

**A Critical Discussion of the European Parliament's Evolution as an Institution of
the EU**

By Zainab Batul Naqvi*
Birmingham Law School
zbn240@student.bham.ac.uk

* Zainab Batul Naqvi (LL.B Law and French (Hons) Coventry University 2012, LL.M Law (General) University of Birmingham 2013) is an Economic and Social Research Council Doctoral Ph.D. Candidate in Law at Birmingham Law School (expected completion 2016). The following paper was submitted in partial fulfilment of the requirements for the degree Master of Laws (LL.M) at the University of Birmingham 2013.

Introduction

It is apparent that the European Parliament (EP) has evolved greatly since its inception as a mere chamber for debate into a distinct legislative institution.¹ The changes wrought by developments within the European Community (EC) and later European Union (EU) have caused much discussion on the role of the EP and its competences. As an institution it represents the efforts of the Member States (MS) to form a closer union because of its democratic characteristic as the sole fully-elected body of the EU.²

This essay seeks to explore several of these advances consisting of an examination of its status as an elected body with an evaluation of three key debates on the EP. The first of these pertains to its legislative role in relation to the Council of Ministers,³ comprising a consideration of the various legislative procedures employed within the EU. This first area also includes a brief review of the EP's budgetary powers which are relevant to the discussion at hand. Following this, the institution's role as an initiator of legislation will be analysed and compared with the European Commission's almost exclusive right to initiate such legislation. The final matter which is significant in the evolution of the EP concerns its role as an applicant before the European Court of Justice (ECJ) during legislation annulment proceedings.

Due to the smaller membership and fewer areas of regulation under the preliminary Treaties between European States, the EP was initially an appointed body.⁴ The MS at the time were also wary of delegating their competences because they were not ready to accept the authority of a supranational Parliament.⁵ This hesitance was attributable to both the novelty of such an overarching organisation and the preference of states to retain their sovereign constitutional powers. The commitment of the MS towards further integration caused the implementation of universal suffrage in 1979 which demonstrated a clear pronouncement of representative democracy and a sense

¹ Amie Kreppel, 'Necessary but not sufficient: understanding the impact of treaty reform on the internal development of the European Parliament' *JEPP*, 10(6) (2003), p.884 (p.884).

² Richard Corbett, Francis Jacobs and Michael Shackleton, *The European Parliament* (3rd edn London: Cartermill Publishing, 1995) p.8; Paul Craig and Gráinne De Burca, *The Evolution of EU Law* (2nd edn Oxford: OUP, 2011) p.19.

³ Hereafter the Council.

⁴ European Coal and Steel Community (ECSC) Treaty 1951 and European Economic Community (EC) Treaty 1957 – also known as the Treaty of Rome

⁵ Corbett et al (n 2).

of legitimacy for the EU.⁶ The Patijn Report⁷ asserts that the EP now represents EU citizens thereby promoting integration as opposed to being another body of MS Parliamentary delegates.⁸

Despite the positive impact that the EP has made on the democratic legitimacy and perception of the EU, issues do exist with its electoral system and membership which may undermine its merits. One such problem relates to the election process and method of voting within the MS for Members of the European Parliament (MEPs). Endeavours to introduce a uniform system have failed and so the individual MS have implemented their own processes.⁹ This is problematic because only domestic laws are in a position to regulate the individual State MEP elections which precludes the EP from challenging the execution of these elections, regardless of how suspicious the MS practices may be.¹⁰ The attempts to impose a common electoral system will be discussed below under the EP's role in initiating legislation.

We also see challenges posed by the membership and composition of the EP. These elections are unconventional because the EP contains no 'institutionalized opposition'¹¹ which diminishes its role as a forum for debate. Such a differing approach causes a lack of understanding on the part of citizens which implies that elections are based upon national rather than EU policies.¹² This contributes to an increasing sense of alienation and distance between European citizens and the EP which provokes further doubts on the transparency of its activities.¹³

Another criticism of EP membership pertains to the wider issue of MEP loyalty in relation to the EP. MEPs cannot serve members of MS Parliaments but this does not prevent them from having affiliations with a particular national party which are not

⁶ Roland Bieber, 'Democratic Control of European Foreign Policy' *Eur J Int'l L*, 1 (1990), p.148 (p.156).

⁷ Patijn Report, adopted on 14 January 1975; OJ C 32, 11-02-1975.

⁸ Agnieszka Sobiech, 'The European Parliament and the European Commission: Institutional Changes' *TFLR*, 8 (1999-2000), p.281 (p.287).

⁹ Corbett et al (n 2) p.44.

¹⁰ Damian Chalmers, Gareth Davies and Giorgio Monti, *European Union Law* (2nd edn, Cambridge: CUP, 2010) p.82.

