European Parliament has strengthened its role of political control over the Commission and has extended its powers beyond the letter of the Treaty. Although the censure of individual Commissioners is still excluded by the Treaty, it is clear that the precedent set by the Barroso Commission will be used again by the European Parliament if Member States present other candidates considered ineligible or unsuitable by the European Parliament in future.

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### D. Future prospects in the context of institutional reform

Based on the foregoing, we can conclude that the European Union now has a real Parliament. Once the Treaty of Lisbon is ratified, the European Parliament will be a legislator in its own right alongside the Council (at least for around 90% of the legislative acts of the European Union) and will be able to select the President of the Commission depending on the outcome of the European elections. In all likelihood, the European Parliament will become a colegislator for all European legislation following further revision of the Treaties. Conversely, it is harder to predict how future relations between the institutions of the European Union will shape up (particularly between the European Parliament and the Commission). Doubtless the new legitimacy of a European Commission whose President has been elected by the democratically elected parliamentary majority will have an impact. Since the choice of Commission President is determined by the parliamentary majority rather than the legislative programme proposed by the Executive and approved by the two legislative bodies, it is unlikely that the Commission will be able to rely, during its five-year tenure, on the same parliamentary majority rather than coalitions that vary according to the acts that are proposed. Were this the case, it would have inevitable repercussions on the role of the arbitrator and protector of the interests of the European Union, a role which at present is assumed by the Commission. According to some scholars<sup>286</sup>, the increasing parliamentarisation of the European

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<sup>286</sup> See in particular Majone, G., 'The European Commission: The Limits of Centralization and the Perils of Parliamentarization', *Governance*, Vol. 15, No 3, 2002, pp. 375-392, and 'Réforme institutionnelle: agences indépendantes, surveillance, coordination et contrôle procédural' (EU, 27.2.2001). See also 'La gouvernance dans l'Union européenne', *Cahiers de la cellule de prospective* (European Commission, 2001).



Union was the reason why the Member States set up a series of independent agencies to manage certain policies and decision-making in a bid to shield these from political interference<sup>287</sup>. It is also thought that questions could be raised over the competence of a Commission that is more dependent on a political majority within the European Parliament, given that it is supposed to exercise its powers neutrally and objectively (with, for example, EU competition rules being enforced by an independent agency)<sup>288</sup>.

According to other commentators, further politicisation or parliamentarisation of the Union has become necessary to bridge or at least narrow the gap between European citizens and Community institutions that emerged in the recent referendums on treaty reform<sup>289</sup>.

The same thing would probably happen if the European Parliament increased its political control over the Commission, whether through censure of individual Commissioners or in return for excessive concessions made by the Commission in terms of the exercise of its powers (right of initiative, executive power, role of guardian of the Treaty, etc.). If so, the motion of censure would risk being reduced to a form of administrative/disciplinary sanction rather than a political act.

In other areas, the European Parliament has acquired powers identical to, and in some cases greater than, those of national parliaments (see the commitments assumed by the Commission and the Council to inform/consult the European Parliament on international agreements during their negotiation, which national parliaments do not always have).

Yet there is a gaping hole in the powers of the European Parliament, which does not have the powers granted to national parliaments concerning budgetary revenue. This could affect the future resources available to the EU budget. This situation will eventually become untenable, not only for general political reasons (national parliaments have asserted their power over the sovereign according to the principle of ‘no taxation without representation’), but also because of the need to establish a more direct link between the resources of the European Union and its citizens, who ultimately bear the cost of common policies.

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<sup>287</sup> However, the concern with depoliticising these agencies does not chime with the eminently intergovernmental nature of their boards.

<sup>288</sup> The proposals already made in this respect by some Member States, including Germany, risked being returned to the table.

<sup>289</sup> See Hix, S., *What's Wrong with the European Union and How to Fix it*, Polity Press, MPG Books Ltd., Bodmin, Cornwall, 2008.

### III. INTERINSTITUTIONAL AGREEMENTS

#### A. Interinstitutional agreements or arrangements

Since they were first created, the institutions of the European Union have concluded around 130 interinstitutional agreements or arrangements, a term that covers not only ‘interinstitutional agreements’ in the strict sense (IIA), formally executed and published in the *Official Journal of the European Union*, but also other forms of ‘soft law’ (such as joint declarations, exchanges of letters, codes of conduct and so on)<sup>290</sup>. As a rule these agreements are designed to facilitate the application of the provisions of the Treaty and practical cooperation between the various institutions, particularly the European Parliament, the Council and the Commission. Yet these agreements have often been one of the ways in which the European Parliament compensates for the shortcomings of the Treaty, or even, in some cases, a way to enhance its powers indirectly, taking advantage of occasions when the other institutions need its approval on important matters and thus avoiding interinstitutional conflict.

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#### A.1. Compensating for the shortcomings of the Treaties and facilitating interinstitutional relations

At the same time, interinstitutional agreements have also been seen as a way of partly overcoming the democratic deficit of the European Union that is easier to implement than an amendment to the Treaty<sup>291</sup>.

For these reasons, the institutions have often resorted to interinstitutional agreements in spite of the fact that these, with a few exceptions, are not expressly provided by the Treaties. Article 218 states that the Commission and the Council ‘shall settle by common accord their methods of cooperation’, although it does not contain a direct reference to the European Parliament.

Furthermore, it can be inferred from Article 10 of the Treaty establishing the European Community (EC Treaty) that the duty of sincere cooperation between the Member States and the Community institutions also applies to relations between the institutions themselves (see Declaration No 3 on Article 10 of the Treaty establishing the European Community annexed to the Treaty of Nice). However, this declaration highlights the

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<sup>290</sup> According to W. Hummer, in ‘From Interinstitutional Agreements to Interinstitutional Agencies/Offices’ (*European Law Journal*, January 2007), the majority of interinstitutional agreements are bilateral (50.4%), while 41.5% are trilateral (in other words, concluded between the European Parliament, the Council and the Commission).

<sup>291</sup> As some commentators have observed, ‘the emergence and development of IIAs, endorsing the role of the European Parliament even in policy fields where primary law remains silent, appears consistent with a constitutional thinking oriented towards parliamentarisation of the European Union’ (see ‘The cocoon of powers’, a EUI Working Paper).

fact that interinstitutional agreements can neither modify nor supplement the provisions of the Treaty and require the consent of the three institutions<sup>292</sup>.

## A.2. Preparing the content of future treaties

Yet although interinstitutional agreements cannot legally amend or supplement treaties, in practice they go beyond what is provided in the Treaty. Notably, the 1988 Interinstitutional Agreement on the budgetary procedure introduces both the idea and the content of the multiannual financial perspective (as an implicit derogation from the provisions of Article 217 of the EC Treaty), while the 1997 Interinstitutional Agreement on the financing of the common foreign and security policy (CFSP) increases the powers of the European Parliament by providing both a formal procedure for consultation of Parliament on the principal aspects of the CFSP and the classification of its operational expenses as non-compulsory expenditure (although the multiannual financial perspective now somewhat limits the European Parliament's options for increasing non-compulsory expenditure).

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In general, it is worth noting that in several cases, the interinstitutional agreements have foreshadowed what is later introduced in the Treaty<sup>293</sup>. Whether concerning the multiannual financial perspective, the codecision procedure, the principle of subsidiarity or Article 7 of the Treaty on fundamental rights, intergovernmental conferences have often adopted and formally recognised what was already present in interinstitutional agreements.

In any case, the scope for the European Parliament to influence interinstitutional agreements is much greater than during intergovernmental conferences ('When it comes to IIAs, the European Parliament has much more power than when it comes to Treaties', according to Maurer)<sup>294</sup>. In other words, if the European Parliament cannot increase its powers during an intergovernmental conference, it will endeavour to extend its influence through an interinstitutional agreement. However, this does not mean that the Council welcomes all requests from the European Parliament to conclude interinstitutional agreements. For example, the request made by the European Parliament after the Maastricht Treaty to review existing interinstitutional agreements was rejected by the Council. Yet if the refusal to sign an interinstitutional agreement could cause major interinstitutional conflict, the other institutions may agree to negotiate with the European Parliament.

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<sup>292</sup> This clarification seems to refer indirectly to bilateral framework agreements between the Commission and the European Parliament, which the Council and some Member States saw as overreaching the provisions of the Treaty on some points (see the chapter on framework agreements below).

<sup>293</sup> Prof. A. Maurer calls these 'pre-cooked IGCs' (see his speech at the EUI Workshop of 1.4.2007 on cooperation and interinstitutional conflict).

<sup>294</sup> It is worth noting that, unlike the Member States and the Commission, the European Parliament is not entitled to table proposals aimed at amending the Treaties, at least not until the Treaty of Lisbon has been ratified.

### A.3. Putting an end to conflict between institutions

Interinstitutional agreements have often been concluded following a period of interinstitutional conflict (such as on budgetary procedure, comitology or the legislative programme).

#### 1. Towards budgetary peace

The first example of an interinstitutional agreement signed following a period of conflict is the Joint Declaration by the European Parliament, the Council and the Commission of 30 June 1982 on various measures to improve the budgetary procedure. This declaration was signed in order to put an end to the rift that emerged between the European Parliament and the Council over the classification of budgetary expenditure and the application of the maximum rate of increase (MRI), resulting in the rejection by the European Parliament of the 1981 budget and the adoption of a 1982 budget with an increase in non-compulsory expenditure without the approval of the Council<sup>295</sup>.

Since the classification of expenditure did not stem from the Treaty, the Council tended to treat new expenditure as compulsory to prevent the European Parliament from increasing it, whereas the Parliament naturally had an opposing interest. In addition, the Council sought to use half of the maximum rate of increase (MRI) in its draft budget so that the European Parliament could not exceed this for non-compulsory expenditure. The 1982 Joint Declaration essentially introduced a procedure allowing the European Parliament and the Council to reach an agreement both on the classification of expenditure and on the maximum rate of increase. At the same time, the declaration prevented the Council from introducing annual spending quotas in legislative acts and in return stipulated the need for a legislative act (a basic regulation) in order to spend the budget appropriations for any significant new Community action. Yet the 1982 Joint Declaration did not stop the Council from commencing proceedings in 1986 for failure to observe the maximum rate of increase. The European Court of Justice, finding that the European Parliament had failed to honour its obligation to agree a new rate with the Council exceeding the maximum rate of increase, confirmed the need for such an agreement between the two branches of the budgetary authority.

#### 2. Clarifying comitology

Another example of an interinstitutional agreement ending, at least temporarily, a conflict between the European Parliament and the Council is the *modus vivendi* of 20 December 1994 on comitology. While the Treaty of Maastricht granted the European Parliament the right to codecide with the Council on legislative acts in several areas, the Council wanted to retain sole control over the delegation of implementing powers to the Commission, without the Parliament being able to scrutinise the executive activity of the Commission. As the European Parliament had rejected a legislative act (the

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<sup>295</sup> See also Chapter II.1 on changes to the budgetary powers of the European Parliament.

ONP Voice Telephony Directive) in order to persuade the Council to change its mind, the Council agreed to sign a provisional *modus vivendi* allowing the Parliament to be informed of the measures envisaged by the Commission and to express a view in certain cases, without this amounting to a full right of scrutiny with binding legal effects.

### 3. Better lawmaking together

Another significant case in this regard was the 2003 Interinstitutional Agreement on better law-making. When the Commission decided to employ new techniques before proposing a legislative initiative (by consulting stakeholders, conducting an impact assessment, considering the possibility of recourse to alternative methods of regulation and so on), the European Parliament reacted by insisting that any changes made to the exercise of the Commission's right of initiative or the implementation of the legislative procedure, or even to the implementation of Community law, had to be discussed at an interinstitutional level.

## **B. Framework agreements between the European Parliament and the Commission**

The framework agreements signed bilaterally between the European Parliament and the Commission represent, from a formal point of view, a variant of the interinstitutional agreements examined earlier. The main difference is not just that they are concluded bilaterally rather than between the three institutions, but also that they are made at the beginning of a new parliamentary term to govern relations between the Commission and the newly elected European Parliament, and are not designed to enforce a particular provision of the Treaty.

### **B.1. Extracting new pledges from the Commission**

For the European Parliament, the main aim of framework agreements is to extract a series of bilateral promises from the newly appointed Commission to improve the way the European Parliament is informed/consulted on its initiatives and to take more account of the EP's views and demands, sometimes even beyond the provisions of the Treaty. This may mean taking more account of the EP's amendments to legislative proposals or its requests for new initiatives or for the withdrawal of a specific proposal – in short, allowing more consideration for the EP's right of initiative. At the same time, the European Parliament seeks to persuade the Commission to grant it a more important role than the one assigned by the Council based on the provisions of the Treaty (see, for example, the possibility of the Parliament intervening in the negotiation of international agreements beyond what was provided by the Luns-Westerterp procedures negotiated with the Council and the Commission in the 1970s, or indeed the 1983 Stuttgart Declaration).

## **B.2. Compensating for the shortcomings of the Treaties**

As a consequence, framework agreements with the Commission – like all interinstitutional agreements generally – represent one of the techniques employed by the European Parliament to compensate for the shortcomings of the Treaty and for what it sees as a lack of power between one intergovernmental conference and the next. As for interinstitutional agreements in general, the European Parliament has made up for the fact that it lacked a right of initiative (now recognised by the Treaty of Lisbon) to revise the Treaties by extracting additional pledges from the Commission and/or the Council, which could actually tip the institutional balance in its favour. Of course, both the European Parliament and the Commission have always maintained that the framework agreements are designed to enforce the provisions of the Treaty and to allow the European Parliament to fulfil its role of scrutinising the work of the Commission, and that they are not meant to change the institutional rules. Nevertheless, this is not an opinion shared by the Council, which, in statements made after the framework agreements were signed, has indicated that several provisions of these agreements seek to alter the institutional balance as laid down in the Treaties, and that it reserves the right to take any appropriate measure in the event that the application of any framework agreement should affect the powers conferred on the institutions by the Treaties.

It was after the Framework Agreement between the European Parliament and the Commission of July 2000 that the Member States signed Declaration No 3 annexed to the Treaty of Nice, whereby interinstitutional agreements could only enforce the provisions of the Treaty and had to be signed by all three institutions<sup>296</sup>.

## **B.3. A mutual interest?**

While it is evident why the European Parliament has an interest in concluding framework agreements with the Commission, the reciprocal interest of the Commission is not so obvious. Effectively, compared with the political commitments assumed by the Commission, the obligations assumed by the European Parliament under the framework agreements are far less significant, involving better programming of its work and regular attendance by members of the Commission at plenary sittings. Yet this superficial analysis does not take account of the fact that a new Commission stands to gain by establishing the overall political support of the parliamentary majority in return for certain concessions relating to the exercise of its powers. At the same time, the signing of a framework agreement with the European Parliament provides an internal boost to the leadership of the Commission President and the role of the Vice-President in charge of relations with the European Parliament (since Commission services under the remit of other Commissioners are supposed to apply the provisions of the framework agreement in a uniform manner).

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<sup>296</sup> However, this political declaration without any binding legal effect did not prevent the revision in 2005 of the Framework Agreement between the European Parliament and the Commission.

Formally, the European Parliament and the Commission have signed two framework agreements, first with the Prodi Commission in July 2000 and then with the Barroso Commission in May 2005. Mr Prodi's interest in signing the first framework agreement stemmed from the political necessity of overcoming the lack of trust between the Santer Commission and the European Parliament, which led to the mass resignation of the Commission in March 1999 (see above). Conversely, the motives of the Barroso Commission had more to do with the differences of opinion that had emerged between the European Parliament and the Commission concerning the replacement of some of its members (namely Mr Buttiglione) and the correct interpretation of the provisions of the Treaty on the ability of the European Parliament to censure individual members of the Commission.

Yet the 2000 and 2005 Framework Agreements were not the first texts destined to govern relations between the European Parliament and the Commission during a parliamentary term.

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The two institutions had already signed two Codes of Conduct in 1990 and 1995 governing their relations, which seemed to place more emphasis on the voluntary – and therefore less binding – nature of the commitments made. In addition, the 1990 Code of Conduct had been formally adopted by the Commission alone and presented to the European Parliament by Mr Delors during its plenary sitting on 14 February 1990. As for its substance, the 1990 Code of Conduct included undertakings by the Commission to discuss as a collective body amendments made by the European Parliament at second reading that it did not intend to adopt and rules of conduct for both the European Parliament and the Council to safeguard the prerogatives of Parliament (preventing political agreements before the EP had issued its opinion, consulting the Parliament again in the event of a substantial amendment of its proposals, etc.). From a legal and institutional viewpoint, not only was the Code of Conduct entirely orthodox, since the Commission unilaterally agreed to it, but the Commission made sure that it highlighted the shortcomings identified and the desired improvements (see document SEC(91)1097 final) in its annual report of 5 June 1991.

The 1990 Code of Conduct was replaced in 1995 by a new Code formally agreed between the two institutions following lengthy negotiations. The initial version of this new Code drafted by the European Parliament contained major changes to interinstitutional relations, eliciting for the first time comments from the Legal Service of the Council as to its compatibility with the provisions of the Treaty. In its final version, the new Code basically introduced the obligation for the Commission to give the utmost consideration to the requests of the European Parliament concerning the presentation of new legislative initiatives, the modification of the legal basis of a proposal, the acceptance of the amendments of the European Parliament and the withdrawal of a legislative proposal rejected by the European Parliament (with any refusal having to be properly explained). Furthermore, the Commission agreed to treat the European Parliament on an equal ba-



sis with the Council in terms of the communication of information and documents (as a result of the codecision procedure introduced by the Treaty of Maastricht). The new Code of Conduct thus signified greater political control for the European Parliament over the Commission's legislative actions<sup>297</sup>.

The 2000 and 2005 Framework Agreements heralded a new era for the form and substance of political control of the Commission by the European Parliament.

#### **B.4. The Prodi Commission**

The first agreement signed by the Prodi Commission formally put an end to the ad hoc practices on which the two institutions had based their relations (such as exchanges of letters, codes of conduct, *modus vivendi*, etc.). Its implementation went a long way towards improving relations between the two institutions, which had deteriorated towards the end of the Santer Commission. Enhanced political dialogue, more information for the European Parliament about the activities of the Commission and the communication by the Commission of confidential documents and information (see Annex III to the Agreement) helped restore a climate of trust and strengthened the accountability of the Commission<sup>298</sup>.

Still, the fact remains that the European Parliament had initially proposed a framework agreement containing provisions that both the Commission and the Council considered as exceeding the provisions of the Treaty and as such liable to affect the institutional balance (the Commission only wanted to keep the five points mentioned by Mr Prodi during the investiture debate). The Commission's main concerns related to requests made by the European Parliament for the application of the codecision procedure, individual accountability of members of the Commission and the introduction of a discharge procedure similar to an annual censure. Although the European Parliament finally agreed to abandon some of its requests, the Framework Agreement of 5 July 2000 marked a quantum leap for relations between the European Parliament and the Commission, with the European Parliament having more political control over the autonomous actions of the Commission. It is no accident that in its declaration of 10 July 2000, the Council expressed its fear of a possible shift in the institutional balance.

#### **B.5. The Barroso Commission**

The same thing happened with the revision of the 2005 Framework Agreement between the European Parliament and the Commission following the appointment of the Barroso Commission. The European Parliament adopted the same strategy, seeking a revi-

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<sup>297</sup> The first version of the Code proposed by the European Parliament contained obligations for the Commission that, in its opinion, could 'modify the thrust of a motion of censure as foreseen by the Treaty. A Commission which undertook to execute all requests from the European Parliament would largely reduce the impact to an administrative/disciplinary form of sanction rather than a political act'.

<sup>298</sup> It is worth noting that the lack of accountability of the Commission at all levels had been the main criticism in the Committee of Wise Men report.



sion of certain provisions of the Framework Agreement of 5 July 2000 that had already posed a problem both for the Commission and the Council (namely the censure of individual members of the Commission, the involvement of the European Parliament in international agreements and the withdrawal of a proposal rejected by the European Parliament). To these were added the correct procedure to follow in the event of a mid-term replacement of a Commissioner and the presentation by the Commission of a proposal for a multiannual programme for the European Union, an idea borrowed by the European Parliament from the new provisions of the Constitutional Treaty. Unsurprisingly, the EP's demands – although motivated partly by the problems that emerged during the investiture vote of the Barroso Commission – presented problems in terms of the institutional balance (particularly for the Council, which had been briefed by its own Legal Service).

Finally, like it or not, the Commission agreed to revise certain aspects of the Framework Agreement, as a simple revision of the 2000 Agreement could lead to non-compliance with Declaration No 3 annexed to the Treaty of Nice on the conclusion of interinstitutional agreements between the three institutions. The most significant changes compared with the July 2000 Framework Agreement were as follows:

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- a) New provisions concerning the political accountability of the Commission and political dialogue with the European Parliament. The President of the Commission assumed full responsibility for identifying any conflict of interests that would cause a Commissioner to be unable to perform his duties. Similarly, the Commission President was responsible for taking the appropriate action if the European Parliament expressed a lack of confidence in a particular member of the Commission (a consequence of the Buttiglione affair). At the same time, the European Parliament obtained a right of scrutiny over the entry into office of a new Commissioner in the event of replacement of a Member of the Commission during the Commission's term of office (in accordance with Article 215 of the Treaty) and over any reshuffling of portfolios (as was the case during the allocation of Justice, Freedom and Security to the Vice-President, Mr Barrot, who was previously in charge of Transport)<sup>299</sup>. Finally, a regular political dialogue was established at the highest level between the President of the Commission and the Vice-President in charge of interinstitutional relations with the Conference of Presidents;
- b) In terms of transparency, the Commission agreed to provide the European Parliament with a complete list of the approximately 1 400 groups of experts that assisted it in exercising its right of initiative (and, at the request of the parliamentary committees, information about the members and activities of these groups);
- c) In terms of programming, the Commission assumed additional commitments concerning regular dialogue with the European Parliament on its annual programme, as well as the submission of a proposal for a multiannual programme (see strategic objectives for the period 2005-09).

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<sup>299</sup> According to Maurer 'these new provisions can be seen as consequences of the EP's dissatisfaction with single Commissioners, which emerged at the 2004 hearings.'

Despite the limited scope of the revision and the emphasis on it conforming to the Treaty, the Council issued a statement reiterating its concerns over the shift in the institutional balance, particularly with regard to the censure of individual Commissioners – considered contrary to Article 215 of the Treaty – and multiannual programming, which would be incompatible with the practices of the Council as established by the Seville European Council.

To conclude, it would be fair to say that, with the new Framework Agreement, the European Parliament strengthened its political control over the Commission by making it, its President and Commissioners more accountable. In practice, however, the application of this agreement has not given rise to any major political difficulties.

### **C. Implementation of the ‘better regulation’ agenda**

Another area of interinstitutional relations that has given rise to both conflict and good cooperation between the European Parliament, the Council and the Commission is that of better regulation.

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As we know, in July 2000 the Commission published a White Paper on European governance in which it endeavoured to respond to criticisms levelled at the institutions of the European Union over the lack of legitimacy, remoteness from citizens and lack of transparency, proposing a series of measures that could be implemented without changes to the Treaties. The main measures were enhanced participatory democracy (more involvement of civil society and its representative organisations in the EU decision-making process) and, more importantly, an improvement in the European legislative process (better regulation) and implementation of Community law.

#### **C.1. Finding a balance between representative and participatory democracy**

With regard to better regulation, the Commission proposed – following in large part the recommendations of the Mandelkern Group on Better Regulation – improving the consultation procedure in areas affected by European legislation, introducing regulatory impact assessments of its new proposals, and simplifying existing legislation (COM/2001/428 final). The European Parliament published its opinion on the Commission White Paper in December 2001 (Kaufmann report). In this report, the European Parliament, while welcoming the Commission’s plans to strengthen the legitimacy of the European Union and to reduce the density of European legislation, warned against the temptation to replace representative democracy within the Union by new mechanisms of participatory democracy, since civil society could not be the sole custodian of democratic legitimacy.

The European Parliament has specifically tried to prevent prior consultation of stakeholders from replacing the decision-making procedures of legislative institutions, and

to prevent the Commission from deploying new mechanisms – such as coregulation or self-regulation – at the expense of adopting classic legislative acts in codecision with the European Parliament. These concerns are voiced in the petition sent to the Commission not to implement an action plan without consulting the European Parliament and to conclude an interinstitutional agreement on new mechanisms of better regulation (e.g. stakeholder consultation, impact assessment, etc.).

Although the Commission declared that it was ready for interinstitutional negotiation, the Council – having had a less than satisfactory experience with this in the past and being less receptive to the new concepts of ‘better regulation’ – was at first more reluctant. According to the conclusions of the Seville European Council on the signing of an interinstitutional agreement, negotiations began not only on the Commission Action Plan on ‘Simplifying and improving the regulatory environment’ (June 2002), but also on points of particular interest to the European Parliament (programming, choice of regulatory instrument, comitology, implementation of Community law).

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After six months of discussions, the three institutions signed an interinstitutional agreement whereby in return for agreeing to having the option of using new legislative instruments, the European Parliament was granted certain concessions (particularly by the Commission, which agreed to inform/consult it before proposing to use coregulation or self-regulation, for example). The same criteria applied for impact assessments or stakeholder consultation carried out by the Commission.

In short, the European Parliament wanted the interinstitutional agreement to stipulate the need for political control of the legislative authority – or even prior approval – before the Commission could deploy new forms of participatory democracy. In other words, the legislative authority had to be allowed to express a preliminary opinion on problem-solving using alternative mechanisms to conventional legislation, which was the responsibility of the legislator (and not civil society organisations).

For instance, the European Parliament did not back the Commission’s plans for self-regulation by the car industry on the issue of pedestrian safety, and called for a proposal for a directive on this subject. In spite of its initial preferences, the Commission finally agreed to accede to the requests of the European Parliament, and at the end of 2007 unveiled its proposal for a regulation of the European Parliament and of the Council on the protection of pedestrians and other vulnerable road users (COM(2007)560 final).

## **C.2. Participating in ‘better regulation’ measures and monitoring their implementation**

The Interinstitutional Agreement of December 2003 did not satisfy the European Parliament’s plans for active involvement in the implementation of ‘better regulation’. In fact, in May 2006 and again in September 2007, the European Parliament voted on a series

of resolutions asking the Commission to adopt new measures in response to the wishes of the European Parliament.

Briefly, the measures sought by the European Parliament and accepted wholly or in part by the Commission targeted:

- a) The creation of an independent body charged with inspecting the quality of the ‘impact assessments’ carried out by the relevant services of the Commission. The Commission did not grant the European Parliament’s request for external audits of its impact assessments by an independent agency, but instead set up an internal body (the ‘Impact Assessment Board’) managed by the General Secretariat of the Commission under the direct authority of the President to examine the relevance and quality of the impact assessments carried out by the Directorates-General of the Commission, assisted by independent experts where necessary;
- b) The precise identification of proposals aimed at simplifying existing legislation in order to facilitate its examination by the European Parliament and to expedite proceedings;
- c) The inclusion in the annual work programme of obsolete proposals to be withdrawn by the Commission, subject to any withdrawals for political reasons during the year in accordance with the procedure provided by the Framework Agreement (prior information for the European Parliament);
- d) More extensive and systematic briefing of the European Parliament on cases of infringement of Community law in order to allow the Parliament to scrutinise the application of European laws by the Member States.

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This illustrates how the European Parliament became progressively involved in the implementation of ‘better regulation’, even beyond the procedures laid down by the Treaty.

