**BOSTON EUSA 2015 PAPER ON DEVELOPMENTS IN EUROPEAN PARLIAMENT HANDLING OF EUROPEAN UNION LEGISLATION SINCE THE TREATY OF LISBON**

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***(this paper represents the personal views of its author, and not necessarily the position of the European Parliament)***

**Summary**

The Lisbon Treaty greatly extended the scope of the co-decision procedure so that it now applies to almost all EU legislation and is now referred to in the Treaties as the normal legislative procedure. The European Parliament has since made use of these new powers in such sensitive policy areas as the reform of the common agricultural and fisheries policies where its role was previously much more limited.

The current paper looks at these changes and at the overall impact they have had on the work of the European Parliament. At the same time the way in which Parliament has handled co-decision agreements has also evolved. In recent years, for example, there has been a steady decline in the number of co-decision procedures which have ended up in conciliation and a great increase in the number of first reading or early second reading agreements. This in its turn has raised new concerns about transparency and accountability and the development, in certain cases, of a new system of mandates, whereby Parliament votes on such a mandate before an agreement is reached.

The Parliament has also sought to reinforce its own expertise in EU legislative matters, not least by setting up a new European Parliament Research Service (EPRS). One important related development has been the development of an impact assessment capacity within the European Parliament, looking not just at the adequacy of the legislative impact assessments carried out by the European Commission but also at its own amendments and other matters.

 A further innovation in the Lisbon Treaty was the creation of a new distinction between delegated and implementing acts. Again questions are raised as to how significant a difference that this is making to the handling of EU secondary legislation as compared to the previous “comitology” system.

Yet another potentially important change in EU legislative procedures has been the reinforced role of national parliaments stemming from the Lisbon Treaty which has posed new questions about the relationship between the EP and national parliaments in the adoption of such legislation.

The Lisbon Treaty also introduced the possibility of Citizens Initiatives, whereby European citizens can themselves propose new EU legislation. Although few such proposals have met the necessary criteria for further consideration they are already posing questions as to how they should be handled by the European Parliament.

The paper also looks briefly at the ways in which the European Parliament is seeking to be involved in a more complete policy cycle in the future, with more emphasis on the whole cycle of forward planning, impact assessment, monitoring and evaluation, and implementation of EU legislation

 This paper examines the above and other changes. It then concludes by looking at the outlook for EU legislative scrutiny in the 2014-19 European Parliament, in the light of two sets of issues, in particular.  The first of these is related to legislative planning and the new scope for inter-institutional negotiations and agreements on Multiannual planning. Finally the European Commission led by Jean-Claude Juncker is setting a new challenge for the other institutions in proposing far fewer legislative initiatives than in the past and also suggesting the withdrawal not just of minor but also of more substantive legislation. How the European Parliament reacts to these challenges will be of considerable significance for the future.

**A longer-term perspective: Co-decision from Maastricht to Lisbon.**

“Co-decision” (technically the Article 189 B Procedure but the European Parliament’s shorthand for it quickly stuck). was first introduced by the Maastricht Treaty when it first came into force in November 1993.It immediately had a fundamental impact on the powers of the European Parliament regarding the legislative areas to which it applied. For the first time, the European Parliament was present right through the entire legislative procedure, and it was also given a potential right of veto, thus ensuring in practice that its proposed amendments to draft laws would have a real impact. It also had a wider inter-institutional impact, in that it lessened the dependence of the European Parliament on the European Commission by putting it in more direct contact with the Council and creating a more balanced inter-institutional triangle. These dynamic effects were graphically illustrated by a telephone call received by the author of this paper from a counterpart member of the Council Secretariat inviting him to a working lunch at the Council since”we need to get to know each other better”

The introduction of the new procedure also tested inter-institutional creativity. How was it going to work in practice? What balance would there be between formal and informal procedures? Where were the Parliament, Council and Commission delegations going to sit in face-to-face negotiations? How would the new procedures be handled within the respective secretariats and would new structures be required? Answers were found to all these questions, including the creation of a dedicated Co-decision Unit within the European Parliament Secretariat, working in tandem with the concerned Committee Secretariat in the negotiation of specific legislative procedures.

The new co-decision procedures were not immediately welcomed by all in the other institutions but ended up working much better than some had feared. There were, however, some important weaknesses.

The first was that the co-decision procedure as introduced by Maastricht did not permit first reading agreements and also included a cumbersome procedure in the case of failure to agree between Parliament and Council in third reading conciliation, with the Council then permitted to impose the original common position (without any of the modifications that had been agreed in conciliation) and with the Parliament then being given the chance to override the Council’ common position by absolute majority of its members.

A far more important weakness, however, was that the new procedure had only been introduced for a limited number of policy areas and co-existed both with the original consultation procedure where the EP only had one reading and where its role was very weak and with the cooperation procedure with two readings for the Parliament that had been introduced by the Single European Act. In consequence not only had EU legislative procedures become even more confusing but the new co-decision procedure where the EP had more power only applied to 21% of legislative files during the 1994-99 Parliament, with 71% still falling under consultation and 8% still under the residual cooperation procedure. Moreover, there was also a very uneven balance of responsibility between the Parliament’s committees, with only 6 of Parliament’s 20 committees dealing with practically all the cases of co-decision between 1993 and 1999 and with a dominant share of the Environment(36%), Economic (25%) and Legal Affairs(18%) Committees.

The Amsterdam Treaty came into force in May 1999, and simplified and extended the co-decision procedure. It was now possible to conclude agreements in first reading and a legislative procedure was now concluded if there was no agreement between Parliament and Council in third reading conciliation (the previous Maastricht post-conciliation procedure had only been invoked once, in the case of ONP Voice Telephony, and had led to the same result, with the EP overriding the Council). Moreover, co-decision was extended to a number of new areas and now applied to over 40 legal bases, and the cooperation procedure was greatly restricted. A joint declaration was also adopted by the Commission, Parliament and Council on practical arrangements for the new co-decision procedure.

The subsequent Nice Treaty, which came into force in February 2003, was disappointing as regards the extension of decision, which only applied to a handful of new areas. As a result, however, of the Amsterdam and Nice Treaties the share of co-decision files doubled to 42% of total EU legislative proposals between 1999 and 2004, but with the consultation procedure still applying in 58% of cases. During the 2004-2009 legislature the percentage of legislative proposals falling under co-decision further rose to 49% but 51%, still just over half, were still under consultation.

**Impact of the Lisbon Treaty: a far-reaching extension of legislative co-decision**

The Lisbon Treaty came into force in December 2009 and had a fundamental impact on EU legislative procedures. Co-decision now became the“ordinary legislative procedure”, and now applied in the great majority of cases of EU legislation.

85 legal bases provided for co-decision, with 48 either being new legal bases or existing ones to which co-decision now applied. Some of these were very technical but others were very important policy areas, such as legislation concerning the common agricultural policy (previously simple consultation of EP), immigration, asylum, visas and other significant home affairs and justice measures where EP had hitherto only been consulted, structural and cohesion funds (previously assent of EP rather than co-decision), implementation of the European Research Area and many others.

