European Parliament

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT C

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What are the challenges for the European Parliament? Legislation, scrutiny and organisation

IN-DEPTH ANALYSIS FOR THE AFCO COMMITTEE

EN   FR

2015

What are the challenges for the European Parliament?
Legislation, scrutiny and organisation

IN-DEPTH ANALYSIS

Substance

The aim of this report is to emphasise some of the challenges that the EP will have to confront during the next parliamentary term. In legislative terms, MEPs will have to direct their attention towards trilogues, legislative initiative and reviews of pending proposals. As regards scrutiny, the global strategy of the EP towards the Commission (support or independence) is at stake. Delegated legislation and committee procedure also merit some attention. Finally, the internal organisation of the EP must be considered in the context of the image of the institution, be it the impact of the 'rationalisation' work undertaken during the 1980s or the way in which the political divisions are revealed or kept hidden.

This document was commissioned by the European Parliament's Committee on Constitutional Affairs.

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LANGUAGE VERSIONS

Original: French

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LIST OF ABBREVIATIONS

ADLE   Group of the Alliance of Democrats and Liberals for Europe

ECB   European Central Bank

ECI   European Citizen's Initiative

ECT   Treaty establishing the European Community

EP   European Parliament

PPE   Group of the European People's Party (Christian Democrat)

RPS   Regulatory procedure with scrutiny

S&D   Group of the Progressive Alliance of Socialists and Democrats

TEU   Treaty on European Union

TFEU   Treaty on the Functioning of the European Union

SUMMARY

The report considers the challenges of the new parliamentary term in the areas of legislation, scrutiny and internal organisation.

I. CHALLENGES IN THE AREA OF LEGISLATION

Since the mid-1990s, legislative issues have been central to the work of the EP. The Lisbon Treaty greatly broadened the scope of the ordinary legislative procedure and MEPs have made good use of their new powers.

There is still room, however, for the assembly to exert greater influence in three areas:

1. Trilogues and early agreements

   Here, the aim should be to:

   – assess more effectively the gains which the EP hopes to make through the use of early agreements;

   – take account of the impact of trilogues on internal balances in the EP;

   – identify the 'important' legislative proposals which should not be dealt with by means of trilogues.

2. Initiative to take the legislative initiative (Article 225 TFEU)

   – the EP should insist that the Commission deal with its initiatives in the same way as European Citizen's Initiatives (ECIs);

   – the EP should seek to become the key interlocutor for civil society groups which are behind reform projects, so that they consider ECIs only as a last resort.

3. Reviewing pending proposals

   J.C. Juncker's reference to the principle of 'political discontinuity' implies that the Commission does not feel bound by existing proposals. The EP should anticipate that eventuality and ensure that it is not presented with a fait accompli.

II. CHALLENGES RELATING TO POLITICAL SCRUTINY

There are numerous challenges as far as scrutiny is concerned. These are closely linked to the new institutional setup, established following the Lisbon Treaty and the confirmation of the Junker Commission.

1. Scrutiny of the Commission

Today the EP has at its disposal all the tools available to modern democratic parliaments so that it can exercise oversight over the Commission. It must, however, maintain the political dialogue that was established with the confirmation of the Commission, and promote the idea that Commissioners are accountable to MEPs.

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2. Relations with the European Council and its President

The European Council is now the driving force behind the EU. The EP must take advantage of the arrival of a new President to ensure that he presents reports to plenary, in accordance with the Treaty.

3. Challenges relating to delegated legislation and comitology

The EP receives a significant amount of information about comitology activities and is involved in the new procedure of legislative delegation to the Commission. Monitoring these dossiers, however, is a complex and thankless task. MEPs should be made more aware of the issues at stake in secondary legislation. The EP should also call on the Commission and the Council to enhance existing procedures.

III. THE PROBLEM OF INTERNAL ORGANISATION

Changes to the EP's internal organisation will largely hinge on its legislative and supervisory priorities. Nevertheless, it is worth looking at a few points more closely.

1. 'Rationalising' the decision-making process

'Rationalising' the decision-making process has significant consequences when it comes to allocating power within the institution, and is a highly divisive matter. It should therefore not be regarded as a purely technical issue.

2. The EP's public image

'Rationalising' the activities of the EP makes them more difficult to understand. Parliament's image is also suffering from the impression that, on the one hand, ideological diversity within the assembly is growing, and, on the other, that it is being 'jointly managed' ever more tightly by the pro-European groups. More effective communication would make plenary debates more intelligible and highlight the work of the committees, which show European democracy in a more flattering light.

3. Impact assessments

The EP has an Ex-Ante Impact Assessment Unit, which analyses studies carried out by the Commission and amendments put forward by MEPs. The Unit only has limited means at its disposal, however, and its work could restrict MEPs' political freedom. Conducting ex-post impact assessments would pose no such problem.

1. INTRODUCTION

Before we consider the challenges that the European Parliament (EP) will have to confront during the new parliamentary term, clarification is needed in three areas. We are not doing this in the name of some abstruse methodology; rather, it is essential if we are to grasp the key issues at stake and make our assessment a realistic one.