In addition, the Parliament was also keen to apply the principles of better regulation to itself:

- a) by increasing scrutiny by the parliamentary committees of the transposition and implementation of Community law (implementation sessions, own-initiative reports on the implementation of one or more legislative acts, hearings, etc.);
- b) by acquiring the tools enabling it to prepare its own impact assessments at the request of a parliamentary committee, when one or more amendments were considered substantial and the impact assessment was considered appropriate;
- c) by making internal arrangements for examining the Commission’s proposals for simplification (codification and recasting).

## IV. PARLIAMENTARY OVERSIGHT OF THE EXECUTIVE ACTIVITY OF THE COMMISSION

Another area in which the European Parliament has considerably extended its powers since the 1960s is oversight over the executive activity of the Commission. Political scrutiny of the Community Executive, which in extreme cases may lead to a motion of censure, also means that the European Parliament remains fully informed about the Commission's activities, and more specifically about the numerous executive acts that it adopts each year (between 2 500 and 3 000 in recent years, making a total of approximately 80 000 to 90 000 decisions since the 1960s).

The system initially provided by the Treaty of Rome made the Council, as the decision-making body of the Community, responsible for conferring powers on the Commission for the implementation of legislative acts at the European level (with Member States being solely responsible for the implementation of acts at the national level).

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It also provided (in Article 155(4) that the Council could, by way of derogation, reserve some implementing powers for itself, where it considered this appropriate. The provisions of the Treaty were interpreted by the Council as granting it not only executive power, but also the power to monitor *ex post* the exercise by the Commission of its powers through a system of committees composed of representatives from the Member States. This system, which in 1987 was given the name 'comitology', has allowed the Council not only to reserve some executive powers for itself (such as funding hydrocarbon projects or declaring veterinary laboratories free from disease), but also to rule on appeal on executive measures delegated to the Commission but not approved by the committees.

This system, introduced to agricultural measures such as export refunds in the 1960s, was gradually extended to the areas of trade, customs, veterinary health, transport and the internal market. In addition, the Council, as sole legislator (the European Parliament having a purely advisory role), took the opportunity to extend the comitology system to the modification of annexes to European laws (regulations, directives and decisions), with the result that the Commission could, with committee approval or by appealing to the Council, draw up 'executive' measures which in reality modified the content of the legislative act.

The European Parliament has always strongly objected to a system that could potentially make overall political control of the Commission more difficult, and in particular prevent the European Parliament from examining the implementation of the budget by the Commission, since the committees of Member States or the Council could modify the content of the draft measure drawn up by the Commission and/or any funding granted. Consequently, the European Parliament considered the Commission to be the sole custodian of executive power, such that any restriction on its implementing powers neces-

sarily gave rise to an equivalent restriction on parliamentary control of the Executive: the Parliament believed that coexistence at this level of their executive bodies in areas of Community competence undermined the democratic foundations of Europe<sup>300</sup>.

This idea led the European Parliament to limit comitology to the advisory committee procedure, this being an intrinsic part of the autonomy of the Commission yet still involving national governments in the drawing up of standards<sup>301</sup>. Still, the comitology system applicable to financial measures was considered lawful and consistent with the Treaty by the Court of Justice (Case 16/88 Commission v Council [1989] ECR 3457).

The comitology system – introduced when the Council was the sole legislator – should have been modified once the European Parliament was granted the power of codecision on legislative acts by the Maastricht Treaty, and thus the power to delegate implementing powers to the Commission, jointly with the Council, particularly as there had been a significant increase in implementing powers over the years. From 1993 therefore, the European Parliament revised its institutional outlook: following the Maastricht Treaty, it believed that legislative codecision necessarily entailed executive codecision<sup>302</sup>. This idea met with the refusal of the Council, which asserted its dual legislative and executive role (while the European Parliament had no executive role). This led the European Parliament to embark on a campaign of institutional warfare, either by blocking the adoption of certain acts in codecision (e.g. rejection of the 1994 ONP Voice Telephony Directive and the European Securities Committee), or by setting aside budget appropriations for committee meetings. This filibustering led the Commission to sign a series of administrative agreements with the European Parliament to inform it about the work of the committees (see Plumb/Delors, Klepsch/Millan and Samland/Williamson exchanges of letters). Furthermore, the blocking of legislative acts in codecision led the Council to accept a *modus vivendi* with the European Parliament and the Commission in December 1994 aimed at informing and consulting the European Parliament on the implementing measures of acts adopted under codecision. The *modus vivendi* of 20 December 1994 takes an unusual form for an interinstitutional agreement (as it is not an IIA, a declaration or an exchange of letters) as, owing to its provisional nature, it will remain in force only until the next Intergovernmental Conference.

The European Parliament accepted this arrangement only on a provisional basis pending a more satisfactory solution, and pressured the Commission to table a proposal for a revision of the 1987 Comitology Decision. A Commission proposal aimed at modifying the provisions of the Treaty was rejected by the Amsterdam Intergovernmental Conference, which triggered a return to filibustering by the European Parliament. In general, this tactic is confirmation of the general idea that interinstitutional agreements are a way for the European Parliament to increase its powers between one intergovernmental

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<sup>300</sup> Roumeliotis report of 15.11.1990.

<sup>301</sup> See Szapiro, M., 'La Comitologie dans le système institutionnel communautaire', 1999.

<sup>302</sup> De Giovanni report of 6.12.1993.

conference and the next, regardless of the Treaties (see earlier chapter on interinstitutional agreements).

In 1998, the Commission finally proposed an amendment to the Comitology Decision whereby the legislator would be notified in the event of an unfavourable opinion of the committee and whereby the legislative procedure used for the adoption of the basic instrument would be revived. This procedure, which in itself presented certain contradictions (for example, why was it that only an adverse opinion of an intergovernmental committee could trigger a return to the legislative procedure?), was disregarded by the Council, which instead gave the European Parliament a right of scrutiny over cases where the Commission had exceeded its powers (the Council still sheltering behind its own executive powers and in the absence of an executive power of the European Parliament, denying it control over the substance of the implementing act drafted by the Commission).

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The European Parliament had no choice but to agree to its involvement in the comitology procedure being limited to cases where the Commission had exceeded its powers. However, when it actually exercised its right of scrutiny between 2000 and 2007, in the majority of cases the European Parliament contested the substance of the Commission's measure, rather than the fact that it had exceeded its powers. The end result was that in five out of six cases, the Commission did not amend its draft measure (with the Council happily taking the side of the Commission).

Furthermore, the application of the right of scrutiny by the Commission was not free from administrative error: the Commission failed to notify the European Parliament of around 60 draft measures, as required by the new Comitology Decision of June 1999 (although the European Parliament, informed of these 60 measures after the fact, found nothing to say about the competence of the Commission or about the substance of any of the measures).

Things changed with the Constitutional Treaty of 29 October 2004. At last, thanks to proposals tabled by the Commission and by the Amato Group within the European Convention, the Treaty recognised for the first time that the same comitology procedure could not be applied both to measures that amend or supplement a law and those that are purely executive (just as in the Member States, the same procedure does not apply to ministerial decrees and executive orders). Consequently, the 2004 Constitutional Treaty made a clear distinction between delegated acts (Article 36 of the Constitutional Treaty) and executive acts in the strict sense of the word (Article 37 of the Constitutional Treaty).

With regard to delegated acts, increasingly conferred on the Commission by the legislator (see measures for the financial services sector under the Lamfalussy procedure), only the Commission is authorised to adopt these under the supervision of the legislator (the



European Parliament and the Council), which can prevent the adoption of a particular measure by a majority vote, or even revoke the powers delegated to the Commission. This provision of the Treaty should have put an end to infighting between the institutions. However, following non-ratification of the Constitutional Treaty at the end of 2005, the European Parliament resumed its filibustering activity, inserting ‘sunset clauses’ into legislative acts designed to limit the delegation of powers to the Commission.

This new tactic of the European Parliament persuaded the Council to re-examine a 2002 Commission proposal with a view to amending the 1998 Comitology Decision, reconciling it with the system described in the 2004 Constitutional Treaty. Following numerous tripartite meetings with the European Parliament and the Commission, the Council amended the Comitology Decision in July 2006, granting the European Parliament a right of veto (to be exercised within a specific timeframe) on the quasi-legislative measures of the Commission. Yet the Council did not follow the Constitutional Treaty through to its logical conclusion, anxious to preserve its legal interpretation of the Treaty and thus safeguard its executive power before the draft measure of the Commission could be submitted to the European Parliament<sup>303</sup>.

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This partial application of the guidelines of the Constitutional Treaty should finally disappear with the ratification of the Treaty of Lisbon, which left the provisions of the Constitutional Treaty unchanged (Articles 249b and 249c of the Treaty of Lisbon).

The delegation of powers to the Commission is a textbook example of the tenacity of the European Parliament in the fight to increase its powers, first using interinstitutional agreements, and then resorting to amendments of secondary legislation (comitology decisions), before finally achieving the revision of the Treaty itself. In other words, comitology is probably the most striking example of the tactics employed by the European Parliament to gain additional powers and to ‘extensively use its formal bargaining chips in order to cajole the Institutions into the Interinstitutional Agreements’<sup>304</sup>.

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<sup>303</sup> In other words, the Council reserves the right to amend the Commission draft before the European Parliament can issue an opinion on it.

<sup>304</sup> See Kietz, D. and Maurer, A., *The European Parliament in Treaty Reform: Predefining Intergovernmental Conferences through Interinstitutional Agreements*.



## V. RELATIONS BETWEEN THE EUROPEAN PARLIAMENT AND OTHER INSTITUTIONS AND BODIES OF THE EUROPEAN UNION

As we have seen, the European Parliament has a special relationship with the European Commission and the Council.

However, relations between the European Parliament and the Council, apart from legislative and budgetary procedures<sup>305</sup> are not widely codified in Community law, be it treaties, interinstitutional agreements or framework agreements. In fact, the EP's power of scrutiny over the Council's activities is virtually non-existent and its control is virtually unrecognised in the Treaties and in other acts governing interinstitutional relations. In practice, however, the Parliament has succeeded in gaining informal powers over the activities of the Council, which, after the progress made by the Parliament since the end of the 1980s, is now accountable to it and must try to cooperate with it in a bid to find a compromise.

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The situation is slightly different when it comes to other institutions and bodies of the European Union, with the notable exception of the Court of Justice, whose activities are not monitored by either the European Parliament or the Council, although the latter appoints national judges to the ECJ and the Court of First Instance. As for other institutions and bodies, such as the European Central Bank, the European Court of Auditors or even the European Anti-Fraud Office and other European agencies, the European Parliament in theory has limited power, although in practice it has established itself as a key player, managing to influence the appointment of members of these institutions and insisting that they report back to it regularly.

### A. Relations between the European Parliament and the Council

For the most part, relations between the European Parliament and the Council of Ministers are within the framework of the budgetary and legislative procedures<sup>306</sup>. Outside this framework, which covers almost all of the activities of these two institutions, relations between the European Parliament and the Council rely in large part on a set of rules and practices which, in the main, are not codified in the primary legislation of the European Union.

In addition, the power of supervision of the European Parliament over the work of the Council is in theory virtually non-existent, unlike the power it has over the European Commission<sup>307</sup>. In practice, however, the European Parliament tries to monitor the activities of the Council using three types of procedure: written and oral questions from

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<sup>305</sup> See section on the budgetary and legislative powers of the European Parliament.

<sup>306</sup> See section on the budgetary and legislative powers of the European Parliament.

<sup>307</sup> See section on the EP's right of censure of the European Commission.

MEPs to members of the Council, the participation of Council representatives in the work of the competent parliamentary committees and/or during plenary sittings of the European Parliament, and the Council's obligations to disclose information to the Parliament about its work<sup>308</sup>.

### **A.1. Written and oral questions**

The Council has agreed to answer written and oral questions from the European Parliament whereas, under the EC Treaty, only the European Commission was obliged to do this. In 1976, the procedure was extended to meetings of foreign ministers on political cooperation. In practice, any member of the European Parliament can submit written questions to the Council, with the question and answer being published in the *Official Journal of the European Union* and thus being accessible to all citizens. Oral questions are somewhat different, in that questions must be asked either by a parliamentary committee or a political group, or by at least 40 MEPs<sup>309</sup>. Questions are asked at plenary sittings during question time, a procedure modelled on the British tradition. MEPs can ask questions, provided that they meet the aforementioned criteria and have been approved by the Conference of Presidents (Article 108.1 of the Rules of Procedure of the European Parliament). Representatives from the Commission and the Council answer the questions in the time allotted to them (as a rule 45 minutes for each institution). Council representatives who take part in parliamentary question time are usually ministers. According to figures supplied by Corbett, Jacobs and Shackleton<sup>310</sup>, the number of questions, both written and oral, submitted to the Council has risen steadily in recent years, although the number of questions submitted to the Commission is still higher.

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### **A.2. The presence of Council representatives in the European Parliament**

The presence of Council representatives at parliamentary sessions is a sign of how relations between the Council and Parliament have changed. As for Council meetings, regardless of the level concerned (working party, Coreper I and II, Council of Ministers), meeting rooms are closed to EP representatives, although Commission representatives, unless otherwise indicated, are invited to attend Council meetings<sup>311</sup>.

The situation is very different when it comes to the European Parliament. Apart from parliamentary committee meetings which the public are not permitted to attend (often between political group coordinators and the parliamentary committee bureau), parliamentary committee meetings, as well as plenary sittings in Strasbourg and Brussels,

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<sup>308</sup> The European Parliament has also tried to exert political influence over the progressive opening to the public of Council meetings; on the limited commitments assumed by the Council in terms of interinstitutional programming and cooperation with the Parliament in the context of 'better regulation' and the Joint Declaration on practical arrangements for the codecision procedure; and by regular requests to the Council or Member States via own-initiative reports/resolutions in plenary.

<sup>309</sup> See Rules of Procedure of the European Parliament.

<sup>310</sup> Corbett, R., Jacobs, F. and Shackleton, M., *The European Parliament*, John Harper, 2007, p. (...).

<sup>311</sup> An exception is made for some informal meetings of ministers, to which certain MEPs are also invited.

are open to the public. Places are reserved for representatives of the various institutions, and specifically for representatives of the European Commission and the Council of the European Union. They, in view of the enhanced role of the European Parliament in legislative and budgetary spheres, have realised that regular monitoring of parliamentary activities is no longer optional and, since the introduction of the cooperation and codecision procedures, Council representatives have regularly attended parliamentary committee meetings and plenary sittings of the European Parliament. It has also become common for Council representatives of all levels, from officials to ministers, to be invited to speak during sessions of the European Parliament. Usually only the representative of the President-in-Office of the Council speaks on behalf of all Member States.

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In practice, each minister acting as President-in-Office of the Council appears before the relevant parliamentary committee at least twice during the six-month presidency, while the President-in-Office of the Council appears before Heads of State or Government and plenary sittings of the European Parliament. Heads of State or Government now submit the programme of work for their six-month presidency to the European Parliament before their presidency begins. French President Nicolas Sarkozy appeared before the European Parliament on 13 November 2007 to announce the priorities of the French Presidency of the Council, which began in July 2008. The European Parliament places great importance on hearing ministerial representatives during its plenary sittings and MEPs are annoyed if ministers do not attend.

Beyond its relations that are not codified in Community law, the European Parliament has also succeeded in obtaining binding legal commitments from the Council of Ministers. This is particularly true of the disclosure of information in areas in which the European Parliament currently has a limited role<sup>312</sup> namely the second pillar, which deals with issues relating to the common foreign and security policy and the third pillar (formerly Justice and Home Affairs, now Police and Judicial Cooperation in Criminal Matters).

### **A.3. Supervision of the common foreign and security policy**

In terms of the common foreign and security policy (CFSP), which traces its roots back to the 1970s, the European Parliament has for a long time been left out of the loop by the Council, since the Member States believe that these topics come within a purely inter-governmental remit. When the CFSP was formally recognised by the Treaties (Maastricht), the European Parliament redoubled its efforts to obtain a right of scrutiny over it, although it has no actual powers in this area.

It was through the budgetary procedure that the European Parliament managed to obtain concessions from the Council in the area of common foreign and security policy.

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<sup>312</sup> This should change in the event of the ratification and entry into force of the Treaty of Lisbon, which abolishes the pillar structure and considerably extends the powers of the European Parliament in the areas of common foreign and security policy and Police and Judicial Cooperation in Criminal Matters.

In fact, MEPs have in their possession a weighty argument in this area, since a large part of the budget allocated to the policy falls into the category of non-compulsory expenditure<sup>313</sup>. In the 1990s, MEPs laboured to specify the amounts allocated to each action under the CFSP so that they could have more control over the actions of the Council in this arena.

Since this practice was inconvenient for the Council, it tried to find common ground with the Parliament. In 1997, the matter was settled through an interinstitutional agreement on common foreign and security policy spending<sup>314</sup> whereby the European Parliament agreed not to modify CFSP-related expenditure on a piecemeal basis, in return for which the Council agreed to keep Parliament better informed about its activities in this field and granted it a general right of supervision over the common foreign and security policy<sup>315</sup>.

The European Parliament can also adopt recommendations to the Council in the areas of common foreign and security policy and Police and Judicial Cooperation in Criminal Matters, as stipulated in the Rules of Procedure of the European Parliament (Rule 114).

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#### **A.4. Choosing the High Representative for the common foreign and security policy**

The European Parliament has no formal power in relation to the appointment of the High Representative for the common foreign and security policy (currently Javier Solana). However, the President-in-Office of the Council is invited to make a statement about the appointment before it takes place. The future representative is also invited before the relevant parliamentary committee for an exchange of views. The European Parliament can adopt a recommendation (which must be separate from the consultation procedure) on the choice of High Representative (Rule 85 of the EP's Rules of Procedure). The Treaty of Lisbon will fundamentally change the existing situation: the current High Representative for the common foreign and security policy will also in future be the Vice-President of the European Commission. Accordingly, his appointment will be subject to a vote of approval by the European Parliament and, if necessary, he may be dismissed from office as part of the censure procedure applicable to Commission members.

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<sup>313</sup> See the description of this in the chapter on the budgetary powers of the European Parliament.

<sup>314</sup> Interinstitutional Agreement of 16.7.1997 relating to the financing of the common foreign and security policy [OJ C 286, 22.09.1997]. This agreement was later repealed and its provisions were incorporated into the Interinstitutional Agreement of 6.5.1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure [OJ C 172, 18.06.1999].

<sup>315</sup> The Council is required to keep the European Parliament informed about changes to the CFSP (Article 21 of the Treaty on European Union).

## **A.5. Practical dialogue on a day-to-day basis**

Relations between the European Parliament and the Council of Ministers are thus based on a set of rules and practices that have been codified over the years, the majority of which are not formally recognised in the Treaties. However, the pivotal role of the European Parliament in the legislative and budgetary spheres has persuaded the Council to step up its supervision of the Parliament's work and to engage more in dialogue with the EP, even in areas where it is not legally required to do so. In practice, the General Secretariats of both institutions, as well as MEPs and representatives of the Member States, have regular dealings with each other and cooperate through information-sharing, even though these activities have a fairly low profile. This regular and informal contact eases the legislative and budgetary process and facilitates compromises on which the smooth operation of the European Union largely relies. The same can be said for relations between the European Parliament and the other institutions and bodies of the European Union.

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## **B. Relations between the European Parliament and other institutions and bodies of the European Union: limited supervision in theory – widespread control in practice**

Because the European Parliament represents citizens and has become a key institution in both legislative and budgetary terms, all bodies and institutions of the European Union have regular dealings with it. Given that the European Parliament is colegislator alongside the Council, but perhaps more importantly because it is one of the two branches of the budgetary authority, all Community institutions monitor its activities closely and send representatives to its meetings. For legislative proposals on which they have issued an opinion or on which they are required to issue one, it is common to see representatives of the European Economic and Social Committee or the Committee of the Regions in attendance at parliamentary committee meetings. It is also normal to see officials working in the various bodies and institutions, such as the directors of European agencies, attend budgetary debates on requests for transfers of appropriations, or during the vote on the annual budgetary procedure. Legally speaking, however, in practice the obligations of most European institutions and bodies towards the European Parliament remain limited.

### **B.1. The European Central Bank and the European Court of Auditors: appointment-based control**

Formally, the European Parliament only has an advisory role in the appointment of members of the European Court of Auditors, the Executive Board of the European Central Bank (the president, the vice-president and four other members) and the Director of the European Anti-Fraud Office. Nevertheless, in reality, this simple advisory role is of enormous importance, and the Parliament, which was quick to realise this, has made full use of it.

## 1. The European Court of Auditors

Article 247.3 of the EC Treaty stipulates that the European Parliament must be consulted on the appointment of members of the European Court of Auditors. As in the case of the European Commissioners, in 1981, even before a system existed for the appointment of Commissioners, the European Parliament introduced a system whereby candidates are interviewed by the Committee on Budgetary Control (COCOBU) before the European Parliament holds a final vote on their appointment. Formally, and if we take the Treaty literally, there is nothing to stop the Council from confirming the appointment of a candidate even if the European Parliament contests this. However, in practice, COCOBU issued an adverse opinion in 1988 on two candidates, which led to the withdrawal and replacement of the French candidate even before the European Parliament held its vote in plenary. The European Parliament repeated this procedure in 1993 and again issued an adverse opinion on two candidates. However, this time its opinion was ignored by the Council, which confirmed both candidates. In 2004, the Cypriot candidate (Constantinos Karmios) and the Slovak candidate (Julius Molnar) received an adverse opinion from the Committee on Budgetary Control, which resulted in the replacement of the Cypriot candidate, as had been the case with the French candidate in 1988. However, Mr Molnar went on to be appointed by the Council. Finally, the right of consultation of the European Parliament should not be overlooked, since it can lead Member States to propose a new candidate rather than face the rejection of its candidate by the European Parliament. Accordingly, despite the fact that it has limited powers, the influence of the European Parliament over the appointment of members to the Court of Auditors remains important.

## 2. The European Central Bank

A similar procedure applies to the appointment of members to the Executive Board of the European Central Bank (ECB), including its president and vice-president. Article 114 of the Treaty again only gives the European Parliament an advisory role in the appointment procedure. Nevertheless, as previously indicated for the European Court of Auditors, the EP's role is in fact crucial, since a vote of no confidence in one or more candidates would put them in a very difficult position.

Since 1993, the European Parliament has organised hearings of candidates put forward by the Council: the first hearing took place in November 1993 for the appointment of Alexandre Lamfalussy to the post of President of the European Monetary Institute. In 1998, it was the turn of the candidate for the post of President of the ECB, Wim Duisenberg (Netherlands), to be interviewed by Parliament. At these hearings, the future directors explain their vision of their future responsibilities and the Parliament assesses their ability to fulfil them. It is interesting to note that the hearing of Mr Duisenberg was an opportunity for him to agree to appear before the Committee on Economic and Monetary Affairs of the European Parliament at least four times a year to report back on the activities of the ECB.

This provision has since been written into the Rules of Procedure of the European Parliament (Rule 106.3). The current President of the ECB, Jean-Claude Trichet, appointed in 2004, also appears regularly before the European Parliament. On 11 September 2007, he appeared before the Committee on Economic and Monetary Affairs during an exceptional hearing about the financial crisis that rocked the global markets in the summer of 2007 (the subprime crisis). By organising these hearings before the appointment and during the term of office of the President, the European Parliament exercises a form of indirect control over the activities of the ECB, also enabling the two institutions to remain in close contact and to cooperate with each other. Furthermore, since 2002, the European Parliament has applied the practice of written questions to the European Central Bank, as stipulated in Rule 111 of its Rules of Procedure.

## **B.2. European agencies and the European Parliament: lack of cohesion and mistrust**

Relations between the European Parliament and the European agencies are both complex and, in some cases, characterised by a certain mistrust of the Parliament towards the agencies and the way in which they operate.

The European Parliament, mindful of the problems that surrounded the resignation of the Santer Commission in 1999 (see Chapter II.2 above), and because it sees the creation of agencies as a threat to its control over the European Commission, has tried to monitor their activities closely. It does this in a number of ways: obtaining the power to appoint, in certain cases, a member to the executive board of the agency in question; interviewing agency directors and issuing an opinion on their appointment; interviewing senior members of the agency in the context of budgetary and legislative procedures; visiting agency headquarters; and finally, keeping a close eye on their budgetary activities.

### **1. Appointment-based control**

With regard to the first type of control, which the Parliament exercises over the appointment of the director or of certain board members of these agencies, it is important to note that no general rule applies to these procedures. For some agencies in fact, such as the European Environment Agency or European Monitoring Centre for Drugs and Drug Addiction, the European Parliament has the right to appoint two board members, granted to it by the basic instrument establishing these bodies. The appointment procedure is similar to that applicable to the appointment of the European Ombudsman. A group of 40 MEPs or a political group can submit a candidate for the post. Candidates are then interviewed by the competent parliamentary committee, which draws up a list of candidates based on the number of votes they receive during the committee vote. Unlike other appointment procedures, candidate(s) are chosen by the Conference of Presidents and not by the European Parliament in plenary. The European Parliament retains a right of censure over the members appointed by it and may dismiss them from office, although this has never happened in the past. Successful candidates must report



regularly to the competent parliamentary committee on any event that might interest the Parliament.

As some MEPs voiced their dissatisfaction with this model, a new procedure was introduced in 2002 for the appointment of members to the Board of the European Food Safety Authority. The parliamentary committee responsible initially interviewed all candidates put forward, drew up a shortlist and submitted this to the Council. Since the list was only intended as a guide, the Council took account of some of Parliament's preferences and disregarded others. Next came the turn of the candidate for the position of Executive Director of the Authority to be interviewed by the competent parliamentary committee. The committee issued a positive opinion on the applicant, a view that was endorsed by the Conference of Presidents. The candidate was therefore appointed. This two-step procedure was initially called for by the Parliament during the reform of the European Medicines Agency (EMA). However, thanks to the considerable efforts made during the negotiations in codecision of the basic instrument, the Parliament managed to ensure that a third procedure was introduced for the EMA: currently the Parliament not only appoints two members of the Board but also interviews candidates for the position of Executive Director and issues an opinion on the appointment. This procedure was later applied to the European Centre for Disease Prevention and Control and the European Chemicals Agency.

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## 2. Information-based control

Apart from the EP's involvement in the appointment of board members, any MEP can also submit a written question to an agency through the President of the European Parliament. The agency is required to answer the question within the time limit indicated in the written question (Rule 119 of the Rules of Procedure of the European Parliament). The various parliamentary committees (including the Committee on Budgets) can also invite agency representatives to speak at one of their meetings.

## 3. Budgetary control

Finally, in order to maintain strict control over the activities of European agencies, the European Parliament has taken advantage of its budgetary powers. The Parliament monitors agency budgets as part of the annual budgetary procedure, during both the annual budget vote and voting on requests to transfer appropriations during the financial year. Both types of budget vote are sometimes accompanied by intense debate within the Committee on Budgets, which can decide, particularly if the requests are not sufficiently reasoned or the arguments are poorly presented, to reduce the budget of some agencies or to decline their budget transfer request.

The European Parliament also has control over the implementation of agency budgets as part of the annual discharge procedure. During this procedure, executive directors



of agencies may be interviewed by the Committee on Budgetary Control<sup>316</sup>. To mitigate the effects of endless budgetary discord, on 13 July 2007 the European Parliament, the Council and the Commission adopted a joint statement on decentralised agencies in which the Commission agreed to provide more information about agency budgets to the two branches of the budgetary authority. The statement also mentioned the need for agencies to plan their budget expenditure more carefully and to disclose all of the necessary information (particularly concerning their staff) when preparing their annual budget. The issue remains a sensitive one and is closely monitored by the European Parliament.

Generally, the European Parliament plans on keeping a close eye on the activities of European agencies. It has let this be known on several occasions, such as in the report adopted in January 2004<sup>317</sup> calling for rationalisation of the procedure for the appointment of board members of decentralised agencies, their directors and their internal structure.