In contrast the consultation procedure has been greatly reduced in scope, being left only on certain CFSP measures, competition and monetary policy matters, a few areas in employment and social policy areas and some measures of a fiscal nature in the energy and environment spheres.

A further important change in the Lisbon Treaty was the extension of the consent procedure, (formerly assent), whereby Parliament had to say yes or to a number of measures, including to critical areas such as the Multiannual Financial Framework(MMF) and all international agreements in areas to which co-decision applies for internal EU measures : Previously some such agreements were already subject to consent whereas others were only subject to consultation. The significance of this consent procedure, which permits Parliament to veto a proposed agreement but not to amend it, is greatly reinforced by the linkage that can be established between it and individual co-decision procedures, as vividly shown by the linkage between the overall MMF agreement and the 65 specific legislative co-decision proposals associated with it.

Although the Lisbon Treaty only came into force half a year after the EP elections earlier that year the impact on the procedure used was immediate and profound. The percentage of legislative proposals falling under co-decision during the 2009-14 Parliament went up from 49% to 89% and those under consultation shrank from 51% to 11%. During this same period 57% of the adopted co-decision files were in areas new to co-decision under the Lisbon and only 43 were in old areas.

The significance of the new Lisbon Treaty changes was also very quickly shown as regards the Parliament’s new extended powers of consent on international agreements when the EP rejected on 11 February 2010 the SWIFT Agreement between the EU and the US on the processing and transfer of Financial Messaging Data, the EU-Morocco Fisheries Partnership Agreement( on 14 December 2011) and ACTA (the Anti-Counterfeiting Trade Agreement) on 4 July 2012.

One striking change , not obviously related to the extension of co-decision, was the marked decline in the number of legislative proposals that were considered during the 2009-14 legislature. Whereas there had been well over 1000 proposals considered during the previous three legislatures (1111 from 1994-1999, 1028 from 1999-2004 and 1041 from 2004-2009) there were only 658 between 2009 and 2014, close to a 40% drop.

This did not mean, however, that there was a much lesser work load, as many of the proposals being considered were of exceptional political and technical complexity. This was particularly the case with regard to the 65 multiannual programmes referred to above which were linked to the overall MMF negotiations. This led to a huge number of amendments and also required extra coordination between EP committees and with regard to the overall strategic objectives of the Parliament on the size and distribution of the longer-term EU budget.

**Changes in the pattern of co-decision: more actors involved, a shift towards first reading agreements, even more trilogues but far fewer conciliations**

One key impact of the post-Lisbon legislative changes outlined above was a great rise in the number of EP committees that were involved in co-decision and in consent. As pointed out before only 6 committees had been fully involved in the early days of co-decision with three committees being particularly dominant. This pattern had shifted over time but during the 2004-2009 Parliament three committees (Environment, Legal Affairs and Transport) were still responsible for almost half of all co-decisions. This completely changed after Lisbon came into force, with no fewer than 16 committees now involved, with a far more even distribution between committees and with many committees, such as Agriculture, Fisheries, Civil Liberties and International Trade having to become familiar with co-decision and now playing a new and far more important role. Some adapted very well, whereas others had more difficulties.

The procedures for committees to work together when a legislative proposal overlaps individual committee competences have also become more significant and been modified, with reinforced provisions in the EP Rules on association between committees, joint committee meetings and other developments.

There were also changes on the Council side. Co-decision had previously been the essential preserve of the Deputy Permanent Representatives in COREPER 1 but now the COREPER 2 Ambassadors were also involved. The impact of this was clearly shown during the Irish Presidency when the Irish COREPER 2 Ambassador was dealing with MMF files and with as many, if not more, cases of co-decision as his COREPER I counterpart.

Another feature of post-Lisbon co-decision was related to the stage at which agreements were reached, in particular the further development of first reading agreements and the near abandonment of third reading conciliations. These were not new developments but were further reinforced after Lisbon came into force. In the early days of co-decision there were always a considerable number of conciliations, although with some committees (like the Environment Committee) being much more inclined to rely on them than others (like the Industry Committee, which was traditionally averse to them).

At overall Parliament level, however, 22% of all co-decision files were still ending up in conciliation during the 1999-2004 legislature, with 49% being dealt with at second reading (24% at second reading, 25% at “early second reading” whereby Parliament ratified the results of EP-Council negotiations between the EP and Council first readings)” and 29% at first reading.

By the 2004-2009 Parliament this pattern had already changed dramatically, with 72% of co-decision agreements now taking place at first reading, 23% at second reading (10% at early second reading and 13% at second reading) and only 5% ending up at third reading stage after conciliation.

In the 2009-2014 Parliament the percentage of first reading agreements had further risen to 85%, second reading agreements had declined to 13% (of which 8% were early second reading agreements) and third reading agreements after conciliation to only 2%. Differences in attitudes to first readings between EP committees had also been greatly reduced, with practically all committees seeking to conclude in first reading and with relatively few committees(notably the Transport Committee) having a significant number of second reading adoptions.

This paper will not seek to analyze this trend in any detail but to make a few initial comments. The first reading stage is very different from the later ones, having no formal time limits, simple rather than absolute majority requirements in plenary and more flexibility for the responsible committee. There has always been an incentive to reach an agreement at this stage, particularly towards the end of a legislature when time is running it or in cases where a particular Council Presidency would like to finalize an agreement on one of its priority policy areas under its watch. At the end of the 1999-2004 Parliament there were thus a considerable number of first reading agreements but it was anticipated that this would again decline at the beginning of the new Parliament. This did not, however, prove to be the case and the rise of first reading agreements became a permanent trend, with their convenience and flexibility prevailing over the greater rigidity of second and, in particular, third readings with conciliations : Apart from the tight time limits Parliament has to find an absolute majority of 376 out of 751 votes to amend or reject a text, and is also constrained by its own rules which restrict the scope for new amendments in second reading, introduced by the EP after the adoption of the cooperation procedure to show that it was a responsible and reliable co-legislator.

First reading agreements have also been facilitated by the informal and flexible procedures that have been developed by the EU institutions to implement co-decision. From the very beginning it was recognized that the formal procedures laid down in the Treaty would not work without informal contacts being established between the key actors in the EP, Council and Commission. This was the origin of the tripartite meetings known as “trilogues”, occurring at all stages of co-decision, not mentioned in the Treaties(although subsequently mentioned in Joint Inter-institutional Declarations and in the EP Rules of Procedure).but playing a critical role in brokering agreements. Their importance is shown by the fact that there were no fewer than 1557 trilogues during the 2009-2014 Parliament, most frequently in the context of the MMF co-decision negotiations (almost 400 trilogues with the Regional and Agriculture Committees most involved) and of the EU response to the economic and financial crisis (331 trilogues involving the Economic Committee between 2009-2014, a Committee which also adopted practically all its legislative proposals in first reading).