1.1.   Analysing the institutions of the Union

We will consider the matter in **historical neo-institutionalist** terms (Jupille and Caporaso, 1999): in our view, the institutional processes must be considered in the long term, based on the acknowledgement that the choices made in the past impact on the institutional strategies (path dependency), and on the assumption that the institutions promote stable world visions. The way in which the actors within the institutions, their operational rules and their routines are configured means that these visions and the strategies deriving from them are unlikely to undergo radical change. This being the case, any review of the strategy of the EP and the other institutions must **take account of their prior strategies**, and must be based on the principle that significant reorientations will be difficult to implement or will be a source of conflict. It makes no sense to envisage a radical change in the EP's strategy.

The complexity of the **'preferences of the actors within the EP'** must also be emphasised. Those actors are not only highly diverse, given the composition and structure of the EP, but are also constructed and defended at different levels: at personal level (MEPs, civil servants, etc.), at the level of the constituents of the EP (political groups, parliamentary committees, governing bodies, directorates-general, etc.) and at the level of the EP itself. It would be wrong to place too much emphasis on the EP's 'strategy', and it must be borne in mind that the EP is not a monolithic and unanimous institution, but a **collection of actors with diverse and changing strategies**. It should also be borne in mind that the EP's institutional strategy has always been the subject of heated debate within the institution, whether in the context of the overhaul of its Rules of Procedure with a view to making decision-making more 'effective', or the EP's more or less conciliatory attitude in interinstitutional negotiations.

1.2.   Understanding the EP's strategy

Any proper analysis of the way the EP's strategy is defined must also emphasise that it needs to reconcile various imperatives, which are not necessarily compatible. In other words, drawing up the EP's strategy entails making choices and setting an order of priority between the imperatives in question:

– *representativeness*: MEPs have been elected to present ideas, which may be those of the voters who elected them, their party or their own ideas. The strategy of the EP must **reflect the status of the forces that are present within the assembly**, and of the (highly diverse) ideas that they represent. However, not all MEPs and all political groups take the same approach to the Union's political system and the role which the EP should play in that system.

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– ***institutional capacity***: the EP can only exert influence if it acts coherently, in particular to meet the demands of the majority and the deadlines laid down in the Treaties, whether in the context of the budgetary procedure or the ordinary legislative procedure (second reading). Since the Single European Act was adopted, the majority of MEPs have opted for **increasingly more intensive rationalisation of the internal organisation of the EP**, including the decision-making arrangements in committee and in plenary. The aim has been to maximise the ability of the EP to make its voice heard in the interinstitutional dialogue, by enabling it to adopt positions by the deadlines set and secure broad majorities for those positions. This strategy has come at a cost. however: the individual rights of MEPs have gradually been restricted, to the benefit of the political groups, and to a lesser degree, the committees or a certain number of MEPs (now 40). The Rules of Procedure have been modified on a number of occasions, to control the behaviour of MEPs in the plenary, preventing untimely interruptions and drastically curtailing delaying tactics. The governing bodies of the EP (Presidency, Bureau, Conference of Presidents, etc.) have been assigned increasing powers (Costa and Saint Martin, 2011). Over recent years, the increase in the power of the legislative activities, the growth in the number of MEPs and political parties represented and the arrival of highly Eurosceptic MEPs have encouraged the pursuit of this strategy.

– ***the democratic imperative***: the strategy of 'rationalisation' of the functioning of the EP has always been the subject of disputes. **In this context, two divergent concepts of the democratic imperative are in direct opposition**. Some MEPs believe that the influence of the EP within the decision-making triangle should be maximised, which would have the effect of rationalising the way it functions and reducing the freedom of the individual MEPs: this is described as *democracy by the EP*. Others believe that it is necessary to ensure that democracy is respected within the assembly itself, guaranteeing the freedom of expression and action of MEPs and the spontaneity of exchanges: this is described as *democracy within the EP*. The aim must be to **strike a balance between these two rationales**, bearing in mind that the first is universally supported by senior figures in the assembly, the leaders of the major groups and the Secretariat, and the second by the rank and file MEPs, those within the 'minor' groups and the non-attached Members.

– ***the proper functioning of the Union***: the EP has always asserted its right of veto (in matters relating to legislation, budgets, conventions or confirmation of the Commission), to enable it to make its demands heard within the interinstitutional dialogue. However, it has frequently backed down in the interests of the proper functioning of the Union. The EP has also become involved in trilogues and early agreements in a legislative context, **in the interests of the effectiveness of the political system of the Union**, with the aim of safeguarding the Union's capacity to legislate despite the new constraints on decision-making brought about by the 2004 and 2007 enlargements.