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The attempts made by the Commission to define a common framework governing the functions and structure of agencies have thus far been unsuccessful, leading it to recommend the creation of an interinstitutional working party and to call for a moratorium on the proposal of new agencies until the end of 2009. Despite the positive response from the various actors in 2007 and the aforementioned joint statement, it is probable that the question of agencies and their supervision will resurface in the months and years ahead, both in the legislative sphere and in the budgetary sphere.

### **B.3. The European Ombudsman: a special case**

The European Ombudsman merits special consideration in view of his close relationship with the European Parliament. The position of European Ombudsman was created in 1993 by the Treaty of Maastricht. The Ombudsman's role is to investigate complaints of maladministration by the institutions and bodies of the European Union. The Ombudsman is totally independent and impartial. Nevertheless, in view of his duties and the powers conferred on the European Parliament concerning his appointment and regulation, he has a very close relationship with the EP. In accordance with Article 195 of the EC Treaty, the Ombudsman is appointed by the European Parliament after each election for a term of five years and is eligible for reappointment. The Rules of Procedure of the European Parliament stipulate that each candidate for the post of European Ombudsman must have the support of at least 40 MEPs from a minimum of two Member States. Hearings are then organised by the EP's Committee on Petitions, which draws up a list of suitable candidates.

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<sup>316</sup> The discharge procedure applicable to agencies is set out in Articles 91 et seq. of Commission Regulation (EC, Euratom) No 2343/2002 of 23.12.2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 357, 31.12.2002, pp. 72-90).

<sup>317</sup> Almeida Garrett report, A5-471/2003.

To be elected, the candidate must obtain the majority of votes of members present. If after two ballots no candidate has obtained a majority, only the two candidates with the highest number of votes remain in the competition and a run-off election is held. Jacob Söderman, from Finland, was elected the first European Ombudsman in 1995 and held this office until 2002 (in other words, for one and a half terms). He was replaced in January 2003 by P. Nikiforos Diamandouros, of Greece, who was re-elected in 2004. As well as playing a part in appointing the Ombudsman, the European Parliament also lays down the regulations and general conditions governing the performance of the Ombudsman's duties<sup>318</sup>. The Ombudsman is accountable to the European Parliament, submitting an annual report to it on the outcome of his inquiries during that year. The Ombudsman may be dismissed by the Court of Justice at the request of the European Parliament if he no longer fulfils the conditions required for the performance of his duties or if he is guilty of serious misconduct.

#### **B.4. The European Court of Justice: an exception to the rule**

Despite the claims made at the various intergovernmental conferences, the European Parliament has thus far been excluded from the appointment of judges to the Court of Justice of the European Communities (ECJ) and the Court of First Instance (CFI), which until now have remained in the hands of the Member States acting by common accord. The Treaty of Lisbon will bring about a significant change however, since Article 224a makes provision for the creation of a panel composed of former judges of the ECJ, former members of national supreme courts and lawyers of recognised competence giving an opinion on the candidates proposed by the Member States to sit in the two European courts. Of these seven members, one will be chosen by the European Parliament, which will thus obtain for the first time – albeit indirectly – a right to express its opinion on the appointment of judges and advocates-general of the ECJ (renamed the Court of Justice of the European Union) and members of the Court of First Instance.

Although the Treaties have not given it extensive control over the institutions and bodies of the European Union (excluding the European Commission), the European Parliament has used the limited possibilities offered by the Treaties to exercise control, more or less directly, over the activities of the various bodies and institutions of the European Union. Owing to the central role played by the European Parliament and its reputation, it has become a key player for the various European institutions. Even the Council, although initially reluctant to see the European Parliament meddling in its sphere of influence, is now accountable to the European Parliament and tries to cooperate with it as much as it possibly can.

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<sup>318</sup> These were established in 1994 by a decision of the European Parliament and revised in 2002.

## **VI. THE INFLUENCE OF THE EUROPEAN PARLIAMENT ON THE CASE LAW OF THE COURT OF JUSTICE**

Elsewhere in Part II of this volume, we looked at how the European Parliament was able to gain additional powers either through the revision of the Treaties, or through inter-institutional agreements and unilateral acts in relation to the budgetary procedure, the legislative procedure and its powers of supervision, mainly over the Commission, but also over the other institutions.

In its never-ending battle to augment its powers, the European Parliament has behaved similarly towards the Court of Justice, in so far as it has obtained, on the one hand, an amendment of the provisions of the Treaty that limited, or even excluded at first, its ability to take direct action before the Court of Justice, and on the other, a change in attitude of the Court of Justice in how it considers its observations both in requests for a preliminary ruling and in requests for an opinion addressed to the Court.

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To gauge the influence of the European Parliament on the case law of the Court of Justice, the following categories have been identified in the interests of clarity:

- a. cases where the European Parliament has contributed towards a change in the case law of the ECJ, with increased recognition/extension of its own rights;
- b. cases where the actions of the European Parliament have had the effect of altering the attitude of the other institutions, or even influencing the adoption of a common policy;
- c. cases where the European Parliament has defended the rights of citizens in actions to enforce the EU Charter of Fundamental Rights or in defending acts adopted in codecision before the Court.

For the purposes of this volume, the following chapter will concentrate mainly on the ‘institutional’ influence of the European Parliament in ECJ case law, since the defence of citizens’ rights stems from all legislative action of the European Parliament, and not simply those cases that come to the attention of the Court of Justice.

### **A. The case law of the Court of Justice and the powers of the European Parliament**

The provisions of the Treaty of Rome did not allow the European Parliament to bring proceedings before the Court of Justice (active legal capacity), or proceedings to be brought against it (passive legal capacity). It was passive legal capacity that was first recognised by the Court of Justice in 1986, when it upheld an action by the French Green Party against a decision of the Enlarged Bureau of the European Parliament concerning

the allocation of appropriations for the information campaigns of political groups<sup>319</sup>, followed later on by an action for annulment brought by the Council against the 1986 adoption of the budget by the President of the European Parliament. In its ruling on “the Greens v the European Parliament” (Case 294/83), the Court of Justice said that ‘the European Economic Community is a Community based on the rule of law, inasmuch as neither its Member States nor its institutions can avoid a review of the question whether the measures adopted by them are in conformity with the basic constitutional charter, the Treaty’<sup>320</sup>.

The recognition by the Court of Justice of the passive legal capacity of the European Parliament for its own actions encouraged the EP to test the parallel case, as a logical corollary, of the active legal capacity of the European Parliament; in other words, its ability to bring direct proceedings before the Court of Justice to annul legal acts adopted by the other institutions.

The first occasion arose barely a year later, when the European Parliament asked the Court to annul the 1987 ‘Comitology Decision’ of the Council (which, inter alia, gave the Council the option to reject by simple majority a draft executive act of the Commission based on the ‘contrefilet’ or ‘safety net’ procedure). On this occasion, the Court of Justice rejected the action for annulment of the European Parliament, considering it inadmissible, mainly on the grounds that the powers of the Parliament could be protected at any time before the Court by the Commission as guardian of the Treaties<sup>321</sup>. However, this rigid case law was difficult to maintain. The Court of Justice itself revised it only 18 months later when the European Parliament again went on the offensive, this time seeking the annulment of the regulation laying down maximum permitted levels of radioactive contamination of foodstuffs (known as the ‘post-Chernobyl regulation’), on the grounds that the Council had, in accordance with a proposal of the Commission, based this on Article 37 of the Euratom Treaty – allowing simple consultation of the European Parliament – and not on Article 100a of the EC Treaty, which made provision for the codecision procedure. Revising its earlier ruling, the Court concluded that ‘an action for annulment brought by the Parliament against an act of the Council or the Commission was admissible provided that the action sought only to safeguard the Parliament’s prerogatives and it was founded only on submissions alleging their infringement’<sup>322</sup>. This revision of case law was all the more justified as the Commission had acted alongside the Council to support the Council’s conclusions, thus proving that it was not possible for it

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<sup>319</sup> Cited in Schoo, J., ‘L’évolution du Service juridique et du rôle du Parlement européen dans la Cour de Justice’ in *Liber amicorum* in honour of Gregorio Garzón Clariana ‘Au service du droit communautaire’, 2006, p. 6.

<sup>320</sup> 1986, 1339.

<sup>321</sup> Op. cit, p. 8. This argument was not strictly true, as the Commission could easily put forward a different interpretation of the Treaty to that of the European Parliament (as will be seen, for example, in other disputes over the choice of legal basis).

<sup>322</sup> Case 70/88 – European Parliament v Council of the European Communities, 1990, I – 2041.

to play the role that the Court had assigned it in the comitology affair – namely that of ensuring respect for the prerogatives of the European Parliament<sup>323</sup>.

The perseverance of the European Parliament in bringing actions for annulment, particularly against acts of the Council, had two consequences:

- a) On the one hand, it paved the way for a change in the provisions of the Treaty recognising the right of active legal capacity for actions for annulment solely for the Member States, the Council and the Commission (Article 173 of the Maastricht Treaty). It was owing to the actions of the European Parliament that Article 173 was amended, first in recognition of the active legal capacity of the European Parliament solely to protect its prerogatives (Article 230 of the EC Treaty), and later with the repeal of this restriction, when the European Parliament was finally granted the same rights as the Member States, the Council and the Commission (Article 230 of the Treaty of Nice)<sup>324</sup>;
- b) On the other, the actions of the European Parliament led the Court of Justice to establish a precedent allowing it to participate fully in the exercise of the legislative process, independently of the will of other institutions and their attitudes in specific cases. In this respect, with the *Isoglucose* ruling the European Parliament won recognition of its right to express an opinion in the consultation procedure without the Council being able to disregard it for reasons of urgency<sup>325</sup>.

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The Court subsequently granted the European Parliament the right to be reconsulted on a draft act when the Commission or the Council had made substantial amendments to it. If not, the Council was restricted to waiting for the formal opinion of the European Parliament on a text that might be significantly different from the one initially proposed by the Commission. This case law is still of interest for legal acts under the consultation procedure (although not for acts in codecision or cooperation).

One area in which developments in the case law of the European Court of Justice are still topical, as well as being of particular interest to the European Parliament, is the choice of legal basis. There is the temptation for each institution to adopt the legal basis that best allows and empowers it to adopt the instrument in question (see, for example, the numerous conflicts in the past between legal bases that relate to agriculture or trade rather than the internal market). The Court tried to take the choice of legal basis away from the institutions by insisting that this had to be founded on objective criteria such as the purpose and principal aim of the instrument.

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<sup>323</sup> Footnote 158.

<sup>324</sup> This more recent amendment was ratified by the Intergovernmental Conference at its final meeting before the Nice European Council (13.11.2000). France was reluctant throughout to grant this new right to the European Parliament. A reference to these negotiations can be found in the article by Ricardo Passos in *Liber amicorum* in honour of Gregorio Garzón Clariana, op. cit. pp. 34-39.

<sup>325</sup> This case law was later qualified by the Court of Justice when it stipulated that the European Parliament had to issue an opinion within a reasonable time in accordance with the principle of sincere cooperation between the institutions.

In some cases, the Court of Justice has made allowance for institutional considerations such as the limited powers of the European Parliament, and has prioritised the democratic dimension of the European Union. For example, in the ‘titanium dioxide’ ruling (case C-300/89), the Court upheld the choice of Article 100a (internal market), which gave the European Parliament the power of codecision, over Article 130s (environmental protection)<sup>326</sup>. In another case (the ‘right of residence’ directive), the Court recognised, at the request of the European Parliament, that the Council had failed to recognise the EP’s legislative powers by adopting the directive based on Article 235 of the EC Treaty (unanimity and consultation of the European Parliament) instead of Article 7(2) (qualified majority and cooperation procedure).

Although the Court of Justice has since adapted its case law so that the purpose or the principal component of the Community act are taken into account when trying to identify the applicable legal basis, the fact remains that the European Parliament, through its actions for annulment, has steered the case law of the European Court of Justice towards greater recognition of the institutional balance.

More recently, further evidence of the contribution made by the European Parliament towards establishing a new institutional balance has taken the form of proceedings brought against acts of the Council or the Commission in which either these institutions have failed to respect the limits laid down by the basic legislative instrument, or the Council has created derivative legal bases allowing it to adopt a legislative act according to a different procedure from the one provided by the Treaty; in other words, without consulting the European Parliament<sup>327</sup>.

As the legislative powers of the European Parliament have grown, so too has its role metamorphosed. It no longer has to safeguard its prerogatives through proceedings for annulment, but rather, as Community legislator, it is called on to defend the legislation adopted, together with the Council.

In all of these cases, which aim to validate acts adopted in codecision, every argument imaginable has been presented by applicants and by national courts in requests for a preliminary ruling, ranging from disputes over the legal basis<sup>328</sup>, to the principles of subsidiarity<sup>329</sup> and proportionality<sup>330</sup>, not to mention infringements of the Treaty and fundamental rights<sup>331</sup>.

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<sup>326</sup> However, the Court reversed its own decision in the case of the Waste Directive (case C-155/91), when it concluded that the ‘harmonization of national provisions’ under the internal market was secondary to environmental protection.

<sup>327</sup> Case C-133/06 – European Parliament v Council of the European Union (procedures in Member States for granting and withdrawing refugee status).

<sup>328</sup> Particularly in the ‘tobacco’ cases: case C-376/98, Germany/Parliament and Council, 2000, I-8419; case C-380/03, 2006, I-11573.

<sup>329</sup> Case C-377/98, Netherlands/Parliament and Council, 2001, I-7079.

<sup>330</sup> Cases C-184 and 223/02, Spain and Finland/Parliament and Council, 2004, I-7789.

<sup>331</sup> Case C-377/98, Netherlands/Parliament and Council, *op. cit.*

To conclude, the fact that the European Parliament has, since the Treaty of Nice, been granted active legal capacity to bring actions for the annulment of Community acts in the same way as the other institutions and the Member States has finally helped establish the institutional balance that the Parliament has always looked for<sup>332</sup>.

## **B. Legal action by the European Parliament and its influence on the content of Community policy**

In this paragraph, we will briefly examine cases where the legal proceedings initiated by the European Parliament have not been intended to defend its prerogatives, but rather to take action against the failure of other institutions to exercise a Community competence or to define a common policy.

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In this respect, the first institutional action brought independently by the European Parliament was the application for the Council's failure to act after it failed to introduce a common transport policy<sup>333</sup>. The proceedings were declared admissible – and even partially founded – by the Court, despite a challenge from the Council, since the ex Article 175 of the EC Treaty (now Article 232) stated, contrary to ex Article 173, that such proceedings were permissible for Community institutions.

In its application for failure to act, the European Parliament found that a number of decisions on common transport policy – particularly overland transport – should have been adopted by the Council during the transitional period provided by the Treaty of Rome, which had expired 13 years previously. A list of Commission proposals not yet adopted by the Council was submitted with the application of the European Parliament. As a result of this oversight, the free movement of goods within the Community had been rendered impossible, or was at least hindered by obstacles in the field of transport services. The initial reaction of the Council had been to hide behind the intention of the Commission to re-examine its proposals before it could legitimately reach a decision. However, the Commission had clearly indicated that the majority of its proposals – particularly those concerning overland transport – were unchanged and that responsibility for an immediate decision lay with the Council. As the response given by the Council within the period of two months allowed by the Treaty was deemed unsatisfactory by the European Parliament, it filed its application in January 1983. The Commission, without being officially joined to the proceedings, had intervened in support of the European Parliament.

In its judgment of 22 May 1985, the Court of Justice, after granting the European Parliament the right to bring an action for failure to act against the Council, partly upheld the Parliament's claims, since the Council, in violation of the Treaty, had failed to guarantee

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<sup>332</sup> Ibid., op. cit. p. 10.

<sup>333</sup> Case 13/83: European Parliament v Council of the European Communities, 1985, 1513.



the freedom to provide services in the sphere of international transport and to lay down the conditions under which non-resident carriers may operate transport services in a Member State (cabotage). In this judgment, the Court recognised that certain obligations stipulated in the Treaty were precise enough for their non-respect to be sanctioned in an action brought for failure to act. In this action, the European Parliament succeeded in furthering the common transport policy, since the Council finally ruled within a reasonable time on the outstanding proposals of the Commission.

In the only action for failure to act brought against the Commission on the grounds that the Commission had failed to submit the necessary proposals to allow the free movement of persons pursuant to Article 7 of the EC Treaty, the Court of Justice did not issue a decision, since the European Parliament itself asked the Court to stay its ruling (the Commission having in the meantime tabled three proposals aimed, *inter alia*, at abolishing internal border controls)<sup>334</sup>. Therefore, in this case, the European Parliament succeeded in obtaining the awaited proposals from the Commission.

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### **C. The European Parliament and its campaign for citizens' rights**

This chapter does not pretend to cover all of the work done by the European Parliament to promote citizens' rights. In any case, it does so mainly through its involvement in the Community legislative process, particularly with acts adopted under codecision, and not through cases heard by the Court of Justice. We need only recall the series of legislative acts where the European Parliament has successfully defended citizens' rights by inserting clauses on consumer protection in directives relating to insurance policies, all-inclusive package holidays, food safety and product labelling. The same can be said for the recent 'roaming' regulation, which allowed mobile phone charges to be significantly reduced, or for the regulation on the rights of airline passengers, putting an end to the airline practice of overbooking and introducing the right of passengers to receive a refund if flights are cancelled or unreasonably delayed.

Apart from its legislative work, the European Parliament has also helped to develop the case law of the Court of Justice concerning the fundamental rights of citizens through recognition of the legal significance of the EU Charter of Fundamental Rights. The occasion for this change in the case law of the ECJ was the action for annulment brought by the European Parliament against the Council directive on the right to family reunification. Although the action was dismissed on the merits, the Court of Justice referred for the first time to the legal existence of the Charter and its importance. In its judgment of 27 June 2006 (case C-540/03), the Court of Justice stressed that 'while the Charter is not a legally binding instrument, the Community legislature did, however, acknowledge its importance by stating ... that the Directive observes the principles recognised not only by Article 8 of the ECHR but also in the Charter'. In this the Court went a step further

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<sup>334</sup> *Op. cit.*, p. 6.



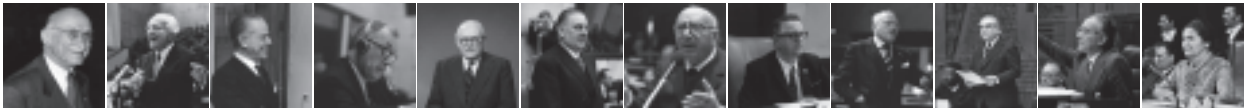
than existing case law since, prior to this ruling, only the advocates-general had referred to the legal value of the Charter (for example, in terms of the right to annual paid leave). In its action, the European Parliament had argued that while the EU Charter of Fundamental Rights was not yet a text with binding legal force, this did not mean that it should have no impact on Community law. According to the European Parliament, the Charter is a useful guide for the interpretation of the provisions of the European Convention on Human Rights.

While these arguments by the European Parliament were rejected by the Council, the Court of Justice followed the EP's line of reasoning by placing the European Convention on Human Rights on the same footing as the Charter<sup>335</sup>. The case law of the Court was thus able to evolve into recognition of the legal force of the Charter.

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<sup>335</sup> The Court of Justice states in its judgment that 'the Charter likewise recognises, in Article 7, the right to respect for private or family life. This provision must be read in conjunction with the obligation to have regard to the child's best interests, which are recognised in Article 24(2) of the Charter'.







## PART III: THE EUROPEAN PARLIAMENT AFFIRMS THE VALUES OF THE EUROPEAN UNION

A symbol of democracy in Europe, the European Parliament has always been an undisputed platform for the defence and promotion of human rights. Ever since the European Communities were first created, it has been concerned with the advancement of human rights, no doubt because parliamentarians are essentially closer to citizens than members of the other institutions. A repository of fears, testimonies and grievances, a sounding board for citizens, the very mouthpiece of the human rights movement: the European Parliament has an instrumental role in defining the EU's human rights policy<sup>340</sup>.

Its commitment towards human rights has been unwavering. From the outset, the Common Assembly of the European Coal and Steel Community (ECSC), responsible for preparing a draft treaty in March 1953 establishing a European Political Union, proposed incorporating the provisions of the European Convention on Human Rights into the Treaty. For the Common Assembly, political union was inseparable from human rights. The treaty was never ratified and was soon overshadowed by related plans to create a European Defence Community (EDC) in 1954, which met with opposition from

<sup>340</sup> Cf. Bradley, K., 'Reflections on the Human Rights Role of the European Parliament', in P. Alston (ed.), *The EU and Human Rights*, Oxford University Press, 1999, pp. 839-858; Rack, R., Laussegger, S., 'The role of the European Parliament. Past and Future', in P. Alston (ed.), *The EU and Human Rights*, Oxford University Press, 1999, pp. 801-837.

France. As a result, the original treaties contained no provision on human rights, their specialist nature and economic function appearing not to warrant this.

### **Inclusion of the EU's values in the Treaties**

Ever mindful of human rights, the European Parliament eventually triumphed. The absence of any reference to values in the founding treaties could not persist, the action of the Community, even in the economic sphere, raising questions about respect for fundamental rights, whether in terms of property rights or non-discrimination in the context of the common agricultural policy, or procedural rights in the context of competition. Through the combined efforts of the institutions, values were gradually incorporated into Community law. The Court of Justice oversaw respect for fundamental rights through the general principles of law. As for the European Parliament, in its resolution on European Union in 1975<sup>341</sup>, it expressed the need to give the future Union a Charter of Fundamental Rights<sup>342</sup>. It persuaded the Council and the Commission to issue a joint statement on 5 April 1977 in which they affirmed their commitment to fundamental rights. For its part, the Commission proposed that the Community should accede to the European Convention on Human Rights, a step that Parliament had always supported.

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In 1984, as European integration progressed and the political debate turned towards new constitutional solutions, the European Parliament unveiled its draft Treaty on European Union (Spinelli draft)<sup>343</sup>. Because the Parliament believed that the legitimacy of the European Union was conditional on respect for human rights and democracy, the draft treaty not only made provision for accession, but also for the drafting of a declaration of rights, which eventually appeared in 1989<sup>344</sup>. This declaration would be one of the factors taken into consideration by the Convention in charge of drafting the Charter of Fundamental Rights of the European Union.

The Spinelli draft was adopted by Parliament by a large majority in the form of a resolution, although the Member States wanted no part of it. The EP's fight for values culminated briefly in Article 6 of the Treaty on European Union, although the process continued with the drafting of the Charter of Fundamental Rights of the European Union, in which the Parliament played a decisive part. According to Article 6 of the Treaty on European Union, the 'Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States'.

The European Parliament has always insisted that the Charter of Fundamental Rights of the European Union should be integrated into the Treaties. This ambition was realised in the context of the Treaty establishing a European Constitution. Unfortunately, the

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<sup>341</sup> OJ C 179, 6.8.1975, p. 28.

<sup>342</sup> (1977) OJ C 77/33.

<sup>343</sup> (1984) OJ C 77/33.

<sup>344</sup> See De Gucht report of 12.4.1989, OJ C 120, 16.5.1989, p. 51.

refusal by the French and Dutch to ratify the Treaty led to the text being revised. The Treaty of Lisbon, without directly incorporating the Charter into the Treaties, maintained the compulsory nature conferred on it by the Constitution, and upheld the principle of accession of the Union to the European Convention on Human Rights. Thus the EP's demands had been met.

Yet the Constitution did not stop there. In accordance with the wishes of Parliament, it contained an article on the values that not only infuse Community law, but represent a condition of new membership. These provisions were retained by the Treaty of Lisbon, which inserts an Article 1a into the Treaty on European Union stating that the 'Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail'. Since merely proclaiming values is not enough, there was no doubt that these provisions would prompt further moves to incorporate them in EU policy. The European Parliament, as the citizens' representative, embraced this role, asserting the founding values of the EU and ensuring that the Union remained true to them through the actions of the institutions and the implementation of Community law by the Member States.

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### **The European Parliament's strategy for administering the values of the European Union**

Of all the Community institutions, the European Parliament is considered the champion of the human rights cause. Deprived for a long time of any official prerogative relating to their defence, it has nevertheless always found a way of applying pressure either directly or indirectly to win acceptance for these values.

Today, the actions taken by the European Parliament to further human rights are based on the powers vested in it by the Treaties. When it has the power of codecision with the Council or the right to give its assent, it can accomplish its mission in dialogue with the Council, since no decision can be taken without the agreement of both institutions. Here its main concern is to establish a policy using internal procedures to oversee the conformity of the texts with Community obligations regarding fundamental rights.

When it simply has an advisory opinion, or when it is not consulted at all, the European Parliament has had to find other ways of bringing its influence to bear. These methods vary. Whenever possible, the Parliament uses other powers to achieve its goals. In this respect, it has made valuable use of its budgetary power to advance fundamental rights in the context of external relations. It can also put pressure on the Commission to table initiatives and win the support of civil society through hearings.

In this context, perseverance and consistency in making its position known have often proved crucial. In fact, repeated insistence on the EP's point of view, often preceding that of the Commission and the Council, can end up igniting a debate and winning around the Member States. The same process applies to third countries. Repeated resolutions on the human rights situation in a particular country can end up mustering public support and galvanising international organisations into action. These organisations also legitimise the actions of the Commission and the Council, which can then rely on the Parliament to pressure the third country that is violating human rights<sup>345</sup>.

The success of the EP's human rights strategy resides first of all in the goals it sets, and then in maintaining its position for as long as it takes. This is how the European Parliament has been and will be able to accommodate human rights considerations within each policy and maintain the necessary cohesion in this area.

This method has been used by the Parliament to defend and promote the Union's values, both in internal policy (I) and in external relations (II).

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<sup>345</sup> The questions that MEPs can ask the Commission and the Council are another way of obtaining information about EU policy and the actual application of this both in and outside the Union. The questions also highlight difficulties in the functioning of the institutions or in the implementation of EU policy.

## **I. THE EUROPEAN PARLIAMENT AND THE FUNDAMENTAL RIGHTS OF CITIZENS**

First of all, the European Parliament has played a major role in the recognition of fundamental rights at Community level (A). Yet it has also persevered in its fight for internal policies that respect these fundamental rights (B). This movement has been accompanied by measures allowing the Parliament to act in certain cases as the citizens' advocate (C).

### **A. The fight for the Charter and the European Union Agency for Fundamental Rights; the European Union accedes to the European Convention on Human Rights**

The European Parliament, the thorn in the side of the institutions and the Member States, has always held human rights up as a model for the EU. It encourages the development of a political and social Europe characterised by a collective patrimony of principles and values founded on respect for human rights. It puts constant pressure on the European institutions and Member States to increase protection for human rights. The EP's fight to include human rights in the Treaties, to prepare a binding list of fundamental rights and to see the Community accede to the European Convention on Human Rights is admirable, despite yielding mixed results.

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#### **A.1. The long road towards the Charter of Fundamental Rights of the European Union**

On 12 December 2007, the President of the European Parliament, Hans-Gert Pöttering, the Portuguese Prime Minister, José Socrates (whose country held the Presidency of the Council of the European Union at the time), and the President of the Commission, José Manuel Durão Barroso, solemnly proclaimed the Charter of Fundamental Rights of the European Union before the European Parliament in Strasbourg. The date of this event was no accident: the 27 were to sign the revised Treaty on European Union in Lisbon the following day. The venue chosen for the signing ceremony was also deliberate, since the Parliament is the symbol of European democracy.

Some 24 hours before the Lisbon ceremony, the three Presidents, bearing witness to the Charter's importance and conscious of the heavy symbolism, explained how they saw the commitment to the fundamental values of the Union as taking precedence over all other aspects of European integration. For Hans-Gert Pöttering, the fundamental values represented the core of European identity, Europe being a community of values built on solidarity, freedom and equality.



