

# THE EMPOWERED EUROPEAN PARLIAMENT

91

ACCOMMODATION TO THE NEW FUNCTIONS  
PROVIDED BY THE LISBON TREATY

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## ACCOMMODATION TO THE NEW FUNCTIONS PROVIDED BY THE LISBON TREATY



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- The European Parliament achieved full legislative powers when the Lisbon Treaty came into force, as most of those policy fields that had formerly been beyond the reach of the EP were duly added to these powers.
- In the implementation of the Lisbon Treaty, the EP's strengthened position is characterized as a vigorous promotion of arrangements favourable to its own position in the EU decision-making process.
- Important changes have taken place in the roles and functions of major parliamentary committees along with the extension of the EP's powers; the changes are most substantial in the Committee on Agriculture and Rural Development (AGRI) and in the Committee on International Trade (INTA).
- Concerns about the spread of undemocratic legislative practices and weaknesses in administrative capacities have been raised since the EP has been accommodated to its new powers.

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Photographers following a session of the European Parliament. Photo: Bernard Rouffignac / European Parliament

The Lisbon Treaty brought about numerous changes to the powers of the European Parliament (EP). The EP finally acquired a formal position in the Union's constitutional process, gaining entry to new legislative fields like that of the common agricultural policy (CAP) or immigration and asylum policy as a legislator equal to the Council. Moreover, its power over the EU's budget was further strengthened, as was its power over the conclusion of the Union's external treaties.

As a result, a number of new competences emerged as new duties or responsibilities for the EP more or less overnight as the Lisbon Treaty entered into force on 1 December 2009. The Parliament's accommodation to these changes was addressed in the Working Party on Parliamentary Reform that had been set up in 2007 to review the functioning of the EP. Most of the reforms proposed by the Working Party were incorporated into the amended Rules of Procedure which were adopted in November 2009.

This paper addresses this process of accommodation. How has the EP been able to adjust to its further empowerment and how have its new competences been institutionalized in its political machinery? What kinds of changes have taken place in the Parliament's internal practices and policy preparation procedures?

While the aforementioned changes in the EP's power undoubtedly contribute to parliamentarism in the EU, some concerns have been raised about emerging

practices which might be seen to dilute key elements of this parliamentary power. Along with the extension of the co-decision procedure in the Union's law-making – the procedure where the EP is equal to the Council – these legislative processes have become shorter and less political. Some concerns have duly been raised about the EP's administrative capacities. Will the Parliament be able to safeguard its independence throughout its new functions or does it in practice have to rely upon the expertise of the Commission and the Council?

The fields of the EP's enlarged competences will now be analysed one by one, starting with the Union's constitutional process, continuing with legislative and budgetary powers and ending with external relations.

### **The EP in the constitutional process**

For years, the EP has been demanding a full-fledged position in the intergovernmental conferences, in the framework of which amendments to the Union's constitutive treaties are negotiated. The Lisbon Treaty (TEU, Art. 48) now strengthens its position essentially by consolidating the Convention mechanism and entitling it to make proposals for the amendment of treaties. According to the new rules, a Convention, which in addition to the member states contains the representatives of national Parliaments as well as the EP and the Commission, shall by consensus adopt a recommendation to the member

states for the amendment of treaties. There is no need to convene a Convention if the scope of the proposed change is limited, but even in this case the EP must give its consent to this decision. The EP's position in the aforementioned constitutional matters shall be prepared by the Constitutional Affairs Committee.

The EP's new constitutional powers were immediately put to the test in the aftermath of the Lisbon Treaty entering into force. In June 2010 the member states decided to amend the Lisbon Treaty Protocol (No 36) on Transitional Provisions which defines how the changes to the composition of the European Parliament will be incorporated. The member states wanted to hasten the transfer and opened negotiations for amending the Protocol. The EP gave its consent to the idea of not convening a Convention on the basis of a recommendation of the Constitutional Affairs Committee, referring to the limited scope of the amendment (A7-0116/2010). Later in the autumn the member states decided to use the simplified revision procedure in order to create a legal basis for the permanent stability mechanism to be established by the member states of the euro area.<sup>1</sup> When the EP was consulted about the amendment, it proposed changes to its formulation which, however, were not approved by the member states. The amendments were adopted unanimously by the European Council in March 2011 and have to be accepted in accordance with the member states' constitutional procedures in order to enter into force by 2013.

Finally, in July 2011 a proposal for the modification of the electoral law was debated in the EP's plenary, which duly decided to send it back to the committees due to the controversial content of the proposal.<sup>2</sup> This proposal may still become the first theme for a renegotiation of the treaties which the EP will introduce to the member states in the framework of its new competence.