– ***the accountability of the EP***: MEPs must be accountable to citizens and the organisations that represent them (bodies within civil society, political parties, the media, etc.). The electoral mandate of MEPs does not release them from their obligations towards those who have elected them. They must therefore ***consider the way in which the actions of the EP are perceived in the outside world***, and pay particular attention to the need for transparency and readability when defining its strategy and own methods of functioning. In other words: the institutional choices made since the mid-1980s have damaged the image of the EP, which tends to be seen as a monolithic assembly subsumed into the Brussels bureaucracy

1.3. The new institutional architecture of the Union

The history of the regime of the Union may be summarised by the concept of 'parliamentarisation', which is understood as a process of ever closer alignment with national systems (Costa, 2013). Although the 'Community method' has never been directly called into question, numerous reforms and developments have turned the Union into a constitutional state, within which the elected assembly enjoys extensive powers, and whose institutions interact in an ever more partisan fashion.

The 2014 European election campaign and the confirmation of the Juncker Commission demonstrated that this process was still taking place. The Union may now be described as a system comprising five main institutions:

- the **Court of Justice**, which is an arbitration, administrative and constitutional court rolled into one;
- a two-pronged executive body, made up of the **European Council**, whose role is akin to that of a head of state exercising leadership, and the **Commission**, which is responsible for implementing the policy thus defined, using its legislative budgetary and implementing powers;
- a bicameral parliament, made up of the **EP** (the lower chamber representing the citizens), and the **Council** (the upper chamber representing the States).

The Union's institutional system now meets only in part the imperative of the distribution of powers so dear to Montesquieu, but a constant process of change has been taking place since the 1980s. The Lisbon Treaty clarified matters significantly, by emphasising the legislative role of the Council, modifying the procedure for appointing the Commission, providing a comprehensive definition of the EP's role (Article 14 TEU) and giving the European Council the status of a fully-fledged institution.

It must be noted that **relations between the executive and legislative powers have become increasingly politicised**. Whereas the EPP-S&D grand coalition, which succeeded in having J.C. Juncker appointed as President of the Commission, is becoming more stable (with or without the support of the ADLE), in particular so that it is now able to confront the Eurosceptics, the functioning of the EP could change, as could the decision-making rationale within the Union. In future, the Commission could in particular seek to reach agreement upstream with the major groups before proposing a new item of legislation. It is also possible, however, that the European Council will continue to exercise its authority over the Commission and that it will oppose an institutional development of this kind. At all events, the EP will have to take account of the new institutional context when setting its strategy.

The challenges to be faced in the new parliamentary term in the context of legislation, scrutiny and internal organisation are examined below.

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2. LEGISLATIVE CHALLENGES

Legislative questions have been central to the EP's agenda and activities since the mid-1990s. The Lisbon Treaty made the ordinary legislative procedure generally applicable to highly important matters from which the EP had previously been excluded, and MEPs have not been slow to exercise their new powers. However, there are margins of progression as regards the influence of the EP. Three issues deserve special attention.

2.1.   Trilogues and early agreements

Trilogues first appeared on the scene during the first decade of this century, as a result of the reform of the codecision procedure (Amsterdam) and the desire to avoid institutional blockages following enlargement in 2004. They have become commonplace since then, and more and more texts are now being adopted at first reading.

Initially, this new decision-making procedure was employed informally, and different rapporteurs and committees developed different practices.

Major reforms have already enabled better management of this practice within the EP: the procedure is now more transparent; the parliamentary committee delivers a clear mandate to the negotiating team; negotiations are no longer led by a single rapporteur but by a group of MEPs; a significant proportion of cases (1/3) are submitted to the plenary.

Nevertheless, progress is still possible:

1. The **potential gains achieved by participating in early agreements need to be better assessed**. As already stated, these agreements, made possible by trilogues, have become the norm (85% of texts during the 2009-2014 parliamentary term Table 1).

Table 1: Codecision procedures adopted since 1 November 1993

	1989-1994		1994-1999		1999-2004		2004-2009		2009-2014		TOTAL	
End of 1st reading Council			1	1%	115	29%	295	70%	448	85%	859	57%
End of 2nd reading EP			1	1%	95	24%	46	11%	40	8%	182	12%
End of 2nd reading	11	73%	86	58%	101	26%	53	13%	30	6%	281	19%
End of 3rd reading	4	27%	60	40%	84	21%	23	6%	8	2%	179	12%
Total	15		148		395		417		526		1501	

Source: Office of the Deputy Secretary-General of the EP

The institutions stand to gain to varying degrees:

- The Council, and the rotating Presidency in particular, have much to gain: early agreements enable them to play a central role in negotiations on behalf of the 28 Member States and to speed up the decision-making process, which makes for a more positive end-of-term assessment for the country holding the Presidency.
- The Commission likes early agreements because it can modify (or withdraw) its proposals right up until the completion of the first reading, and thus avoid unexpected conciliation agreements or amendments at second reading.
- The potential gains for the EP are less clear, but essentially concern better management of organisational constraints (timesaving), a subjective assessment of

potential gains during trilogue negotiations and a willingness to contribute to the proper functioning of the EU. Early agreements do have a negative impact on Parliament's image, however, since it has to give up some of its more public discussions and interactions with the Council and the Commission. Thus, the proposals which best highlight the EP's role in the EU decision-making process have always been given two readings: this enables MEPs to voice their disagreement and prove that they can impose certain choices on the Commission and the Council (Crespy, 2012).