These values are enshrined in the Treaty of Lisbon. Article 2 of the Treaty states that the ‘Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail’. These values are confirmed and expanded upon by the Charter, which, unlike the Constitutional Treaty, remains at the draft stage following its rejection by French and Dutch voters and does not incorporate the Treaty but gives it, according to Article 6 of the Treaty of Lisbon, ‘the same legal value’.

### 1. Gradual but vital progress

It would be 20 years before the first major milestone was achieved. On 5 April 1977<sup>346</sup>, the European Parliament joined the Council and Commission in jointly declaring that, ‘in the exercise of their powers and in pursuance of the aims of the European Communities they respect and will continue to respect these rights’, ‘the protection of fundamental rights, as derived in particular from the constitutions of the Member States and the European Convention for the Protection of Human Rights and Fundamental Freedoms’, ‘signed in Rome on 4 November 1950’. The three institutions thus solemnly adopted the approach developed by the Court of Justice whereby the protection of human rights was enshrined in Community law based on unwritten principles drawn from the constitutions of the Member States and the European Convention. In 1978, during the European Summit in Copenhagen, the Heads of State or Government endorsed this declaration. Yet the European Parliament in no way renounced its ambition to develop a Charter of Fundamental Rights. Its President at the time, Emilio Colombo, said that the declaration was only the first step towards preparing a code or Charter, which had to be drawn up and which would take into consideration all civil, political, economic and social rights of the citizens of Member States.

In spite of the encouragement of the European Parliament, the Single European Act remained vague on the subject of human rights. In the preamble to the SEA, the signatory countries declared that they were ‘determined to work together to promote democracy on the basis of the fundamental rights recognised in the constitutions and laws of the Member States, in the Convention for the Protection of Human Rights and Fundamental Freedoms, and the European Social Charter, notably freedom, equality and social justice’ (paragraph 3 of the preamble). The preamble also insists on the responsibility of the Community ‘in particular to display the principles of democracy and compliance with the law and with human rights’ (paragraph 5 of the preamble).

Following the draft Treaty establishing the European Union, adopted on 14 February 1984 (Spinelli draft), Article 4 of which makes provision for both the accession of the Union to the European Convention and the drafting of a declaration of fundamental

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<sup>346</sup> Joint Declaration of 5.4.1977, OJ C 77/33.

rights, the European Parliament committed to a specific political text, proclaiming, on 12 April 1989, the Declaration of Fundamental Rights and Freedoms<sup>347</sup>. The Declaration, drafted following lengthy comparison of the various definitions existing for each law in the national constitutions and international instruments, was a catalogue of fundamental rights, meant to be respected by the Community institutions. It was 'revolutionary' in that it was founded on the principle of indivisibility of human rights<sup>348</sup>. In fact, it borrows from the European Convention (the right to human dignity, the principle of equality before the law, freedom of opinion, etc.), but also incorporates certain social rights enshrined in the European Social Charter. However, the declaration was destined to remain a simple resolution of the European Parliament and would only have a moral value, despite the pressure exerted by the EP to have it taken into consideration during the Rome IGC in December 1990.

Although some aspects of the declaration have been developed, it has served as a reference ever since its adoption. The European Parliament has frequently called for the drafting of a Charter of Fundamental Rights specific to the European Union<sup>349</sup>.

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It was not until the drafting of the Charter of Fundamental Rights of the European Union, and later the European Constitution, that the changes derived from the Spinelli draft were fully taken into account. Like the Constitution, the Treaty of Lisbon made the Charter binding and made provision for the accession of the Union to the European Convention on Human Rights.

In parallel with the adoption of a declaration on human rights by the European Parliament, 11 of the 12 Member States at that time adopted the Community Charter of the Fundamental Social Rights of Workers during the European Council in Strasbourg in December 1989. The Charter followed a mainly French initiative that was finalised by the Commission with the active involvement of the European Economic and Social Committee. It drew its inspiration from the European Social Charter and from certain conventions of the International Labour Organization (ILO). The United Kingdom did

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<sup>347</sup> Resolution of 12.4.1989 adopted based on the De Gucht report (1989), OJ C 120, 16.5.1989, p. 51.

<sup>348</sup> The European Parliament has always insisted on the need to recognise social rights in their own right. The resolution on respect for human rights in the Community of 11.3.1993, adopted based on a new De Gucht report, is particularly significant, in that the Parliament considered that economic, social and cultural rights, recognised worldwide as fundamental rights and the actual enjoyment of which therefore had to be universally recognised and guaranteed, should, despite their often 'prospective' nature, enjoy a similar level of protection to civil and political rights, owing to the indivisibility and interdependence of all fundamental human rights and fundamental freedoms. The emphasis subsequently placed by the European Parliament on social rights emerges in particular from the Resolution of 13.3.1996 containing Parliament's opinion on the convening of the IGC, adopted based on the Majj-Weggen-Dury report, which states that 'the essential principles of the Community charter of fundamental social rights should be incorporated in the body of the Treaty'. This position is also found in its Resolution of 11.6.1997 on the draft treaty drawn up by the Dutch Presidency, in which the Parliament considered that fundamental social rights should be included in the Treaty. OJ C 115/178.

<sup>349</sup> Resolution of 19.11.1997 on the Treaty of Amsterdam adopted based on the Mendez de Vigo-Tsatsos report, OJ C 371, 8.12.1997, p. 99.

not sign the Charter of Social Rights, just as later on, in the Treaty of Lisbon, it agreed a special protocol together with Poland to distance itself from the Charter of Fundamental Rights of the European Union. The EP, in a resolution of 22 November 1989, was heavily critical of the fact that it was not involved in the drafting of the Charter of the Fundamental Social Rights. For it, the draft Social Charter, eventually adopted by the Commission on 27 September 1989, constituted a first step towards the establishment of fundamental social rights in the European Community. However, it represented merely a minimum threshold below which the European Council could not go. The resolution stated that Parliament regretted that the Charter had not been embodied in Community law by means of binding instruments as called for in its resolutions of 15 March 1989 and 14 September 1989.

## 2. The active participation of the Parliament in the drafting of the Charter of Fundamental Rights

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Eventually the European Council in Cologne decided to proceed with the drafting of an EU Charter of Fundamental Rights. The European Parliament welcomed the long-awaited decision. The decision of the European Council satisfied one of the age-old demands of the Parliament, which saw the adoption of the Charter as 'one of its constitutional priorities'. In a resolution of 16 March 2000, the European Parliament said that it welcomed 'the drafting of a European Union Charter of Fundamental Rights, which will contribute to defining a collective patrimony of values and principles and a shared system of fundamental rights which bind citizens together and underpin the Union's internal policies and its policies involving third countries' and that it offered 'its full support and cooperation in drafting the Charter of Fundamental Rights of the European Union'.

The European Parliament was closely involved in the drafting of the Charter, as provided by the European Council in Tampere. For the first time in the treaty reform process, European and national parliamentarians, the European Commission and personal representatives of the Heads of State or Government worked together to further the Union. Although the national parliaments were represented by 30 members (two for each Parliament), which gave them a near-majority within the Convention, the European Parliament had 16 representatives. As for the Heads of State or Government, they each had a personal representative, while the Commission was represented by one of its members. Acting unanimously, the EP delegation led by Inigo Mendez de Vigo played a decisive role in the drafting of the Charter. Parliamentary positions had a decisive influence on key points such as the protection of social rights, gender equality, bioethics and the right to marriage and a family.

It was the first time that the European Parliament had been so closely involved in a process that would lead to a 'constitutional' decision.

The EU Charter of Fundamental Rights was finally proclaimed by the European Commission, the European Parliament and the Council of the European Union during the

European Council in Nice on 7 December 2000. Nicole Fontaine, President of the European Parliament, emphasised during the signing of the Charter that ‘I trust that all the citizens of the Union will understand that from now on ... the Charter will be the law guiding the actions of the Assembly ... From now on it will be the point of reference for all the Parliament acts which have a direct or indirect bearing on the lives of citizens throughout the Union’.

The Member States declare in the preamble to the Charter that they want to ‘share a peaceful future based on common values’ and that ‘conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law’. The Charter brings together all civic, political, economic and social rights of citizens, and indeed anyone residing in EU territory. These rights are divided into six chapters that correspond to the values recognised by the Union: Dignity, Freedoms, Equality, Solidarity, Citizens’ Rights and Justice.

### 3. Parliament’s fight to incorporate the Charter into the Treaty

The European Parliament persevered in its fight. It repeatedly called for the Charter to be incorporated into the new treaty, which was in the process of being negotiated, arguing that unless it was binding, the text would be diminished. In two resolutions adopted on 16 March and 2 October 2000, it resolved that the Charter should be binding and integrated into the Treaties. It failed with the Treaty of Nice, signed in December 2000, but stuck to its guns. In a resolution of 23 October 2002 on the impact of the Charter of Fundamental Rights and its future status, it declared that the public would not be satisfied with the proclamation of the Charter by the Community institutions unless this was followed by the incorporation of the Charter into the constitutional law of the European Union. The enhanced status of the Charter would be eminently symbolic at a time when the Union was preparing to welcome new countries from central and eastern Europe. It would also uphold the principle whereby fundamental rights were at the core of the European integration process, providing reassurance for existing, new and candidate Member States.

In the meantime, the Commission began systematically ensuring that the texts it drafted were consistent with the fundamental rights guaranteed by the Charter. The European Parliament, in a resolution of 15 March 2007, insisted on the need for the Commission’s legislative proposals to respect the Charter of Fundamental Rights and to offer a means of more systematic and tighter control. Together with the Council and the Commission, it began inserting a reference to the relevant provisions of the Charter into the citations of legislative texts whenever this seemed necessary. As a result of this practice, the Court of Justice, when interpreting the provisions of these texts, was forced to do so in light of the Charter. In its ruling of 27 June 2006 relating to family reunification, the

Court referred specifically to the Charter for the first time<sup>350</sup>. More recently, it relied on the provisions of the Charter on the right to strike to explain the links between this law and the freedom of establishment. In that way, the practice adopted by the institutions allowed the Charter to enter Community law, even though it was not binding.

Members of the European Parliament and national parliaments called for the Charter to have increased status. It worked. In February 2002, another Convention was set up, tasked with drawing up a draft constitutional treaty. Its working method was directly inspired by the one used to draft the Charter. The Charter of Fundamental Rights was to be inserted into the European Constitution. Yet the authors of the Lisbon Treaty eventually abandoned the idea of incorporating the Charter, although they did make it binding, since, as Article 6 states, the Charter of Fundamental Rights has the same value as the Treaties.

## **A.2. The fight for the accession of the Union to the European Convention on Human Rights**

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Once all Member States of the European Communities were party to the Convention, the European Parliament campaigned for the Community and the Union to accede to the European Convention on Human Rights. It believed that this would help create a coherent system for the protection of human rights in Europe, in which the European Convention on Human Rights had to appear as the minimum standard common to all European democracies. It wanted the Union to be subject, in the same way as the Member States, to external control by the European Court of Human Rights. This was embodied in the Spinelli draft, Article 4 of which makes provision for accession to the European Convention on Human Rights and the European Social Charter.

Reiterating its calls for the Community to adopt its own declaration on human rights, the European Parliament adopted a position based on its resolution on human rights of 9 July 1991<sup>351</sup> in favour of the accession of the Community to the ECHR. It gave a detailed argument in support of this accession with its resolution on accession of the Community to the European Convention on Human Rights of 18 January 1994.

The idea failed to win unanimous support among the Member States. The Council took the matter before the Court of Justice for a decision on the legality of accession. In 1996, the Court of Justice issued an opinion in which it believed that accession was conditional on a revision of the Treaty. Despite raising some concerns, the Member States were not prepared to carry out this revision.

The European Parliament, through a series of intergovernmental conferences, continued trying to change attitudes towards accession. In a 2002 resolution, it insisted that

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<sup>350</sup> ECJ, Grand Chamber, 27.6.2006, *European Parliament v Council of the European Union*, Case C-540/03, based on the opinion of the Advocate General, J. Kokott, at the sitting on 8.9.2005.

<sup>351</sup> OJ C 240, 16.9.1991, p. 45.

‘As has been said repeatedly by both the European Parliament and the Parliamentary Assembly of the Council of Europe, the best means of ensuring coherence between the ECHR and EU human rights law would be for the Union to accede to the former. It is important to remove the anomaly whereby the EU, which enjoys competences attributed by its Member States, is not a high contracting party to the ECHR alongside those same Member States. If it were to sign up to the ECHR, the EU would be subject to the same external control in respect of human rights as that of its Member States. On the one hand, the existence of the Charter makes EU accession to the ECHR neither unnecessary nor irrelevant. Accession is desirable for its own sake whatever the status of the Charter. On the other hand, accession to the ECHR does not render the incorporation of the Charter into the Treaty any less necessary or relevant...’<sup>352</sup>.

The Parliament eventually triumphed with the European Constitution, which made provision for accession of the Union to the European Convention. The principle is enshrined in Article 6 of the Treaty of Lisbon: ‘The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union’s competences as defined in the Treaties’.

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### **A.3. European Union Agency for Fundamental Rights**

#### **1. Respect for citizens’ rights**

While the European Parliament asserts the founding values of the European Union, it also plans on ensuring that these are respected. In 1992, together with the Treaty of Maastricht and the creation of the third pillar, it formed its Committee on Civil Liberties, Justice and Home Affairs (LIBE). This allows it to gauge respect for fundamental rights in the Member States of the Union, compiling the results in an annual report. It is also able to issue a warning when fundamental rights are at risk or are actually infringed in a Member State<sup>353</sup>. Should a crisis occur in any of the Member States of the European Union amounting to a clear breach of human rights, the European Parliament, in its annual reports, can act as a ‘lookout’, implementing the early warning system provided by the Treaties and instructing the Council to consider sanctions.

As we will see, there are some recurring themes, such as the fight against racism, xenophobia and discrimination. The report is sometimes the source of controversy and has on occasion been rejected by Parliament.

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<sup>352</sup> European Parliament resolution on the impact of the Charter of Fundamental Rights of the European Union and its future status (2002/2139(INI)). OJ C 300 E/432.

<sup>353</sup> These annual reports also allow the EP to fulfil the role assigned to it during the implementation of the early warning system provided for by Article 7(1) of the Treaty on European Union in case of a clear risk of a breach of fundamental rights by a Member State. This article allows it to refer to the Council in case of risk of a serious breach of fundamental rights in a Member State. It must also give its assent on measures to suspend the rights of a Member State guilty of a serious and persistent breach of the principles set forth in Article 6(1) TEU.

However, apart from these rare occasions, the European Parliament monitors respect for fundamental rights in EU legislation. This is easier when it is colegislator in the co-decision procedure. Conversely, within the area of freedom, security and justice, until the Lisbon Treaty comes into force it only has an advisory power. However, this does not stop it from using all the means at its disposal to ensure respect for fundamental rights. For example, it commenced proceedings before the Court of Justice against the directive on family reunification and more recently on the release of airline passenger data in the United States.

## 2. The European Parliament in favour of a European Union Agency for Fundamental Rights

In view of the scale and specialist nature of the task, a specialist independent body was needed. The European Parliament, which in the past had supported the creation of a network of independent experts on fundamental rights, campaigned for this. The European Council rallied to the cause. On 13 December 2003, it decided to extend the mandate of the European Monitoring Centre on Racism and Xenophobia (EUMC) to set up a European Union Agency for Fundamental Rights (FRA). The European Parliament closely monitored the preparations and was actively involved in the adoption of the regulation of 15 February 2007 establishing the Agency<sup>354</sup>, although this text is based on Article 308, which only makes provision for the consultation of Parliament.

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Several aspects of the regulation satisfy the EP's demands, including the enhanced legitimacy and independence of the Agency, particularly its Scientific Committee, the EP's involvement in defining the Agency's mandate and its structure and finally the assurance of the best possible synergy, notably through close cooperation with the Council of Europe and national bodies.

The European Union Agency for Fundamental Rights was officially launched on 1 March 2007. With a budget of EUR 14 million (EUR 22 million by 2012), it is primarily designed to be a consultation tool for the Community institutions and Member States, as well as a means of raising public awareness and providing information and statistics.

The Agency provides the institutions and bodies, as well as the Member States of the European Union, when they implement Community law, with help and advice on fundamental rights. It monitors fundamental rights within the areas of competence of the European Union, as well as in Member States when they implement Community law.

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<sup>354</sup> Regulation (EC) No 168/2007 establishing a European Union Agency for Fundamental Rights.



It is open to participation by candidate countries and, on the invitation of the Council, countries that have signed a stabilisation or association agreement with the EU<sup>355</sup>.

Taking account of the legal constraints, the Agency's remit is limited to the activities of the Union and Member States when they implement Community law. The actions of the Member States outside this sphere are beyond the Agency's control, although monitoring is carried out by the Council of Europe. Similarly, the activities of the third pillar are not directly within the Agency's jurisdiction. This will change following the entry into force of the Treaty of Lisbon.

The European Parliament may, like other institutions, commission studies from the Agency. These may include legislative proposals under examination. It soon made use of this prerogative to ask the Agency to conduct a study on homophobia in Europe. However, the Agency's mandate extends beyond the simple role of consultant. It must enable the institutions and Member States to monitor the progress of the fundamental rights policy, identify new problems and compare the solutions offered while trying to highlight new practices. Cooperation with EU institutions, national bodies and civil society should fuel debate and lead to the formation of a consensus which can then inform the EP's approach towards fundamental rights.

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## **B. The implementation of fundamental rights**

The role of the European Parliament is not confined to the affirmation of fundamental values and the creation of bodies tasked with monitoring their implementation in the general sense. In some areas it consists of developing the EU's actions, facilitating analysis and inserting human rights issues into European legislation.

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<sup>355</sup> The Agency's tasks specifically include: the compilation, analysis, distribution and independent evaluation of information and statistics concerning the tangible effects on fundamental rights of measures taken by the EU, and good practice in terms of respect and promotion of these rights; the development, in cooperation with the Commission and Member States, of standards aimed at improving the compatibility, objectivity and reliability of data at European level; conducting research and scientific studies, preparatory studies and feasibility studies; formulating and publishing conclusions and opinions on specific themes, as well as on the development of fundamental rights in policy implementation for European institutions and Member States when they implement Community law; the publication of an annual report on issues relating to fundamental rights within the sphere of activity of the Agency; the publication of thematic reports based on its analyses; the publication of an annual report; formulating a communication strategy and furthering dialogue with civil society to raise public awareness of fundamental rights. The Agency provides a cooperation network with civil society (the 'Fundamental Rights Platform') made up of various stakeholders. It also establishes close institutional relations for cooperation at the international, European and national levels, notably with the Council of Europe, the Organisation for Security and Cooperation in Europe (OSCE), the relevant EU agencies and government organisations and public bodies.



## **B.1. Women's rights**

Women make up 52% of the European population and yet they still suffer from discrimination, particularly in the job market. On 8 March 2007, during the opening of a seminar organised by the Committee on Women's Rights and Gender Equality, the President of the European Parliament, Hans-Gert Pöttering, talking about the 'major strategic role' played by Parliament, was keen to underline that 'in spite of the progress achieved so far at European level in eliminating discrimination and promoting equal opportunities, much remains to be done'. The European Parliament is constantly trying to ensure that respect for women's rights is considered a political priority within the European Union.

Since the beginning of European integration, gender equality has been considered a founding value of the Community. The 1957 Treaty of Rome only guaranteed it in terms of salary, although since then, through the case law of the Court of Justice, legislation and the revision of the Treaties – particularly the Treaty of Amsterdam – women have been granted more rights. From equal pay they now enjoy equal employment terms. Since 1975, eight directives aimed at ensuring equal treatment between men and women in areas as varied as equal pay, access to jobs, vocational training, social security and protecting expectant mothers at work have been adopted.

In 1979, finding that women continued to suffer discrimination despite the existence of European equality laws, it set up a parliamentary committee dedicated to women's rights. In 1984 this became a standing committee of the European Parliament. The Committee on Women's Rights and Gender Equality (FEMM) is responsible for defining, promoting and protecting women's rights in the EU and measures taken in this respect by the Community, as well as promoting women's rights in third countries. It is also involved in the equal opportunities policy and in eradicating all forms of gender-based discrimination. In nearly all legislative reports linked with the internal market, industry or health, the FEMM committee is now called on to give its opinion so that women's interests are taken into account in Community legislation.

At the same time, the European Parliament has in the past appointed two specific committees of inquiry, one in 1979 on the status of women and the other in 1981 on the situation of women in Europe.

The European Parliament is not content merely to offer symbolic support for women's fight for equality, for example by recognising International Women's Day on 8 March each year; it also effectively contributes to gender policy by supporting action plans such as those for gender mainstreaming, the fight against trafficking of women and forced prostitution, vocational training of women and the participation of women in public life.

The European Parliament also seeks to put pressure on the Commission. The report submitted by the Italian MEP Amalia Sartori welcomed the European Commission document entitled 'A roadmap for equality between women and men 2006-2010'. In this roadmap, the Commission considers gender equality 'a necessary condition for the achievement of the EU objectives of growth, employment and social cohesion' for the period 2006-10 and outlines six priority areas, including: equal economic independence for women and men, reconciliation of private and professional life and eradication of all forms of gender-based violence. Adopting the Sartori report on 14 March 2007 by a large majority, the European Parliament called on the Commission to 'give practical effect to its roadmap'. MEPs want the Union to show greater commitment and take more concrete measures to enforce the principle of equal pay. They have again asked the European Commission to ensure that the principle of equal pay does not remain wishful thinking. They want encouragement for measures such as paternity leave, action against violence suffered by women, the integration of immigrant women, respect for women's rights in external relations and increased media awareness.

The Parliament's fight also concerns the trafficking of women for sexual exploitation purposes and rising domestic violence. It constantly calls on the other institutions to take the necessary measures to eradicate these scourges. Following its resolution in 1997, which called for 1999 to be declared 'European Year against Violence against Women', the European Union launched an action plan for the European Union and beyond known as the Daphne programme, adopted in codecision by the Parliament and the Council.

Daphne III (2007-13) was set up to prevent and combat all forms of violence (physical, sexual and psychological) against children, young people and women, in the public and private spheres, and to protect victims and groups at risk. It complements existing programmes in the Member States and is based on the policies and objectives defined in the two previous Daphne programmes (Daphne I and Daphne II). The budget allocated to the programme stands at EUR 116.85 million for the period 2007-13.

The European Parliament is also concerned about the issues facing disabled women and women in prison, as well as the need to reconcile family life with formal study.

Through these initiatives, the European Parliament has been instrumental in the inclusion in the Charter of Fundamental Rights of a provision on gender mainstreaming, covering areas such as employment, work and pay, and allowing the adoption of measures providing for specific advantages for the under-represented sex (Article 23 of the Charter).

## **B.2. Rights of minorities and action for the Roma**

The European Parliament has also had a pioneering role in the protection of national minorities, in the belief that the protection of cultural and linguistic identity is vital to ensuring stability within the European Union and peace across the European continent.

In 1981, following the Arfé report, it issued a resolution calling for the creation of a European Community Charter of Regional Languages and Cultures and a Charter of Rights of Ethnic Minorities. Other resolutions would later be submitted to the Parliament, all driven by the same concern to ensure the preservation of minority languages and cultures in the EU. On 9 February 1994, the European Parliament voted on a resolution whereby it specifically encouraged Member States to recognise their linguistic minorities and to adopt the legal and administrative provisions necessary to preserve and develop regional or minority languages. It also invited the Member States who had not yet done so to ratify the European Charter for Regional or Minority Languages and asked the Commission to take measures in favour of 'lesser-used languages'.

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The effort made by Parliament to protect these minorities culminated in a draft Charter guaranteeing the rights of ethnic groups living in the Member States of the European Community, drawn up in 1988 by the Committee on Legal Affairs chaired by Franz von Stauffenberg and later his successor Siegbert Alber. The aim of the draft was ambitious, because it sought to include in the Treaty on European Union, when the Treaties were revised by the 1996 Intergovernmental Conference, a section guaranteeing the rights of ethnic groups and their members, rights defined by the draft Charter. In this way a solid legal basis could be given to the protection of minorities within the Union. The draft was strongly contested, so much so that, failing to garner a sufficient majority even within the committee, its discussion was postponed indefinitely.

On 8 June 2005, the European Parliament adopted a major resolution on the protection of minorities and anti-discrimination policies in an enlarged Europe. It first of all 'points out the inconsistency of policy toward minorities – while protection of minorities is a part of the Copenhagen criteria, there is no standard for minority rights in Community policy nor is there a Community understanding of who can be considered a member of a minority'. The Parliament proposed adopting the definition of national minority given by Recommendation 1201 (1993) of the Parliamentary Assembly of the Council of Europe, namely 'a group of persons in a state who: reside on the territory of that state and are citizens thereof; maintain longstanding, firm and lasting ties with that state; display distinctive ethnic, cultural, religious or linguistic characteristics; are sufficiently representative, although smaller in number than the rest of the population of that state or of a region of that state; are motivated by a concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion or their language'. The Parliament believes that real participation by national minorities in the decision-making process is one of the most effective forms of integration.

Some Member States were hostile to the recognition of national minorities on their territory, and the concerns of the European Parliament were not taken into consideration by the EU Charter of Fundamental Rights. The Parliament had to settle for the vague wording of Article 22, which states that the 'Union shall respect cultural, religious and linguistic diversity'.

The Parliament kept up its fight, believing that the enlargement of the Union brings increasing cultural and linguistic diversity, which vests it with a particular responsibility towards minorities. MEPs also highlighted the fact that anti-discrimination policies had not been properly implemented in the Member States and asked for certain common minimal objectives to be defined with a view to protecting minorities. Other vulnerable groups mentioned were migrants, homosexuals, the disabled, linguistic minorities, women - particularly those in national minorities - and the Roma. Identifying shortcomings in the Member States' responses to measures taken based on Article 13 of the Treaty of Rome, the resolution urged the institutions and Member States to sanction all forms of discrimination against these minorities.

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Special attention was paid by the European Parliament to the Roma community, historically marginalised but which had become, following enlargement, one of the largest minorities in Europe (15 million people). It was particularly concerned about the segregation suffered by the Roma in all aspects of public and private life. It denounced the discrimination against this minority, particularly in terms of access to education, housing, healthcare and public services.

In its resolution on the situation of the Roma in the European Union of 28 April 2005, the European Parliament said that it was concerned about the extent of segregation suffered by Roma and Sinti. In its resolution on the protection of minorities and anti-discrimination policies in an enlarged Europe of 8 June 2005, it again criticised the discrimination, marginalisation and segregation of the Roma community and called for measures to be taken to overcome the most manifest disadvantages. It believed that these would be overcome if the Member States where members of this community lived implemented joint integration projects.

On 31 January 2008, it again adopted a position in their favour by fiercely condemning all forms of racism and discrimination against them. It believed that the Union and Member States had a shared responsibility for their integration and called for the formulation of a strategy and a European action plan for better integration of the Roma.

### **B.3. The fight against the rise of fascism, racism, xenophobia and anti-Semitism**

Combating the rise of fascism, racism, xenophobia and anti-Semitism is a constant concern for the European Parliament, which regularly points out the dangers that the existence of these ideologies represents for human rights and for democracy in general. It has called on the institutions of the European Union to exercise constant vigilance.

The Parliament has played an essential role in the gradual establishment of an effective European policy on this issue. In 1973, a British MEP, Dick Taverne, submitted the first written question, worried about the rise in xenophobic acts and racial discrimination, and asked the Commission what could be done to put a stop to it.