A further example is the development of informal bargains between EP and Council negotiators, on the basis of exchanges of letters between the EP and Council. In a first reading deal this might take the form of a prior Council Presidency letter to say that there will be Council agreement if the EP votes a particular set of agreed amendments and in the early second reading referred to above a letter from the Parliament to say that there will be a second reading deal if the Council accepts an agreed text in its own position. This flexibility and creativity has ensured that co-decision has evolved in ways perhaps not initially envisaged by EU Treaty negotiators.

A final interesting point in this context relates to the length of legislative procedures. One early criticism of co-decision, particularly by those looking at co-decision flow-charts, was that it would be more cumbersome than the consultation or cooperation procedures and would further slow down the adoption of legislation. In practice this does not seem to have been the case and the length of adoption of particular legislative proposals seems to be more linked with how politically controversial they are rather than the nature of the procedure.

Comparison of the total average length of legislative procedures from 1999 to the present shows that this has declined slightly over time (22 months from 1999-2004, 21 months from 2004-2009 and 19 months from 2009-2014). The length of proposals concluded at first and second reading phase has, however, gone up, in the case of first reading deals from 11 months in 1999-2004 to 17 months in 2009-2014. The reasons for this would have to be subject to case-by-case analysis but it does show that first reading agreements are not necessarily quick and easy ones. In fact the lack of any time constraints in first reading mean facilitate the holding of very lengthy negotiations between the institutions at this stage to reach such an agreement on any controversial or technical proposal.

.**Adapting to the new trends in co-decision : Inter-institutional relations**

The far-reaching extension of co-decision and the growing tendency to conclude legislation at the first reading stage have had a number of impacts, both in terms of inter-institutional relations and of the need to react to growing demands for increasing transparency and accountability of the co-decision process.

One obvious impact is that familiarity with co-decision is now much more widespread than before, not just in terms of more European Parliament committees being involved, as described above, but also within the Council and Commission as well. When the current author was working in the EP Committee on Environment, Public Health and Food Safety inter-institutional relations were very different in each of the three main areas of policy. The Environment Council was already well attuned to co-decision and it was no coincidence that the chair of the Committee was one of the first to be systematically invited to informal Environment Council meetings, and to be able to take part in their discussions on a similar basis to the Commissioner and to national ministers. The Health Council was somewhat less involved, and there was more initial resistance to invite the EP Committee chair to informal Health Councils, although this then became the practice as well. On the other hand the Agriculture Ministers, dealing with part of the food safety element of the Committee’s competences, and more used to consultation of the European Parliament rather than co-decision, had a less close relationship with the Committee, whose chair was then not invited to their Informal Council meetings and where relations even at Secretariat level were generally less close.

All this has now changed and practically all Council formations have had to adapt to co-decision. There have still been some residual disagreements on delimitation of legislative competences, for example in the area of agriculture where the Council had been used to a lesser role for the European Parliament. Article 43-2 of the TFEU now provides for co-decision on the main elements of agriculture and fisheries policy but Article 43-3 concerning “measures on fixing prices, levies, aids and quantitative limitations and on the fixing and allocation of fishing opportunities” provides for decisions to be taken by the Council on a proposal from the Commission and without a formal role for the Parliament. Unsurprisingly this has led to disputes as to which legal base to use, notably in the area of fisheries. There have also been other problems concerning adaptations of the old third pillar acquis. Some of the most difficult discussions have concerned the delimitation of delegated and implementing acts, for example as regards the negotiations on the Multiannual Financial Framework (MMF), and this issue is described in more detail in a subsequent section of this paper.

In general, however, EP-Council relations have continued to intensify. The role of the Council Presidency may have been modified post-Lisbon as regards overall chairmanship and strategic decision-making, but this may have led to an even deeper involvement of Council Presidencies in individual co-decision files, as shown in the increased number of co-decision trilogues that was described above. Presidency ministers now have a whole range of contacts with the key actors in the European Parliament, notably committee chairs and political group coordinators, the main rapporteurs and shadow rapporteurs, and other leading figures in the political groups, contacts that are generally established well before a Presidency and are particularly frequent not only during the presidency but in the last few months preceding it.. Presidency ministers with responsibility for European affairs are present in most plenary sessions and other sectoral ministers systematically appear before the relevant Parliament committees at the beginning of a Presidency and very often at the end as well.

Outside Council Presidencies these contacts may be less intense but their continuing importance is evident. A good example of this is the decision that was taken by the current Irish government to seek to have an Irish government minister, whether the Europe Minister or a sectoral minister, present at all European Parliament plenary sessions.

One brief comment should also be made about European Parliament-Commission relations in the post-Lisbon era. As mentioned before, in the era of legislative consultation of the EP and even after the cooperation procedure was introduced, the European Parliament was primarily reliant on the Commission for its information on the legislative process. The introduction of co-decision provided for more direct EP-Council links and for a new institutional triangle but the Commission retained some great advantages, most obviously where there was still consultation or cooperation or no EP role at all, but even in cases of co-decision as it was present in both EP and Council meetings and privy to developments in the Council that the Parliament was not.

The ideal way to implement co-decision in the most satisfactory manner for the Parliament has been through inter-institutional agreements involving the Council as well as the Commission. The Parliament, however, has also sought direct leverage on the Commission, notably through successive Framework Agreements on relations between the European Parliament and the European Commission that were adopted at the beginning of new Commission’s terms of office. These included a section on “Cooperation on legislative procedures and planning ”that had headings on “the Commission Work Programme and on the European Union’s programming”, on “procedures for the adoption of acts”, and on “issues linked to better law-making” in which the Parliament made some commitments of its own but also tried to obtain clearer undertakings from the Commission on a number of points. This Agreement was last negotiated in 2009 and is still attached as Annex XIII to the European Parliament’s Rules of Procedure. It was, however, not further renegotiated in 2014, partly in avoid further dispute with the Council, which was never happy with these EP-Commission bilateral agreements, partly, perhaps, because of a changing relationship with the Commission in the “Spitzenkandidat” era, but also perhaps because it was now less necessary in an era of almost complete co-decision.

**Adapting to the new trends in co-decision : Seeking greater transparency and accountability**

A further development in the post-Lisbon era has been a change in internal EP procedures to reflect concerns about the need for greater transparency and accountability in the case of first reading and other early EU legislative agreements.). First reading agreements, in particular, had obvious potential advantages in terms of speed and flexibility but there was not a clear mandate for such negotiations even within the responsible EP committee, as it had not always formally voted, and there was certainly no overall EP plenary position as after first readings and even more after later stages in the procedure. Moreover, the number of trilogues was proliferating ,as described above, but there might only be a few key actors involved, such as rapporteurs or shadow rapporteurs, and other members of the committee, let alone MEPs from other committees, might well have much less idea of what was happening.