2. Account must be taken of the **impact of trilogues on the internal balances within the EP**; the generalised use of this procedure has led to a reallocation of powers within the institution (Costa, Dehousse and Trakalova, 2011; Costello and Thomson, 2010; Farrell and Héritier, 2004; Héritier and Reh, 2012; Rasmussen and Reh, 2013). Trilogues have also benefited 'large' groups (and their most influential members) and the hierarchies of the assembly (committee chairs, Vice-Presidents with responsibility for codecision). In contrast, the rank and file MEPs, the members of the 'small' groups and the non-attached Members feel excluded from decision-making, reduced to the role of rubber-stamping agreements reached behind closed doors. Here too, two visions of democracy (*by the EP* and *in the EP*) are in direct opposition.

3. Finally, **'important' proposals** must be distinguished from others; no clear and universal criterion currently exists in this regard. Each institution has its own view of matters, and opinions differ even within the EP. However, it is crucial for the most important proposals to be examined in depth in committee and thereafter in the plenary, and to receive a second reading and even be dealt with by means of conciliation, if necessary. If no universally valid criterion exists (a new text is not necessarily more important than revising an existing text; a short text may be as crucial as a long text; a text presented by the Commission as a 'revision' or 'codification' may be highly political, etc.), there must be an option to examine texts on a case-by-case basis;

Rules 73 and 74 of the EP's Rules of Procedure (July 2014) set out the procedures for opening a trilogue, drawing on the 'Code of conduct for negotiating in the context of the ordinary legislative procedures' adopted by the Conference of Presidents on 18 September 2008 (Annex XX to the EP's Rules of Procedure). The Code of conduct stipulates that:

> *'the decision to seek to achieve an agreement early in the legislative process shall be a case-by-case decision, taking account of the distinctive characteristics of each individual file. It shall be politically justified in terms of, for example, political priorities; the uncontroversial or "technical" nature of the proposal; an urgent situation and/or the attitude of a given Presidency to a specific file'.*

This case-by-case approach is relevant, since it makes it possible to take account of the nature of the proposal and of the attitude of the Presidency and of the Commission. It rules out, however, the definition of a medium-term institutional strategy and thus serves to **make early agreements the norm, even though the EP has taken no political decision to that effect**.

2.2. 'Initiative to take the legislative initiative'

At an early stage, the EP assumed the right 'of initiative to take the initiative' based on its right to adopt declarative resolutions. The Maastricht Treaty formalised that right:

> ***Article 225 TFEU (ex Article 192, second subparagraph, TEC):*** *The European Parliament may, acting by a majority of its component Members, request the Commission to submit any appropriate proposal on matters on which it considers that a Union act is required for the purpose of implementing the Treaties. If the Commission does not submit a proposal, it shall inform the European Parliament of the reasons.*

Today, this power is shared, in some circumstances, with the Council, the Member States, the Court of Justice, the ECB and even with the European Citizens' Initiative (ECI) established under the Lisbon Treaty. In fact, the Council bypasses the existing procedures by using the European Council, from which 50% of the legislative initiatives of the Commission now originate.

For the time being, the EP is not taking full advantage of this opportunity, and appears to be relying more on the commitment by the Commission to exercise 'its right of initiative in a constructive manner with a view to reconciling the positions of the European Parliament and the Council' (Joint Declaration on practical arrangements for the codecision procedure, 2007). Progress has been made in the use of Article 225 TFEU, but the results are still disappointing for the promoters of the initiatives, owing to the attitude adopted by the Commission.

The EP should **require the Commission to deal with its initiatives in the same way as the ECIs**, which are, at the very least, the subject of an official communication. When interviewed, Vice-President Timmermans gave the impression that this was conceivable. Given the success of the ECI procedure, it would make sense for the EP to make greater use of the procedure laid down in Article 225 TFEU, in particular so that it has the appearance of acting as a go-between for requests coming from civil society.

There is a risk that representative democracy - as outlined in Article 10 TEU, for example, which states that 'the functioning of the Union is based on representative democracy'- will be superseded by direct democracy. If the EP is unable to influence the Union's legislative agenda, the ECI could quickly establish itself as the preferred means of doing so. The targeted use of Article 225 TFEU would enable the EP to act as the **primary interlocutor for civil society bodies developing reform projects**, and ensure that the ECI is seen only as a last resort.

EP initiatives have not garnered a great deal of attention thus far, but **MEPs have several means of changing the Commission's attitude at their disposal**. If they consider that a an initiative should genuinely have priority, they can make it a key issue in interinstitutional relations, to be highlighted by the President of the EP in his speeches to the European Council and at his meetings with the President of the Commission. As a last resort, the EP can compel the Commission to give serious consideration to its initiatives which fall under Article 225 TFEU by using its wide-ranging powers of veto.

