

Lund University
Department of Political Science

STVM01
Spring 2010
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The Empowerment of the European Parliament

-An Analysis of its Role in the Development of the Co-
decision Procedure

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Abstract

In this thesis the European Parliament's role and influence in the development of the co-decision procedure is analysed. Over the last decades the European Parliament has increased its power in the legislative process. It has been one of the central actors in the development of the co-decision procedure, established in the Maastricht Treaty and extended in the Amsterdam Treaty. The question of how the EP has enjoyed increased influence as a consequence of the extension of the co-decision procedure is also being asked. The theoretical framework is a combination of insights from both rational choice institutionalism and historical institutionalism and it is argued that a rational choice-historical institutionalist perspective is favourable in order to find a full explanation. The analysis shows that the EP due to the fact that the member states did not have full information and was not able to predict consequences of their decision of the establishment of the co-decision procedure. Hence the EP has managed to make an interpretation of how the procedure should be implemented and had a possibility to influence the development of the procedure. Through creation of informal rules and institutions, which the EP has later managed to institutionalize in the Amsterdam Treaty, the EP has managed to maximize its interest and enjoyed an increased power by becoming co-legislator with the Council. Due to path dependency in the negotiations of Treaties, the member states have not been able to reverse decisions already taken and has had to further extend the co-decision procedure, even though the EP had interpreted the procedure in another way than originally intended.

Key words: the European Parliament, historical institutionalism, rational choice institutionalism, co-decision procedure

Words: 9985

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1 Introduction

“The European Parliament has come a long way. It sought and eventually obtained a power of co-decision with Council on legislation so that Council’s decision only enter into force with the explicit approval of a public vote in the elected assembly” (Corbett et al. 2007: 356).

The empowerment of the European Parliament (the EP) over the last decades has been widely debated within political science and the general assumption has been that the institution indeed has enjoyed increased power (Crum 2006: 383). It might be argued that the EP is the EU institution that has changed the most in the last 20 years (Corbett et al. 2003: 353, Nergelius 2008: 5). Since the EP has been directly elected it has actively worked for maximizing its influence in the legislative process. The EP has been quite successful in trying to force both the Commission and the Council to accept its proposed amendments to the EU legislation (Hix 2005: 110). Further the co-decision procedure could be argued to be one of the most significant constitutional changes the EU (Corbett et al. 2007: 214). When the co-decision procedure was established in the Maastricht Treaty a substantial institutional change in the EU was introduced. For the first time in history there was a level of interdependence and interaction between the Council and the EP that had never taken place before. For the first time the Council was obliged to negotiate with the EP, which in the end could turn down the specific proposal. The co-decision procedure has made the EP an equal decision-maker in the legislative process compared to in the past when it had merely a consultative role (Shackleton & Raunio 2003: 171).

Scholars have extensively observed the procedure of co-decision during the last decades. In the general debate the main assumption has been that the EP has enjoyed greater influence under co-decision but there are also scholars that have argued the opposite. A controversial claim was the work of Tsebelis and Garrett (Tseblis & Garrett 1997), in which they argued that the EP rather had lost agenda-setting power by the introduction of co-decision compared to its influence under co-operation. This argument generated widespread criticism among scholars who stressed the authors overlooking the importance of informal process and the unconditional veto the EP enjoys (Burns 2006: 233f).

This thesis will rely on the argument that the influence of the EP indeed has increased with the introduction of the co-decision procedure over the last decades. It has also been debated how active the EP itself has been during this change. As stated in the quote in the beginning the standing point of this thesis will be that the EP has been an active essential actor in the development of the co-decision procedure as well as in its empowerment. By explaining this empowerment and development from a rationalist-historical perspective the aim of this thesis is to present an interesting explanation and thereby make a contribution to the debate within political science.

1.1 Purpose and Research Questions

The purpose of this thesis is to look closer to institutional change that followed of the development of the co-decision procedure and analyse the EP's influence in this process. I will argue that the EP's influence in the development of the co-decision procedure can be explained from a rational choice-historical institutionalist perspective where the insights from both rational choice institutionalism and historical institutionalism will be combined. Both the formal and informal development will be taken into account and analysed. To be able to fulfil my purpose I will ask two questions:

- How can the role and influence of the EP in the development of the co-decision procedure be explained?
- In what way has the EP enjoyed increased influence because of its role in the development of the co-decision procedure?

With my purpose and research questions I hope to contribute with a new perspective in the debate regarding the empowerment of the EP and the development of the co-decision procedure. The development has been a long process and the focus will be in the establishment of the procedure in the Maastricht Treaty and the essential extension of the procedure established in the Amsterdam Treaty. The Nice Treaty and Lisbon Treaty will only shortly be mentioned since the conditions of the procedure have not changed even though the application of the procedure has extended to new policies.

1.2 Method and Material

The method that a writer chooses to use in a study is generally made on the assumption that it is a suitable way of answering the specific research questions. Both the quantitative and the qualitative method are diverse manners of gathering data in different ways. Which method that is the most suitable depends on the theoretical and empirical questions asked (March & Stoker 2002: 202).

A study can be of either describing or explanatory nature (Esaiasson et al. 2007: 25f, Teorell & Svensson 2007: 7f). The explanatory study can further be divided into three different approaches: the writer can test an existing theory, the writer can further develop an existing theory or the writer can make a "theory consuming" study.¹ This thesis will be in the character of the latter; meaning that a specific case, the development of co-decision procedure, is in focus while several existing theories are used in order to explain the particular case. In a theory consuming study the primary choice is the specific case while the choice of theory is secondary (Esaiasson et al. 2007: 42f). The prospects of drawing general conclusions are limited with a theory

¹ Author's translation, original term is *teorikonsumerande*.

consuming study (Esaiasson et al. 2007: 175f). The intension of this thesis is not to present general conclusions, it is rather to focus and analyse the specific case of EP's influence in the development of the co-decision procedure. By combining the two theories I will argue that this combination can explain the influence that the EP has had in the development of the co-decision procedure. The intention will thereby rather be to present a new explanation to this specific case.