A committee of inquiry was set up in October 1984 and published its findings in November 1985. The hearings organised during this time specifically confirmed the rise in xenophobic sentiment in the EU. Recommending greater awareness and education, the report proposed that all European institutions be on their guard against these phenomena.

The committee's efforts were rewarded in June 1986, when the European Parliament, the Council and the Commission adopted a joint declaration on the subject. In 1989, the Parliament created a new committee of inquiry, which specifically recommended that governments look at the possibility of giving the vote to immigrants under certain conditions.

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Under constant pressure from the Parliament, the European Commission prepared directives and action plans that have guided the Member States in their drive to combat racism, xenophobia and anti-Semitism. The European Parliament welcomed the European Commission's actions, insisting that all Member States of the European Union should engage in the fight against racism and sanction acts of intolerance and revisionism.

It also supported the creation in June 1997<sup>356</sup>, of the European Monitoring Centre on Racism and Xenophobia, which is in charge of studying the extent and development of these phenomena, analysing the causes and disseminating examples of good practice. It was replaced in 2007 by the European Union Agency for Fundamental Rights.

Every year, through its reports on fundamental rights, the European Parliament provides an update on the situation in the European Union. It immediately alerts Member States when there is the risk of xenophobic or racist movements developing in their country.

#### **B.4. The fight against homophobia**

The European Parliament has embraced the fight against homophobia. It is concerned about the proliferation of 'hate speeches' targeting the gay, lesbian, bisexual and transsexual (LGBT) community in a number of European countries. It has denounced disturbing events such as bans on equal rights demonstrations and gay pride events. It has called on Member States to ensure that lesbian, gay, bisexual and transsexual people are

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<sup>356</sup> Council Regulation (EC) No 1035/97 of 2.6.1997 establishing a European Monitoring Centre on Racism and Xenophobia.

protected from homophobic hate speech and violence and ensure that same-sex partners enjoy the same respect, dignity and protection as the rest of society.

In its resolutions adopted on 18 January 2006 and 26 April 2007, the Parliament ‘urges Member States and the Commission firmly to condemn homophobic hate speech or incitement to hatred and violence, and to ensure that freedom of demonstration – guaranteed by all human rights treaties – is respected in practice’. It has also invited the Commission to ensure that discrimination based on sexual orientation is prohibited in all sectors, and has declared 17 May ‘International Day against Homophobia’.

### **B.5. For an immigration policy that respects human rights**

A matter of common interest since the Maastricht Treaty, and an area of Community competence since the Amsterdam Treaty, European immigration policy is currently being written. For the European Parliament, this policy must be consonant with the values championed by the European Union.

Following the adoption by the Council of the first regulations on illegal immigration, and before it was elected by universal suffrage, the European Parliament, in a resolution of 12 December 1977, declared that it supported the goals of prevention and eradication of illegal immigration and illegal employment, but regretted the complete disregard by employers for the principle of respect for the rights of illegal migrant workers in relation to the work carried out, a principle that was nevertheless essential<sup>357</sup>.

Since then, there have been countless initiatives. The conclusions of the 1999 European Council in Tampere indicate the need to approximate national legislations on the conditions for admission and residence of third country nationals, to ensure fair treatment of third country nationals who reside legally in the territory of its Member States, and to adopt a more vigorous integration policy.

The European Council, following the repeated calls of Parliament, decided to tackle illegal immigration and the organised crime that profits from it. In February 2002, the ‘comprehensive plan to combat illegal immigration and trafficking of human beings’ was adopted. In June 2002, at the European Council in Seville, Member States agreed to expedite the implementation of the plan adopted in Tampere by developing a common policy on the separate, but closely connected, issues of asylum and immigration.

For the European Parliament, this represented progress, although a global approach had to be found. In October 2002, during a debate on the minimum standards for granting refugee status, the European Parliament called for an improvement to the integration guarantees given to refugees by civil society and to the way in which factors such as the

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<sup>357</sup> Resolution of 12.12.1977 on the proposal from the Commission of the Communities concerning a directive relating to the approximation of legislations of Member States concerning the fight against illegal immigration and employment, OJ C 299, 12.12.1977, p. 16.

refugee's gender, sexual orientation and health were taken into consideration during the assessment of persecution risk.

Parliament's commitment to a global approach is reflected in the conclusions adopted by the European Council in December 2006 on the question of migration. In fact, as far as the EP was concerned, a comprehensive immigration policy (covering legal immigration, illegal immigration and co-development) was the only way forward. This approach, which focuses on priority areas targeting Africa and the Mediterranean, should help define policies and coherent action as well as addressing the range of issues in the areas concerned: external relations, development and employment, as well as justice, freedom and security. This global approach should be implemented in accordance with fundamental rights.

Finally, the European Parliament received an assurance from the Council that more lenient national laws would not be challenged and that access to education by minors would follow the same rules as those applicable to nationals in the host country. In November 2006, it also called for more effective measures against human trafficking and for victim protection instead of punishment. It also outlined a course of action to the Commission for protecting victims and stressed the need for Member States to rapidly transpose the directive on residence permits issued to victims of trafficking<sup>358</sup>.

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## **B.6. Right to privacy**

The current concern of the European Parliament is the protection of privacy against any threat resulting from the use of new technologies, particularly the Internet. The question of data protection is essential in this regard. The European Parliament has intervened in the issue of compulsory temporary storage of call records by telephone companies. Today it is closely monitoring the activities of search engines such as Google. It has organised a hearing that will be a prelude to action in this area.

The European Parliament has voiced particular concern over the impact on privacy of the fight against terrorism. For the EP, the request from United States authorities for airlines to release passenger details seemed incompatible with Community data protection laws. In October 2003, Parliament adopted a resolution calling for personal data to be released to third parties only where there was no discrimination against passengers who were not United States citizens, provided that passengers gave their informed consent and appeal procedures were put in place. As the agreement reached on this subject with the United States did not seem to satisfy these requirements, the EP took the matter before the European Court of Justice. The Court annulled the decision to sign

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<sup>358</sup> The report submitted by Edit Bauer in November 2006 calls for protection rather than punishment for victims, OJ C 314 E/355.



the agreement<sup>359</sup>, although unfortunately it only delivered a ruling on the Community competence, without responding to the grievances of the EP on fundamental rights. The agreement was replaced by a new agreement signed in October 2006 under the third pillar, in accordance with the Court ruling, which barred the EP from having any role. However, the Parliament has not given up its fight in this area.

Finally, the European Parliament had an active role in the creation of the European Data Protection Supervisor (EDPS). This independent authority was established in 2003. Like its national counterparts, the EDPS must ensure that the legally protected rights of citizens are respected.

To this end, it has the task of monitoring how personal data is handled by the EU. Its role also consists of promoting good practice in EU institutions and cooperating with the authorities to ensure coherent data protection.

### **C. The European Parliament, citizens' advocate**

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The European Parliament sees itself as the advocate of European citizens, protecting them from administrative secrecy. It believes that transparent functioning of the institutions must be guaranteed, since this is vital to allowing citizens to take part in the political process and to scrutinise the work of Community institutions and bodies. At a time when the EU is experiencing problems in terms of political legitimacy and having to cope with scepticism from some quarters, the European Parliament believes that it is crucial for the legislative process to become more accessible to the public, since transparency strengthens the democratic nature of the Union as well as building the confidence of citizens in their public institutions.

#### **C.1. Right to information**

The European Parliament promotes transparency. Keen for its work to be recognised and understood by the public, it opens its sessions and committee proceedings to the public. The reports, opinions and decisions of the EP are easily accessible and citizens can access various documents via an electronic register. The EP also campaigns for the principle of transparency to apply to other Community institutions and bodies.

In 1988, the European Parliament confirmed its position whereby the right to information is one of the fundamental freedoms of European citizens and must therefore be recognised as such by the European Communities. It called on the Commission to

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<sup>359</sup> Court of Justice of the European Communities, Joined Cases C-317/04 and C-318/04, 30.5.2006, European Parliament v Council of the European Union and Commission of the European Communities. The Court found that neither the decision of the Commission on the adequate protection of personal data by the United States nor the Council decision approving the conclusion of an agreement on the transfer of this data to the United States were founded on an appropriate legal basis.



prepare a legislative proposal based on the recommendations of the Council of Europe and on Danish and Dutch laws on the right of access to public administration. However, it was not until the 1990s that the right to information was implemented. In 1993, the Commission presented a communication on transparency in the Community in which the principle of the right of access to administrative documents was mentioned for the first time<sup>360</sup>. A code of conduct common to the Commission and the Council on public access to documents was adopted on 6 December 1993.

In 1996, this right of access was inserted into Article 255 of the Treaty establishing the European Community, as amended by the Treaty of Amsterdam, and was enshrined by the Charter of Fundamental Rights, which states that 'Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents'. Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents was adopted to guarantee the concrete application of this right. Since the entry into force of the regulation, the number of requests for access to documents has steadily risen, as shown by the annual reports published by the European Parliament, the Council and the Commission in accordance with Article 17(1) of the regulation, which shows that the regulation has attracted a lot of public interest.

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The application of the regulation has led to differing interpretations, prompting the involvement of the Court of First Instance and the Court of Justice in several cases. The European Ombudsman has published special reports and a series of opinions concerning the complaints that he has received, while the European Parliament has raised various concerns in its reports and has proposed that the regulation be amended. Under pressure, on 18 April 2007 the Commission published a Green Paper on public access to documents, in which it confirms the need to revise the regulation. In October 2007, it tabled proposals for an amendment to the regulation that would lead to the opening of a legislative codecision procedure with the European Parliament and the Council.

Unlike the Council, the Parliament clearly defends the idea whereby democracy presupposes that all documents, whether they concern the legislative decision-making process or not, must be accessible and available to the public. Similarly, the opinion of the legal services, when given in the context of the legislative decision-making process, should not be exempt from the democratic principle of right of access. The EP also believes that it is necessary not only to guarantee access to documents, but also to promote the right of access to legislative proceedings. The Council does not entirely share this point of view. It does not want certain documents or parts of documents to be divulged, particularly concerning the identity of the delegations of Member States to the Council and their working groups, in addition to their proposals, votes and declarations, to avoid political pressure and to facilitate consensus. The Council is making progress in this, since it now holds some of its debates and votes in public, although according to the Committee on Civil Liberties, Jus-

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<sup>360</sup> Declaration No 7 of the Final Act of the Maastricht IGC (1991).

tice and Home Affairs (LIBE), it could do more. The committee suggests that the Council should organise public meetings and ‘make accessible all the documents in their entirety also at working group level when a legislative procedure is followed’<sup>361</sup>.

Since the entry into force on 30 May 2001 of a regulation guaranteeing public access to documents, the number of requests has steadily risen, as demonstrated by the annual reports published by the three institutions. The institutions have stepped up their efforts to make their documents available online, not without some success. Since the Official Journal was made available online, the level of interest has risen from 23 000 subscriptions a year to 8 million queries a month.

For its part, the European Parliament, which wants to be accessible to all citizens, ensures that it answers questions from all parties. A mailbox has been set up so that the public can submit questions and proposals to MEPs. This principle also applies to other institutions, since Article 21(3) of the Treaty of Rome recognises the right of anyone to contact the EU institutions in a language of the Communities and to receive a response in the same language.

## C.2 Right of petition

In accordance with Article 194 of the Treaty of Rome, any EU citizen, and any natural or legal person residing or based in a Member State, has the right to submit, individually or in association with other people, a petition to the European Parliament on a matter within the sphere of competence of the European Union and directly concerning it. These petitions allow the European Parliament to highlight infringements of the rights of European citizens by a Member State, local government body or other institution.

More than a thousand petitions are received each year by the EP’s Committee on Petitions, which replies to petitioners. The committee may decide that some petitions merit a wider debate and in some cases may submit a report to the European Parliament with a view to its adoption at the plenary, or else conduct a fact-finding mission<sup>362</sup>. The com-

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<sup>361</sup> LIBE working document of 22.8.2007 on the annual report on access to EU documents.

<sup>362</sup> See Rule 192 of the Rules of Procedure of the European Parliament: Examination of petitions:

1. The committee responsible may decide to draw up a report or otherwise express its opinion on petitions it has declared admissible. The committee may, particularly in the case of petitions which seek changes in existing law, request opinions from other committees pursuant to Rule 46.
2. An electronic register shall be set up in which citizens may lend their support to the petitioner, appending their own electronic signature to petitions which have been declared admissible and entered in the register.
3. When considering petitions or establishing facts, the committee may organise hearings of petitioners or general hearings or dispatch members to establish the facts of the situation in situ.
4. With a view to preparing its opinions, the committee may request the Commission to submit documents, to supply information and to grant it access to its facilities.
5. The committee shall, where necessary, submit motions for resolutions to Parliament on petitions which it has considered. The committee may also request that its opinions be forwarded by the President to the Commission or the Council.
6. The committee shall inform Parliament every six months of the outcome of its deliberations. The committee shall, in particular, inform Parliament of the measures taken by the Council or the Commission on petitions referred to them by Parliament.
7. The President shall inform petitioners of the decisions taken and the reasons therefor.

mittee thus has a fundamental role in defending citizens' rights by finding appropriate solutions to the concerns and problems that they encounter in their day-to-day lives. It also helps increase democratic scrutiny of Community law and its implementation.

Petitions have a real impact. Following the submission of a petition by a Danish citizen, for example, the Parliament was asked in May 2007 to debate the public health consequences of a military aircraft crash in Greenland. Several kilograms of plutonium had been released into the snow and ice, and were then dispersed by the wind and tides, contaminating vast areas and causing an environmental and public health disaster. The petition gave rise to a report by the European Parliament. According to the author of the report, the British MEP Diana Wallis, it is about 'the consequences which nuclear accidents have for ordinary citizens. It raises questions of principle and has implications for many citizens across Europe'. The report adopted by Parliament therefore sent out a firm message to all Member States: the health and safety of individuals must take precedence in such circumstances.

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Since the start of the current parliamentary term, at least two other petitions have given rise to a resolution voted on by Parliament. In 2005, Parliament adopted a resolution following allegations of improper use of the law on land ownership in Valencia in Spain and the negative impact on European citizens. The same year, Parliament adopted a resolution based on a petition from European citizens who felt adversely affected by customs irregularities in Greece.

On rare occasions, petitions submitted to the committee have given rise to infringement proceedings against a Member State in accordance with Article 226 of the EC Treaty.

### **C.3. The European Ombudsman**

In view of the effectiveness of the petitions system, the European Parliament did not consider appointing an ombudsman. However, the role was created by the Treaty of Maastricht under the aegis of the European Parliament, to the EP's satisfaction.

The Ombudsman is appointed by the European Parliament, but he is independent. Only the Court of Justice can dismiss him from office for misconduct. The Ombudsman has the task of investigating cases of maladministration by EU institutions and bodies. He may be contacted by any EU citizen or by any natural or legal person residing or based in the EU. He may also act on his own initiative.

The Ombudsman tries to find an amicable solution for cases submitted to him with the institution or body concerned. Failing this, he will make recommendations and, if these are not adopted, will submit a special report to the European Parliament.

In practice, a large number of cases are settled amicably. Cases where a special report is drawn up relate either to transparency or to the investigation of complaints made by citizens to the Commission. The Ombudsman acts on his own initiative in terms of ac-

cess to documents, good governance and age limits for joining the EU Civil Service. The European Parliament examines the Ombudsman's annual report and special reports relating to recommendations that are not adopted. The system is designed to offer citizens an easier and cheaper means of redress than going through the courts. The Ombudsman maintains a close link with the Parliament, submitting sensitive issues to it as a last resort, which can turn the case into a political matter. In this context, the Ombudsman and the Parliament complement each other.

## II. THE EUROPEAN PARLIAMENT, DEMOCRATISATION AND HUMAN RIGHTS AROUND THE WORLD

Action for human rights is not simply a principle observed in the EU's internal policies: it is one of the objectives of the EU's external relations. In fact, Articles 177 and 181a of the EC Treaty state that this is one of the aims of cooperation with third countries, while Article 11 of the Treaty on European Union makes it an integral part of the EU's common foreign and security policy. The Treaty of Lisbon confirms that the Union's external action is based on the advancement of democracy, human rights and fundamental freedoms. Article 21 of the new Treaty on the Functioning of the European Union states that 'The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law'.

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Since its creation, the European Parliament has shown that the fight for human rights is universal, transcending both borders and politics. Thus it has campaigned for freedom in countries formerly under Soviet rule, in military dictatorships in Europe and Africa, and in Asia and Latin America. It has undeniably played a major role in raising awareness in Europe. Less inhibited than either the Council or the Commission, acting within the strict framework of the Treaties, it has provided momentum for the political debate within the European Union, without which the promotion of values would be undermined.

Although the European Parliament has made use of the legitimacy conferred on it as the elected representative of 495 million people, it has also exercised all of the (limited) powers granted to it by the Treaties. For the EP, human rights issues cannot be considered in isolation, but must be part of the global strategy in relation to third countries. It also believes that its involvement with human rights cannot be seen as interference in the internal affairs of third countries. It lobbies the Council and the Commission for these concerns to be addressed in all aspects of EU external policy, including trade, and for all available political and economic instruments to be used with a view to achieving the objectives relating to fundamental rights.

It has endeavoured both through its annual report on human rights and through resolutions adopted on specific issues to draw attention to human rights abuses in third countries.

It actively campaigns against dictatorships, whether left- or right-wing (A) and, alongside the Commission and Council, and where possible in conjunction with them, engag-

es in genuine parliamentary diplomacy (B). In this respect, it emerges as the champion of universal values (C).

## **A. Campaigning against dictatorships**

One of the main strands of the European Parliament's work has been to campaign against the dictatorships, both left and right-wing, that control many of the countries seeking to enter the European Union.

In the days when it was composed of delegates from national assemblies, it was not really the Parliament's role to debate international events. Nevertheless, it was quick to do so during the troubled times experienced by some countries on the European continent. Once elected by direct universal suffrage, it stepped up this fight.

Its position was echoed by the Member States of the Community. Censorship on the other side of the Iron Curtain prevented citizens in countries under Soviet rule from learning about the crucial action taken by the European Parliament. Conversely, Parliament's support for democracy was public knowledge in Greece and Spain.

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Freed from authoritarian regimes, these countries turned to the Union and embarked on the accession process. The European Parliament, called on to give its assent on the accession treaties, closely monitored the progress made by candidate countries in terms of democratisation and respect for human rights to reach a level acceptable to the European Union. It carefully examined developments in these countries and the annual reports prepared by the Commission, its observations having even more weight since it was able to withhold its assent as a last resort, an option that it never needed to use.

### **A.1. Former Soviet countries**

The European Parliamentary Assembly had always reacted to the various Soviet offensives in eastern Europe by denouncing the various acts of repression. On the advice of dissidents, it backed the 1975 Helsinki Accords. When cracks began to appear in the Iron Curtain in the late 1980s, it stepped up its campaign for democratisation and respect for human rights.

#### **1. Hungary**

In 1956, the European Parliamentary Assembly held a debate on the situation in Hungary, which had been invaded by Soviet troops. On 18 September 1981, to mark the 25th anniversary of the tragedy, the European Parliament adopted a resolution confirming solidarity between the citizens of the Community and the Hungarian people and encouraging those who wanted to safeguard freedom in Europe to join forces.

Almost eight years later, on 14 September 1989, the European Parliament voiced its support for the mobilisation of the Hungarian people, which included East German citizens fleeing their country, a movement that would mark the start of the disintegration of the Soviet Bloc. In a resolution, it praised the Hungarian people for their generosity in helping the refugees and welcomed the decision of the Hungarian government to allow thousands of East German citizens to cross the border.

## 2. East Germany

On 10 and 11 October 1961, the Political Committee of the European Parliamentary Assembly held a symbolic meeting in Berlin in protest against the building of the wall dividing the city on 12 and 13 August. In attendance, the President of the Assembly, Hans Furler, declared that although his institution did not have the means of intervening directly, it still had the power – and the duty – to express its solidarity with the city of Berlin, the symbol of a free Europe.

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On 11 October, during the debate held on this subject at the plenary, a member of the Assembly, Mr Jarosson, said that as European representatives, they would shoulder responsibility in their respective national parliaments and that as Europeans, regardless of nationality or language, the suffering of the people of Berlin would be shared by everyone in Europe. The President of the Assembly's Political Committee, Emilio Battista, said that the situation might not have continued to exist if European governments had acted swiftly and by common accord proceeded with political union. As for the President of the European Commission, Walter Hallstein, he believed that those living in danger on the edges of the Community should not be any less dear to the hearts, consciences and actions of Europeans.

Some 28 years later, on 9 November 1989, the European Parliament reacted swiftly to the fall of the Berlin Wall by inviting the German Chancellor, Helmut Kohl, and the President-in-Office of the European Council, François Mitterrand, to address the Parliament at Strasbourg on 20 November. It was an emotional occasion. The Chancellor began by saying that everyone considered the events to be historic, and that in eastern Europe, the political, economic and social system was undergoing profound changes at a breathtaking pace in several countries simultaneously. He added that for the first time since the end of the Second World War, there was the real hope that the East-West conflict could be resolved and lasting stability and peace established throughout Europe. He concluded that the time had come for European solidarity, and that the freedom of a united Europe and the future of all Germans and Europeans were at stake.

The French President replied that on 9 November, with the fall of the Berlin Wall – which alone symbolised almost 30 years of a divided continent – history had unfolded before the world in a series of events that only the day before had seemed improbable. That day, democracy and freedom, inextricably bound together, had enjoyed one of their finest hours, one of their greatest triumphs. Sooner or later, he concluded, these peoples

would join the concert of nations that the countries of the European Community were already part of: 12 countries that history had divided but that had united because they wanted to do so, but perhaps also because they had learnt that they needed to do so.

On 23 November, MEPs adopted a resolution calling for the right to self-determination for citizens of the German Democratic Republic (GDR). On 14 February 1990, another resolution recognised the right of Germans to live in the same state.

On 16 May 1990, it was the European Parliament that chose Helmut Kohl and Lothar de Maizière, the first democratically elected leader of the GDR, to present their vision of the future of their country and of Europe. Mr de Maizière, addressing the European Parliament as Prime Minister of the first democratic government of the GDR, was gripped by emotion: they owed their meeting to the East Germans who had begun taking charge of their own destiny in the autumn of 1989. By peaceful means they had won their right to democracy, freedom, self-determination and respect for their dignity as humans.

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Chancellor Kohl meanwhile was keen to point out the significance of this sudden acceleration of events, saying that the federal government had always wanted the German unification process to take place within a stable European framework, and that he had set himself the task of deepening the European and German unification process by making them coincide as much as possible within a common timetable.

### 3. Czechoslovakia

Following the invasion of Czechoslovakia by the armies of five Warsaw Pact countries (USSR, GDR, Poland, Hungary and Bulgaria) on 21 August 1968, the European Parliament adopted a series of concrete initiatives, including the creation of the European Action Committee to help the Czechoslovakian people.

At the plenary on 1 October, MEPs adopted a resolution in which they called for the withdrawal of the occupying troops and recognition of the political autonomy of Czechoslovakia, issuing a new and urgent appeal to the governments of the Member States to overcome the obstacles to strengthening of the European Communities, the unification of Europe and its security. During the debate, the President of the Parliament, Mario Scelba, said that a free Europe had no other choice than unity.

The European Parliament would continue to support freedom fighters in Czechoslovakia, and particularly the signatories of Charter 77, a manifesto protesting against the 'normalisation' of the regime after the crushing of the Prague Spring. In 1979, MEPs condemned the arrests of some members of the opposition movement, including the playwright Václav Havel, who would later become the first President of a democratic Czechoslovakia.



On 11 April 1980, they expressed their respect for the courage shown by all those who had sought to safeguard fundamental freedoms in Czechoslovakia. When Václav Havel was arrested again in 1989, the European Parliament, in a resolution on 16 March, called for his immediate release as well as that of his friends and other political prisoners.

#### 4. Poland

Following the creation in August 1980 of 'Solidarity', a Polish trade union federation that would become the starting point for a broad anti-communist social movement, the European Parliament held a debate about the situation in Poland at virtually every one of its sessions.

During the debate on 17 September 1980, representatives from most of the political groups urged the Council to take action. Belgian MEP Léo Tindemans said that it was precisely at these difficult times that the European Community had to do its utmost for the Polish people, and that he firmly believed that Poland was an integral part of Europe. He urged Parliament to consider what it could do for a country that had so many ties with the European Communities.

In his response to MEPs, Gaston Thorn, President-in-Office of the Council, acknowledged his discomfort, saying that he had hesitated to speak during the debate because clearly there could not be a common position within the Council, which had not discussed or reached a decision on the matter. He added that in terms of political cooperation, his colleagues had not given him a mandate to present a collective viewpoint.

On 10 April 1981, the European Parliament solemnly informed the Soviet Union that if Poland was not allowed to solve its internal problems as it saw fit, without foreign interference, it would immediately demand that credit agreements concluded by the Soviet Union and its allies with the European Community be reviewed, and for an embargo to be imposed on exports of new technologies to the Soviet Union.

On 15 October of the same year, the European Parliament invited the Polish government to release the leaders of Solidarity, who had been arrested. In another symbolic gesture, in a resolution of 11 October 1982, the Parliament nominated Lech Walesa, the emblematic figure of Solidarity, for the Nobel Peace Prize. On 15 November 1984, following the assassination of the priest and opponent of the regime Jerzy Popiełuszko, the European Parliament said that it was outraged by the incident and called on the authorities in Warsaw to conduct a thorough and immediate investigation.

#### 5. Bulgaria

MEPs expressed their interest in Bulgaria mainly through written or oral questions to the Council of Ministers or the Commission. Bulgaria's autarchic regime was making any contact with the outside world difficult. MEPs were particularly worried about the

protection of minorities and specifically the obligation imposed on citizens of Turkish origin to make their name sound more Bulgarian.

## 6. Romania

To begin with, the European Parliament focused on emergency aid for the Romanian people, after the country suffered serious flooding in 1970 and a devastating earthquake in 1977. It was only later on that its actions became more political.

On 7 July 1988, it adopted a resolution condemning the decision of the Bucharest government to demolish a number of villages. MEPs believed that these measures were in breach of the human rights of minorities, already harshly repressed, and threatened European cultural heritage that was 'irreplaceable'. On 16 March 1989, the European Parliament adopted a resolution condemning the serious human rights abuses uncovered in the country; it called on Member State governments to take a firm stance with the regime and asked them to stop paying respects to President Ceaușescu and his supporters. The EP went on to support the regime's opponents, mainly by demanding information about the whereabouts of Donia Cornea, one of the key figures of Romania's dissident movement, when she was imprisoned.

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## 7. Baltic states

On 13 January 1983, the European Parliament adopted a resolution asking Member States to examine, in the context of the Helsinki Conferences, the situation in Estonia, Latvia and Lithuania, countries that had been forced to join the Soviet Union at the end of the war.

On 24 January 1991, following the movements of Soviet troops, the Parliament was unequivocal in its condemnation. It spoke out against the intervention of Soviet forces in the capital cities of the Baltic states: since by law the Republics of Estonia, Latvia and Lithuania were defined as democratic states and had undertaken to protect the rights of minorities, the EP strongly condemned Soviet military intervention.

### **A.2. Human rights and the USSR**

The European Parliament did not confine its actions to central and eastern European countries, victims of the Soviet regime; on a number of occasions it also denounced human rights abuses in the USSR.