Concerns about these developments had been present for a considerable time, among many MEPs (and also the staff of the Parliament’s dedicated co-decision unit), and a *“Code of conduct for negotiating in the context of the ordinary legislative procedures”,* was adopted in September 2008 , setting *out “general principles within Parliament, on how to conduct negotiations during all stages of the ordinary legislative procedure with the aim of increasing their transparency and accountability, especially at an early stage of the procedure”.* It is still annexed to the EP Rules of Procedure (as Annex XX). The Code had considerable flexibility but still assumed that first reading agreements were still not the norm

*” As a general rule, Parliament shall make use of all possibilities offered at all stages of the ordinary legislative procedure. 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.”* (in Article 2 of the Code).

“*As a general rule, the amendments adopted in committee or in plenary shall form the basis for the mandate of the EP negotiating team. The committee may also determine priorities and a time limit for negotiations. In the exceptional case of negotiations on a first reading agreement before the vote in committee, the committee shall provide guidance to the EP negotiating team.”* ( in Article 4)”

The concerns which the 2008 Code addressed before the final coming into force of the Lisbon Treaty later became even more acute with the effective completion of co-decision and the further development of first reading agreements. Parliament’s relevant Rules were thus re-examined and modified, coming into force on 10 December 2012. The key rules are Rules 73 on “Inter-institutional negotiations in legislative procedures” and 74 on **“**Approval of a decision on the opening of inter-institutional negotiations prior to the adoption of a report in committee”

Rule 73, which also includes a cross-reference to the 2008 Code, provides, inter alia, that committee decisions are taken by absolute majority of its members and that*“The mandate shall consist of a report adopted in committee and tabled for later consideration by Parliament. By way of exception, where the committee responsible considers it duly justified to enter into negotiations prior to the adoption of a report in committee, the mandate may consist of a set of amendments or a set of clearly defined objectives, priorities or orientations”*

Besides defining the nature of the mandate the Rule also seeks to deal with the need for accountability of the committee negotiators (the rapporteur and shadow rapporteurs and Chair or a Vice-Chair of the Committee) :

*“.After each trilogue the negotiating team shall report back to the following meeting of the*

*committee responsible. Documents reflecting the outcome of the last trilogue shall be made*

*available to the committee. Where it is not feasible to convene a meeting of the committee in a timely manner, the negotiating team shall report back to the Chair, the shadow rapporteurs and the coordinators of the committee, as appropriate.”*

The Rule permits modification of the mandate and also provides for procedures in case of associated committees as well as when the new possibilities for joint committees meetings are invoked.

Rule 74, on the other hand, sets out more detailed provisions in cases where a committee opens negotiations before a committee vote, but then seeks an explicit prior mandate from the European Parliament plenary, with a debate and vote on the committee’s proposal and with the chance for amendments to be tabled.

Rule 73 (often in combination with Rule 61 on the adoption of amendments to a Commission proposal) has been much more used than the more rigid Rule 74. The latter was, however, invoked in the MFF context by the Agriculture Committee when it sought an explicit mandate from the plenary for its negotiating stance on the reform of the Common Agricultural Policy, not least because of the very varied positions on the reform among members of the committee. It was also used by the Civil Liberties Committee.

So far there has been very little legislation being considered in the new 2014-2019 Parliament, and it will be interesting to see how the practices developed in the last parliament will be interpreted in the future.

One final comment relates to the search for more openness and accountability in other aspects of the co-decision process, notably, the greater secrecy of the relevant Council procedures compared to those in the European Parliament, Parliament’s 2014 Activity Report on Co-decision and Conciliation points out (page 45) that “it remains difficult for Parliament to access the documents of Council working party and COREPER meetings- and impossible for it to attend them” and that this constitutes “ an unjustifiable imbalance in the relations between the two institutions” since the Council can attend EP meetings but not the opposite.

The report then goes on to make a number of recommendations in these contexts, including for Parliament to push for full access to all relevant Council documents and to “reflect on its possible attendance at various Council bodies” It also asks for the European Council to refrain “from becoming involved in the co-legislative work of the Parliament and Council”. Furthermore the report calls for reflection on the idea put forward by Commissioner Šefčovič for “a public register of trilogues, which could make available to the public, inter alia, information on files under negotiations and the composition of negotiating teams and ,once agreement on a given file is reached, all relevant documentation”.

**To codify or not to codify?**

As we have seen, the co-decision procedure has been laid down in formal treaties but how it works in reality has been based on evolving experience and informal patterns of cooperation between the institutions. This flexibility has been one of the strengths of co-decision, for example the development of trilogues to prepare the more formal meetings set out in the Treaties and of letters from the Council to the Parliament and the Parliament to the Council to facilitate first reading agreements and “early second reading agreements” respective, the latter not mentioned in the Treaties at all.

After a while pressures build up to codify developing practice, whether on an inter-institutional basis (as in the 2007 joint declaration on practical arrangements for the co-decision procedure) or within a single institution (as in the EP Code of conduct for negotiating in the context of the ordinary legislative proceduresor the December 2012 changes to the EP Rules of Procedure.)

One of the key questions facing the co-legislators, therefore, is to choose the right balance between maintenance of flexibility and codification of evolving procedures.

**What of “comitology”? Experience with the system of delegated and implementing acts brought in by the Lisbon Treaty**

One of the main problems in the EU legislative process has been how to handle secondary legislation, statutory instruments or decrees in certain national systems, which implement provisions in the primary legislation. The old EU system for dealing with these became familiarly known as “comitology” because of the use of a large number of committees involving national experts but also a wide variety of different procedures to guide or even effectively direct the Commission before the relevant decisions were made.

The Parliament had many problems with this system. It considered that there was insufficient transparency, even on what committees existed and on the decision-making process within them. When co-decision was introduced on primary legislation the problem became a more serious one as the Parliament considered that its co-decision rights were undercut by its much lesser rights on the secondary legislation and the imbalance between its own powers and those of the Council. Many of the sticking points in early co-decision negotiations were thus directly related to problems of comitology.

A series of more or less formal or informal agreements between the institutions tackled different aspects of this problem but never meeting all the key points of concern for the Parliament, the latest being the system of Regulatory Procedure with Scrutiny in 2006, giving the Parliament the right to block, under specified circumstances, Commission decisions on certain delegated measures of general scope that could be described as quasi-legislative in nature.

The Lisbon Treaty made a more systematic attempt to come up with solutions.. In theory the old comitology system was abolished and replaced by a new system of delegated and implementing acts. The former were set out in Article 290 TEU where the EP and Council would have equal power to block such acts or even to revoke the power delegated to the Commission. Implementing acts, however, as set out in Article 291 TEU, would retain certain elements of the old comitology system and would not establish any explicit role for the Parliament.

These new procedures had to be put in practice, however, and the key guidelines agreed between the institutions. The delegated acts, which covered measures of general application to amend or supplement certain non-essential elements of the basic legislative act, which gave Parliament real veto power, were less problematic but still had to be clarified by means of a Common Understanding negotiated in 2010 between the three institutions, and which set out practical procedures as to how the new system would work.

The more immediately sensitive procedures for implementing acts, where the EP had far less power, were to be set out in a co-decision regulation which proved hard to negotiate but was eventually adopted as Regulation 182/2011.