The method employed in this thesis is a qualitative method. As mentioned, the study will be conducted by using a combination of theories in order to explain the specific case of the co-decision procedure. The research can be illustrated through what can be called a level of specificity.² In the top a general account of the traditional debate will be given in order to give insight in debate within the political science. The next step will be to look closer to the rational choice institutionalism and historical institutionalism and thereafter argue for a combined perspective. The theoretical framework and rational choice-historical perspective will then be applied on the empirical material in order to analyse and fulfil the purpose.

The material employed in this thesis is secondary data such as literature and articles.

When searching for material it is important to be aware of that the literature in the area is tremendous and it is a complicated and an advanced field. It takes a lot of effort to screen and find the material of importance for the purpose of the study. Another issue to be aware of is that the EU is constantly changing. Research and literature can after a few years be incorrect and out of date due to Treaty changes. For the same reasons can it be difficult to find material that has been produced very recently, for an example due to the implementation process it can take time before the consequences of a decision is fully known.

A lot of literature has been studied but only the reference used in the text is listed in the reference list. Though the literature studied but not used in the text has still been of great importance since it has given a good knowledge of the area in question. Since co-decision is a legislative act a part of the material studied has been juridical literature. It has given an understanding of the legal aspects but it has not been used in a great extent in order to keep focus on the debate within political science.

1.3 Restrictions

The EP has three essential power areas; the legislative powers, the budgetary powers and the supervisory powers (Corbett 2007: 5f). Thus the empowerment and influence of the EP could include several aspects. Since the co-decision procedure is applied within the legislative process, it is this area and empowerment as in terms of legislative powers that will be of interest in the analysis. It is further the legislative powers in the decision-making process that will be in focus, the influence regarding the EP's ability to initiate propositions to the Commission will not be further analysed.

Since the EP is the only EU institution that is elected, the democratic aspect is often brought up in the discussions regarding the empowerment of the EP. If a more powerful

² Author's translation, original term is *abstraktionsstege*, see Lundqvist 1993.

Parliament will diminish the democratic deficit in the EU is one of the more common questions in the debate. Legitimacy problems due to low participation in the elections are another subject worthy of note (for further discussion see e.g. Bomberg 2008, Rittberger 2005 and Tallberg 2007). The democratic aspect is interesting but since the research area would then be too wide and more suitable for two different studies, it will not be included.

Finally, the thesis will be of empirical nature rather than normative. I will not further analyse or make any conclusions if the increased influence of the EP in the decision-making process could be seen as positive or negative for the European integration or the EU system.

2 Theoretical Framework – New Institutionalism

It could be argued that rational choice institutionalism and historical institutionalism could be seen as contradictory but I will here instead argue that they rather complement each other. I will start with a brief reflection of the traditional debate within the field and thereafter present the main features of the two perspectives. I will end the theoretical framework by presenting the benefits of a rational-choice- historical institutionalist perspective.

2.1 The Traditional Debate and Institutional Criticisms

The general institutionalist aspiration is to be able to reach beyond the traditional debate of the competing perceptions of neofunctionalism and intergovernmentalism. While neofunctionalists claim that the supranational institutions can exercise their power with extensive autonomy from national governments, the intergovernmentalists claim that the governments do remain in control and that institutions are serving the member states' purposes. An institutionalist approach presents theoretical tools for explaining changes and disparities in supranational autonomy and institutions. It focuses on how the actors' behaviour is affected by these structural changes (Tallberg 2000: 844). According to traditional institutionalist thinking, the institutions affect the outcome (Bjurulf & Elgström 2005: 45). One of the more prominent contributions in the traditional debate is Moravcsik's theory of liberal intergovernmentalism. In short, the focus is on intergovernmental bargaining such as the intergovernmental negotiations and IGCs (Intergovernmental conferences) leading to the Treaties. The main actors are the member states, specifically the most powerful ones. Through a gradual process of where the powerful state's preferences converge they find concession and struck central bargains among themselves. The smaller, reluctant member states are offered side-payments. According to Moravcsik institutions do matter in the sense that they serve the member states by providing information and reducing transaction costs. Though institutions do not lead to a transfer of authority from member states to supranational institutions (Pollack 2001: 225ff). A general institutionalist critic of the liberal intergovernmentalism and intergovernmental bargaining is that the theory does not capture the influence that the EU institutions have in shaping and constraining intergovernmental policy-making (Pollack 2001: 225ff).

From a historical institutionalist perspective the focus is rather of how integrative decisions can get locked in and hence will be difficult for member states to change. In a similar manner rational choice institutionalists argue that the EU legislative process

cannot be seen as strictly intergovernmental since EU institutions contribute to shape the process as well (Pollack 2001: 226). Institutions have an effect on political outcome through the actions of the individuals (Hall & Taylor 1996: 939).

2.2 Rational Choice Institutionalism

Rational choice institutionalism arose within the rational choice theory and among American political scientists trying to understand the institutions of US Congress (Pollack in Wiener & Diez 2009: 126). Institutions are by rational choice institutionalists defined as actor-created formal rules of the game and behaviour, restricting actors' behaviour (Héritier 2007: 5, Pollack 2005: 227). The source of action is the actors' preferences and interests (Rittberger 2005: 16). The individuals are rational actors with fixed preferences seeking to strategically maximize and attain these preferences (Hall & Taylor 1996: 944f). The individuals make rational choices from their set of preferences by evaluating their likely consequences. The actors behave strategically in order to obtain their most preferred outcome, being aware of that other actors behave accordingly (Rittberger 2005: 16). Following, politics is seen as a sequence of actions dilemmas and political outcome is determined by strategic interaction. The institutions are structuring and calculating information about other actors' behaviour (Hall & Taylor 1996: 944f). Further are policy outcomes, from a rational choice institutionalist perspective, a result from variations in the rules of the EU legislative process. According to Hix it could be claimed that the EP could be seen as a "conditional agenda-setter". Under the co-decision procedure the Council applies qualified majority voting while the EP has a powerful role in the legislative process, which have the effect that unless the EP proposal is preferable to the status quo the minority in Council will not be able to block it (Hix 2005: 268). Rational choice institutionalism can be seen as a calculus approach (Jönsson & Tallberg 2008: 89). A lot of the research in EU studies conducted by rational choice institutionalist has traditionally focused on transaction costs and principal agent analysis (principal-agent) in order to explain why the member states (principals) have let the supranational institutions (agents) to act within some independence (Jönsson & Tallberg 2008: 100).