The resolution of 18 November 1977 unreservedly condemned the use of all forms of psychiatric treatment on political prisoners whenever and wherever this was intended to deprive them of freedom of opinion and political activity. MEPs were also concerned about the whereabouts of dissidents such as Vladimir Bukovsky, who underwent life-threatening psychiatric treatment, Yuri Orlov, co-founder of the Moscow Helsinki

Group to monitor Soviet compliance with the Helsinki Final Act, and physicist Andrei Sakharov. On 15 February 1980, the European Parliament called on the Soviet authorities to put an immediate end to the forced exile of Mr Sakharov, later calling for him and his wife, Elena Bonner, to be allowed to leave Soviet territory.

Numerous EP resolutions, such as the one voted on in 1983, condemned all forms of systematic violation of civil, political, social, economic, cultural and religious rights of the citizens of the Soviet Union. On several occasions the Parliament denounced the repeated infringements of human rights and fundamental freedoms of the Jewish Community in the USSR.

From 1975, it used the Helsinki Agreement to put pressure on the USSR and satellite regimes and to demand a tougher stance from the Council. In numerous resolutions, it asked the Council what it intended to do about the repeated violations of the Helsinki Agreement by the Soviet Union. Yet again, observers noted the gulf that existed between the responses from the Council and the Commission and MEPs' expectations.

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Today, although the Soviet Union no longer exists and the majority of central and eastern European countries, as well as the Baltic states, have now joined the European Union, the Sakharov Prize for Freedom of Thought, created in 1985, is a testimony to both the loyalty of MEPs to their past support for freedom fighting in this part of the world, and their determination to extend their actions to the rest of the world.

### **A.3. Southern Europe: progress towards democracy**

Throughout these troubled times, the censorship existing on the other side of the Iron Curtain prevented all but a tiny majority of citizens in the countries concerned from learning about the positions adopted by the European Parliament. Conversely, the EP's support for democracy was public knowledge in Spain, Greece and Portugal, living under dictatorships, and helped to overthrow these regimes. In its dealings with these three countries, the European Parliament swiftly adopted an attitude that would prefigure what would become one of the 'fundamentals' of the European Union, namely the place of democratic values at the heart of foreign policy and European integration itself.

#### **1. Spain**

The tone was set on 29 March 1962, during an EP debate on the request of the Spanish government to open negotiations with a view to association or even accession of the EEC. Since 1939, Spain had been under the authoritarian regime established by General Franco at the end of the Civil War.

In response to Madrid's request, MEP Willi Birkelbach asked the other European institutions whether the Council of Ministers and the Commission believed that consideration could be given to a request from a regime whose political philosophy and economic

practices were diametrically opposed to the concepts and structures of the European Communities. For Mr Birkelbach, the EEC would no longer be trustworthy if it considered forming close ties with the Madrid regime in the form of association or full accession.

In his written reply, read by the presiding officer of the European Parliament, the Council simply said that it had not yet reached a decision on the request made by the Spanish government. The President of the Commission, Jean Rey, was more explicit, saying that European politics was not just about interests, but about sentiments and ideals, and that when new currents of thought emerged (a reference to the actions of illegal trade union organisations in Spain), these had to be taken into consideration by all European governments. When Willi Birkelbach pushed his point, asking for a yes or no answer on whether a country where human rights were ignored could become a member of the EEC, the Commission President interrupted the debate by saying that he was unable to add anything further to his previous remarks at that time. Spain made a new request in 1964, which, after considerable prevarication, and taking account of the significant development in trade relations in the meantime, led to the signing of a preferential trade agreement in 1970.

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The agreement sparked controversy in the European Parliament over whether or not trade relations could herald a move towards democracy.

On 25 September 1975, during an emotional session, MEPs decided to take action to pressure the Spanish government to grant a stay of execution for 10 Spanish citizens who had been sentenced to death. Following a heated debate on how to go about this, Parliament called on the Commission and the Council to put its relations with Spain on hold until freedom and democracy had been established in that country.

A representative from the Commission present in the Chamber, paid tribute to the debate, saying that it was one of those occasions when the Assembly had, in some respects, ceased to be simply an institution of an economic group of nations and had become a European Parliament in the true sense of the word, a Parliament speaking as the conscience of Europe, the conscience of the Communities. The authorities in Madrid would not be swayed, and two days later five of the death sentences were carried out. However, reports of the Strasbourg debate reached Spain, and helped to galvanise public opinion in Europe against the Spanish government.

Franco died on 20 November 1975. On 8 April 1976, less than six months later, with Spain's democratisation process in trouble, the European Parliament voiced its support for hundreds of thousands of Spaniards from all backgrounds who took to the streets to prevent any return to the previous order. In a resolution, much talked about in Madrid, the European Parliament demanded the restoration of freedoms, an amnesty on political prisoners and the return of exiles.

Democratic elections were held in 1977 and on 12 June 1985, Spain signed its Treaty of Accession to the European Communities. The same day, Enrique Barón Crespo, one of the first Spanish members of the European Parliament, concluded that he belonged to a generation of Spaniards for whom the fight for the country's democratisation and its integration with Europe were two sides of the same coin.

## 2. Greece

On 11 May 1967, less than three weeks after the military coup d'état in Greece, the European Parliament called for democratic order to be restored in Athens. As with Spain, its overriding concern was for human rights, and it insisted that respect for human rights was essential in any country that wanted to engage in relations with the EEC.

The European Parliament, which in 1961 had called for the signing of an association agreement with Greece, insisted that this agreement be frozen until a democratic regime had been restored. This decision was adopted by the Council. On the second anniversary of the coup d'état, the European Parliament reiterated its position, voting on a resolution whereby it declared its total solidarity with the people of Greece and pointed out that the association agreement could not be fully applied until democratic and parliamentary structures had been re-established in Greece.

In August 1974, shortly after the fall of the military junta on 24 July, the President of the European Parliament, Cornelis Berkouwer, went to Greece to express the Assembly's support for the democratic process under way. In October that year, the EP called for an immediate thawing of the economic and trade aspects of the association, even before elections could take place in Greece. On 1 January 1981, Greece became the 10th member of the European Community.

## 3. Portugal

Living in a virtual autarchy since the installation of a corporatist regime in 1920, Portugal did not, unlike Spain and Greece, try to form ties with the Community. Without this economic leverage, the European Parliament was unable to bring pressure to bear on Lisbon to democratise the regime.

Following the Carnation Revolution in April 1974, which led to the fall of the dictatorship, the European Parliament learnt that Portugal wanted to join the EEC. In April 1975, while declaring itself satisfied with the political changes in Portugal, it voiced its concern over certain negative aspects of democratic evolution in Portugal and appealed to the country's leaders to commit to the democratic process. The appeal worked. Elections were held, and Portugal joined the EEC at the same time as Spain.

## **B. Parliamentary diplomacy for human rights**

The European Parliament has an extensive set of instruments at its disposal to promote democracy around the world, some of which are associated with the special relationship that the EU has with regions such as Africa, Latin America and the Mediterranean.

### **B.1. Instruments used by the European Parliament to ensure respect for human rights**

The treaties give the Parliament numerous tools for promoting democracy around the world, and some of them form part of the special relationship that the EU has with regions such as Africa, Latin America and the Mediterranean.

Of course, in the EU's foreign relations, the European Parliament only has limited powers and the Treaties give it no more than a decision-making role in certain circumstances. For example, its assent is required for the signing of certain international agreements, such as association or cooperation agreements, and it may use its budgetary powers to initiate or influence certain actions of the EU.

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For the rest, and within the framework of the common foreign and security policy, it can adopt resolutions, but these are not binding. It must therefore make the most of its powers of persuasion and the legitimacy that comes from its election by direct universal suffrage. It influences the Council and the Commission, for example, by relying on the strength of public opinion and on non-governmental organisations. Resolutions on particular abuses in certain countries or individual cases adopted during an emergency plenary debate have for a long time enabled the Parliament to react swiftly to crisis situations. The President of the Parliament or the chairmen of committees and delegations can go through official channels so that the Council, the Commission and the governments concerned take action. The reactions of the governments concerned indicate that they are often highly sensitive to criticisms made by the European Parliament.

The EP knows how to use the powers given to it by the EC Treaty as part of external economic and trade action in order to protect human rights. For the EP, human rights concerns cannot be considered in isolation, but must be part of a broader strategy for third countries. It lobbies the Council and the Commission so that human rights concerns are integrated into all aspects of EU foreign policy, including trade, and so that all political and economic instruments are used with a view to achieving the goals in terms of fundamental rights. The EU's external policy is an undivided whole, and issues relating to foreign policy cannot be separated from the common commercial policy.

The European Parliament bases its human rights strategy on the report that it adopts each year on the human rights situation around the world. This report, prepared for the first time in 1983, helps gauge the progress of human rights around the world. It is used by the European Parliament to set its own political priorities and to call for a more coherent and coordinated human rights policy as part of the EU's external relations. These

priorities are traditionally expressed through resolutions, but also lead to more binding measures for third countries.

### 1. The assent procedure as a means of protecting human rights

The European Parliament has gradually increased its powers of control over agreements between the European Union and third countries. According to Article 300(3) of the EC Treaty, the Parliament must give its assent for the signing of any Community agreement that creates a specific institutional framework. It can thus veto any association or cooperation agreement in order to assert its demands in terms of human rights. In addition, since the 1983 Solemn Declaration on European Union, the Council has agreed to keep Parliament informed about negotiations with third countries. The European Parliament therefore has the right to intervene with the Commission and the Council when negotiations begin for an association or cooperation agreement to ensure that its concerns are taken into account. It can also use the threat of suspending or refusing to give its assent in order to influence negotiations or to obtain an improvement in the human rights situation in the country concerned.

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The events that surrounded the signing of the customs union agreement with Turkey in 1995 are symptomatic of Parliament's influence. In 1994, the European Parliament asked that negotiations with Turkey for the customs union agreement be suspended in view of the human rights situation in the country, and specifically the decision of the Turkish government to suspend the immunity of some MPs. In 1995, the Turkish National Assembly adopted a constitutional reform on democratisation and several political prisoners were released. The Parliament gave its assent and the agreement was signed.

Similarly, the EP refused to give its assent for the signing of four protocols to the cooperation agreement with Syria until Syria had agreed to include the issue of human rights on the agenda of a cooperation summit with the EU.

The European Parliament also refused to give its assent for a financial agreement with Morocco in view of the human rights situation there.

As we have seen, the assent procedure also applies when new Member States join the European Union. The Parliament is thus involved in the enlargement process and can monitor the progress made by candidate countries in terms of human rights. To this end, it carefully examines the annual reports prepared by the Commission on the situation in future Member States and is quick to underline both progress and failings in terms of fundamental rights. This scrutiny is even more effective because the Parliament again has the right to withhold its assent as a last resort. If it has never needed to resort to this extreme measure it is because, throughout the accession process, it can monitor changes in fundamental rights in candidate countries and persuade them to build up to the level of protection existing within Member States of the European Union. During



enlargement to central and eastern European countries, it closely monitored the treatment of minorities and the progress made in terms of respect for the rule of law.

## 2. The human rights clause

Whether in terms of its special relations with ACP countries (Africa, the Caribbean and the Pacific) or trading relations with other third countries, the European Parliament has established the idea that the advantages granted in this context should contribute to respect for human rights by the other contracting state. Within the Joint Committee of the ACP-EEC Consultative Assembly in 1978, it was Parliament that secured recognition for human rights.

For MEPs, the economic, commercial and financial benefits granted to these countries must entail respect for fundamental rights. Based on this, a practice emerged of inserting a human rights clause into Community agreements, which became automatic in the 1990s. In 1995, the Council, following continuous pressure from the Parliament, made the inclusion of this clause obligatory in international agreements signed by the Community. Significantly, the European Union abandoned an agreement with Australia, which saw this clause as tantamount to interference in its internal affairs.

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At the end of 2007, more than 120 states were bound by this clause. Under the terms of the agreements, the clause is considered an essential part of the agreement. Under international law, this means that a human rights violation by a contracting state can lead to the suspension of the agreement and thus the related economic benefits. Suspension only takes place at the end of a mutual consultation process. The existence of the clause thus allows a dialogue on fundamental rights to be established during meetings between the parties. For the EU institutions and the European Parliament, the clause represents a way of monitoring the human rights situation in the country in question. The subject of human rights is no longer off limits and is open to discussion between the parties. Cross-compliance is established between the economic benefits and respect for human rights, which is a valuable tool for ensuring respect for the rule of law and democracy.

This clause has been enforced on several occasions. It has facilitated consultation between the Community and the countries concerned, often allowing solutions to be found for controversial situations. In the case of Togo, the enforcement of the clause led to the agreement being suspended in 1998. More recently, the clause was enforced against Zimbabwe and Uzbekistan.

## 3. Generalised System of Preferences

The Generalised System of Preferences (GSP) is aimed at providing preferential access to the EU market to developing countries in the form of reduced tariffs for their goods. Under this system, special incentives (GSP+) are offered to countries that meet certain



international obligations in terms of human rights, good governance and sustainable development. To qualify for these incentives, countries have a general obligation to ratify and implement certain international conventions, namely the principal UN/ILO conventions on human rights and workers' rights, in addition to conventions relating to the environment and the principles of good governance. Article 207 of the Treaty on the Functioning of the European Union makes the granting of generalised preferences conditional on codecision between the Council and the European Parliament.

Burma is the only country to have forfeited the benefits of GSP, for both the agricultural and the industrial sectors. On 24 March 1997, the EU Foreign Affairs Council effectively adopted a regulation withdrawing the preferences granted to Burma following an inquiry into forced labour practices employed by the government. The sanction sent a clear signal to Burma and other countries that practise or tolerate the exploitation of workers through forced labour or allow human rights abuses in the workplace. It was also a message for companies that cooperate with military juntas and that benefit directly or indirectly from their exploitation practices. The trade unions saw this measure as recognition of the link between trade and respect for social legislation.

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In 2006, the European Union considered temporarily withdrawing trading preferences from Belarus due to violations of fundamental labour laws. International trade unions and the ILO identified systematic violations of the freedom of association in Belarus at a time when the political climate was deteriorating. The EU released a statement on 14 June in which it said that it was concerned about the increasing oppression of political forces, civil society, trade unions and independent media in the country, but did not consider it appropriate to suspend GSP.

#### 4. Financial instruments as leverage

The financing instrument for the promotion of democracy and human rights is one of the most striking contributions of the European Parliament to the establishment of human rights and democracy in third countries.

In 1994, the Parliament made use of its budgetary powers to compile a series of budgetary items for the promotion of human rights and democracy in a special budget heading entitled the 'European Initiative for Democracy and Human Rights' (EIDHR).

It subsequently used its budgetary powers to considerably increase the resources allocated to the programmes and actions undertaken in connection with the Initiative and to influence the content of the actions. In 1994, EUR 27 million was available under Chapter B7-7 to support human rights, democratisation and conflict prevention activities; in 2006, more than EUR 133 million was set aside.

The 2000-06 Initiative has financed a wide range of projects across 68 countries and has helped address priority issues in four campaigns: promoting justice and the rule of law; fostering a culture of human rights; promoting the democratic process; and advancing

equality, tolerance and peace. By the end of June 2006, the Initiative was supporting more than a thousand projects worldwide.

A new financing instrument for the promotion of democracy and human rights worldwide was adopted for the period 2007-13. On 6 July 2006, the President of the European Parliament, Josep Borrell, welcomed the Commission proposal for a new European Instrument for Democracy and Human Rights in third countries and recalled that since the start of the project, the European Parliament had always led the fight to protect human rights and democracy when negotiating agreements with its partners. He also said that the proposal entailed an agreement on the revision of the financing instruments, which would both help streamline the EP's work and allow the focus to be shifted to human rights and democracy, facilitating social stability and social harmony. After difficult negotiations, Parliament had been able to bring the Commission and Council around to its way of thinking, thus preparing the ground for the proposal of this new instrument. Josep Borrell welcomed this achievement.

Regulation (EC) No 1889/2006<sup>363</sup> set out the objectives for the financial assistance granted by the new instrument:

- a. Enhancing the respect for and observance of human rights and fundamental freedoms; promoting and consolidating democracy and democratic reform in third countries; mainly through support for civil society organisations, providing support and solidarity to human rights defenders and victims of repression and abuse; and strengthening civil society active in the field of human rights and the promotion of democracy.
- b. Supporting and strengthening the international and regional framework for the protection, promotion and monitoring of human rights.
- c. Building confidence in and enhancing the reliability of electoral processes, in particular through election observation missions and support for local civil society organisations involved in these processes.

These actions will receive funding of EUR 1 104 million for the period 2007-13.

One of the Instrument's main functions is to provide direct financial support for NGOs campaigning for human rights in third countries without the need for approval from the authorities in their country. It complements other Community programmes such as Phare, Tacis and Meda and the European Development Fund and represents a valuable addition to the objectives of EU common foreign and security policy in the fields of human rights, democratisation and conflict prevention. In some regions, it provides the only legal basis for certain activities, including the promotion of civil and political rights, election observation and conflict resolution initiatives.

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<sup>363</sup> Regulation (EC) No 1889/2006 of the European Parliament and of the Council on establishing a financial instrument for the promotion of democracy and human rights worldwide, OJ L 386, 29.12.2006, p. 1.

## 5. Political dialogue on human rights

Political dialogue on human rights consists of regular meetings between the EU and leaders in third countries during which matters of common interest are raised in relation to human rights. Dialogue and consultation should form part of the global strategy deployed by the EU for the promotion of sustainable development, peace and stability worldwide and are designed to help establish democracy, the rule of law, good governance and respect for human rights in third countries, whether in terms of civil and political rights or economic, cultural, social and environmental rights.

Progress towards establishing closer links between the EU and these countries directly depends on the progress achieved within the framework of this dialogue.

The European Parliament is not involved in dialogue and consultation but it encourages them, as it sees them as representing one of the tools available to the European Union to implement its human rights policy. Its Subcommittee on Human Rights has however developed a highly effective strategy over the past few years for making itself heard. Before 'human rights' consultation begins between EU representatives and third countries, the Subcommittee conducts hearings of opponents, senior NGO staff or even the country's leaders. These hearings carry weight in the Council and can influence the content of the dialogue.

The aims of the dialogue vary according to the country and are defined on a case-by-case basis. It may be a question of simply addressing matters of common interest and strengthening cooperation in terms of human rights, or conversely more intense dialogue may be required to acknowledge the EU's concerns over the human rights situation in the country in question. Naturally, dialogue with candidate countries means significant cross-compliance, particularly in terms of human rights. This is assessed in the regular reports produced by the Commission on the human rights situation in each candidate country, which set the pace for the accession negotiations.

Political dialogue has some bearing on the insertion of the human rights clause into treaties signed by the Community. Before resorting to suspension, it can be useful to negotiate, issue warnings and nurture a positive approach.

The most important structured dialogue engaged in by the Union is without doubt the one conducted with China over the past 12 years. These regular meetings have addressed themes as varied: as the ratification of the International Covenant on Civil and Political Rights; reform of the penal system, including the death penalty and rehabilitation through work; freedom of expression, particularly on the Internet; freedom of the press; freedom of conscience, thought and religion; the situation of minorities in Tibet, Xinjiang and Mongolia, the release of prisoners following the events in Tiananmen Square; labour rights, and other rights. Progress can be slow, although dialogue at least has the merit of involving civil society (NGOs, intellectuals, etc.) and giving it a voice. The European Parliament recognises the need to strengthen and improve this dialogue,

redefining it so that it yields better results and focuses on how China fulfils its obligations under international law.

A similar dialogue was initiated with Iran in 2002 following the start of negotiations between the EU and Iran regarding a trade and cooperation agreement. This was interrupted in 2004 due to lack of cooperation from Tehran. The European Parliament is keen to foster contact with Iranian civil society and to find common ground for discussion with the authorities. It believes that more support for democracy and human rights is crucial, and that close attention should be paid to the protection of women and children and the advancement of their fundamental rights.

At the EU-Russia Summit in November 2004, it was decided to begin biannual consultation on human rights. The issues debated included Chechnya, the freedom of the press, the situation of minorities and the implementation of international human rights laws, as well as racism in Europe. Civil society is not involved in this process. The European Parliament supports the Council's ambition to transform these exchanges into a frank and genuine dialogue and asks that monitoring and control mechanisms be established to ensure respect for the commitments assumed by Russia.

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Alongside structured dialogue and based on the 'human rights clause', dialogue on human rights is a traditional part of the exchanges that take place in the context of association and cooperation agreements concluded by the Community. The European Parliament has a role to play in the parliamentary structures established in these agreements. Furthermore, specific consultations have taken place, for example those of the EU troika with the United States, Canada, Japan and New Zealand, although mainly involving exchanges of views and information about human rights, the aim being to define cooperation strategies or to reach a common position during sessions of the Human Rights Defence Council or the United Nations General Assembly.

The European Parliament is closely monitoring this dialogue policy and is keen to make it more effective. Based on the report by Elena Valenciano, it has carried out a general assessment of political dialogue. Although it does not question the merits, it is keen to strengthen coherence between the various dialogues and regrets the number of dialogues with different structures, formats, timetables and methods. It has asked the Council to structure the methods and themes of dialogues so that the objectives can be evaluated. Maintaining various forms of dialogue without ensuring the necessary coherence undermines the credibility of the EU's policy on human rights. To this end, MEPs recommend improving coordination between the various EU institutions (the Council, Commission and European Parliament), strengthening the role of the Working Party on Human Rights (COHOM) and making the action of the EU more consistent with that of other states and international organisations.

The European Parliament believes that it is necessary to strengthen its role and that of the national parliaments concerned in order to increase the legitimacy of dialogue and consultation. MEPs wish to be systematically involved in official dialogue and consultation<sup>364</sup>. They ask that the Council conduct a six-monthly evaluation of each dialogue process and that the results be sent to the Parliament. They are also keen for the Commission to send the Parliament specific assessments of the status of political dialogue and consultation on human rights in third countries.

## 6. Resolutions and the role of urgent debates

Depending on current events, the European Parliament holds an urgent debate on breaches of human rights, democracy and the rule of law in the context of its monthly debates on urgent matters. Rule 115 of the Rules of Procedure of the European Parliament states that ‘a committee, an interparliamentary delegation, a political group or at least forty Members may ask the President in writing for a debate to be held on an urgent case of a breach of human rights, democracy and the rule of law’. This may lead to the adoption of a resolution.

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These debates are frequent and allow the Parliament to respond regardless of the circumstances and to condemn particularly serious situations. It may express a view on current events. The debates generally concern a country or region and seek to defend the universal values defended by Parliament. The topics covered most frequently are humanitarian issues, regional conflict, violations of the rights of women and children, freedom of expression, prisoners of war or political prisoners, and electoral processes. Other resolutions refer to individual situations and concern people or groups who are victims of human rights abuses (such as politicians, journalists, judges, human rights activists, etc.).

The resolutions are not binding, but they do carry considerable weight because they reflect the opinion of a democratically elected institution at the European level. Furthermore, the reactions of the countries targeted are indicative of how much of an impact this practice has. Usually, countries react by justifying their position or promising to resolve the situation. When the resolutions mention an individual by name, they can provide protection for that person, the country in question hesitating to take repressive measures against them.

The impact of resolutions is increased tenfold when a particular issue is addressed in several resolutions or when complementary activities are carried out on similar issues<sup>365</sup>.

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<sup>364</sup> Although they are not represented in the EU-China dialogue, they were involved – at the request of the European Parliament – in the dialogue with Iran on human rights, the third session of which took place in October 2003 in Brussels, hailed as a useful contribution to the human rights process.

<sup>365</sup> Fischer, H., Lorion, S., Ulrich, G., *Beyond Activism. The Impact of the Resolutions and Other Activities of the European Parliament in the Field of Human Rights Outside the European Union*, Marsilio, 2007, p. 162.

The European Parliament does not systematically compile information about the reactions of third countries to resolutions concerning human rights.

In general, these urgent debates lead to three resolutions and take place on the Thursday of each Strasbourg session<sup>366</sup>. Occasionally, governments in the countries concerned react strongly, such as China on the subject of Tibet or death sentences, or Russia on the subject of Chechnya and the muzzling of the democratic opposition before elections.

## **B.2 Great causes**

The European Parliament constantly targets its efforts at several major international causes, such as abolition of the death penalty, combating hunger and the international fight against impunity.

### **1. The fight against the death penalty**

The European Parliament has led the way in the fight to abolish the death penalty. A cruel and inhumane punishment, the death penalty is a violation of the right to life and has no legitimate place in the penal system of a modern society. MEPs have always voiced concern over the existence or reintroduction of the death penalty in certain countries, resulting in the execution of thousands of people every year. The European Parliament has adopted numerous resolutions to put pressure on countries that still have capital punishment to abolish it.

First of all, the EU has imposed the abolition of the death penalty on its own Member States, requiring those that have not yet abolished capital punishment to do so and making it one of the conditions of EU membership. On 14 March 1980, it adopted a resolution calling for Member States to stop enforcing capital punishment. The resolution states that Europe is not only a common market, but also a civilisation founded on shared values such as respect for human dignity and life, even in those who have violated these values. It goes on to demand the same commitment from candidate countries. Gradually, all Member States have complied, although not without some resist-

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<sup>366</sup> For example, during the first session in December 2007, the European Parliament adopted three resolutions. The first resolution concerned justice for 'comfort women' and called on 'the Japanese Government formally to acknowledge, apologise, and accept historical and legal responsibility, in a clear and unequivocal manner, for its Imperial Armed Forces' coercion of young women into sexual slavery, known to the world as "comfort women", during its colonial and wartime occupation of Asia and the Pacific Islands from the 1930s until the end of World War II'. It also called on the Japanese government to implement administrative and legal mechanisms to provide compensation and 'to refute publicly any claims that the subjugation and enslavement of "comfort women" never occurred'. The second resolution concerned eastern Chad and called for the urgent deployment of EUFOR CHAD/CAR. The third resolution adopted in December 2007 concerned the case of a young woman who was the victim of a rape in Saudi Arabia while in a vehicle with a man, also assaulted by the attackers. The woman was sentenced to 90 lashings, increased to 200 when she appealed against the verdict, on the grounds that she was in the car with an unrelated male. The European Parliament immediately called on Saudi Arabia to take measures to guarantee respect for women's rights. At the end of December, the Saudi authorities pardoned the woman. Perhaps international efforts influenced this decision.

ance. The abolition of the death penalty is one of the conditions of accession to the EU. Today, the death penalty no longer exists in any of the 27 Member States that make up the European Union.

The European Parliament has also campaigned for the worldwide abolition of the death penalty. Each year thousands of people are executed in the name of vengeful justice. On 22 June 2001, Nicole Fontaine, the then President of the European Parliament, and the presidents and vice-presidents of numerous national parliaments, signed a text calling on 'all States to introduce a worldwide moratorium on executions without delay, and to take steps to abolish the death penalty in their domestic law'.

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During its sessions, the Parliament has adopted numerous resolutions to pressure countries practising this penalty to abolish it. It has repeatedly denounced the continuation of capital punishment in the United States, one of the last countries in the western world to enforce the death penalty. The various EP presidents have often campaigned to help prisoners facing a death sentence. In its European Parliament resolution on the death penalty in the United States, the European Parliament, while calling on the Government of the State of Virginia to suspend the execution order against a prisoner, reminded the United States Supreme Court of the need to meet its obligations under the International Covenant on Civil and Political Rights and abolish the death penalty and urged the United States Administration to comply with the request made by the Inter-American Commission on Human Rights on 27 January 2000 that executions should not proceed until the Commission had examined and ruled on the case.

The European Parliament frequently condemns the practice of carrying out executions in Libya, Iran, Tibet and elsewhere in the world. It also intervenes in individual cases that it considers particularly disturbing. On 27 June 2007, in a letter sent to the Minister of Justice of the Islamic Republic of Iran, the President of the European Parliament, Hans-Gert Pöttering, expressed his deep concern, and that of the European Parliament, about the continued application of the death sentence in Iran, in particular applied to young people. In his letter President Pöttering said: 'A number of young people in Iran have been sentenced to death and are facing execution, although they were under 18 years of age when the crimes that they are accused of were perpetrated'. He referred to the case of Ms Delara Delabi, who was accused of committing a murder when she was 17 and sentenced to death.