Parliament then had to adapt its own Rules of Procedures, which it did in 2012 in Rules 105 dealing with delegated acts, 106 on implementing acts and 107 when more than one EP committee was involved in the form of joint or associated committees, along with Rule 40 which gives a consultative role to the EP Committee on Legal Affairs. Certain aspects had also been covered in the 2010 Framework Agreement on relations between the Parliament and the Commission, notably in its point 15 on Commission meetings with national experts “within the framework of its work on the preparation and implementation of Union law, including soft law and delegated acts”. These undertakings covered information and documentation, and possible EP attendance at relevant meetings, and were spelled out in more detail in an Annex 1 on meetings with national experts.

As could have been predicted, numerous problems have arisen as regards implementation of the new system. Firstly, no tidy distinction can always be made in practice between delegated and implementing acts .The fact that the Parliament has more power under the former is a potentially complicating factor in the choice of the instrument, with the Council being often reluctant to concede their use, with a considerable number of ensuing disputes on co-decision legislation. This has also led to the introduction of regular screening exercises within the European Parliament on the safeguard of its prerogatives on delegated acts within ongoing legislative procedures with letters then sent on behalf of the Conference of Committee Chairs, and with the leaders of the EP political groups also being informed. Earlier screening exercises have shown considerable disagreement between the institutions on whether delegated acts should be included in a proposal, especially between the Parliament and the Council (which, in some cases, would appear to prefer a full co-decision procedure rather than use of a delegated act) but in some cases between the Parliament and the Commission as well. The conditions that Parliament has sought to introduce for delegated acts have also been very controversial with the other institutions.

Another associated problem for the Council is that there is no formal provision in delegated acts for consultation of national experts. The Commission has informally organised such procedures, and the Parliament has insisted on its right to have full information and documentation on such meetings and if possible to attend them as observers. This point also features in the EP-Commission Framework Agreement. In 2014 the Council was again seeking to amend the Common Understanding on Delegated Acts to clarify procedures on the consultation of experts.

A third problem was that the new system could not be introduced overnight. The former Regulatory Procedure with Scrutiny was still in existence since many legislative acts with such provisions had not yet been aligned to the new procedures. Three sets of so called “Omnibus” Alignment proposals were put forward by the Commission in 2013 and were subject to a Parliament first reading in 2014. Negotiations were postponed, however, until after the new Parliament was elected in 2014, and the Commission later withdrew its proposals At the moment of writing it is thus unclear how this alignment will take place, but the Commission, in withdrawing the three sets of proposals, called for this to take place within the wider scope of a new inter-institutional Agreement on Better Lawmaking, for which Commission Vice-President Timmermanns is responsible. .

A further problem is one that has always been present, and which relates to the extent to which Parliament should be involved in the very technical substance of many of these proposals. There have always been divisions between those MEPs who believe that these were more matters for the Executive than for the Parliament and others who argue that “the devil is in the detail” and that the co-legislator should thus be meaningfully involved in the scrutiny and if necessary rejection of such measures. Once it has decided to get involved a further question relates to how it can then improve its own capacity and expertise to do so.

The first stage, of course, is for initial discussion in committee on a delegated act. How such discussions are triggered would be worthy of further study, whether by individual MEPs , activist members of political group staff, outside interests aware of the Parliament’s new powers or a combination of all of these. Sometimes Commission\* Committee dialogue at this stage can help to resolve problems with these measures but on other occasions they have then be raised in plenary.

The number of delegated acts sent to the Parliament between 2009 and 2014 came to 166 such acts, starting slowly with only 4 in 2010 to 60 in the early part of 2014 before they stopped being transmitted by the Commission because of the elections. The residual importance of measures under the Regulatory Procedure with Scrutiny is shown by the fact that 963 such measures were sent to the Parliament between 2007 and 2014, with delegated acts only getting close in number in the course of 2014.

The handling of these measures is now a regular aspect of business in a number of EP Committees. The Environment Committee, for example, remains a committee with a particularly high number of such acts submitted to it. The system developed by it for dealing with these acts during the 2009-14 Parliament provided for four newsletters to be sent each week from the Secretariat to Committee members, two dealing with delegated acts or measures under the regulatory procedure with scrutiny(RPS) and two with implementing measures. Members then had to decide whether to object to such measures. During the 5 years 790 such newsletters were produced, containing around 8000 documents.

The Committee’s rights to propose rejection of such measures was restricted to a minority of these measures, those submitted to it under the regulatory procedure with scrutiny(614 under the RPS between 2007 and 2014) and the even smaller number of delegated acts(44 sent to it from the entry into force of the Lisbon Treaty until 2014). During the 2009-14 Parliament the Environment Committee considered 24 comitology objections of all kind, only 10 of which ended up in plenary for a formal Parliament decision. Only 5of these were adopted in plenary, four concerning RPS objections and 1 a delegated act. Four of these were in the particularly sensitive area of food safety and only one was environmental in nature. Two non-binding resolutions on implementing acts were also submitted by the Committee and formally adopted by the plenary.

Adoption of an EP Decision on such acts is now a feature in EP Plenaries. The responsible committee makes a recommendation, background comments may be made in the recitals. A recent example was the European Parliament decision of 27 November 2014 to raise no objection to a piece of Commission delegated resolution relating to administrative expenditures of the Single Resolution Board.

Prior to the 2014 elections Parliament had adopted objections in plenary to 6 measures under the Regulatory Procedure with Scrutiny (with 5 other proposed objections rejected in plenary) and also to 1 delegated act (on the provision of food information to consumers as regards the definition of engineered nano-materials), as had the Council on one further occasion (on a measure in the context of the Galileo Programme). In addition Parliament had twice, as mentioned above, adopted resolutions suggested by its Environment Committee (on GM Maize and on Country of origin or place of provenance for meat) objecting that a proposed implementing measure had exceeded the powers conferred on the Commission although these were declaratory rather than binding.

**The post-Lisbon role of national parliaments in the EU legislative process**

A further Lisbon Treaty change concerns the role of national parliaments in the EU legislative process. Article 12 TEU states that “National Parliaments contribute actively to the good functioning of the Union” and they are encouraged, inter alia, “to enhance their ability to express their views on draft legislative acts of the Union…”. All draft EU legislative acts are now forwarded directly to them.

Moreover, under Protocol 2 of the Lisbon Treaty, individual national parliaments (including either House in bicameral systems) are given 8 weeks from the moment of transmission to review proposed EU legislation not falling within exclusive EU competence and may then issue “reasoned opinions” if they consider that a draft legislative act does not comply with the principle of subsidiarity.