2.3 Historical Institutionalism

While rational choice institutionalism has derived from the study of American congressional behaviour, historical institutionalism developed in response to structural-functionalism in the 1960s and 1970s (Hall & Taylor 1996: 937, 942). As mentioned, advocates of rational choice institutionalism define institutions as formal rules restricting actors' behaviour. Historical institutionalists have a broader approach and generally define institutions as formal and informal procedures, norms and routines.

These norms shape the goals the actors will pursue and structure power relations among them (Hall & Taylor 1996: 938). Further do the historical institutionalists also have a broader approach to the definition of what institutions do and of why institutions persist. In addition to the calculus approach used by rational choice institutionalists they also use a cultural approach. This approach implies that apart from individuals acting rational, they also stress actors turning to established routines and patterns of behaviour in order to attain their purposes. Apart for individuals seeking to maximize utility they are also seen as “satisficers”. The individuals’ course of action is not solely determined by calculation but by interpretation of the situation. The institutions provide filters for these interpretations and actions (Hall & Taylor 1996: 939f, Jönsson & Tallberg 2008: 90)). The key concepts of historical institutionalism are the aspect of time and path dependency. Pierson stresses the temporal aspects of politics and emphasize that political development must be understood as a process evolving over time where long-term consequences can be unpredictable and unintended (Pierson 1996:126f, Pierson 2004). Decisions taken at one time may have unforeseen consequences later in another point of time (Farrell & Héritier 2003: 578). It is still difficult to predict a long-term consequence of a decision taken no matter how well informed politicians and decision-makers are (Johansson & Raunio 2005: 519, Pierson 1996, 2004).

Further can decisions made at one stage create opportunities for decision-making in a later period (Svendrup 2002: 123). To reform Treaties is exceedingly hard and the costs are high if a member state would like to exit (Jönsson & Tallberg 2008: 17f). Hence adopted integrative decisions and policies get locked in and become difficult for member states to change (Pollack 2001:226). As a result the locking in become the appropriate course of action and individual behaviour become difficult to reverse (Johansson & Raunio 2005: 519f). It is presumed that actors take decisions, which have constraints of bounded rationality coupled with limited time and energy. Therefore all decision-making must be understood from a temporal aspect; all decisions are taken is located in a distinct temporal order, which can affect the content and duration of the decision-making process (Svendrup: 2002: 133). A concept related to both rational choice and Pierson’s historical institutionalism is the concept of incomplete contracts (Johansson & Raunio 2005: 519f). If we presume that the member states have insufficient information and a short-time horizon, incomplete contracts will be constituted with discretionary space for rule interpretation. The EP, as a rational actor seeking to maximize its interests, will in the interpretation of the Treaty rules use this space in order to move policy outcomes closer to the Parliament’s preferred outcome (Rasmussen 2000: 2f). With each institutional change information is generated on the preferences and strategies, and following will the discretionary space for future interpretation of the procedures diminish (Rasmussen 2000: 18).

2.4 A Rational Choice-Historical Perspective

When analysing the role and impact of EU institutions, a lot of academic literature focuses on the aspects of rational choice institutionalism. I will argue that these aspects are essential but it is also important to look at the aspects of historical institutionalism

such as the importance of temporal aspects, path dependency and incomplete contracts in order to understanding the EP's increased influence in the legislative process. Both rational choice institutionalism and historical institutionalism have strengths and weaknesses. Even though there are contrasting differences between the two perspectives it could still be argued that they can be seen as complementing each other rather than being competitive (Hall & Taylor 1996: 950f). Pollack argues that historical institutionalism can be seen as a particular variant of rational choice theory emphasizing the importance of path dependence and the temporal aspects of politics (Pollack 2009:127f). Pierson's contribution can be seen as a complement to game-theoretical approaches, traditional in rational choice (Bulmer 2009: 310). Hix also argues that the two perspectives are closer than expected. They share many assumptions regarding institutional change and the interaction between institutions and actor's preferences (Hix 2005: 267). Both rational choice institutionalism and historical institutionalism assumes that individuals are acting strategically in order to maximize their interests and attainment of goals given by specific preferences (Hall & Taylor 1996: 939).

The benefit of a combination of the two theories, and the purpose of this rational choice-historical analysis is to capture the importance of the individual actors or agency (in this case the EP as a unitary institution) but also the importance of path dependency and temporal aspects that cannot be neglected. Regardless of the preferences or the degree of information, it is difficult for actors (in this case the member states) to predict the long-term consequences of a decision (Johansson & Raunio 2005: 519). While advocates of rational choice institutionalism assume that actors are fully aware of the consequences of their actions, historical institutionalists rather see that actors are not always able to predict how institutional change can transform their own position in an unexpected or undesired way (Jönsson & Tallberg 2008: 102). Hence it could be argued that it is essential to add the concepts of incomplete contracts to the traditional rational choice perspective in order to fully understand the development of the co-decision procedure. The member states could not be aware of the consequences of the co-decision procedure when it was introduced in the Maastricht Treaty.

When analysing institutional change, which the development of the co-decision procedure is, it can be argued that the temporal aspect is of great importance. The European integration and the development in the EU is an ongoing process evolving over time, which might lead to quite unexpected outcomes (Pierson 1996: 127). The temporal aspect is often underestimated or even neglected in the rational choice perspective; in this manner historical perspective constitutes a complement. On the other hand, Hall & Taylor stress the importance of the role of strategic interaction between actors for the determination of political outcome, which is emphasized in rational choice institutionalism (Hall & Taylor 1996: 950f). Hence an analysis from a rational choice-historical perspective can be seen as fruitful. The time horizon has an impact on political decisions and the actors making them. Short-term interests often guide decisions, while their consequences will be long-term (Jönsson & Tallberg 2008: 102).