Existing examples show that the EP will make full use of this and all the other new functions in the

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1 See e.g. Witte de, Bruno: "The European Treaty Amendment for the Creation of a Financial Stability Mechanism", *SIEPS European Policy Analysis* 6, 2011.

2 The proposal – based on the recommendation of the Constitutional affairs committee – suggests among other things that twenty-five members of the EP would be elected in a single constituency comprising the entire EU territory.

constitutional procedure in order to become a more equal actor in this field as well.

### The EP's new legislative competences

The Lisbon Treaty made the EP much more equal to the Council as a legislature as a considerable number of new legislative powers were transferred to its competence. The form of this transfer – establishing a procedure called the ordinary legislative procedure and defining it as the main legislative procedure – has a principled value for the Parliament.<sup>3</sup> Due to this formulation – as well as the one demanding that the functioning of the EU shall be based on representative democracy where the citizens are directly represented by the EP (TEU, Art. 10) – it will be extremely difficult to bypass the EP when further legislative powers are conferred on the EU.

The ordinary legislative procedure is now applied with respect to 87 issues of the EU's legislative competence. Half of them are new powers for the EP in either of the two following senses: they are new powers conferred on the EU or they are legislative powers that already existed in the EU but were moved from other legislative procedures to the framework of ordinary legislative procedure. Legislation on the citizen initiative, energy policy and the services of general economic interests are examples of the first. Legislation on common agricultural policy or on the liberalization of services as well as common immigration policy and measures concerning police cooperation are examples of the latter.

There are still several exceptions to the main rule which are categorized as special legislative procedures. In these cases it is only the EP's consent that will be needed or, in other cases (like cross-border police operations, TFEU Art. 89), just consultation on it.

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3 The ordinary legislative procedure is almost identical to the old co-decision procedure. The logic of both is the adoption of legislation jointly by the EP and the Council on a proposal from the Commission. The procedure consists of up to three readings. The Council, however, now adopts its position in all cases by qualified majority. Instead of adopting 'an opinion' in the first and second reading, the EP now adopts 'a position'. In addition to the Commission, legislative proposals can in specific cases be submitted by a group of member states.

The extension of the EP's legislative powers shall, however, be assessed together with the changes made to its powers in policy implementation and with respect to the establishment of a new category of 'delegated acts' by the Lisbon Treaty. By establishing this category of delegated acts referring to acts supplementing or amending certain non-essential elements of EU legislation, the treaty de facto introduced a hierarchy of norms into the Union's secondary legislation. Delegated acts create a level of norms subordinated to normal EU legislation.

This group of delegated acts now forms a specific category of legislative powers conferred upon the Commission. The power to define their limits remains strictly in the hands of the legislator, that is, the EP and the Council. As decisions on delegation are taken in the form of an ordinary legislative procedure, both of these bodies have the right of revocation and objection in the event that the Commission can be seen to have exceeded the limits of its mandate. The EP's powers were strengthened with respect to a field that used to be characterized as policy implementation as all the acts conferring powers on the Commission are now adopted in the ordinary legislative procedure.

At the same time, the powers to implement EU legislation conferred upon the Commission were, however, detached from the control of the EP and the Council. It is only the member states that can exert such control through an amended system of comitology committees. From the point of view of the EP's power, the final effects depend on the policy field in question and the proportion of delegated vs. implementing acts.

The changes in the EP's power have brought about important modifications to the roles and activities of the Parliament's committees. These have principally affected the Committee on Agriculture and Rural Development (AGRI), the Committee on Fisheries (PECH) and those on Civil Liberties, Justice and Home Affairs (LIBE) and international trade (INTA). The Committee on Agriculture used to prepare the EP's position in a consultation process and has now become a leading committee in the procedure of ordinary legislation. It not only prepares the EP's positions in the key legislative issues related to CAP, but also plays a key role in preparing the Parliament's view on the CAP expenditure along with the EP's new budgetary powers. The role of the Committee on

Civil Liberties, Justice and Home Affairs was enlarged significantly as issues related to criminal law and police cooperation were subordinated to the powers of communitarian institutions and major parts of them to the ordinary legislative procedure. The same applies to the Union's policies on immigration and asylum as well as visa and border control policies where the EP has now become an equal legislator after having played a merely consultative role.

The notably extended role of the EP's Committee on International Trade (INTA) is another example of the implications of the Lisbon Treaty for the EP's internal setting. The EP now has to give its consent to all international trade agreements, which are then implemented in the Union's legislation through the ordinary legislative procedure. The requirement of the Parliament's consent implies that the INTA committee has to be informed on an equal basis with the Council on the process of any such negotiations.