Under what is familiarly known as the “yellow card procedure” adoptions of reasoned opinions by a combinations of chambers representing a third of all votes allocated to national parliaments (or one quarter in the case of proposals in the fields of judicial cooperation on criminal matters and police cooperation) trigger a review by the European Commission which has to decide whether to maintain, withdraw or amend the proposal and to justify its decision. Under the even more far-reaching “orange card procedure”, only applicable in the case of co-decision proposals, a majority of votes of the national parliaments also triggers a review by the Commission. In this case, however, the draft proposal is then sent on to the Council and Parliament for a final decision in cases where the Commission maintains its proposal, the Parliament then voting by simple majority and the Council by 55% of votes as to whether to finish the legislative procedure.. This procedure would thus give the Parliament a power it does not normally have under co-decision, the chance effectively to reject a proposal in first reading.

Finally national parliaments may also make “contributions” to the EU legislative process, whereby they give their comments on the substance of a proposal rather than on its compliance with subsidiarity.

It should also be mentioned that the Framework Agreement on relations between the European Parliament and the Commission provides, in its point 18, for practical cooperation between the two institutions on translation of these texts:

*“The two Institutions agree to cooperate in the area of relations with national Parliaments.*

*Parliament and the Commission shall cooperate on the implementation of TFEU Protocol No 2 on the application of the principles of subsidiarity and proportionality. Such cooperation shall include arrangements related to any necessary translation of reasoned opinions presented by national Parliaments. When the thresholds mentioned in Article 7 of TFEU Protocol No 2 are met, the Commission shall provide the translations of all the reasoned opinions presented by national Parliaments together with its position thereon.”*

.This paper will not go into this in any detail but merely outline some initial figures as to how these procedures have been working in practice, and how the European Parliament is seeking to adapt its procedures in consequence, not least by modifying its own rules and internal structures. Examples of the former are that no EP report may now be adopted in the EP before the end of the 8 week period given to national parliaments to complete their scrutiny procedures. The main example of the latter has been the development of its Directorate for Relations with National Parliaments, which has its own specialist Legislative Dialogue Unit.. Moreover in December 2010 the European Parliament’s Conference of Committee Chairs adopted a “Common Approach for the treatment at Committee level of national Parliament’s reasoned opinions and all other contributions of national Parliaments”

Between the coming into force of Lisbon on 1 December 2009 and 4 February 2015 no less than 498 draft EU legislative acts were sent to national parliaments under the terms of Protocol 2. During that period the European Parliament received 1903 submissions on these proposals from national parliaments.

Of these only 297 were “reasoned opinions” on questions of subsidiarity. Rule 42-3 of the European Parliament Rules of Procedure provide for all such opinions to be referred to the responsible EP committee.

Reasoned opinions are also systematically sent to the EP Legal Affairs Committee for information. The latter committee has maintained a practice off having a standing rapporteur on reasoned opinions and who draws the committee’s attention to a potential yellow-card situation. A list of reasoned opinions is then published in the committee newsletter, and in the committee agendas and minutes of each meeting.

Reference to the existence of reasoned opinions must be made in the relevant EP reports. Another important point is that EP consideration of these opinions is greatly facilitated by the fact that they are then translated into all EU official languages apart from. Irish and Maltese.

Moreover, when a sufficient number of reasoned opinions are adopted by national parliaments to trigger the yellow card procedure the EP Rules now state that “Parliament shall not take a decision until the author of the proposal has stated how it intends to prceed”. In most cases this will be the Commission.

In practice, however, during this whole period only 2 proposals have successfully triggered a yellow card from the necessary number of national parliaments. The first of these was the so-called Monti II Proposal in September 2012, seeking to regulate the right to take collective action which led to the adoption of 12 reasoned opinions and 19 out of the 54 votes allocated to national parliaments, thus exceeding the one third threshold. The Commission then withdrew the proposal not on the grounds of subsidiarity but because the Commission felt that there was too much opposition to it.

The second case was on the proposed establishment of a European Public Prosecutor’s Office in 2013, which led to 13 reasoned opinions, amounting to 18 out of 56 votes. In this case the Commission not only rejected the subsidiarity concerns but went on to maintain its proposal, leading to objections by several national parliaments (UK, Netherlands and Sweden) that their concerns had not been taken into account. The proposal was then the subject of a first reading within the European Parliament. As for orange cards not a single one has yet been triggered by national parliaments.

National parliament “contributions” to EU legislation have been far more numerous than reasoned opinions, with 1605 having been given between 2009 and February 2015 out of the overall total of 1903 national parliament submissions.

Rule 142-4 of the EP Rules of Procedure provides that “. *Any document concerning a legislative procedure at Union level which is officially transmitted by a national parliament to the European Parliament shall be forwarded to the committee responsible for the subject-matter dealt with in that document”.* Unlike reasoned opinions, however, any contributions submitted under this rule are not systematically translated but they may be translated into one other language at the explicit request of the Committee Chair or relevant Rapporteur.

One important catalyst for greater national parliament involvement in the EU legislative process is through the growing number of inter-parliamentary committee meetings enabling exchanges of views on many policy areas. This is reinforced by the presence of national parliament representatives in Brussels (from all Member States apart from Slovakia) who meet regularly (notably on Monday mornings) and compare and sometimes seek to coordinate the views of their respective parliament. The development of IPEX, the Inter-parliamentary EU information exchange, first inaugurated in 2006 and relaunched in 2011, permits all national parliament documents on a particular EU proposal(many also translated into English) to be known to other national parliaments and to the European Parliament.

The extent to which the above changes might modify the EU legislative process is still unclear but it appears likely that the more flexible “contributions” of national parliaments on the substance of proposed EU legislation might have greater longer-term significance than the “reasoned opinions” on the narrower and more difficult to define grounds of subsidiarity. In the latter context the EP Legal Affairs Committee is planning to hold a hearing later on in 2015 on the whole issue of subsidiarity and whether the European Commission’s statement of reasons are sufficient in this respect.

**The initial experience of EU Citizens Initiatives**

A further innovation of the Lisbon Treaty was the creation of citizens initiatives, the modalities of which were subsequently laid down by EP-Council co-decision in Regulation 211/2011 of 16 February 2011. This permits in its Article 2.1 the submission, subject to the provisions of the Regulation, of “ *any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties, which has received the support of at least one million eligible signatories coming from at least a quarter of all Member States”.* Once the conditions are met the Commission is not obliged to submit a draft EU law but must (Article 10(c) *“ within 3 months, set out in a communication its legal and political conclusions on the citizens’ initiative, the action it intends to take, if any, and its reasons for taking or not taking that action”.*

If a legislative proposal were to be put forward by the Commission on that basis the European Parliament would be involved in the ordinary way. The European Parliament is, however, given an additional role by the Regulation. In its Article 11 the organisers of any successful initiative are explicitly given the opportunity to present it at a public hearing. *“The Commission and the European Parliament shall ensure that this hearing is organised at the European Parliament, if appropriate together with such other institutions and bodies of the Union as may wish to participate, and that the Commission is represented at an appropriate level”.*

The above Regulation came into force in 1 April 2012, so there has now been three years of experience with its implementation.