2.3.   Reviews of pending proposals

The European Commission is formally entitled to withdraw legislative proposals if they are not adopted following their first reading. The Barroso I Commission had made extensive

use of this right, thereby causing conflict with the EP: The Commission saw this as a 'technical' measure, while some MEPs saw it as an essentially political act: the withdrawal of pending proposal can amount to a deregulation strategy.

The Juncker Commission will very likely do the same, albeit adopting an even more political approach. In the guidelines sent to the Commissioner candidates, the President in fact stated *'I will ask you to discuss, within the first three months of the mandate, with the European Parliament and the Council, the list of pending legislative proposals and to determine whether to pursue them or not, in accordance with the principle of "political discontinuity"'* (letter to Frans Timmermans, 10 September 2014). **The reference to the principle of 'political discontinuity' shows that the Juncker Commission will not consider itself to be bound by the proposals made by the Barroso II Commission**, and that it could make extensive use of its right of withdrawal. This principle, which is inspired by German politics, was for the time being only applicable to the EP, which is subject to changing majorities. By affirming the principle of political discontinuity, J.C. Juncker is equating the Commission with a government, which, by virtue of the logic of alternation in power, is free to withdraw pending legislative proposals.

The withdrawal of pending proposals is not politically neutral: it may be a means of pursuing political goals, and must therefore be closely monitored by the EP. The issue is all the more crucial because J.C. Juncker has resolved to legislate less, in keeping with the trend started by J.M. Barroso (Table 2).

Table 2: legislative proposals received by the EP from the Commission

	2005	2006	2007	2008	2009	*Total*	2010	2011	2012	2013	2014	*Total*
Codecision	93	114	104	125	66	***502***	107	169	92	132	66	***566***
Approval	21	14	20	32	25	***112***	58	39	46	52	36	***231***
Consultation	114	109	123	76	60	***482***	18	43	12	25	9	***107***
Total	228	237	247	233	151	***1096***	183	251	150	209	111	***904***

Source: Office of the Deputy Secretary-General of the EP

Finally, this prospect raises scheduling issues which could be damaging to the EP: if the Commission withdraws a large number of proposals they will not be proposed again until 2016 or 2017, given the sluggish nature of the procedure (communication, impact assessments, consultation of interested parties, etc.). This being the case, **the EP will be confronted by a flood of legislative proposals** at the end of its mandate, and will be forced to accept the rationale of agreements at first reading, as was the case during the 2009-2014 parliamentary term.

The EP must therefore pay the necessary close attention to this issue, in order to avoid being **presented with a fait accompli by the Commission**. While the withdrawal of some proposals may be politically desirable, and fulfils the expectations expressed within the EP and by public opinion, it is vital to adopt a case-by-case approach.

Another related and equally hotly debated dossier is that of the **possible repeal of existing legislation**. Once again, this raises the problem of what is and is not political.

3. ISSUES RELATING TO POLITICAL SCRUTINY

There are multiple issues associated with scrutiny, and they are closely linked to the new institutional configuration which is emerging following the Lisbon Treaty and the confirmation of the Juncker Commission.

3.1. Scrutiny of the Commission

The EP has at its disposal all the tools available to modern chambers which enable it to scrutinise the Commission: questions, hearings, temporary committees and committees of inquiry, consideration of reports which must be submitted by the Commission, information on the implementation of the budget and comitology, reports by the Court of Auditors, information forwarded by the European Ombudsman, petitions, etc. MEPs use them extensively and independently. Unlike in the Member States, the lower has no political majority which is required as a matter of principle to support the government and be moderate in its criticism and scrutiny.

As already stated, it is too soon to determine the impact of the *Spitzenkandidat* procedure on the Union's political system, in particular as regards relations between the EP and the Commission. Much will hinge on the strategy adopted by the EP. It is now up to MEPs to choose between two options based on two different rationales:

- a rationale of **institutional independence** between the EP and the Commission, in keeping with the practice employed during previous parliamentary terms and the 'Community method', meaning that the EP does not automatically support the Commission, goes over its legislative proposals with a fine-tooth comb and scrutinises its activities closely and - by and large -critically;

- a rationale of **parliamentary majority**, which implies support for the actions of the Commission, in principle, by the groups which voted for its confirmation and the development between the two institutions of joint strategies vis-à-vis the Council and the European Council.

At all events, it is vital that the EP should **maintain the political dialogue established when the Commission was confirmed** and foster the idea that the Commissioners are accountable to it. The aim must be to develop and place on a systematic footing the links forged between parliamentary committees and Commissioners at the hearings. The introduction of that procedure in 1994 started the trend towards closer relations between MEPs and Commissioners and it is up to MEPs to build on those relations even further.

The new structure of the Commission, with its seven Vice-Presidents responsible for supervising the work of a certain number of other Commissioners, also **poses specific problems**. In which parliamentary committee will they be received? Is there still any sense in maintaining a dialogue with the other Commissioners if the vice-presidents hold the right of legislative initiative and can veto proposals by the Commissioners they supervise? Given that Jean-Claude Juncker has called for less consensus-based decision-making in the College of Commissioners - and votes on certain controversial issues - should the EP consider cultivating alliances with certain Vice-Presidents against the rest of the College?