It could further be argued that the development of co-decision can be seen from two aspects; on the one hand is the procedure formally stated in the Maastricht Treaty, but on the other there is the aspect of rationality and the EP interpreting the Treaty in order to suit its agenda and thereby as a consequence, creating informal rules. The informal

rules were later established and institutionalized in the Treaty reform, the Amsterdam Treaty. I will argue that a combination of the two perspectives of rational choice and historical institutionalism help us understand the importance of both the EP influence in the formal development of co-decision, that is in the treaty negotiations, and the influence in the informal development, that is the EP interpretation of Treaty and establishing daily decision-making. There are a number of significant reasons for this claim. The rational action by the EP in order to maximize its interests can be explained by rational choice institutionalism. But we also need to add perspectives from historical institutionalism in order to understand the establishing grounds of the procedure and why the member states approved of the Treaty articles even though it would mean giving the EP greater influence in the legislative process. The IGCs and the revisions for a new Treaty are based on earlier Treaties (Sverdrup 2002: 124ff), thus we must consider path dependency in order to find an explanation. Another benefit of combining the two perspectives is to be able to use a broader definition of institution to also include informal norms and institutions since all institutions have the capacity to shape of individual behaviour. This enriches the analysis of understanding the influence of the EP (Bjurulf & Elgström 2004: 252).

At last, it must be considered if the EP as an institution can be treated as a unitary actor or not. It could be argued that it can be if the institution in the relation vis-à-vis the other actors present a clear and coherent position (Beach 2005: 13). The role of the EP in the analysis is as a singular institution with self-interest, thereby it could be argued that the EP in this case can be treated as a unitary actor. The internal differences within the Parliament will not be further considered.

3 The European Parliament and Co-decision Procedure

The EP is a complex institution and this chapter will give a shortly introduction of the EP, its functions and the co-decision procedure been given in order to give a background and bring understanding to the forthcoming analysis regarding the EP's increased influence under co-decision.

3.1 The European Parliament and its Organization

The European Parliament is the only institution in the EU, which is elected by the citizens of the member states. Since the direct elections of MEP's (Members of Parliament) every fifth year were introduced in 1979 the EP has been seen as the main representative in the EU of the European citizens. Thus it could be argued to be the institution with the greatest democratic legitimacy (Tallberg 2007: 103). The EP has 736 MEP's who are organized in political groups and not by nationality. The political groups are representing over 200 national parties (EP homepage, Bomberg et al 2008: 59f). Research has showed that the MEP's vote in accordance to party lines rather than according to nationality (see e.g. Hix 2009). Within the political groups the members try to compromise and find agreement in the political questions in order to seek advantages and maximize its influence. It is the leaders of the political groups that together with the president set the agenda. In order to achieve as much power as possible in the legislative process is it important that the EP as an internal unity (Bomberg et al. 2008: 59, Tallberg 2007: 109).

A lot of the work in the EP is preparatory work and is conducted within the 20 specialised parliamentary committees. The standing committees are organized by policy area. When the EP receives a proposal from the Commission the committees will take it under consideration and prepare a report of the common opinion of the EP, which are to be presented in Plenary (Tallberg 2007: 106f). If the committees have amendments to the Commission's proposal of new legislation they make a draft of a resolution, which is then submitted to the full EP plenary (Hix 2005: 93). The committees system allows the MEP's to be involved in and develop specific areas of specializations; hence will the EP's claim of expertise in the relevant areas be strengthened (Burns 2006: 236).

It can be argued that the main difference between the EP and national parliaments is that the EP does not initiate legislation. The EP has power within three areas: in the legislative process, in budget and as a supervisor of the Council but more noticeable of the Commission. This control is accomplished through the right to question and

examine (Bomberg et al. 2008: 58ff). Though as mentioned above is it the power within the legislative process that will be analysed in this thesis and analysis.

3.2 The Co-decision Procedure

Since December 1st 2009 when the Lisbon Treaty came into force, the co-decision procedure is the ordinary legislative procedure in the EU³ (Nergelius 2008: 5). It now is applicable to two thirds of the European laws. Some exceptions though are taxation, industrial policy, CFSP (Common Foreign and Security Policy), agricultural policy and trade policy (EP homepage, Bomberg et al. 2008: 60). The co-decision procedure makes the EP an equal legislator with the Council in the EU legislative process. As already mentioned the co-decision procedure was introduced under the Maastricht Treaty (Co-decision I) and reformed under the Amsterdam Treaty (Co-decision II). The procedure was simplified under the Amsterdam Treaty but is still complicated (Burns 2002: 233, Tallberg 2007: 52). It will here briefly be presented.

When the Commission formulates a proposal for legislation it submits it to the EP and Council. In the first reading the EP adopts an opinion of the proposal, which generally imply amendments to the Commissions text, prepared by the committees. The Council adopts an opinion as well. The Commission submits a revised proposal where it has taken the EP's amendments under consideration by accepting or rejecting them. The Council then examines the revised proposal; if the Council adopts the EP amendments, or if the Parliament and the Council both adopt the proposal without amendments, the legislation has passed. On the other hand, if the Council do not agree with the EP amendments it adopts a common opinion by QMV (Qualified Majority Voting) and proposes amendments to the Commission's text. The proposal then goes to a second reading by the Parliament. If the EP accepts the amendments the legislation is passed. If the Council and the EP cannot agree after their second reading the proposal is brought before a conciliation committee consisting of 15 members of the Council, 15 members from the EP and a representative from the Commission. The conciliation committee has six weeks to reach an agreement and adopt a joint text. It must be adopted by QMV by the Council representatives and by simple-majority by the representatives of the Parliament. If the committee will not reach an agreement the legislation falls. If they adopt a joint text it will go to a third reading in the Council and the EP. Under co-decision I in Maastricht Treaty, the Council and the Parliament had to adopt the joint text from the conciliation committee in a third reading. The Council had to approve it by QMV and the EP by simple/absolute majority in order for the legislation to be adopted (Hix 2005: 99ff, Pollack 2003: 224f, Tallberg 2007: 52ff).