The first such successful initiative was the Right2Water Initiative that was submitted to the Commission on 2 December 2013 and inviting the Commission *“ to propose legislation implementing the human right to water and sanitation, as recognized by the United Nations, and promoting the provision of water and sanitation as essential public services for all”* The Commission’s subsequent Communication(2014/2239(INI) did not undertake to put forward any new legislative proposal but suggested a number of concrete measures that it would take in response to the initiative.

The public hearing on the Right2water Initiative was held in the European Parliament in Brussels on 17 February 2014, and was organised by the Environment Committee in association with the Petitions, Development and Internal Market Committees. In the presence of the Environment Committee Chair, Matthias Groot and of Commission Vice President Šefčovič the Initiative was presented by the President of the Citizens Committee. Each of the three main objectives of the Commission(“Guaranteed water and sanitation for all in the EU”, “Global access to water and sanitation for all”, “No liberalisation of water services” were presented by other members of the Citizens Committee and there were then individual Q and A sessions with MEPs in the presence of senior European Commission officials. Finally there were closing statements by Groot and Šefčovič a Vice-President of the Citizens Committee, and representatives of the European Committee of the Regions and of the European Economic and Social Committee.

This hearing took place shortly before the 2014 EP elections, without time for any proper follow-up. Since the elections, however, the decision has been taken to do a follow-up own initiative report on the Right2Water Initiative within the European Parliament’s Environment Committee, with Lynn Boylan, (Sinn Fein, GUE-NGL Group, Ireland) as the rapporteur. The current indicative timetable is for a Committee vote in May of this year, and a plenary vote in June.

There are several other ongoing citizens initiatives in the pipeline, including ones on “An end to front companies in order to secure a fairer Europe”(calling for a new legal instrument in the area of company law) another “Socially fair Europe. Encouraging a stronger cooperation between Member States to fight poverty in Europe” and a further one on the need for legal confidentiality.

It is clearly too early to pronounce judgement on the impact of such citizens initiatives, but some initial lessons can be learnt. One of the criticisms that has been made, for example, is that its agenda-setting role has been undercut by its administrative and technical complexity, and has also been too much confused with the pre-existing petitions procedures.

A European Parliament Public Hearing to this effect was held on 26 February 2015 to see how the Citizens Initiatives had worked so far, and to evaluate them from institutional, organisational, legal and technical perspectives. Among the speakers were representatives of both successful and failed Citizens Initiatives, lawyers and academics and Commission and Parliament speakers, including the key Parliament participants in the drafting of the initial Regulation.

**“ Completing the legislative cycle”**

At the beginning of the 2014-19 European Parliament the Secretary-General, Klaus Welle presented a Strategic Execution Framework for the future of the European Parliament in terms of both specific objectives and possible means. One of these objectives was entitled “Completing the Legislative Cycle” His argument was that Parliament had become very well organised in its core business of considering amendments to EU legislation, although even here improvements could be made, for example by better integration of input from EP delegations into the legislative work of EP committees. On the other hand the EU legislative cycle was much wider than this, consisting of an agenda-setting and consultative phase before the presentation of formal legislation and a scrutiny phase after it. It was thus important for the European Parliament to be fully involved in all these 4 phases, and to further develop the means for doing so.

This paper will not look into these objectives in any detail (not least because they are covered in another related paper in this panel) but look briefly at a few of the relevant initiatives that were already underway in the last Parliament and that are likely to be further consolidated in the new European Parliament, namely EU-value added and ex ante impact assessments, as well as review clauses and ex post evaluation.

These have gradually increased in importance over the last few years, backed up by organisational reforms aimed at ensuring greater EP Professionalism and expertise, such as through the development of expertise budgets for and policy departments within the Committees and the creation (or rather, re-creation) of a European Parliament Research Service(EPRS) to complement the steady increase in size in EP Committee Secretariats.

**The enhanced use of European added value and ex-ante impact assessments**

The value of Parliament’s involvement in these areas, now backed-up by a separate Directorate within the EPRS, was well-summed up by Klaus Lehne, the long-standing chair of the Conference of EP Committee Chairs when he said, in his introduction to the corresponding 2012-14 EP Activity Report that *“the effective use of impact assessment and added value tools can make a very important contribution to the quality of law-making within the European Union”*

In the area of European added value, assessments are now carried out within the EP in a number of ways, including to analyse the potential impact of legislative initiatives put forward by the Parliament (8 such studies in 2012-13), to look at areas where common action at EU level would be useful and where it is currently absent ( 6 such Cost of Non Europe reports in 2012-14), and to analyse the added value of existing EU policies(two such studies in 2013).

The ex-ante impact assessment unit has done work of even wider scope, carrying out 74 initial appraisals of Commission impact assessments from 2012 to 2014, 5 much more detailed appraisals of the strengths and weaknesses of Commission impact assessments, 2 substitute or complementary impact assessments on parts of Commission legislative proposals not covered or inadequately covered in the Commission’s own impact assessment and finally 4 impact assessments on 21 substantive amendments being considered by the EP in the course of the legislative process.

All these are of direct relevance in terms of improving the legislative work of the EP Committees and the Conference of Committee Chairs has produced Impact Assessment Guidelines, updated in November 2013 indicating to committees how best to undertake ex-ante impact assessments. There have also been several EP resolutions covering impact assessment, namely those commenting on the last two Better Lawmaking Reports as well as specific resolutions of 8 June 2011 on guaranteeing independent impact assessments and of 27 November 2014 on the revision of the Commission’s impact assessment guidelines and the role of the SME test. This latter resolution called (paragraph 23) for “*Commission Impact Assessments to be examined systematically and as early as possible by Parliament, and in particular at Committee level”*. Paragraph 24 called, inter alia, “ *for more consistent use to be made of the parliamentary impact assessment”* and for *“recourse to a parliamentary impact assessment to be particularly necessary when substantive changes to the initial Commission proposals have been introduced”*

**EP Monitoring of implementation of adopted EU legislation: Correlation tables, review clauses and other aspects of ex-post evaluation and scrutiny**

Ex-ante impact assessments are thus of real potential value in the second and third phases of the legislative cycle. European Parliament involvement in the fourth phase, ex post scrutiny of EU legislation, is also of great importance, but is also particularly complex, since it has so many aspects and covers matters where the European Parliament often has fewer formal powers. Firstly, in the case of EU Directives, have they been properly transposed into national law? Secondly are all EU laws being properly applied in individual Member States? Are infringements being detected and effective EU sanctions then being imposed? Perhaps most importantly of all what are the impacts and levels of effectiveness of adopted EU laws: If they are not working as intended do they need to be modified, replaced by new EU laws or completely abandoned?

Evaluation of how the European Parliament has been tackling these various matters would be a lengthy paper in its own right. This paper will just cover a few of the instruments that have been used by the Parliament.

In the area of EP monitoring of transposition of EU law, two significant potential instruments have been the introduction of correlation tables and scoreboards into EU legislation. Correlation tables, which show which Member States laws and regulations transpose which provisions of an EU directive, have proved particularly controversial in negotiations with the Council in spite of inter-institutional agreement on their importance in the Agreement on Better Lawmaking Many Member States did not want an obligation to produce such tables

being placed in the main text of individual directives but only referred to in non binding recitals.