¹¹ Craig and De Burca (n 2) p.35 citing Andreas Follesdal and Simon Hix, 'Why There is a Democratic Deficit in the EU: a Response to Majone and Moravcsik' *JCMS*, 44(3) (2006), p.533 (p.552).

¹² *ibid.*

¹³ Christine Neuhold, 'The "Legislative Backbone" keeping the Institution upright? The Role of European Parliament Committees in the EU Policy-Making Process' Accessed: 31 December 2012 <<http://eiop.or.at/eiop/texte/2001-010a.htm>>, p.18.

reflective of the political leanings of a State's majority.¹⁴ Conflicts may therefore arise on certain legislation which would not be opposed by a MS in its entirety but are objectionable to certain MEPs who now have a voice in the EU. This problem may inevitably cause tension in the effective workings of the EP which cannot be overlooked.

It is further observed that the encouragement of an increased citizen engagement in EP elections creates a paradox in practice. If citizens were more involved in the process and were able to use the elections to state their policy preferences, the MEPs would become entangled in campaigning and serving their constituents. This would remove them from their legislating responsibilities which would be delegated to unelected staff, begetting a less democratic legislating process.¹⁵

These primary considerations on the EP as an elected institution provide a foundation for the implications of the developments in its legislative competences. This now allows us to turn to the legislative role of the EP compared to the role of the Council of Ministers.

Legislative Role

In order to examine this role and how it compares and relates to the Council, the main legislative processes of consultation, cooperation, co-decision and the ordinary legislative procedure will be evaluated. The conciliatory process which forms an important stage in legislation formation will also be discussed. The EP along with the Council and Commission are charged with creating EU legislation within an oft-described triangle of power that consigns the EP to a weaker position.¹⁶ The clearest reason for this weakness is that the Council traditionally enjoys the dominant legislative function with all EU legislation needing Council approval before implementation.¹⁷ This creates a 'democratic deficit',¹⁸ the existence of which is

¹⁴ Corbett et al (n 2) p.44.

¹⁵ Paul Craig and Carol Harlow (eds), *Lawmaking in the European Union* (London: Kluwer Law International, 1998) p.208.

¹⁶ Corbett et al (n 2) p.3.

¹⁷ *ibid*, p.4.

¹⁸ Paul Craig and Grainne de Burca (n 2) p.30.

supported by arguments that the EP's control over Council decisions constitutes a 'meek' and inadequate check from a democratic perspective.¹⁹

That being said, there is a certain satisfaction in having a greater role for the Council which comprises political representatives of each MS. These members although not elected to the Council, are elected at domestic level by their citizens proving significant in democratic terms.²⁰ It is also noted that there are constraints on Council activities as manifested in the legislative processes and the Commission's monopoly on the right to formulate legislative proposals in the first instance.

The first legislative procedure which provided the EP with competences in this area is that of 'consultation'. This dictated that the Council procured the opinion of the EP on legislation prior to adopting it. The EP was therefore able to evolve from a debating chamber into an informed participant in the legislating process.²¹ The consultation procedure also imposed a control on the Council because any amendments applied by the EP to a legislative proposal which the Commission approved could only be overridden by the Council unanimously.²² The EP's position in consultation was strengthened by the ECJ's *Isoglucose*²³ decision which struck down a piece of EC legislation that was adopted before the EP had pronounced its opinion. This showed the Court's reluctance to marginalise the EP in this process which is beneficial for the efforts to balance legislating power in the EU.

Parliament was able to take advantage of this ruling and adapt its internal procedures to primarily vote on the amendments it wished to make. A request for assurances from the Commission would then follow that these changes would be included in the proposal before the EP provided its formal consultation opinion. In the absence of such an assurance, the EP could abstain from providing its opinion. This would then create a delay and a compromise would be sought before the Council could proceed.²⁴ Thus, the EP had a bargaining power in legislating for the first time which could affect EU legislation.

¹⁹ Joseph Weiler, *The Constitution of Europe "Do the Clothes have an emperor?" and other essays on European Integration* (Cambridge: CUP 1999) p.38.

²⁰ Paul Craig and Carol Harlow (n 15) p.139.

²¹ Corbett et al (n 2) p.5

²² *ibid.*

²³ Also known as *Roquette Frères v Council* (Case 138/79) [1980] ECR 3333.

²⁴ Corbett et al (n 2) p.10.

Despite this step forward, the consultation procedure is open to criticism for various reasons. In the first instance, the EP's opinion was generally considered to be trivial and once received could be completely ignored rendering its participation minimal. In addition, the influence of the EP very much depended on the Commission's inclinations towards endorsing the EP's views and amendments²⁵The abovementioned *Isoglucose*²⁶ ruling was also limited because any power that the EP had to delay the process was only effective in urgent situations.²⁷ Such a delay was moreover detrimental to the relations between the EP and the other institutions which could affect its reputation, increasing its isolation. These issues show us that the EP was unable to impose its will on the Council or realistically block proposals which are both characteristics of national Parliaments.²⁸ As such, changes were needed and these were addressed by the Single European Act (SEA) 1986 which created the procedure of cooperation.