The Parliament's position in the final stages of the co-decision procedure changed after the reformation in the Amsterdam Treaty. Under co-decision I, if the Council and the EP failed to produce a joint text, the Council could reaffirm its original common position adopted in the first reading and confront the EP with it as a "take-it-or-leave

³ Other legislative procedures are the consultation procedure, co-operation procedure and assent procedure, see e.g. Bomberg et al. 2008 and Tallberg 2007.

offer". Unless the EP voted against it with absolute majority the legislation was adopted. If the Council and the EP cannot reach an agreement in conciliation under co-decision II, the legislation falls (Burns 2006: 235f, Hix 2005: 102).

The EP's ability to veto a part of legislation can be seen as notable (Steiner & Woods 2008: 51), though it could be argued that it is not the veto that is the most significant issue with co-decision. It is rather that the interaction between the EP and the Commission and the Council. Since the EP has a matter in the final stages of legislation, the Commission and Council are keen to listen to and accommodate the Parliament's view when policies are being formulated (Bomberg et al. 2008: 60).

4 Analysis

The analysis will be divided into four parts, all looking closer to the features drawn from the rational choice-historical perspective. The first part will look closer to incomplete contracts leading to rule interpretation. The second part deals with informal institutions; norms and rules while the following third part will look into the institutionalization of informal rules. The fourth and last part will analyse the importance of path dependence and the role the EP has had in the reforms of the Treaties when negotiations of a development of the procedure took place.

4.1 Incomplete Contracts Leading to Rule Interpretation

The Treaty articles can be seen as legislative rules conceptualised as incomplete contracts with the inherent space for interpretation by the institutions. Through strategic action the EP has tried to move beyond the original meaning of the legislation and thus shift the policy outcome closer to its ideal position (Rasmussen 2000: 18). The EP managed to institutionalize the informal practise of the co-decision procedure through rule interpretation and manipulation (Hix 2002:261). Since all member states can be seen as actors with veto, this joint-decision trap makes it difficult to enforce a legislative procedure that will live up to the original intent. Hence the institutional procedures and their development have an impact on how the member states act in the Treaty reforms (Rasmussen 2000: 19). When the member states negotiate changes for a new Treaty they are unable to predict how these changes will be implemented. The actors have diverse preferences and different time constraints, which have an impact on what can be seen as an incomplete contract. The EU institutions, the EP in this case, bargain on how the Treaty text should be interpreted and applied in the legislative process in order to maximize its own legislative competences (Farrell & Héritier 2007: 288f). In the process of reforming EU treaties the governments had incomplete information about how far the EU institutions would be able to exercise discretion and thus their ability to shape the final policy outcomes beyond the governments' original intension. This is in line with Pierson's argument that incomplete information can lead to consequences that were unintended by the governments (Hix 2002: 270). Due to the unanimity rule it is difficult for member states to change institutions and rules established in previous IGC's that have developed in a direction not originally preferred and thus pushed the integration process too far. It is therefore difficult to roll back the power of the EP once it has increased its power in an unexpected way through interpretation and establishing of informal institutions. The importance of path dependency will be analysed further ahead in the discussion regarding path dependency (Farrell & Héritier 2007: 290).

It can be argued that the formal decision-making procedures in the treaties, such as the co-decision procedure, can be seen as an incomplete contract and during the negotiations did the EU governments not have complete information of how the EP would later interpret it. This left the EP with a degree of discretion of interpreting how the new procedure would be completed. When interpreting the contract and Treaty article the EP tried to maximize its influence over the outcomes and threatened the governments with non-cooperation unless they adopted its interpretation (Hix 2002: 271).

When trying to understand the consequences of incomplete contracts it can be mentioned that the time horizon is of great importance. Not only do the member states lack of complete information, different actors also have different time horizons, which creates different priorities over legislation. The members in the Council have a much shorter time view than the Parliament due to their rotation of chair. The longer time horizon, the more actors may be willing to delay or threaten to delay legislation if it benefits its interests. Short-term policy goals can be sacrificed in order to obtain long-term institutional goals (Farrell & Héritier 2005: 280).

When the co-decision procedure had been established in the Maastricht treaty the EP revised its own Rule of Procedure in order to decide how it should operate under the new legislative procedure. In this process it tried to maximize its own influence and exercise discretion on how the it would work in practise (Hix 2002: 273, Kreppel 2003: 893). Since the Treaties as already mentioned mainly offered a framework that had to be filled through practise, it was open for the EP to interpret the co-decision procedure and its implementation (Shackleton 2000: 333).

So how did the EP interpret the Treaty article establishing the co-decision procedure? Its interpretation of the procedure was that two equal actors – the Council and the EP, should take all decisions jointly. The EP was according to its understanding just as much a principal as the Council. Hence the EP interpreted the Maastricht Treaty to maximize its own interests. Though, the Council considered it differently and there were profound differences in the interpretation of what the co-decision procedure actually meant (Farrell & Héritier 2003: 586). Neither the Council nor the EP was initially prepared to back down. Following while the Council tried to keep the EP's role at minimum by refusing negotiations and merely presenting legislative proposals that it was prepared to accept or reject, the EP threatened with blocking or slowing down legislation to win concessions and increase its negotiation power. This led to a deadlock (Farrell & Héritier 2005: 281). Gradually the Council came to accept EP's position and started to seek common ground. Informal meetings between representatives from the EP and Council were held frequently in order to find a compromise when the institutions had different opinions. These meetings were called "trialogues" and "early meetings" and they were originally introduced after the second reading but before conciliation (Shackleton 2000: 326f). During these informal meetings the two sides could exchange ideas but without any formal decisions being taken (Shackleton & Raunio 2003: 177). Eventually the trialogues became normal procedure and were sometimes used already before the second reading. Following new procedural rules were formed. The EP's direct involvement was now approved by the Council, which had to modify its opinion in order to find an agreement (Farrell & Héritier 2003: 586, Shackleton 2000: 333f).

During the conciliation the EP could press its opinion much more intensive than during co-operation due to an process of exchange being developed (Shackleton 2000: 331f).