Three issues have been of particular concern when the EP has tried to adjust to its extended legislative responsibilities. Firstly, the extension of the former co-decision procedure to a number of new legislative fields has stimulated a debate about the emerging non-democratic way of conducting these processes. It is obvious that the strengthening trend of resolving cases in the first reading has taken place with the support of practices that aren't optimal from the point of view of parliamentary participation and openness. The proportion of co-decision cases being resolved in the first reading has been steadily growing and reached a level of 72% during the last electoral period 2004-09 (EP, Co-decision Activity Report). This issue was addressed by the Working Party on Parliamentary Reform whose proposals led to a particular 'Code of Conduct for Negotiating Co-Decision Files' becoming attached (Annex XXI) to the modified Rules of Procedure for the EP.

The new rules stress in particular the role of the leading committee in the EP's negotiations with the other institution. A new requirement has been introduced according to which the rapporteur must obtain the consent of this committee for the commencement of negotiations with the Council. The committee shall approve the composition of the negotiation team and its mandate. Earlier, a cooling-off period had been established, creating a rule whereby a period of at least one month must elapse between the vote on any legislative report in the committee on the first

reading and the vote on it in plenary (Decision of the Conference of Presidents, 25.10.2007). This rule, still in force, aims at facilitating deliberations on these issues in political groups.

Another concern deals with the new category of delegated acts that has been established, particularly the limits of this category and the way it would affect the EP's legislative powers. There are thus a number of official documents produced since the Lisbon Treaty entered into force trying to clarify the relationship between the delegated act and implementing act and defining the division of responsibilities between the three institutions with respect to them. The EP originally demanded much more liberty as a legislator when it comes to the means of control vis-à-vis the Commission exerting powers delegated to it. In a common understanding adopted by the three institutions (April 2011) reference is, however, made only to the objection to and revocation of a delegated act as procedures and time-frames are being defined for both.

The third concern is related to the EP's administration and deals with the capacity to provide the support and expertise needed, particularly for those committees whose mandates were expanded decisively. References have been made in particular to the Committee on International Trade whose administrative burden has multiplied in the technical field of common commercial policy due to this field becoming an object of ordinary legislative procedure.<sup>4</sup> An administrative weakness might in the worst cases circumscribe the EP's independence from its co-legislators. Around 150 new administrative functions have consequently been established in the EP, a majority of them in committee secretariats.

### **The EP's new budgetary powers**

The third extension to the EP's legislative powers applies to its budgetary powers: the Parliament became an actor equal to the Council as the old distinction between compulsory and non-compulsory expenditure was eliminated and the budget procedure started to resemble the ordinary legislative

procedure. Along with this change, however, the EP lost the final say it had had over the non-compulsory expenditure as the Council now plays an equal role to it with respect to all expenses.

The annual budget is now adopted by the Council and the EP in a single reading. In the event that the EP doesn't approve the Council's position, a Conciliation Committee will be convened to facilitate the emergence of an agreement. Decisions on the annual expenditure shall, however, adhere to the multiannual financial framework (MFF) which defines the main categories of the Union expenditure and their maximum levels. The multiannual financial framework is adopted unanimously by the Council after it has obtained the consent of the EP. The EP's grip on the MFF is now much firmer as instead of its former power to either accept or reject the whole package, its consent must now be obtained before the Council adopts the agreement.<sup>5</sup> The procedure for the adoption of the MFF has now been given a legal base in the treaty after having thus far been based on inter-institutional agreements only.

The Lisbon Treaty extensions to the EP's budgetary power were well in line with the general increase in its power. The EP has now become a key actor in the fields of the CAP and the common commercial policy through changes to legislative as well as budgetary powers. When it comes to the CAP, which absorbs a major share of the Union's expenditure, the EP first has to give its consent to a more long-term share of the Union's expenditure through the role it takes with respect to the MFF. The more detailed costs are approved through the annual budget together with the Council, with whom the EP legislates on the CAP.

The first annual budget procedure under the new Lisbon Treaty rules became a complicated one as disagreement prevailed about the size of the budget between the EP and two member states in particular (the UK and the Netherlands) almost until the end of 2010. Finally, a compromise was reached between the actors based on a modest increase of 2.9% in the annual expenditure. In June 2011 the EP started its scrutiny of the MFF, repeating in its resolution its old

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4 Kleidmann, David: "Taking Stock: EU Common Commercial Policy in the Lisbon Era". *CEPS Working Document*, No 345, April 2011, 13-14.