3.2. Relations with the European Council and its President

The European Council is now the driving force behind the Union (Puetter, 2014). It has clearly taken on the leadership function that was originally the Commission's and exerts

significant influence on its legislative agenda. The EP must therefore establish a dialogue with that institution, and in particular with its President. The EP managed to establish productive contacts with Herman Van Rompuy, who reported to MEPs on his actions. There is still scope for progress, however, particular as regards enforcement of the Treaties to the letter.

Article 15(6)(d) of the TEU stipulates that the President of the European Council 'shall present a report to the European Parliament after each of the meetings of the European Council'. **This provision is not observed to the letter**, since, in accordance with the practice established in 2010, the President of the European Council presents a report to an ad hoc meeting of the Conference of Presidents which is open to all MEPs - i.e. an informal meeting of the assembly. The problem is that these meetings are held in camera and no minutes are published, so that there is little or no media coverage. What is more, few MEPs who are not members of the Conference of Presidents get to speak, which does not foster interaction with the President of the European Council.

The EP should take advantage of the arrival of a new President to try to impose a different approach, one which spotlights more effectively the EP's actions vis-à-vis the European Council and emphasises the political nature of their relations. In a broader context, MEPs must make clear that the mere fact that **the President of the European Council has no political responsibilities does not mean that he should not be accountable to the EP**. MEPs could draw inspiration from their relations with the President of the European Central Bank (ECB). The EP is involved in his appointment, unlike in the case of the President of the European Council, but once appointed the President of the ECB is completely independent. Nevertheless, he presents his institution's annual reports to the plenary and each time this is followed by a debate. He is also invited to attend at least four meetings a year of the parliamentary committee responsible. At those meetings he makes a statement and answers MEPs' questions. Lastly, he can also take part in other EP meetings, at his own request or at the request of the President of the EP. In each case, a verbatim report of the proceedings of these meetings is drawn up and translated into all the languages, so as to publicise these events as much as possible. This set of practices could form the basis for the EP's future relations with the President of the European Council.

3.3.   Issues relating to delegated legislation and comitology

This is a more technical, albeit equally important, aspect of the scrutiny function of the EP. Having fought hard for some considerable time, the EP now **receives a great deal of information about a large proportion of the activities associated with comitology**. It is also fully involved in the procedure of legislative delegation to the Commission, which was introduced by the Lisbon Treaty (Bonfond, 2014). However, monitoring these dossiers is a complex and thankless task: few MEPs are prepared to devote a significant proportion of their parliamentary working time to this issue or indeed have the expertise required to do so. As a result, the EP is making only partial use of its powers in this area.

It is vital to **make MEPs more aware of the issues at stake in secondary legislation**, which has a major impact on European policies. The administrative resources devolved to this task must also be increased, while the associated responsibilities must be clarified. It would appear that the actors within the parliamentary committees (MEPs and officials) who have monitored the production of the files, are better equipped than the officials in the cross-discipline departments of the EP (conciliations and codecision unit) to deal with the issues associated with the negotiations on secondary legislation.

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The EP must also **seek improvements**. Today, secondary legislation poses a number of problems which call for reforms or clarifications (Blom-Hansen, 2014):

−   the **continuing co-existence of pre- and post-Lisbon procedures**, and the desire of certain actors to retain the former, in particular the regulatory procedure with scrutiny (RPS). This trend represents a reaction to the Commission's initial overuse of the delegated legislation procedure introduced under the Lisbon Treaty; in response, the Council has favoured the RPS, which was in fact supposed to be phased out.

−   **The ad hoc nature of the procedures**, which involve numerous exceptions, derogations and special cases, imposing hitherto unprecedented legal complexity on secondary legislation. Only a handful of experts from the institutions, the private sector and the academic world currently have the knowledge required to monitor the issue, which raises obvious problems of legitimation. This complexity limits the ability of political actors (MEPs, ministers, national parliamentarians) and representatives of civil society to **grasp the real issues at stake in delegated legislation**. Drafting is thus left to civil servants, even though the issues at stake are often political and the new Commission President has said that he wants to enhance the specifically political dimension of the functioning of the Union.

−   Secondary legislation suffers from **a lack of transparency and the difficulty of obtaining documents** concerning the principle of legislative delegation, comitology and even trilogues. There are considerable differences, therefore, in the ability of EU actors to follow negotiations on delegated legislation as effectively as those on primary legislation.

−   Lastly, trilogue negotiations very frequently come up against the issue of the **distinction between delegated acts and implementing acts**. This apparently technical issue is fundamental to the implementation of legislation, but the negotiators, particularly those from the EP, attach only limited importance to it and would prefer to focus on other, more obviously political, matters.