4.2 Informal Institutions, Norms and Rules

It could be argued that the dynamic interaction between formal and informal institutions and norms has led to significant consequences for the decision-making power and legislative outcomes in the EU decision-making process. As we have seen, formal decisions taken at Treaty level can lead to informal norms and institutions the way in which the decision procedure is implemented. This may further lead to formal Treaty changes where the informal norms will be institutionalized (Crum 2006: 384). To put it differently, informal institutions may be influenced but not determined by the formal framework in which actors operate. In this context the formal framework is the Treaty texts and articles, which determines the responsibility of the various actors. The framework lays the foundation for an interaction between the parties. These repeated interactions might lead to expected regularities in behaviour and generate informal institutions, which may have an important impact on institutional outcome. This might lead to a difficulty for the member states to in advance predict the outcome of the initiated formal institutional changes they take upon (Farrell & Héritier 2003: 578, 580). Informal institutions can be defined as rules enforced by the actors themselves and not subject to third-party, while formal institutions or rules can be defined as the written rules enforced by a third party. The creation of informal institutions is driven by interpretation of formal rules. As discussed above the formal rules are usually vague and for direction through daily application of the rules informal institutions are developed. The actors will have diverse interests when interpreting the formal rules and thus will each actor prefer the rules and interpretation that is most beneficial to its own decision-making competence (Farrell & Héritier 2005: 277).

In order to handle everyday politics informal institutions are established to structure the actors' relation with the legislative process. The informal institutions may accommodate the existing formal rules by either specifying or complementing them (Farrell & Héritier 2007: 288). The informal institutions may also transform the formal rules in the sense that by becoming competing institutional rules the relative decision-making influence of the involved actors is changed. Thus it can be argued that there is an iterated relation between informal and formal institutions (Farrell & Héritier 2007: 288).

The agenda-setting skills of the Council through their option to make a take-it-or-leave-it proposal to the EP were conducive to an inequality between the two institutions (Rasmussen 2000: 15). The EP was the whole time aware of that the provisions of the Treaty were allowing the Council to reconfirm its position if there was no agreement (Pollack 2003: 226). In order to handle this imbalance the EP adapted rule 78 in the Rules of Procedure. The intention was particularly to ensure the EP's threat to vote down the Council's common position if it was ever reintroduced (Rasmussen 2000: 15). If the Council attempted to reintroduce its common position, it was automatically put to a vote of rejection and the EP was open with the information that this would be the

common reaction. Only at one occasion did the Council reintroduce its position, followed by the EP turning down the legislation. This led to the Council treating the EP as an equal and thus paved the way for what would later be the extended version of the co-decision procedure, established in Amsterdam Treaty (Pollack 2003: 226).

It could be argued that the EP during the implementation of the co-decision procedure was acting deliberately strategically, aiming to gain as much interest as possible. The Parliament sought to establish informal institutions, which it later tried to institutionalize through Treaty reforms. The institutionalization of informal rules will be further analysed in the next chapter. The relation between the Council and the EP has become dominated by informal rules rather than formal (Farrell & Héritier 2003: 595).

While the Council tried to interact with important actors within the EP in order to facilitate decision-making and assure its legislation would not be voted down the Parliament had a more undecided view of the proliferation of early informal meetings. On the one hand the EP would enjoy new agenda-setting powers in the decision-making process but on the other its increased influence might exclude smaller parties due increased openness and democratic legitimacy. Though, the informal institutions in the decision-making process generated new political possibilities of which the EP tried to obtain advantages. It found the opportunity to hold the Council more directly accountable to the EP through building upon the Council's increased need for informal meetings with MEP's (Farrell & Héritier 2003: 592).

It could further be argued that MEP's have had a significant role in the establishment of informal institutions and the development of co-decision. The MEP's have under informal institutions tried to widen the scope of co-decision beyond the formal policy areas. The interaction and informal relations between the Council and the EP could be claimed to potentially ease Treaty reforms in the future; if a policy area in practice is treated as if it is under co-decision it will become easier for the EP to persuade the member states of the benefits of the institutionalization of the informal procedure (Farrell & Héritier 2003: 594).

4.3 Institutionalization of Informal Rules

The informal institutions that emerged after the introduction of co-decision had notable consequences for its development in the Amsterdam Treaty (Farrell & Héritier 2003: 589). During the negotiations of the revision of the Maastricht Treaty, the EP proposed a reformation of the co-decision procedure. There were two significant informal rules that were institutionalized, thus the Amsterdam Treaty led to further institutional change (Maurer 2003: 228).

The EP made a clever strategic move to propose that the third reading, including the Council's right to reaffirm its position in the final stages of the procedure, being removed from co-decision (Hix 2005: 108f). The removal of this element was one of the most controversial matters in the negotiations of the Amsterdam Treaty (Héritier 2007: 102, Maurer 2003: 230). The EP argued that the reform would bring collective efficiency since the procedure would be less complex and more transparent. It further claimed that it would still keep the net redistributive effect on the power balance

between the Parliament and the Council since the EP had only rejected the common position at one occasion (Hix 2002: 275, 279). This change led to the conciliation committee being the ending stage in the co-decision procedure (Rasmussen 2000: 17). It further put the EP as an equal actor along with the Council during the whole procedure. A balance of veto power between the EP and the Council had now been established (Maurer 2003: 230).

The member states were indifferent of making the EP an equal actor with the Council and agreed to the proposal, as they did not find the predictable outcomes of the proposed rule on policy as being any better or worse than the old one. From the member states' point of view, the deletion of third reading was also a way of responding to increasing demands to reduce the democratic deficit at no cost. Still the governments knew from experience from the negotiations of the Maastricht Treaty that lack of complete information could lead to the EP interpreting the rules in a manner not predicted by the Member States. Therefore an amendment was added to the paragraph on the Conciliation Committee, constraining further interpretation to its benefits (Hix 2002: 275, 279).

The possibility of an early agreement between the EP and the Council, the *trialogue*, was the other significant effect of the establishment of informal institutions, which would come to influence the reformation of the Maastricht Treaty. If the EP and the Council agreed legislation could be adopted already after the first reading (Maurer 2003: 228f, Rasmussen 2000: 17f). The EP stressed the argument of efficiency and that responsibilities at European level ought to be carried out more efficiently. The EP was critical to the Council's practise of unanimity since a blocking power was inefficient when a policy had been decided to be jointly carried out (Corbett et al. 2003: 356).