The Parliament continued to attach considerable importance to these tables, in order to have a much better handle on transposition of adopted EU law. The matter was thus inserted into the 2010 Framework Agreement on relations between the European Parliament and the Commission. Its point 44, therefore, referred to the need for these tables and also for more detailed information on infringement procedures:

*“ In order to ensure better monitoring of the transposition and application of Union law, the Commission and Parliament shall endeavour to include compulsory correlation tables and a binding time-limit for transposition, which in directives should not normally exceed a period of two years. In addition to specific reports and the annual report on the application of Union law, the Commission shall make available to Parliament summary information concerning all infringement procedures from the letter of formal notice, including, if so requested by Parliament, on a case-by-case basis and respecting the confidentiality rules, in particular those acknowledged by the Court of Justice of the European Union, on the issues to which the infringement procedure relates.”*

Another instrument in ex-post scrutiny is the use of review clauses in EU legislation., covering review, evaluation and reporting provisions that have been placed in recent EU legislation. The European Parliament has now set up an ex-post impact assessment unit which has drawn up a Check List on the whole range of reporting and information commitments for the Member States in 232 EU legal acts from 2009-2014 which it hopes to extend to those made in earlier legislation as well.

Most problematic of all is for the EP to monitor implementation in the wider sense of judging effectiveness of adopted legislation, problems encountered and whether such legislation needs to be interpreted in a different way, modified or dropped altogether. This is particularly difficult because there is no simple benchmark for such monitoring activity by the Parliament and the EP also has few formal powers in this area, leaving it up to the appreciation of individual EP committees. Some committees put an early priority on this: the Environment Committee was already active in this area in the 1999-2004 Parliament, with own initiative implementation reports, implementation question time in committee and delegations to Member States concentrating primarily on questions of implementation on such sensitive issues as the nitrates and habitats directives. It can be difficult, however, to keep this up systematically and for it not to be crowded out by other priorities.

**Two other future challenges**

This paper concludes by looking at the outlook for EU legislative scrutiny in the 2014-2019 European Parliament, in the light of other two sets of issues, in particular.  The first of these is related to legislative planning and the new scope for inter-institutional negotiations and agreements on Multiannual planning. Finally the European Commission led by Jean-Claude Juncker is setting a new challenge for the other institutions in proposing far fewer legislative initiatives than in the past and also suggesting the withdrawal not just of minor but also of more substantive legislation. How the European Parliament reacts to these challenges will be of considerable significance for the future.

**A new scope for inter-institutional agreement?**

A key part of the EU legislative cycle has related to forward planning of what legislative proposals should be put forward in the first place and which ones should then be given priority. These have taken the form of Commission annual legislative programmes as well as Commission longer-term programmes, individual Council Presidency priorities as well as Trio Presidency priorities of successive Council Presidencies . These have generally been uneven in scope and in implementation.

There has been much discussion between the Parliament and the Commission as to how to strengthen this process, and this has been an important point in Parliament’s own Rules and in successive Framework Agreements on relations between the Parliament and the Commission

Rule 37 of the EP Rules, for example, covers the Commission’s Work Programme and declares that *“Parliament shall work together with the Commission and the Council to determine the legislative planning of the European Union”* The 2010 Framework Agreement has a special section (in its points 33-36 on the Commission Work Programme and the European Union’s Programming, which is then spelled out in more detail in its Annex IV which contains a very specific timetable for the Commission Work Programme and on the ways in which the Parliament is to take part in the process.

The last phrase in this Annex states that *“this timetable shall not prejudice any future agreement on inter-institutional programming”.* This latter is now a key challenge for the European Parliament, in particular in coming up with a satisfactory implementation of an important provision in the Lisbon Treaty that is contained in Article 17 TEU This provides for the European Commission to initiate the annual and multiannual programme of the Union with the view to reach inter-institutional agreement, thus implying a clear role for both the Parliament and the Council in this process. This will be of even greater importance in the light of future negotiations on better regulation and on the aspiration to do less but better

**Responding to the European Commission’s new regulatory agenda, with far fewer legislative proposals and suggested withdrawal of parts of the existing acquis**

Wednesday 14 January 2015 was a very unusual day in the life of the European Parliament in that, for the first time in living memory, there was no voting session on a central day of a Strasbourg plenary session. This was again duplicated a month later on Tuesday 10 February.

The lack of voting is partly a reflection on the fact that it is still early on in the new legislature, with few committees in a position to bring legislative proposals to the plenary. It is also a reflection, however, of the very different priorities in the new Commission. As this paper pointed out earlier the 2009-2014 Parliament had already seen a 40% drop in the presentation of new legislative proposals. The decline in proposed new legislation has been dramatically compounded, however, in the new Juncker Commission, which has set 10 main priorities as well as far fewer new legislative proposals. It has also proposed withdrawal of far more proposals than has been the case in the past.

Parliament failed to adopt a resolution on this subject in the autumn and how Parliament will respond to this new emphasis on less regulation is still unclear

Parliament is thus facing a set of new challenges in the way that it handles EU legislation in the post-Lisbon era. The battle to extend co-decision and to greatly reduce or eliminate the legislative procedures like consultation and cooperation in which it had much less power has now been effectively won. The emphasis will now have to shift towards consolidation of the European Parliament role in the whole legislative policy cycle of forward planning, ex ante impact assessment, and ex post monitoring and implementation as well as more classic legislative amendment. The European Parliament will have to increase its own capacity and expertise, to handle this extended involvement in the policy cycle, develop its relations with national parliaments in the most effective way, promote a more balanced institutional triangle with the Council and Commission while maximizing openness and transparency of the legislative cycle. A heavy agenda for the years to come!

*Key documents consulted*

*-European Parliament Rules of Procedure: Besides the key rules mentioned in the text (such as Rules 73 and 74) there are also 21 annexes, including Annex XII on implementing powers, Annex XIII on the Framework Agreement on relations between the European Parliament and the Commission, Annex XIX on co-decision and Annex XX on the code of conduct*

*Successive EP Activity Reports on Co-decision and Conciliation, of which the most recent is that on the 7th Parliamentary Term from 14 July 2009-30 June 2014*

*20 Years of Co-decision, Conference report of 5 November 2013 prepared by the EP Conciliations and Codecision Secretariat*

*Report on “Interparliamentary relations between the European Parliament and national parliaments under the Treaty of Lisbon”2009-2014 , Annual Report 2013-14*

*European Parliament work in the fields of ex-ante assessment and European Added Value: Activity Report for June 2012-June 2014; European Parliamentary Research Service*

*Review Clauses in EU legislation; A rolling check list : European Parliamentary Research Service*

*EP Committee on the Environment, Public Health and Food Safety: Activity report for the 7th Parliamentary term 2009-14*

*EP study in 2013(PE 493.014) on Tools for ensuring implementation and application of EU Law and evaluation of their effectiveness*