Pending the widespread abolition of the death penalty, the European Parliament is campaigning to establish a moratorium on capital punishment. It has unstintingly called on the Presidency of the European Union to table a resolution to the UN General Assembly for the 'adoption of a worldwide moratorium as a crucial step towards the abolition of the death penalty'. It recently triumphed when, on the initiative of a transregional group, including Portugal, acting in the name of the European Union, a resolution calling for the creation of a moratorium was adopted by the UN General Assembly on



15 November 2007. This illustrates one of the techniques used by the Parliament to improve the human rights situation around the world. It starts by defining an objective, and then repeatedly lobbies the Commission and the Council so that they make this a priority of the Union in its dealings with international institutions.

The European Parliament is also pressing for greater awareness of the first guidelines concerning the abolition of the death penalty adopted by the Council in 1998, and for these to be enforced by all EU Missions and Member States. These guidelines contain a detailed definition of the steps that representatives of the EU and Member States should take to secure the abolition of the death penalty in their host countries. Through this action, it ensures that the positions adopted by the EU will not be in vain. The European Parliament also ensures that there is significant European Instrument for Democracy and Human Rights (EIDHR) funding for projects undertaken by local and regional abolition bodies.

Finally, the Parliament regularly invites the EU Presidency to put pressure on those countries that have not yet done so to sign and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, as well as Protocol No 13 to the European Convention on Human Rights concerning the abolition of the death penalty in all circumstances, including war.

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The European Parliament recently took action so that the European Union, in concert with the Council of Europe, despite the reservations of Poland, which eventually backed the initiative, would make 10 October of each year ‘European Day Against the Death Penalty’, a symbolic initiative that fully reflects the fundamental values of the European Union. The President of the European Parliament, Hans-Gert Pöttering, called on all nations to follow the example of EU Member States, all of which had abolished the death penalty and included the principle of abolition in the Charter of Fundamental Rights of the European Union.

## 2. The fight against world hunger

The fight against world hunger is an age-old concern of the European Parliament, for which ‘it is the right of everyone to have access to healthy, safe and nutritious food and the fundamental right of everyone to be free from hunger’. This comes under the EU’s general development initiative, which is an established policy of the Union. In 2002 for example, the President of the Food and Agriculture Organization of the United Nations reminded the European Parliament that Europe had a long history of contributing to development aid, owing to its special historical, cultural and economic links with developing countries, links that it had continued to forge. He praised the Parliament for its constant commitment towards eradicating poverty and combating hunger, particularly when the EP spoke out in favour of contributing to the FAO Trust Fund for Food Security and Food Safety.



The European Parliament does not simply promote food aid. This is only one of the aspects of its campaign against hunger, although the main objective is to ensure lasting food security around the world. Food aid should neither create dependence nor act as an obstacle to the introduction of local food production capability. When food aid is the only solution, it must wherever possible rely on local resources or resources from neighbouring regions. The priority is the development of effective agricultural production in conjunction with local producers, which does not depend solely on increasing local production capacity, but also on wider reforms with a view to establishing a favourable context in terms of the system of land ownership, intellectual property rights and eradication of local conflict. Food security must form part of sustainable development and democratisation<sup>367</sup>.

### 3. The fight against impunity

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The European Parliament has offered its constant and unfailing support for the creation of the International Criminal Court (ICC), whose Statute was adopted on 17 July 1988 and which has the task of prosecuting those responsible for genocide, crimes against humanity and war crimes. Very early on, an informal group of MEPs called the 'Friends of the ICC' was set up to promote international justice. It was also in the European Parliament that a seminar was held on 27 November 1997 on the implications of the international negotiations under way on the establishment of this permanent international court. Since then, the European Parliament has stepped up its actions in favour of the ICC. On 21 November 2006, the Subcommittee on Human Rights held a hearing on the role of the EU in promoting and supporting the International Criminal Court. The European Parliament wants to make accession to the Rome Statute of the International Criminal Court a condition of accession to the European Union, in other words one of the shared values.

Several EP resolutions concerning the ICC have been adopted. Some call on the Council and the Commission to redouble their efforts to promote the universal ratification of the Rome Statute and its transposition into domestic law<sup>368</sup>. Others invite the European Union to make every effort to convince the United States to ratify the Rome Statute and to put an end to the campaign it conducts against the Court by dissuading other states from ratifying the Statute and proposing bilateral exemption agreements.

Other resolutions insist that references to the ICC should be systematically included in new action plans that come under the neighbourhood policy or partnership and cooperation agreements. Describing the Annual Report on Human Rights in the World 2006, the Parliament welcomed 'the fact that references to the ICC have been included in several new European Neighbourhood Action Plans (relating to Egypt, Jordan, Moldova, Armenia, Azerbaijan, Georgia, Lebanon and Ukraine) and are being negotiated in the

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<sup>367</sup> European Parliament Resolution of 29.11.2007 on Advancing African Agriculture.

<sup>368</sup> In accordance with Council Common Position 2003/2004/CFSP of 16.6.2003 on the International Criminal Court and the Action Plan.

context of other new Action Plans as well as Partnership and Cooperation Agreements with several countries’.

Since 1995, a considerable amount of funding has been released as part of the European Initiative for Democracy and Human Rights for NGOs involved in campaigns to promote ratification of the Rome Statute.

The impact of Parliament’s ICC resolutions on international law has been pointed out<sup>369</sup>. By referring to international law, the resolutions strengthen the legal force of international principles and standards.

Parliament’s resolutions may sometimes also interpret international laws or steer them towards the adaptation of treaties on humanitarian law, particularly the Convention relating to the Status of Refugees (Geneva Convention) in response to new challenges raised by international terrorism. Finally, certain resolutions seek to make accession to the Rome Statute a condition of accession to the European Union, so that the Statute becomes one of the shared values and thus part of the *acquis communautaire*.

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#### 4. Humanitarian aid

The European Union and its Member States have become the world’s leading providers of humanitarian aid. The European Parliament has always approved of the EU’s work on international humanitarian aid. Since the early 1990s, the Parliament has supported the creation of a body within the Commission charged with coordinating humanitarian aid. The European Community Humanitarian Aid department (ECHO) was set up on 1 April 1992. The Office provides support for the coordination, efficiency and visibility of measures taken by the EU on humanitarian aid. Its mandate consists of providing assistance and aid (in the form of goods or services) to victims of natural or manmade disasters, as well as conflicts outside the EU. This aid is based on the principles of non-discrimination, impartiality and humanity.

The Parliament also makes use of the budgetary powers at its disposal, particularly the European Initiative for Democracy and Human Rights, to increase funding for humanitarian aid and to distribute it to the various regions and countries.

On 21 November 2007, the European Parliament hailed the prospective signing of the European Consensus on Humanitarian Aid, designed to foster concerted and coordinated action within the EU and other actors and thus improve the collective response to humanitarian crises<sup>370</sup>. During the debate on the Consensus, MEP Thierry Cornillet, the standing rapporteur for humanitarian aid within the Committee on Development, insisted on the need for the EU and the Member States to construct a stand-alone hu-

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<sup>369</sup> Fischer, H., Lorion, S., Ulrich, G., *Beyond Activism*, op. cit., p. 98.

<sup>370</sup> European Parliament Resolution of 21.11.2007.

manitarian aid policy, saying that ‘we simply want this consensus report to incorporate not just a set of principles but also a roadmap with which we will have – and this has been agreed – an annual meeting so that Parliament, too, can play a full role’.

The Consensus was proclaimed jointly by the Presidents of the Council, Commission and Parliament during the plenary sitting of Parliament in Brussels on 18 December 2007<sup>371</sup>.

The Treaty of Lisbon also introduces a specific legal basis for humanitarian aid. This provision insists on the application of the principles of international law, as well as the principles of impartiality, neutrality and non-discrimination<sup>372</sup>. The Treaty also makes provision for a European Voluntary Humanitarian Aid Corps.

### **B.3. Actions in specific regional contexts**

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The fact that the Treaties assign the task of conducting the EU’s external policy to the Commission and the Council has never stopped the European Parliament from conducting its own actions in accordance with EU policy. Taking advantage of their wide networks in third countries, both with political and economic leaders and members of civil society, MEPs have various options for conveying their concerns, particularly when it comes to the defence of human rights.

#### **1. Delegations**

EP delegations are often set up in the context of association or cooperation agreements signed by the EU with third countries. Since these agreements establish joint committees vested with a decision-making power, it seemed important to introduce joint parliamentary assemblies at the same time, so that the parliamentary delegations of both parties could monitor the decision-making process and engage in dialogue at their own level.

As the ‘ambassadors’ of the European Parliament, delegations help to spread the influence of the EU around the world and to defend the values of the Union. Through contact with political authorities, NGOs and representatives from civil society, they can gather information about the political situation in the countries concerned, providing the EP with detailed knowledge of local issues on the ground. Aside from the exchange of information and parliamentary dialogue, they can express their support for the actions of a particular group, or even denounce practices that are inconsistent with democratic values, sometimes even securing political pledges from the states concerned.

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<sup>371</sup> Joint Statement by the Council and the Representatives of the Governments of the Member States meeting within the Council, the European Parliament and the European Commission on the European Consensus on Humanitarian Aid, OJ C 25, 30.1.2008.

<sup>372</sup> Article 214 of the Treaty on the Functioning of the European Union.

Their presence, even short-lived, is particularly welcome in countries deprived of freedom, owing to the publicity and visibility that it gives to situations in which human rights are flouted. These often create expectations that both the European Parliament and the European Union owe it to themselves to satisfy.

There are numerous delegations, each composed of around 15 members and in charge of one or more countries or regions. Interparliamentary delegations work with parliaments in non-candidate countries. These may involve one country (Russia, China, Japan, United States, Canada) or two countries (Australia and New Zealand), or even an entire region (South America, Central Asia). Joint parliamentary committees are responsible for preparing for EU enlargement and are in contact with parliaments in candidate countries or with parliaments of countries that have an association with the Community. Finally, there are three specific delegations: the EP delegation to the ACP-EU Joint Parliamentary Assembly, the EP delegation to the Euro-Mediterranean Parliamentary Assembly (EMPA) and the EP delegation to the Euro-Latin American Parliamentary Assembly or EuroLat<sup>373</sup>.

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These seek to represent the European Parliament within these bodies. Finally, ad hoc delegations can also be set up, just as an MEP together with other MEPs or a political group can form their own delegation.

The following two examples help illustrate the role and impact of parliamentary delegations.

The European Parliament formed a delegation for south-east Europe responsible for all western Balkan states. It resolved to send observers to the region whenever elections were held. In 2005, when the Stabilisation and Association Agreements with the Former Yugoslav Republic of Macedonia and with Croatia came into force, joint parliamentary committees were set up between the European Parliament and parliaments from the partner countries. As a result, following the 2004 European elections, the new delegation for relations with south-east Europe was only involved in interparliamentary dialogue with Albania, Bosnia-Herzegovina and Serbia and Montenegro. In the course of their work, MEPs emphasise the need to respect democracy, the rule of law, human rights and the rights of minorities, as well as the need for full and effective cooperation of the countries concerned with the International Criminal Tribunal for the Former Yugoslavia, the effective implementation of a policy to encourage the return of refugees and the importance of an active policy against organised crime and corruption.

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<sup>373</sup> List of interparliamentary delegations: Croatia; Former Yugoslav Republic of Macedonia; Turkey; Mexico; Chile; Switzerland, Iceland, Norway and the European Economic Area (EEA); Russia; south-east Europe; Ukraine; Moldova; Kazakhstan, Kyrgyzstan, Uzbekistan, Tajikistan, Turkmenistan and Mongolia; Armenia, Azerbaijan and Georgia; Belarus; Israel; Palestinian Legislative Council; Maghreb; Mashreq; Gulf States, Yemen; Iran, United States, Canada; Central America; Andean Community; Mercosur; Japan; People's Republic of China; Southeast Asia, ASEAN; Korean Peninsula; Australia and New Zealand; South Africa; NATO; South Asia; India; Afghanistan; ACP; EMPA; EuroLat.

The interparliamentary delegations for relations with Israel and the Palestinian Legislative Council are particularly sensitive. They regularly visit both countries to meet with not only their parliamentary counterparts, but also other political actors, representatives from civil society, religious communities and NGOs in order to learn about developments in the conflict and to support the troubled peace process. Regardless of their political differences, MEPs are always clear on the ambition of the European Parliament and the European Union to find a swift and peaceful solution to the conflict in the Middle East.

## 2. Election observation missions

The European Parliament attaches fundamental importance to free and transparent elections, which it sees as a vital step in the process of democratisation of a country. It believes that the right to take part in the appointment of governments through free and fair elections makes a substantial contribution to peace, security and conflict prevention.

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The European Parliament is actively involved in election observation missions, which the EU systematically sends to third countries to monitor elections. The missions oversee the compliance of elections with international laws and practices, such as those set forth in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the 1990 Copenhagen Declaration<sup>374</sup>. The task of these missions is essential since they are responsible for validating the electoral process and by the same token the governments that are formed as a result.

The practice of choosing a member of the European Parliament as head of mission is now well established, as is sending an ad hoc delegation from the European Parliament for brief periods of observation. Member States and political groups engaged in the electoral process can thus benefit from the electoral experience of members of the mission.

Since 2000, approximately 60 missions and 10 special support missions have been sent to all continents, except for the Organisation for Security and Cooperation in Europe (OSCE) region, where the Office for Democratic Institutions and Human Rights is the lead agency. A special unit for election observation has been set up within the Directorate-General for External Relations to prevent efforts within the EP from becoming too scattered and to ensure coordination between the Parliament, the Commission and the Council. The EU also finances electoral assistance, or consultation on the electoral process, in parallel with election observation.

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<sup>374</sup> Article 21 of the Declaration states that elections must be free and fair and held by secret ballot, and that they must take place at regular intervals. The OSCE developed the criteria of the UN in the Copenhagen Declaration adopted in 1990.

### 3. Elections in Kosovo

In November 2000, an EU Election Observation Mission monitored the legislative elections in Kosovo, when negotiations over the final status of the territory were going through a particularly tough time. Administered by the UN since the 1998-99 conflict, the province of Kosovo is home to an Albanian majority (90% of the population) and a Serb minority (between 100 000 and 200 000 people). While the majority of Albanians are in favour of Kosovo's independence, the Serbs feel threatened. The Serbian authorities had called on the Serb minority in Kosovo to boycott the elections. The delegation found that democratic standards had been respected, although it regretted the low voter turnout. The delegation chair, Doris Pack, pointed out that the elections were problem-free, apart from the fact that the Serbs were encouraged to abstain from voting.

### 4. Elections in Ukraine

Two months earlier, a delegation of 14 MEPs went to Ukraine to observe the parliamentary elections of 30 September 2007. They returned with a positive verdict, believing that the elections had on the whole been satisfactory and in accordance with international law, despite a few regrettable incidents. The main thing, according to the chairman of the delegation, Adrian Severin, was that the government and the opposition could now work together to avert a future crisis.

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The European Parliament was one of the first institutions to denounce the irregularities of the 2004 presidential elections that led to the Orange Revolution, the run-off election and the eventual victory of Viktor Yushchenko. MEPs supported these mass movements by taking part in the demonstrations.

In recognition of the EP's support, the new Ukrainian President made the European Parliament one of his first official visits. In July 2007, while Ukraine went through another crisis, the European Parliament adopted a resolution affirming that 'before the negotiations are concluded and a new, closer relationship between the EU and Ukraine is established, the current crisis has to be peacefully resolved, the system of checks and balances restored and enforcement of the rule of law ensured'. The EU-Ukraine Summit held on 14 September in Kiev also underlined the importance of the 2007 legislative elections. These would determine the country's ability to consolidate the ongoing democratic process and the rule of law, an ability considered a prerequisite for deepening political and economic ties with the EU, hence the importance of the legislative elections in September 2007 and the need for the European Parliament to monitor them.

### 5. Elections in the Palestinian Territories

Chaired by the Vice-President of the Parliament, Edward McMillan-Scott, the delegation sent to the Palestinian Territories to monitor the legislative elections of 25 January 2006 consisted of 27 members representing all EP political groups. It was there at the same time as the EU Election Observation Mission led by another MEP, Véronique De Key-

ser. The European Parliament deemed the elections a fundamental step in the process of developing Palestinian institutions. In a joint statement, the two missions believed that the elections had been free and well organised and praised the success of the democratic process in the Palestinian Territories. 'We heard the noise of democracy', said Mr Mc-Millan-Scott. 'The conduct of the elections has provided a model for the region and has clearly demonstrated the commitment of the Palestinian people to democracy'. A few days later, the EP's Committee on Foreign Affairs, while also welcoming the success of the electoral consultation, called on the winning party, Hamas, to try to find a means of peaceful cooperation with Israel.

## 6. Regional partnerships: ACP, EuroMed, EuroLat

Regional partnerships, based on assemblies with an equal number of MEPs and parliamentarians from other geographical regions, are examples of regional cooperation founded on intercultural dialogue and the promotion of universal values. They are important because the resolutions adopted by the parliamentary representatives enjoy considerable legitimacy.

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### - ACP-EU: from Yaoundé to Cotonou via Lomé

The ACP-EU Joint Parliamentary Assembly (JPA) has managed to establish itself as a key player in North-South cooperation. Born from a common desire to bring together the elected representatives of the European Community and the elected representatives of the African, Caribbean and Pacific states ('ACP countries'), it was created within the framework of the first association agreement, the Yaoundé Convention, signed on 20 July 1963. The Yaoundé Convention confirmed the association between Europe and Africa based on free trade and financial aid from the Six. It was later replaced by the Lomé Convention and then by the Cotonou Agreement, signed by the European Union and 78 African, Caribbean and Pacific countries. The Cotonou Agreement aims to improve living standards and economic development in ACP countries and to establish close cooperation between these countries and the European Union.

The JPA is the main forum for political dialogue between the European Parliament and MPs from African, Caribbean and Pacific countries. It is made up of 78 MEPs and 78 parliamentarians from African, Caribbean and Pacific countries that are party to the Cotonou Agreement. Representatives from the 78 ACP countries meet with their 78 counterparts from the European Parliament in plenary for one week twice a year.

The JPA has helped deepen parliamentary cooperation between North and South and has over time become the only institution of its kind in the world, for it is the only international assembly in which representatives from Europe sit together regularly with representatives from African, Caribbean and Pacific countries with the aim of promoting the interdependence of North and South. Although it was originally created to monitor economic partnership agreements, the impact of the work of the Joint Parliamentary Assembly extends far beyond economic considerations. A substantial part of its work is



aimed at the advancement of human rights and democracy and the common values of humanity, and this has produced joint commitments undertaken within the framework of UN conferences.

It has launched numerous initiatives concerning the upgrading of the role of women in the development process, the improvement of measures aimed at combating epidemics and the reinforcement of health and hygiene services, the enhancement of the cultural dimension in North-South cooperation, the acceleration of aid procedures and the increase of appropriations intended for refugees and for displaced persons, as well as measures to reinforce the commitment to respect and defend human rights and human dignity. The issues of migration and trafficking in human beings are also key topics for discussion.

At its 13th session, which took place in Wiesbaden on 23-28 June 2007, participants debated the situation in Zimbabwe and Darfur. An ACP-EU joint resolution was adopted in which the JPA asked the international community to reach a consensus on the strategic measures that should be adopted.

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#### - Euro-Mediterranean Parliamentary Assembly

The Euro-Mediterranean Parliamentary Assembly (EMPA) is the parliamentary arm of the 'Barcelona Process', launched during the Barcelona Euro-Mediterranean Conference of Foreign Ministers in November 1995. It allows the European Parliament to engage in dialogue with Mediterranean countries on human rights and democracy issues. It was instituted in Naples on 3 December 2003 by a decision of the Euro-Mediterranean Ministerial Conference and its work began in 2004.

The EMPA, which consists of 130 parliamentarians representing the European Union (49 members of the European Parliament and 81 members of parliament from the Member States) and 130 parliamentary representatives from Mediterranean countries, meet once a year in plenary. Following the accession of Bulgaria and Romania on 1 January 2007, the EuroMed Partnership is now made up of 37 countries, the 27 Member States of the EU and 10 Mediterranean partners: Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestinian Authority, Syria, Tunisia and Turkey. Libya has had observer status since 1999, Mauritania and Albania since 2008.

The role of the EMPA is to raise matters of common interest of a political, economic or cultural nature and to debate the means of advancing, furthering and consolidating the Euro-Mediterranean partnership. It has an advisory role on all subjects concerning the Euro-Mediterranean partnership.

The theme of the annual plenary session held in Tunis in March 2007 was intercultural dialogue between Europe and the Arab/Muslim world. The Assembly's committees meet more often to examine issues such as the Arab-Israeli conflict, terrorism, poverty reduction and improving the situation of women in the Euro-Mediterranean countries.



The Committee on Political Affairs, Security and Human Rights traditionally makes sure that one item on the agenda is about human rights.

On 6 February 2006, in the crisis that ignited over reactions to caricatures of the prophet Muhammad published in Danish newspapers, the Bureau of the EMPA adopted a declaration in which it 'deeply' deplored 'the offence given to religious feelings of the Muslim community' while resolutely condemning 'the use of violence against European diplomatic representations'.

#### - EuroLat

The Euro-Latin American Parliamentary Assembly (EuroLat), created on 8 November 2006, is the most recent interparliamentary assembly. It is made up of 60 MEPs and 60 members from parliaments of countries in the Andes and central and Latin America. Its task is to help establish efficient democratic governments and democratic political parties in Latin America, actively campaigning for human rights and the role of Latin America and the European Union on the international scene.

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At its constituent session on 8 and 9 November 2006, Co-President Ney Lopes invited members to ensure that the Assembly did everything in its power to work towards the common goal, which was to become a medium for dialogue and deeper social cohesion in the region. José Ignacio Salafranca Sanchez-Neyra, the European Co-President, added that development without integration was impossible, and that Latin America could learn much from the European integration experience, in spite of the differences existing on either side of the Atlantic.

The first plenary session was held in December 2007 in Brussels and tackled the subject of EU-Latin America relations, particularly economic and trading relations and issues linked with development and global warming.

### **C. The European Parliament, a sounding board for universal values**

Over the years, the European Parliament has become a forum for the defence of the general principles enshrined in the Universal Declaration of Human Rights and any other universal instrument on human rights adopted by the UN, including the Millennium Development Goals (MDGs). Alongside the Council of Europe, it now represents the leading forum for debating the state of democracies, democratic deficit and the principles of democracy and democratic good practice. These debates sometimes lead to a resolution reiterating that its work is based on these universal values and calling on the Member States, the Commission and the Council to make every effort to preserve them.

Eminent figures from all four corners of the globe have stood before the European Parliament to spread their message. The creation in 1988 of the Sakharov Prize for Freedom

of Thought was further confirmation of the central role played by Parliament in defending the values of the European Union.

### **C.1. State visits**

Visits from foreign dignitaries and Heads of State are a chance for them to convey their position on human rights and democracy. Some of them thank the European Parliament for the support that the Union has shown for the reconstruction of democracy in their country, or for its action for peace. Others come in search of its support or to develop and strengthen a partnership with the EU, or simply to express their views on a European issue that they consider to be fundamental.

In 2006, 11 Heads of State officially visited the European Parliament. In 2007, apart from visits from several Heads of State, including the Romanian, Bulgarian and French Presidents, in April the Parliament received for the first time the Indian President, Dr APJ Abdul Kalam, who reminded the EP that India, like the European Union, was 'a unique unity amid diversity', and that the European Union should be seen as 'an inspirational model and an example to emulate for every region in the world'. He then dedicated a poem to the EU that he had composed himself, entitled 'The message from Mother India to the European Union', expressing the vow 'never to turn human knowledge against ourselves or others'. Finally, he proposed that India and the European Union should act in unison to 'contribute to global peace and prosperity'.

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#### **1. Near and Middle East**

In December 2007, King Abdullah II of Jordan paid a visit to a formal sitting of the European Parliament. It was his third visit to the assembly in the context of Parliament's efforts to bring about peace in the Middle East. King Abdullah II described the outcome of the Annapolis meeting in the United States as a second chance, during which Israelis and Palestinians met with the support of the EU and states from the two regions to agree on global negotiations for a peace treaty in 2008 and on the measures to be taken in order to implement their obligations under the Road Map. He appealed to the European Union to lead the way in securing peace. 'Europe has a unique experience of the mechanisms and process of post-conflict recovery and reconciliation. European peacekeeping forces have played a constructive role in Lebanon. Your commitment can help bring great trust to a Palestinian-Israeli settlement', he added. The President of the European Parliament, Hans-Gert Pöttering, thanked King Abdullah II of Jordan for his speech and his convictions, declaring that 'we are at your side to create a Palestinian state that can live in safety', while calling for continuing 'close cooperation with your country'.

It was not the first time that Parliament had received such an eminent figure from the Middle East: on 10 February 1981, just a few months before he was assassinated, the President of Egypt, Anwar El Sadat, paid an historic visit to the European Parliament. In his address, which was applauded by MEPs and still holds true today, he said that Islam

should not be judged by the depraved or reckless acts of some who claim to subscribe to its beliefs. He described Islam as 'a religion of tolerance and peace' and 'a religion of love and not of hatred'. In her introduction, Simone Veil, the then President of the European Parliament, described him as a statesman whose courage and tenacity had, in a region torn apart for 30 years by armed violence, allowed the unthinkable to happen, for a dialogue to be established on either side of the line of fire, leading to a long and painstaking negotiation process and the signing of a Peace Treaty between Israel and the Arab Republic of Egypt.

A few years later, on 12 February 1985, Israeli President Chaim Herzog told Parliament: 'You here represent much for one from Israel. You represent what is perhaps the most important of all between nations – dialogue'.

On 1 December 1993, he was followed by Israeli Prime Minister Yitzhak Rabin, who said that Israel looked to Europe in hope of support and assistance with the peace process, particularly for those parts of the Middle East that were committed to bringing about real peace.

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On 16 May 2006, the President of the Palestinian National Authority, Mahmoud Abbas, told the European Parliament: 'I believe that I have just spoken before friends who share with us the dedication to promote the values of freedom, democracy, tolerance and dialogue'.

## 2. Central and eastern European countries

The visits made by the majority of Heads of State of central and eastern European countries to the European Parliament while their countries were undergoing a post-communist thaw were just as emotional. On 8 March 1994, Czech President Václav Havel told a rapt audience of MEPs that if the future of Europe did not stem from a broader European vision, taking the best of European values, its organisation would risk falling into the hands of all kinds of madmen, fanatics, populists and demagogues. The former Charter 77 activist expressed the prophetic hope that the European Union would produce its own charter, clearly defining the ideals on which it was built, its role and the values that it intended to represent. That was in 1994, 13 years before the European Union proclaimed the Charter of Fundamental Rights.

## 3. Iraq

In October the Parliament also received for the first time Mahmoud al-Mashhadani, speaker of the Iraqi Parliament. The President of the European Parliament, Hans-Gert Pöttering, assured him of the EP's support and said that 'the EP clearly positions itself in favour of the integrity of the Iraqi nation, we are supporting within our limits and responsibilities all efforts aiming at ethical and religious reconciliation. We are already supporting economically and socially the development of the country and

we will continue doing so'. Mahmoud al-Mashhadani asked the European Parliament for its help in combating poverty and its support for building a democracy in Iraq.