An interinstitutional agreement is being drawn up on these issues. **It is important that the EP should enter the negotiations with clear objectives and strong demands**. Three points warrant particular attention:

1. improper interpretations of implementing procedures, such as the *no opinion-no adoption* clause, which is giving rise to heated disputes between the Commission, on one side, and the Council and the EP, on the other;

2. the risk that, paradoxically, implementing measures will make primary legislation more cumbersome and hamper its implementation, precisely the reverse of what was intended;

3. the need to familiarise a broad range of actors in the institutions and representatives of civil society with the subtleties of delegated legislation.

The EP must echo the concerns expressed about delegated legislation within civil society and among the addressees of the European policies. An initial stage could involve the organisation of a public hearing at the EP involving the representatives of the three institutions, experts, practitioners and media representatives. This would put the EP in a strong position during negotiations on the interinstitutional agreement.

4. PROBLEMS RELATING TO THE INTERNAL ORGANISATION OF THE EP

The outlook for the internal organisation of the EP will broadly hinge on the priorities defined in relation to legislation and scrutiny. Be that as it may, a few points need to be examined.

4.1. Issues relating to the 'rationalisation' of the decision-making process

As stated in the introduction, the EP is a chamber in which behaviour is highly regulated and in which the governing bodies and the ('large') groups play a decisive role in the organisation of parliamentary business and the decision-making process in committee and plenary. This option is seen as a 'guarantee' of the 'effectiveness' of the EP, which is understood as the ability to meet binding deadlines and to put together the majorities needed in order to make its voice heard in the institutional dialogue (Costa and Saint-Martin, 2011). It should be borne in mind that, since the cooperation procedure was introduced by the Single European Act, the EP's ability to exert influence has hinged directly on meeting deadlines (three months) and conditions governing majorities (a majority of its constituent Members, not just voting Members, so that MEPs who are absent or who abstain are deemed to oppose the amendments put to the vote). This strategy has imposed order on the functioning of the EP, which was fairly chaotic in the early 1980s.

But it has not been neutral, and it has had **significant repercussions as regards the allocation of power within the institution**. As previously stated, it has worked to the benefit of the large groups, the EP's governing bodies and the MEPs with the highest profiles, and it has given their more self-effacing colleagues the feeling that decision-making has become the preserve of a small elite group of parliamentarians.

This approach to the functioning of the EP also prompts more overtly ideological reactions from MEPs, who, by virtue of their political convictions, the political culture they grew up with or their political careers, are committed to less regulated parliamentary procedures which are conducive to lively, partisan debates.

4.2. The EP's public image and highlighting the work done in committee

The 'rationalisation' of the EP's work also raises the **problem of the image of the institution** – its decision-making procedures are difficult to understand and offer little scope for free interaction between MEPs. The strategic choices to be made as regards the EP's relations with the Commission (independence or support) will also have major implications for the image of the assembly.

And that image is not good. (Gattermann, 2013). Although in principle the public are in favour of the the EP, by comparison with the other Union institutions they are confused as to what it actually does and support is declining. In the survey conducted by the EP after the June 2014 European elections, 54% of those questioned said the EP 'did not take proper account of the concerns of EU citizens'; the figure was only 41% in 2009 (European Parlioament, 2014). A growing number of EU citizens thus seem to think that the thinking which drives the EP has little to do with the concerns of ordinary people and that the way it functions prevents it from taking them into account.

Today, two contradictory trends are shaping the EP's public image:

- On the one hand, it appears to be an assembly in which **ideological diversity is growing**: the presence of numerous Eurosceptic MEPs proves that the EP is not a bureaucratic, monolithic institution, but rather an assembly in which all the political views which find expression in European society are represented, which is open to political controversy and which is capable of making contradiction part of the Union system (Brack, 2012).

- At the same time, the broad support lent by the S&D, PPE and ALDE Groups to the Juncker Commission and the possibility of **'joint management' of the EP** by the groups which account for two-thirds of the MEPs paints a picture of a consensus-based assembly in which the left-right division is disappearing and in which MEPs from other political formations are being marginalised. This approach based on compromise, which is seen as entirely normal in the 'consociative' Member States (Lijphart, 1985), where it also provides the foundation for national political life, is less well understood in those where the polarisation of political life and shifts in power between left and right are the democratic norm. It gives people in those countries the feeling that the European elections are irrelevant and that decision-making in the EP amounts to nothing more than window-dressing.

The plenary tends to exaggerate these two facets of the EP's proceedings. Conversely, the work of the **parliamentary committees** shows that decision-making does not necessarily boil down to the search for the lowest common denominator and that 'middle-ground' agreements can be the result of open-minded negotiation. It also shows that MEPs who do not belong to the three centre groups can make their views heard. Efforts should therefore be made to publicise the work of the parliamentary committees.

4.3. Impact assessments

As part of its Better Regulation strategy, the Commission has made it routine to conduct ex ante impact studies when preparing new legislative proposals (Radaelli, Dunlop and Fritsch, 2013). Vice-President F. Timmermans appears to be very keen on this practice.