The cooperation procedure brought an end to the originally 'bi-polar relationship' between the Council and Commission by creating a triangle of legislative power.²⁹ Under cooperation, the EP was granted a second opportunity to review the legislation and either amend or reject it in which case the Council could overrule it unanimously.³⁰ This increased the dialogue between the two institutions which evidently promoted further cooperation as well as making the process more inclusive of parliamentary views.³¹ It provided another step towards increasing the legislative competences of the EP but nevertheless flaws are present in this procedure.

Cooperation was only made applicable to ten of the EC Treaty articles which did not make for frequent usage³² and in reality; it was little more than a longer consultation process because the EP's views could still be ignored by the Council acting unanimously. This demonstrates that as with the consultation process, the EP's legislating abilities were in a limited capacity and not especially strong.³³ Cooperation

²⁵ Pierre Mathijsen, 'The Power of Co-Decision of the European Parliament Introduced by the Maastricht Treaty' *Tul Eur & Civ LF*, 8 (1993), p.81 (p.83).

²⁶ (n 23).

²⁷ Corbett et al (n 2) p.10.

²⁸ *ibid* p.191.

²⁹ Neuhold (n 13) p.11.

³⁰ Corbett et al (n 2) p.11.

³¹ Craig and Harlow (eds) (n 15) p.142.

³² Corbett et al (n 2) p.11.

³³ Mathijsen (n 25) p.83.

was also overshadowed by the desperate need of the EP to make it a success so that its increased legislative role could be justified.³⁴ It was therefore ‘doomed to succeed’³⁵ which has both positive and negative connotations. On one hand the development of its role in this area was encouraged but on the other, Parliament may have taken great pains to make cooperation seem more beneficial than it truly was.

It was in the 1992 Maastricht Treaty³⁶ that the co-decision procedure was introduced which built upon the cooperation procedure and enhanced the EP’s legislative role. This was applicable to all of the legislation formed under the SEA 1986 through cooperation as well as several new areas. Later, co-decision was increasingly extended from applying to a mere fifteen legal bases to eighty-five bases³⁷ with the advent of the Treaty of Amsterdam 1997 and the Treaty on the Functioning of the European Union (TFEU) 2009.³⁸ Co-decision incorporates two new stages into the cooperation procedure which consist of conciliation and an option for the EP to reject the Council’s decision after conciliation.³⁹

Conciliation is arguably a pioneering process which calls for the formation of a committee with representatives of both the Council and EP when their views on a piece of legislation differ. This occurs after both institutions have reviewed the legislation twice and are still in disagreement which calls for a compromise to be sought. If the committee is successful in attaining this compromise, both institutions must approve the legislation in question. In the opposite case, the Council may still adopt the legislation unanimously but the EP may use its option to reject the adopted legislation causing it to fail.⁴⁰ A preliminary examination of co-decision will facilitate our understanding of the conciliation process.

Several comments have been made on the improvements to cooperation that co-decision has produced. One such comment is that for the first time the EP has the potential to influence legislative decisions which is ‘comparable’ to the Council.⁴¹ For

³⁴ Craig and Harlow (eds) (n 15) p.143.

³⁵ *ibid.*

³⁶ Also known as the Treaty establishing the European Union (TEU).

³⁷ John Peterson and Michael Shackleton (eds), *The Institutions of the European Union* (2nd edn, Oxford: OUP, 2006) p.106.

³⁸ Also known as the Lisbon Treaty.

³⁹ *ibid.*

⁴⁰ *ibid.*

⁴¹ Robert Thomson and Madeleine Hosli, ‘Who Has Power in the EU? The Commission, Council and Parliament in Legislative Decision-Making’ *JCMS*, 44(2) (2006), p.391 (p.398).

example, the Lisbon Treaty positioned the Parliament as equally responsible for legislation pertaining to the EU's Justice and Home Affairs which originally fell outside of the EP's activities.⁴² This suggests a power to jointly legislate in some capacity, indicating a positive increase in EP legislative powers.⁴³

It is also observed that co-decision was initially important for the then EC's future development because of its application to fundamental freedoms including the movement of workers⁴⁴ and right of establishment.⁴⁵ By allowing the EP to act in these areas, the commitment towards integration that it embodies as an institution is reinforced which contributes to its democratic legitimacy. This increase in power is also seen through an indirect effect that co-decision has on the abovementioned consultation procedure. It appears that confidence in the EP has increased with the success of co-decision and causes it to be consulted not only on non-legislative documents but to also be informed of exchanges between the Council and Commission.⁴⁶ This is substantiated by an overall augmentation in the strength of EP consultation because opinions must now be considered and are not as easily disregarded.⁴⁷ Parliament has become an increased participant in EU activity which tilts the balance of power towards it further.