To conclude it could be argued that the institutionalization of the above-mentioned informal institutions was in large a consequence of everyday practise in the EP (Héritier 2007: 98f). The reforms adopted in the Amsterdam Treaty was practice already existing, thus the EP contributed to transferring informal norms to formal procedure (Hix 2002: 275, 279). The removal of the Council's ability to reintroduce its common position can be seen as an effect of the EP's convincing threat to block legislation and led to informal expectation being established. Since the Council was aware of that in case it would seek to use its formal third-reading ability to reintroduce a common position after conciliation had failed, most likely the EP would vote it down (Pollack 2003: 224f).

The relation between informal and formal institutions can be seen as being interdependent; formal institution-building may affect the creation of informal institutions while informal institutions the other way around may lead to changes in formal institutions. The process of creation of formal institutions occurs in a context in which member states interact with other actors in the legislative process (in the IGC's). Thus, member states are likely to take account of the interaction between the formal Treaty changes that they propose and the informal institutional rules that have come into being as a result of previous Treaty changes. It could further be stressed that member states may bring about changes in the Treaty in order to positively act in response to the further cooperative opportunities arising from the process of informal institutionalization even when it might lead to redistribution of competence and power. When cooperation between the Council and EP stabilizes and the balance of power is shifted from the member states, efficiency might be carried out and gained through

informal institutionalization. When informal institutions are determined, member states may be prepared to make Treaty changes to further develop the informal institutions. These reforms may lead to further informal institutionalization, which in turn lead to further Treaty changes. Hence the process between formal and informal institutionalization is recursive (Farrell & Héritier 2003: 583f).

4.4 Path Dependence and the Role of the EP in Treaty Negotiations

As we have looked closer on the informal role and actions of the EP, which has effected the formal development of the co-decision procedure, it is also essential to look closer to the role the EP has had in the IGC's and in the negotiations of the Treaty revisions. The participation of institutions in Treaty reforms is often neglected, most likely due to their lack of veto over the final outcome, though it could be argued that the potential significant role of the institutions is important to consider as well. The influence of institutions often derives from participation in the day-to-day policy process and may be important in a long-term perspective (Christiansen et al. 2002: 14). A lot of literature focuses on the voting pattern within the EP and the aspect of the influence in the IGC:s is often neglected due to that the EP does not have a formal role or is directly involved as a decision-maker. Though it can be argued that the EP has an important consulting and agenda-setting role in the IGC:s, which sometimes can have an impact on the final result. By linking the outcomes of the negotiations of Treaties to outcomes in other areas, actors such as the EP can gain influence in arenas they are not formally involved in and there press for Treaty changes even though it is not directly involved in the Treaty negotiations (Beach 2005: 5, Farrell & Héritier 2007: 287, 292).

When looking at the development of the co-decision procedure, in order to fully understand it is essential to look at the influence of the Treaties as well. It could be argued that the development has had a path dependent character (Svendrup 2002: 123f, 127). It is important to have in mind that IGC:s are not faced with a "tabula rasa" on what new deals can be struck, but rather with the dense framework of existing treaties and agreements. There is scope for additions and departures from this existing framework (Christiansen et al. 2002: 15f). The conferences and negotiations of the Maastricht, Amsterdam and Nice Treaty were based on revisions on the previous Treaties, hence structured by the past. The negotiations in the Amsterdam Treaty could be seen as "left-overs" from Maastricht. Hence the agenda of the conferences could be claimed to be path dependent; decisions taken in one phase generated opportunities and constraints for decisions to be made in a later stage (Svendrup 2002: 123f, 127). Regarding the development of the co-decision procedure it could be claimed that once the procedure was introduced in the Maastricht Treaty, the most likely progress was to further develop it in the Amsterdam Treaty (Johansson & Raunio 2005: 519).

The member states are the formal actors in the IGC: s but the Commission and the EP still must be consulted during the negotiations. Thus it can be argued that even though the role and participation of the different EU institutions is limited they still do

have an influence (Sverdrup 2002: 129). Since the EP is represented in the IGCs, it has an opportunity to project their institutional self-interest (Christiansen et al. 2002: 14). The EP was during the IGCs of the Amsterdam and Nice Treaties continually updated and dedicated considerable resources to seek influence in the negotiations. Both the Commission and the EP established special task forces and debates, through which the EP gained the administrative power to collect and take part of position papers from the member states. Increased complexity in the EU system led to member states being more dependent on the supranational institution's information-processing and administrative capacities, specifically the smaller member states, which have less capacity than the larger member states. The EP task forces had significant capacity, which gave it high legitimacy in EU circles (Sverdrup 2002: 129). It can be claimed that this has led to increased influence of the EP later in the actual negotiations. As discussed above in the negotiations of the Amsterdam Treaty the EP proposed that an extension of the dialogue and making an early agreement after the first reading if the Council and the EP agreed should be allowed. Due to its strategic acting, the EP for the first time played an important formal co-agenda setting role. Before the IGC leading to the Amsterdam Treaty should take place, a reflection group was formed in order to prepare the negotiations of the foreign ministers. The EP took part in this group, proposing a reformation of the co-decision procedure and the acceptance of early agreement. The fact that the Amsterdam Treaty established and formalized an informal institution; the possibility for the EP and the Council to conclude and formally adopt an agreement already after the first reading, can clearly be seen as an unexpected informal institutional innovation where the member states could not foresee the development when introducing the co-decision procedure (Farrell & Héritier 2007: 295f).

In the IGC and negotiations of the Maastricht Treaty the EP had argued for a substantial increase of its powers through the introduction of the co-decision procedure. It was very active in the IGC in order to achieve its goals but the EP did not gain equal footing with the Council in the procedure. The Council was allowed to have a third reading to reject EP amendments to the proposal (Beach 2005: 78). In the preparations of the negotiations of the Amsterdam Treaty the EP once again proposed that the third reading should be dropped on the whole. This time the Commission supported the proposal but several member states did disagree. Finally the member states met the EP's request and approved the proposal. The informal practice of the EP had been to reject any of the Council's reintroduced common positions and thereby keeping the Council from using its right of reintroducing (Farrell & Héritier 2007: 298). As long as the procedure worked and the EP was an attractive actor for the Council to negotiate with, member states found it difficult to argue against a further extension of the procedure (Shackelton 2000: 341).