MEPs have often complained about the quality and the partiality of the studies conducted by the Commission. In June 2011, therefore, they adopted a report entitled 'Guaranteeing independent impact assessments' and set up their own dedicated structure: the 'ex ante impact assessment' unit, which analyses the assessments conducted by the Commission and conducts its own assessments on the amendments tabled by MEPs. The unit only has five staff, however, so that its sphere of action is extremely limited in comparison with that of the Commission, which has many more staff and significant outsourcing budgets. Some MEPs fear that the unit will reduce their freedom to draft amendments and will slow down the legislative process, as the assessment of amendments takes time. Making it routine to conduct ex ante impact studies within the EP may thus **boost even further the drive to 'rationalise' its functioning**. This option must be seen as a political choice and treated as such, not as a self-evident or necessary course of action.

Ex post impact assessments would not display the same flaw: they would give MEPs a better grasp of the issues central to a proposal or policy and enable them to propose changes or scrutinise the work of the Commission more effectively in this area, without restricting their sphere of action and without adding to the 'bureaucratic' nature of the debate. In that connection, the cooperation now taking shape between the EP and the European Economic and Social Committee with a view to the latter conducting ex post impact assessments looks like a promising avenue.

CONCLUSION

Following the unexpected events surrounding the confirmation of the Juncker Commission, **the EP is at a turning point in its history**. It has an opportunity to develop or even redefine its relations with the other institutions, to establish a new balance of power. With that aim in view, MEPs must launch a strategic review which calls into question certain practices and choices which at first sight seem deeply rooted in the working culture of their institution.

The 'effectiveness'-based approach to the EP's organisation and strategy and the decision to place the emphasis on first-reading agreements should be the subject of an open debate in the EP, given their impact on internal dynamics within the institution, the relationship between expertise and politics and the EP's public image. It is becoming difficult to convince people of the merits of an assembly whose decision-making in plenary is often confined to rubber-stamping agreements negotiated in committee and at interinstitutional level. Without calling into question the methods which enable the EP to carry out its remit, the review - begun a few years ago - of ways of making plenary debates more attractive to the media and the public needs to be continued.

Of course, this discussion must be **closely linked to that on the EP's strategy towards the Commission and its President**. Here again, the plenary should consider the issue and set its medium-term strategy - independence or negotiated support.

In that connection, MEPs must remember that at various times their institution has managed to consolidate its position vis-à-vis the Commission and Council in order to achieve its own ends (Rittberger, 2005). Whether in the budgetary sphere in the early 1980s, or in the legislative sphere in the mid-1990s, **the EP had no compunction in using its veto or the threat of a veto** (Priestley, 2008). The EP's success in securing the appointment of J.C. Juncker as Commission President shows that this strategy remains effective. It is an instrument which should be used prudently, however: misusing this power would undermine the long process of establishing constructive relations with the Commission and Council through the negotiation of many interinstitutional agreements, a process which culminated in a substantial upgrading of the EP's powers in the Treaties. MEPs could, however, use the threat of a veto in specific cases in order to put their views on certain issues across more effectively.

At all events, the prospects for the EP seem favourable. **The process of the 'parliamentarisation' of the Union**, which began in the 1980s, **has continued in recent years**, as evidenced by the increased powers conferred on the EP by the Lisbon Treaty and the role, as crucial as it was unexpected, played by the assembly in the appointment of Jean-Claude Juncker. The process of parliamentarisation is likely to continue, for three main reasons:

- First of all, **the rise of the European Council needs to placed in context**. The fact that the Lisbon Treaty conferred on it the status of a fully-fledged institution and the leading role it has played in managing the euro crisis point to a strengthening of the intergovernmental approach in the Union. That approach, however, primarily concerns issues which were not previously dealt with at supranational level. A new chapter in the European integration process can be said to have been unfolding since 2009: it is characterised by an intergovernmental approach, admittedly, but it does not pose a direct threat to the powers of the other institutions, and has in fact strengthened them, through the budgetary Treaty. The intergovernmental method has also shown its limitations: the European Council has

been revealed as an institution which cannot react quickly to problems and which is hamstrung by the need to seek a consensus. Its scope for action is likely to remain limited, therefore.

- **The Community method is increasingly coming under fire** from the public, national leaders, actors in the institutions (Dehousse, 2011) and even some Commission staff (Brack and Costa, 2012). It would not appear to be an appropriate response to the challenges of legitimation facing the Union today.

- **The process of the parliamentarisation of the Union is gaining ground,** however. This is partly the result of the work done in the EP since the 1980s to bring about a strengthening of the assembly's powers and impose that option as the best response to the problems facing the Union in the areas of working methods and democracy. It still enjoys a broad measure of support among MEPs, because even moderate Eurosceptics believe that strengthening the EP is desirable for democratic reasons - if only to ensure more effective scrutiny of the Commission. The idea of greater parliamentarisation also has supporters outside the EP - in particular among the negotiators of the Treaties - on the grounds that the parliamentary system is part of the political heritage common to all Member States and thus to all Union actors.

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