## **C.2. The Parliament, a place of dialogue**

The European Parliament does not invite only political leaders to the Chamber. Pope Jean Paul II and the Dalai Lama, even His Holiness Bartholomeos II, Ecumenical Patriarch of Constantinople, have made the journey to Strasbourg several times. In January 2008, Parliament welcomed the Grand Mufti of Syria, Ahmad Bader Hassoun.

The European Parliament also received three Nobel Prize winners at an extraordinary session held at the European Parliament on 8 May 2007 to mark the 50th anniversary of the signing of the Treaties of Rome. Its President Hans-Gert Pöttering underlined on this occasion that each of them, in their respective fields, embodied the achievements of the European continent over the previous 50 years and by inviting them to Parliament, the EP had hoped to highlight the scientific, intellectual and cultural prowess of Europe, as well as the European Union's contribution to a more peaceful world. Each Nobel Prize winner was a visible testimony to the progress achieved in their area of expertise in previous decades and to the challenges to come for Europe.

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## **C.3 The Sakharov Prize**

The Sakharov Prize for Freedom of Thought was created in 1985 by the European Parliament. It is awarded each year for outstanding achievement by a person or organisation in the field of human rights. It is awarded to those who fight to defend human rights and fundamental freedoms, particularly the right to freedom of expression, safeguarding the rights of minorities, and respect for international law, as well as the promotion of democracy and the rule of law.

Jean-François Deniau, rapporteur for the Sakharov Prize, recalled in 1985 the symbolism attached to the name of the Russian physicist Andrei Sakharov, who won the Nobel Peace Prize in 1975: 'He was a man with a brilliant mind, but if I may speak plainly, he was a man of the highest honours – in a system where having honours means having all of the attendant protections and material advantages – and yet who decided to give it all up for his beliefs. I would not say that Sakharov is the most famous victim who ever lived, but he is the most famous person who, having had all of the material advantages and honours, followed his conscience and decided one day to give it all up. This is what it means to be European; this is freedom of thought!' Although this vision was not unanimously shared by Parliament at the time, the Sakharov Prize became a testimony to the EP's commitment to fighting dictatorships and protecting human rights.

The prize is awarded as a symbolic gesture, although it also helps to support those who strive to promote the values defended by the European Parliament. The media coverage given by the Parliament to the event is also an opportunity to denounce publicly those

countries that violate human rights and democratic principles and in many cases to protect prize winners from any reprisals from their own government.

Awarding the first Sakharov Prize in 1988 to another famous prisoner, Nelson Mandela, who had just been released from prison after 26 years, the European Parliament demonstrated that its fight for human rights was not limited to European countries. The list of other prize winners testifies to this diversity. Among them are the Mothers of the Plaza de Mayo, who have fought for 30 years in Argentina to find their children, kidnapped by the military regime, and Bangladeshi author Taslima Nasrin, exiled from her country for her fight for female emancipation and for defending non-Muslim minorities. There is also the French organisation Reporters without Borders and the Belarusian Association of Journalists, who campaigned for a free press. The Ladies in White ('Damas de Blanco') were awarded the prize in recognition of their efforts to help political prisoners in Cuba, while Hauwa Ibrahim received the prize for her work as a lawyer defending women and children persecuted under Islamic Sharia law in Nigeria.

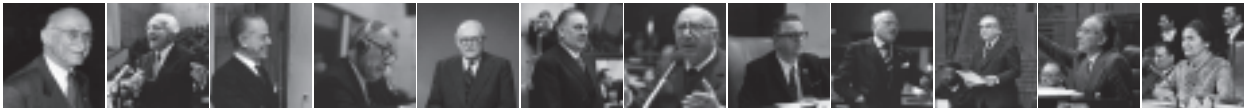
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In 2006, the European Parliament awarded the prize to Aliaksandr Milinkevich, a Belarusian opposition leader and champion of human rights and democracy. In 2007, the Sakharov Prize was awarded to a Sudanese human rights lawyer, Salih Mahmoud Osman, for his contribution towards the defence of human rights. He was unanimously selected by the chairmen of the EP's political groups from among three finalists, the two others being Anna Politkovskaya (posthumously) and Chinese dissidents Zeng Jinyan and Hu Jia. The EP wanted to praise Salih Mahmoud Osman's courage and reward his work on building a democracy in Sudan. Its choice is another indication of Parliament's support for the action of the European Union in Sudan in implementing the Comprehensive Peace Agreement and facilitating peace talks in Darfur.

### **Conclusion to Part III**

The extent of the European Parliament's activities in relation to the values of the European Union attests to the importance that this issue has for MEPs. In touch with citizens, the European Parliament does not confine itself to ensuring the conformity of legislation with European laws on protecting fundamental rights: it also campaigns for their advancement, as evidenced by the EU Charter of Fundamental Rights. Even today, it is working to identify the threats that economic and technological challenges represent for these rights. Finally, beyond the legislative sphere, it is anxious that these rights are effectively observed both inside and outside the EU. In this respect, it is one of the guardians of the values of the Union.







## CONCLUSION

There is hardly a political system in the modern world that does not have a parliamentary assembly in its institutional 'toolkit'. Even autocratic or totalitarian systems have found a way of creating the illusion of popular expression, albeit tamed and subjugated.

The parliamentary institution is not in itself a sufficient condition for granting a democratic licence. Yet the existence of a parliament is a necessary condition of what we have defined since the English, American and French Revolutions as 'democracy'.

Since the start of European integration, the history of the European Parliament has fallen between these two extremes. Europe was not initially created with democracy in mind. Yet Europe today is realistic only if it espouses the canons of democracy. In other words, political realism in our era means building a new utopia, that of a supranational or post-national democracy, while for two centuries the DNA of democracy has been its realisation within the nation-state.

To understand both the difficulty of the task and yet at the same time its categorical imperative, we need to look briefly at the intellectual revolution that accompanied political and social upheaval in the United States and France towards the end of the 17th century. Prior to that – ever since Athens had been held up as a monument to democratic myth and nostalgia – everyone agreed that the theoretical superiority of the democratic model should be celebrated, overlooking in their haste the practical impossibility of achieving



this dream. Montesquieu preached virtue, while Rousseau insisted on a small nation-state: surely only the gods could achieve this kind of regime.

The members of the American constituent assembly brought us back down to earth with the tried-and-tested representative system inherited from the British tradition of 'no taxation without representation'. The combination of a perfect democracy and the practical means of representation of the people reconcile the seemingly irreconcilable: the application of the democratic principle to vast areas having large populations. Naturally, what would from that point on be termed 'democracy' had little in common with the original Greek concept. We have only a single word – 'democracy' – to describe a reality which is fluid both in time and space. Yet it is precisely this aspect of the concept and reality of democracy that allows them to adapt constantly to change and to the constant, varied demands by the people for participation in their own government. It is for this reason that we would probably fail to recognise de Toqueville's America as democratic, our criteria and requirements having changed so much. Democracy is a moving target, a never-ending struggle that it would be ridiculous to hem in within the codes of the past and within the nation where it was born. To say today that democracy is not possible or conceivable except within the nation-state not only runs counter to an impartial analysis of history, but in a single move sounds the death knell for both Europe and democracy. How can Europe develop and progress if it does not embrace the ideals and *modus operandi* of our democracies? Yet how can our national democracies survive if they are devoid of substance following the wholesale transfer of power to a supranational bureaucratic agency? The risk of popular rejection, of populist reactions both primitive in their expression and legitimate in their aspirations would be huge. Unfortunately, the seeds of these reactions have already been planted in numerous European countries at this, the start of the 21st century.

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Looking at the challenge ahead, it is tempting to quote Margaret Thatcher and her famous saying: 'there is no alternative'. There is no alternative as familiar or attractive as the democratic system, imperfect as it is; there is no credible alternative to European integration unless we limit our ambition to preserving a few thriving tax havens.

If we accept these premises, the narrow and difficult path explored by the European Parliament in its various manifestations over the past half century leads to the discovery, in a very different setting, of the preliminary conditions that have allowed democracy to form over two centuries thanks to its espousal of the representative principle. The idea of parliament remains central to this scheme. Yes, we can point out the inadequacies and imperfections of parliamentary representation, but there is no better institutional invention that can ensure the legitimation of democratic systems. In essence, the problem of the European Parliament is no different from that of national assemblies. However, the major difference resides in the nature of this 'unidentified political object' (Jacques Delors) which is the European Union.

The European Parliament is not a carbon copy of national parliaments. In addition, unlike parliaments in modern democracies (post-Second World War), the European Parliament was not conceived by its constituents as a finished product. It is a parliament in the making, an assembly that makes choices as it goes along. Its originality means that it can be described as a new type of parliament, differing from the two existing categories.

## **I – The European Parliament: a parliament like no other?**

There is no ‘one size fits all’ model when it comes to parliamentary institutions. Throughout history, constituents have given free rein to their imagination when it comes to limiting representation or preventing representatives from becoming autonomous. Nevertheless, several trends have emerged. If the parliament is bicameral, the second chamber tends to be less concerned with demographic representation and more with functional or territorial representation.

In monocameral systems, there is more focus on popular representation to avoid accusations of rotten boroughs or gerrymandering.

As a monocameral assembly, the European Parliament is particularly aware of this aspect. At the same time, however, the principle of classic ‘one-man, one-vote’ representation must give way before the needs of territorial representation. This compromise is reflected in over-representation of some Member States (usually the smallest) and under-representation of the largest. As the first chapter points out, a Luxembourg MEP represents 60 000 voters, while a German MEP is the spokesperson for an average of 750 000 compatriots. Another inherent limitation of the multinationalism of Europe has to do with the eligibility rules. In a national democracy, subject to a few minimum requirements, citizens can stand as a member of parliament anywhere in the country. This hypothesis is theoretically possible for the European Parliament, although in reality it is virtually impossible for political, linguistic and cultural reasons. MEPs inevitably remain as ‘local’ elected representatives, more so than in national systems. This peculiarity partly explains the flexibility of voting and behaviour, which are only partly conditioned by ideological affinities (left-wing, right-wing, etc.) and are heavily influenced by national interests. Cross-party voting is common, since in many cases territorial preferences (the nation) take precedence over partisan or ideological affinities.

The same peculiarity can be found in the exercise of the Parliament’s powers. This entire volume has described in detail the long drawn-out battle – a battle that is still ongoing, moreover – for legislative and budgetary power waged by the European Parliament. From this point of view, the path followed by the European Parliament bears more resemblance to the struggle of pre-modern parliaments than of parliaments in recent democracies, which have generally benefited from the historical achievements of their foreign counterparts. This battle – the principal achievements of which are still to be

implemented through the Treaty of Lisbon – is a testimony to the dual limitation imposed on the European Parliament. The first limitation is structural and concerns the nature of the Union, which has limited powers. Unlike the old British adage whereby ‘Parliament can do everything except make a woman a man, or a man a woman’, the European Parliament has no universal powers, in line with the general philosophy that has informed the European integration process. Yet it is no secret that countless restrictions were imposed at first to make the European Parliament the Cinderella of the European institutions. Sieyès’ famous declaration on the Third Estate during the French Revolution could have been made for the original European Parliament:

‘What is the Third Estate? Everything.

What has it been hitherto in the political order? Nothing.

What does it desire? To be something’.

There are still signs of the old elitist and technocratic nature of European integration. Few people question the anomaly that persists to this day of the Commission’s monopoly over legislative initiative. It is not something to which Europe’s supporters, anxious to keep this valuable tool in safe hands, wish to draw attention. Admittedly, the executive branch of government and its experts are generally responsible for producing the bulk of draft legislation. Yet there is no democracy worthy of its name where the parliament is in theory totally without any power of legislative proposal. If adopted, the Treaty of Lisbon should put an end to this anomaly.

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Another anomaly, the near-total absence of rules governing interinstitutional relations, has gradually been addressed. At first glance, this might seem a strange oversight. However, the role of the Consultative Assembly was initially so rigid and symbolic, its representativeness so poor and its powers so limited, that it did not need any legal or political framework to govern its relations with the Council or the Commission. In ‘mature’ democracies, these relations are established by the Constitution, followed where necessary by specific laws, supplemented by parliamentary customs and practices and by their rules of procedure. In the EEC and the European Union, there was nothing of this kind.

It was not until 2002-04 that the term ‘constitution’ became acceptable, before being buried in 2006 by the negative referendums in France and the Netherlands. The only option left to the European Parliament was its Rules of Procedure. Yet none of this took into account the energy and imagination of the representatives of the European people, who founded a peerless system: a set of binding legal rules contractually agreed on between members of an institutional triangle (the European Parliament, the Commission and the Council). In the absence of any higher law establishing the legal and political basis of these relations, the European Parliament succeeded in creating a binding legal framework for its political relations, arranging matters to its advantage by seizing every opportunity, exploiting procedural loopholes and even resorting to ‘blackmail’; in other words, using the leverage given to it by the Treaties. While in national democracies

political relations are conditioned by predetermined legal rules, at European level most of these rules are created ex post, on a contractual basis and in a climate of interinstitutional power struggles.

## **2 – A Parliament in the making**

The history of the European Parliament is long and has no ending, like the story of European integration itself, like Roland Barthes' image of the Argo, 'each piece of which the Argonauts gradually replaced, so that they ended up with an entirely new ship, without having to alter either its name or its form'.

This incompleteness has numerous causes, some of which are inherent in the status of the Parliament itself. In any respect, to begin with the European Assembly was only an embryo, and might have remained one, like so many consultative assemblies created within regional or international organisations. Although the road to making the European Parliament a 'fully fleshed-out Parliament' is still long, the path taken over the past 50 years is impressive, particularly as it is without precedent. In this respect, the final stage – the Treaty of Lisbon – represents an historic step towards achieving the original ambitious objective: establishing a constitution for Europe.

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It is unfortunate that the constitutional ideal had to be abandoned. However, the important thing is that as far as the Parliament is concerned, the Treaty currently undergoing ratification reflects the achievements of the Convention. A return to the Treaty of Nice would paradoxically be a huge step backwards: the calls for greater recognition of popular aspirations, expressed through opposition to the Treaty of Lisbon, would not be satisfied, indeed quite the reverse. Yet even if the Treaty is eventually ratified, the EP's fight will still be unfinished. There is still progress to be made in terms of legislative codecision, budgetary power and control.

Yet the incomplete nature of the European Parliament is also due to factors beyond – or only partly within – its control. While national parliaments have their say – sometimes decisively – in terms of the voting system, distribution of representation and allocation of seats, the European Parliament pretty much depends on the other institutions in this arena, and is even more dependent on the Member States. The same applies to members' allowances. To the best of this author's knowledge, there is no country in the world where allowances vary dramatically depending on where the representative comes from. This aberration should end after the 2009 elections, although the Parliament has no autonomous decision-making power in this area.

The fact that the European Parliament is a work in progress is also due to shifting timeframes and uncertainty over the rules. No one knows what rules will apply, depending on whether the Treaty of Nice or Treaty of Lisbon is in force during the 2009 elections. While the current Parliament has 785 members, it would have only 736 under the Nice

Treaty and 751 under Lisbon. Yet despite these numerical uncertainties, the European Parliament, owing to its size and its national, linguistic and cultural pluralism, faces difficulties that are inherent in the changing nature of the political Community it represents. It is already a challenge to accommodate the growing number of members of the Council and the Commission. Yet both of these institutions are still modest in size, while it takes the Parliament a great deal more time and effort to accommodate its several hundred representatives and to ensure that they 'think European' rather than acting first and foremost as representatives of a particular nation. In addition, unlike national parliaments, where parties and ideologies tend to be powerful factors in integration and discipline, nothing like this exists at European level. On the one hand, European parties still lack their own identity, while on the other, parliamentary groups are tending to become increasingly heterogeneous. Ideological differences occasionally come into play, but these are often overtaken by the 'federal' split (for or against further integration) or national differences (the holy union of all representatives of a country to defend a particular policy). This is not an entirely new situation, although it is rare in Europe, where parties are generally formed at the same time as the representative institutions are created. However, a similar situation exists in the United States, where two dominant parties function primarily as electoral machines which, post-election, are fragmented by currents of thought, opinions and behaviours in which there is little room for parliamentary discipline.

### **3 – A third type of parliament?**

As stated at the start of this conclusion, the near-universal nature of the parliamentary institution makes this category particularly heterogeneous. The same word is used to describe very different situations. Nevertheless, two major types of parliamentary assembly can be identified. The first seeks to ensure popular representation and – if necessary – establish the formal conditions for democracy, employing techniques of varying success and sophistication. This first category is founded on the representation of individuals (one man, one vote) and its role is to legislate and to control an executive resulting from and supported by parliament. A second type of assembly (this word is generally preferred over 'parliament') emerged around the same time as the institutionalisation of international relations. International organisations mushroomed after the Second World War. These assemblies also have a representative remit and in general, by virtue of the principle of legal equality between the states, apply the same basic principle of 'one country, one vote'. Naturally, as the fable goes, some animals are more equal than others, leading to weighted votes when crucial decisions are taken. Unlike national parliaments, these assemblies have a limited role in fact or law in terms of the appointment of executive bodies; their decision-making powers are often symbolic and are in any case limited to the specific responsibilities assigned to the organisation; their powers of scrutiny are also modest, since at last resort it is mainly the states – particularly the most powerful – that count. Evidently, representatives generally have little room for manoeuvre, subject as they are to the rules of the binding mandate. At best and with few

exceptions, these representatives come from the national parliament via second-level representation. As imperfect as it was, this method of representation (which existed in the ECSC and in the EEC until 1979) retains a close link with the democratic principle. Yet the ratio of citizens to second-level representatives is so stretched that it would be wrong to see it as a substitute for democracy. To talk about democratic deficit here is an understatement: in fact, the people are nowhere to be seen. This second group is more like public and private institutions that split the work between the deliberative body and the executive branch, with no intention of ever establishing a democracy, but rather as a means of managing large numbers (much like corporate shareholder meetings, for example).

The European Parliament does not truly fit into any of these categories, even though it has borrowed certain features from each one. It derives its specialist nature from the second type (no 'universal' competence), while its supranational structure is in keeping with the supremacy of the states. In its original form it resembled this category, with no causal link between the composition of the assembly and the executive body, no decision-making power, no means of scrutiny and no power of initiative. In many respects, the Consultative Assembly of the ECSC and the European Parliamentary Assembly seemed to exist merely to please a formal model deigned to attenuate the autocratic and technocratic nature that an organisation without this 'decorative' element would have. It was not so long ago that the very idea of calling this rump institution a 'parliament' would have sparked anger and protests from nation-state fundamentalists. Yet semantics also plays a part: it was incorrectly referred to as a 'parliament' precisely so that it would become one, in a sort of self-fulfilling prophecy.

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The original European 'Parliament' owed few of its attributes to the first category: those attributes that it did share concerned the rules of representation rather than powers, which were, as we have pointed out, very limited indeed, if not practically non-existent. On the one hand, parliamentary representatives were not delegates but members of national parliaments; on the other, their number was more or less determined based on the population of each Member State, and not according to the principle of 'one state, one representative'.

Fortunately, the diplomatic approach was replaced by a 'democratic' approach, although this struggled to take root. That 50 years later it should have grown into a plant – albeit a fragile one – is a minor miracle. Today, on the cusp of a new era ushered in by the Treaty of Lisbon, several factors can be said to have had an influential role.

1. The first is without doubt the fighting spirit of the European Parliament, and particularly some of its members. During this period, we cannot fail to be struck by the tenacity of MEPs, their skill in exploiting every loophole and opportunity presented by the institutional system and their ability to rotate through the other institutions – the Council, the Commission and the Court of Justice, joining forces with them or opposing them,

depending on the tactical requirements at the time – based on a consistently unanimous strategy (to strengthen the European Parliament), irrespective of national or ideological sympathies.

2. The second factor is independent of the Parliament but undeniably worked in its favour. It concerns the steady increase – both in diversity and intensity – of the power of first the EEC and later the European Union. The absence of democratic scrutiny could be tolerated when it was a case of simply managing a coal or steel community. Over the years, not even a child would have been taken in by the myth that either the EEC or the European Union was democratic because members of the executive involved in policy management alongside the Commission had been appointed by their respective popular representatives. The influx of new Member States coming from the old democratic tradition, less willing to accept that the end (the integration of Europe) could justify the means (the absence of democratic scrutiny), spawned a motley coalition for the democratisation of the institutions. A British political analyst, David Marquand, created the spare phrase ‘democratic deficit’ to emphasise how the European ‘Parliament’ was not elected by direct universal suffrage. After 1979, the EP evidently enjoyed greater legitimacy, but its decision-making power and right of scrutiny were still marginal. In any case, democratic deficit persisted in other guises. The success of ‘democratic deficit’ resided in the fact that, for reasons that were at times diametrically opposed, everyone could subscribe to this diagnosis: the Commission, keen to have an ally against the Council; supporters of integration, hoping to increase the powers of a ‘federal’ parliament; eurosceptics, in the name of the democratic denial that they felt Brussels represented; legal practitioners and political commentators, who could not identify the canons and attributes of representative democracy in the European institutions; and populists and the British tabloids, ready to denounce the regulatory excesses of Brussels and Strasbourg and the unreasonable cost of a ‘rump parliament’.

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In short, the democratic deficit diagnosis was universally embraced, and as the Parliament remains symbolically and in practice the best embodiment of the principle of democratic legitimacy, the only realistic way of reducing the deficit was a stronger Parliament.

The situation today is still far from perfect, although the European Parliament has crept from the second category of parliament (the assembly of an international organisation) to the first (a representative democracy).

Nevertheless, the European Parliament remains a hybrid, and considering its roots, perhaps it will always remain so. The supranational flavour that sets it apart from conventional parliaments is both its standard and its *raison d'être*. What was at first a weakness is now what makes it original, unique and extraordinary, the solution to an unprecedented challenge that, it must be said, has been successfully tackled. Naturally, the absence of legislative initiative is a bizarre anomaly compared with the classic



parliamentary vernacular. However, if we look more closely, the situation is no different in national parliaments, where the executive has assumed a virtual monopoly on the matter. Since the European Parliament now has the power to submit proposals to the Commission and it is difficult to see how the Commission can withstand its demands or the pressure applied by it, the EP is in a fairly comfortable position. It can provide political impetus by leaving the role of technical lawmaker to the Commission. Recent events have also highlighted what was already apparent at national level, namely that through the amendments procedure, a parliament can in fact substitute its own text for the one tabled by the competent authority (see the REACH and Services Directives, for example).

Change is inevitable, and so is the direction of this change: over the coming decades the European Parliament can only gain power and influence. What is not clear is the pace of this velvet revolution. No one knows, for example, what will happen to the Treaty of Lisbon. However, even in a worst-case scenario – the collapse of the enterprise – it will eventually be impossible to deny the Parliament what was granted to it first in the draft Constitution and later in the Treaty of Lisbon. More time may be needed, and progress could be slow, but we cannot stop the formidable force that the principle of democratic legitimacy represents in our societies. As we said before: ‘there is no alternative’.

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This volume was produced by the European University Institute in Florence and was edited by Yves Mény for the European Parliament.

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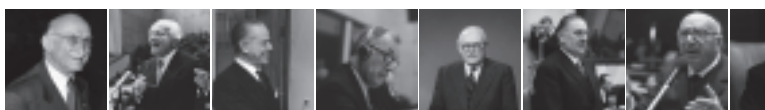
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There is hardly a political system in the modern world that does not have a parliamentary assembly in its institutional ‘toolkit’. Even autocratic or totalitarian systems have found a way of creating the illusion of popular expression, albeit tamed and subjugated.

The parliamentary institution is not in itself a sufficient condition for granting a democratic licence. Yet the existence of a parliament is a necessary condition of what we have defined since the English, American and French Revolutions as ‘democracy’.

Since the start of European integration, the history of the European Parliament has fallen between these two extremes. Europe was not initially created with democracy in mind. Yet Europe today is realistic only if it espouses the canons of democracy. In other words, political realism in our era means building a new utopia, that of a supranational or post-national democracy, while for two centuries the DNA of democracy has been its realisation within the nation-state.

**Yves Mény**

President of the European University Institute, Florence

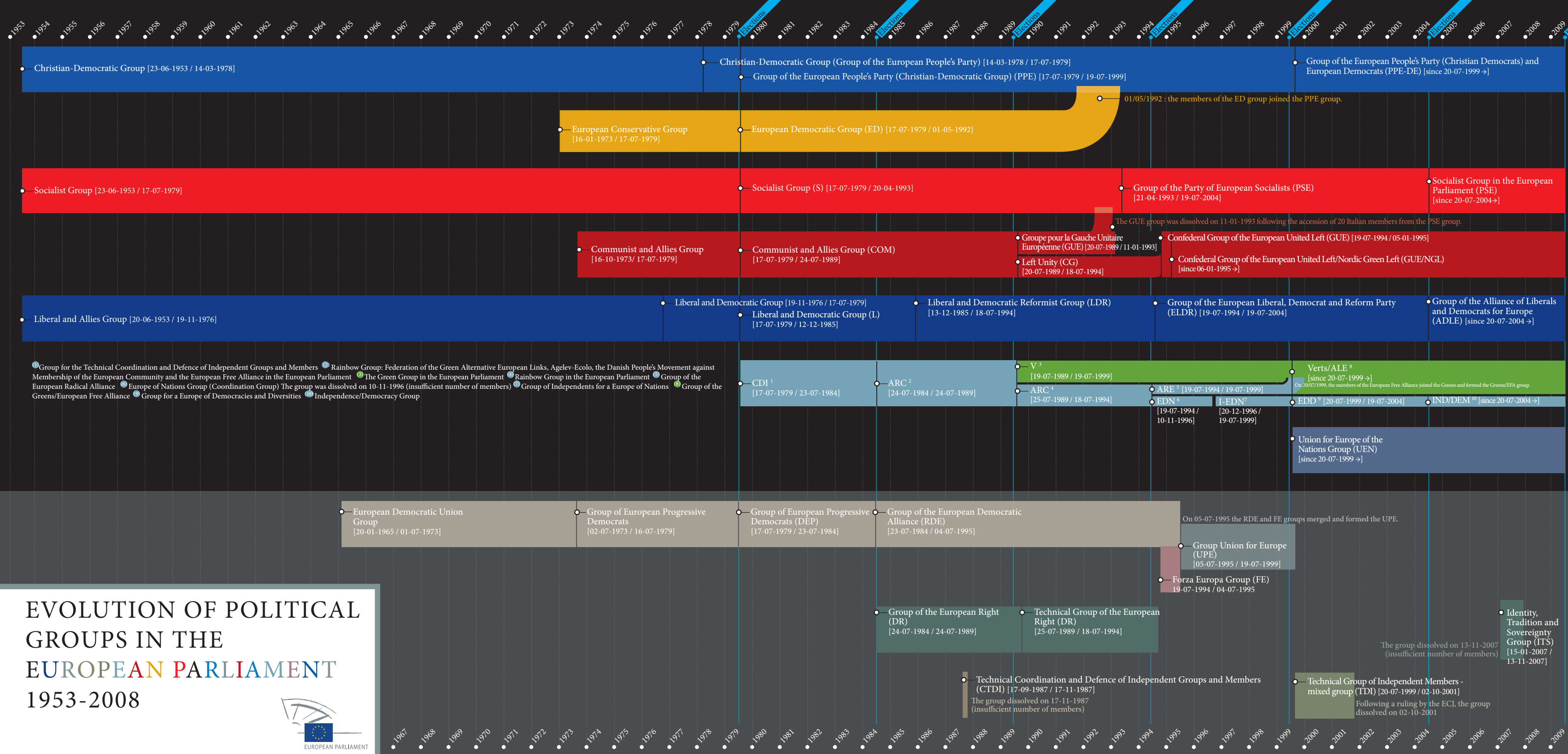


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