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5 This was reflected in the Parliament's decision to establish a special committee (SURE) to prepare its priorities for the first new MFF after the Lisbon Treaty had come into force. The committee had concluded its work by summer 2011.



MEPs voting on the EU budget for the year 2012.  
Photo: Pietro Naj-Oleari / European Parliament.

demand about making the duration of the MFF equal to the duration of the electoral period, namely five years.

### The EP's powers in the conclusion of international treaties

The EP's powers were also strengthened in the Union's external relations, even though a complete merger of the CFSP and the rest of the external action didn't take place and the intergovernmental institutions still dominate the CFSP. The EP, however, plays an ever more important role with respect to the conclusion of the Union's international treaties.

The Parliament's consent is currently required for all the main groups of international commitments with the exception of CFSP agreements (TFEU Art. 218, 6). The EP's powers consequently cover the accession of new members, association agreements creating reciprocal rights or obligations and other agreements which establish a specific institutional framework or create budget implications for the Union. In spite of the fact that the EP's consent is demanded for the entire treaty, which doesn't enable the EP to make any amendments to it, the Parliament is usually informed and consulted throughout the negotiation procedure.

Following the changes in the Union's powers, the Lisbon Treaty added new types of international agreements to the list of treaties demanding the

EP's consent. The EU's accession to the European Convention for Human Rights on the one hand, and agreements in fields where the ordinary legislative procedure applies or a special legislative procedure applies and the EP's consent is needed on the other, were added to the list. The latter provision safeguards the EP's role vis-à-vis the Union's so-called implicit treaty-making powers. These are powers where the right to conclude treaties is not directly established by the treaties but follows from other treaty provisions.

Along with this amendment major changes took place in the Union's common commercial policy where the EP has now become one of the key actors. The previous order where the Council authorized the Commission to negotiate international trade agreements and, once they were ready, approved them, has now been replaced by full parliamentary involvement. The EP must now give its consent to agreements in the common commercial policy and it also participates in their implementation in the Union's legislation through the ordinary legislative procedure. Previously, this legislation was adopted by the Council on the proposal of the Commission.

The change means that within the area of the common commercial policy, all trade barrier regulations, trade defence instruments, trade preferences programmes, as well as future regulations laying down EU foreign direct investment policy, are subject to the ordinary legislative procedure rules. With the entry into force of the Lisbon Treaty, Parliament's

International Trade Committee (INTA) has been granted the same procedural powers to weigh in on commercial framework legislation as held by member state governments represented in the Council.

This change in the new rule of the Union's trade policy has gained a lot of attention and many resemblances to the US system have been identified. The EP had a visible start to its new treaty-making function as it decided to reject the so-called SWIFT agreement concluded between the EU and the US on banking data transfers to the US. The Parliament, however, gave its consent to the agreement after it had been amended along the lines it had suggested. A good number of other cases exist where the EP has rejected draft agreements in the framework of its new competences. The EP's role in treaty negotiations became one of the key bones of contention in the negotiations of the 2010 Framework Agreement between the Parliament and the Commission as the Parliament demanded a place in the negotiations team. In the end, a compromise was achieved based on the Parliament's full access to information during the different stages of a negotiation process, including some limited possibilities to observe negotiations.

## Conclusions

With the Lisbon Treaty in force, the European Parliament has become a full-fledged actor in all traditional fields of parliamentary power. And as history has shown, the EP is usually quick to seize on the remaining weak points and launch a political process in order to catch up. And after the Lisbon Treaty amendments it undoubtedly has an extended potential to do so.

The major weak points with respect to the EP's full parliamentary power now occur in the Parliament's capacity to control the executive, namely the Commission. If the key treaty provision with respect to this control – the one establishing the Commission's responsibility towards the EP – is to be taken seriously, the means for assessing this responsibility and controlling the Commission must be developed further. The constraints on this development are well-known and are ultimately related with the role of the Commission as a non-partisan body. In order to create possibilities for a full political control of the Commission, it should be made a partisan body with its composition reflecting the results of the EP

elections. Such a development would most probably also dispel the second weak point in the parliamentary system – the deficient EU-level party system.

The EP has already recognized these weak points and initial steps have been taken both towards adding the partisan dimension to the relationship with the Commission and deepening the EU-level party system. The Lisbon Treaty requirement according to which the result in the EP election shall be taken into account when the Commission president is nominated is an example of the former, and the projects towards the adoption of party statute and funding as well as the pending proposal for European lists in elections are examples of the latter. Both elements of a deepening EU-level parliamentary rule are highly controversial among the member states, but this has been the case previously as well with corresponding elements which have nevertheless seen the light of day.

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