The situation and acceptance of EP had changed and has improved from the earlier Treaty reforms to some extent the Maastricht but specially the Amsterdam Treaty. In the past the EP used to have a peripheral role where its opinion was dismissed and not taken into much consideration. Though in the discussion of its own powers the EP had now managed to link its formal powers in the daily policy-making with outcomes in the IGC (Beach 2005: 104). The success of the EP to further develop the co-decision procedure in the Amsterdam negotiations can be seen as an example of how an actor without a formal role in a formal arena could use its influence and put pressure to

establish a link to its formal veto power in an informal arena. The purpose is to establish or achieve its institutional objectives in the formal arena. To put it differently; the EP, which gained from an informal rule even though it did not have a formal say in the Treaty revisions, could put pressure on others to have a rule formalised by using its veto in other linked areas where it did have a role and influence (Farrell & Héritier 2007: 298).

It can also be argued that the reform of the co-decision procedure in the Amsterdam Treaty can be seen as a successful example of the EP's power and leadership during the IGC's an negotiations. During the establishment of informal institutions under the existing produce, which put the EP on equal footing with the Council, the EP tabled its proposal to amend the procedure to give the EP *de jure* equal footing. To convince the opposing member states the EP, as earlier discussed, used arguments of efficiency and that the change had no real cost since it already was common procedure and that the two institutions had *de facto* equal footing (Beach 2005: 137).

At last it could be mentioned that the role and participation of the MEP:s are of importance as well. Since the European citizens directly elect the MEP's they can give legitimacy to the proceedings. In the same way the can also dislegitimize a new Treaty since criticism in the committees and plenary is publicized (Christiansen et al. 2002: 15). When the EP receives a draft the MEP's go through each paragraph carefully, sometimes amending and rewriting it. The ministers in the Councils do the same and if the options differ the two institutions must reconcile (Corbett et al. 2003: 358).

5 Conclusions

The introduction of the co-decision procedure has generated new dynamics within the legislative arena in the EU. The EP has been a significant actor in the process of changing and shaping the Community legislation (Corbett et al. 2007: 226). The EP could be seen as the main beneficial actor of the Treaty changes with the introduction and extension of the co-decision procedure over the last decades since it has increased its powers and influence (Burns & Carter 2010: 125). Though it could be argued that the EP's informal powers and influence in the development of the co-decision procedure have been of greater importance than the formal powers. The EP has not always been successful in the negotiations of Treaty reforms and higher-order rules since the EP has had a limited formal role and privileges. The EP's strength has been in the informal and daily decision-making procedures through creation of informal rules unilaterally, which it has been able to impose on the Council and on member states, and which has later led to the formal adoption (Stacey & Rittberger 2003: 877).

Though the EP's advancing role in IGC:s, specifically the negotiations of the Amsterdam Treaty, should not be neglected. In the negotiations of Maastricht, the EP was not able to shape the agenda or outcome and hence did not have that much influence of the establishment of the co-decision procedure. However, in the negotiations of the Amsterdam Treaty the EP was more successful and managed to formalize its informal rules, which were a consequence of its interpretation of the Treaty article. It might be argued that the EP had gained power through the creation of informal institutions, which maybe later changed its role and status in the following Treaty reform and provided influence in its suggestion of an extension of the co-decision.

Following could it be claimed that the most essential development of the co-decision procedure could be explained to be a result of the EP's rule interpretation and the creation of informal norms and institutions. In its interpretation of how the daily procedure and decision-making process should take place the EP tried to gain as much utility as possible and maximizing the outcome to its favour. It therefore follows that the perspective of rational-choice institutionalism is relevant when explaining the EP's role in the development in the co-decision procedure.

Though it is still of great importance to also look at the conditions for the establishment and further reform of the co-decision procedure. This can be found in the IGC:s and preparing negotiations of Treaty reforms. Due to that member states usually did not have complete information and could not predict all consequences of their decision, the concept of incomplete contracts serves as explanation as well. It was due to the lack of information of the consequences the EP could find discretion for interpreting the Treaty article stating the procedure. Hence historical institutionalism provides meaningful complement to the rational choice perspective and the study of the EP's role in the development of the co-decision procedure.

Essential for the development of the co-decision procedure was the success of the EP to later in the Amsterdam Treaty institutionalize the informal institutions and rules it had created through its rule interpretation. Through the institutionalization of the informal rules and institutions and thereby extension the co-decision procedure the EP has managed to gain more power. Though it could be argued that the EP could not have managed to pull through the extension of the procedure if the Treaty negotiations were not bounded of the tradition of path dependence. The development was conditional of the member states' ability to not be able to reverse decisions taken at earlier stages even if the EP had interpret the procedure differently than the member states' original intension. Once the procedure had been established the only option for the member states was to further develop and extend it.

To sum up and to clarify the answers of the questions asked in the beginning of the thesis the role of the EP in the development of the co-decision procedure can be explained by seeing that the EP interpreted the Treaty article and established informal rules in order to put daily-decision making into practice and to gain as much utility as possible in relation to the Council. The member states contributed with the possibility for the EP to make this interpretation. The co-decision procedure can be seen as an incomplete contract; the member states did not have complete information and had no possibility to predict the consequences when the procedure was established, hence room for interpretation existed. The EP later managed to institutionalize the informal institutions in the negotiations of the Amsterdam Treaty but also in this case did the member states have a role. Due to the tradition of path dependency in IGC:s, the member states could not reverse their earlier decisions regarding the co-decision procedure even though it can be argued that the EP had interpreted it beyond its original intent and the natural development in the Amsterdam Treaty would be a further extension of the procedure. As an answer to the second question I pose the EP has enjoyed increased power in terms of becoming an equal co-legislator with the Council because of the development of the co-decision procedure. It has also advanced its role as an actor in the negotiations of Treaty revisions even if the role is still informal.

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