With regards to the relative positions of the Council and Parliament under co-decision, the previous situation has changed. There is now a negative correlation between the prevalence of co-decision and the Council's dominant decision-making powers.⁴⁸ As a result, the EP's role expands as it embraces the extra responsibilities encouraged by co-decision. This does, however, pose a problem requiring consideration, in that the reduced capacity of the Council to prevail over these decisions decreases the input of national Parliaments.

A final development which bears mentioning is that the later ordinary legislative procedure formed under the Lisbon Treaty led to the conferral of formal power on the

⁴² Paolo Bilancia, 'The Role and Power of the European and the National Parliaments in the Dynamics of Integration' *Perspectives on Federalism*, 1 (2009), p.1 (p.6); Chalmers, Davies and Monti (n 10) p.24.

⁴³ Mathijssen (n 25) p.93.

⁴⁴ Now provided for in Article 46 TFEU (ex Article 40 Treaty establishing the European Community (TEC)).

⁴⁵ Provided for by Article 50(1) TFEU (ex Article 44 TEC).

⁴⁶ Corbett (n 2) p.189.

⁴⁷ Thomson and Hosli (n 41) p.398.

⁴⁸ Corbett et al (n 2) p.12.

Council and EP to check the Commission's powers under 'comitology'.⁴⁹ Comitology has been a persistent concern to the EP because it historically permitted the Commission to use Committees which formulate and implement delegated legislation without parliamentary input.⁵⁰ This caused concern because these Committees enable unelected Member State representatives to legislate with minimal checks decreasing democratic legitimacy.⁵¹ Parliament therefore attempted to control the measures through other, more indirect methods, including its political and budgetary powers.⁵²

The EP's efforts to improve this situation were successful and gradually its powers of scrutiny and regulation of comitology have increased, culminating in formal recognition through Articles 290 and 291 TFEU. These provisions ensure that Parliament can both block and revoke delegations which prior to this, could only be achieved indirectly by amending the provisions conferring the delegation.⁵³ The Lisbon Treaty has provided a clear triumph for the EP as another facet of the 'democratic deficit', termed the 'by-passing of democracy'⁵⁴ is now targeted. The involvement of the sole democratically elected body of the EU creates further accountability for the Commission in this area.

Notwithstanding these improvements, issues do exist surrounding the process and its components. It is axiomatic that the process is considerably longer and more 'intricate'⁵⁵ because of the addition of conciliation and the 'option to reject' an already lengthy cooperation procedure.⁵⁶ EU legislating is adversely affected by the lack of efficiency⁵⁷ which necessitates the employment of other strategies to compensate for this loss of time. Such strategies include the surge in decisions made

⁴⁹ George Haiback, 'Comitology: A Comparative Analysis of the Separation and Delegation of Legislative Powers' *Maastricht J Eur & Comp L*, 4 (1997), p.373 (p.383).

⁵⁰ *ibid* p.382.

⁵¹ Craig and de Burca (n 2) p.30.

⁵² Haiback (n 49) p.383.

⁵³ Chalmers, Davies and Monti (n 10) p.121.

⁵⁴ Craig and de Burca (n 2) p.30.

⁵⁵ Paul Lasok and Dominik Lasok, *Law and Institutions of the European Union* (7th edn, Oxford: Butterworths, 2001) p.263.

⁵⁶ Craig and Harlow (eds) (n 15) p.149.

⁵⁷ Edward Best, 'Legislative Procedures after Lisbon: Fewer, Simpler, Clearer?' *Maastricht J Eur & Comp L*, 15(1) (2008), p.85 (p.96).

by EP committees after one reading without any debates in plenary which reduces the time for scrutiny.⁵⁸

This emphasis on efficiency warrants ‘trilogues’ between the EU institutions in order to engage in faster agreements, but such informal communication seriously compromises the transparency of the process along with these committee level decisions. Negotiations between the Council and Parliament before a second reading are less public and the Council pressures the EP for an accord, placing both bodies in the precarious position of balancing effective inter-institutional relationships and the pursuance of their own interests.⁵⁹ This is problematic because of the disparity in positions of the Council and EP in these exchanges. The Council meetings on legislation are generally closed which concretises the asymmetry of information between itself and Parliament.⁶⁰ The MEPs are therefore dependent on Council members for information on these meetings⁶¹ causing it to receive an incomplete report of the Council’s discussions.

Having evaluated co-decision, our examination turns to the most progressive component of this legislative procedure, namely conciliation. This was introduced via a Joint Declaration of the three legislative institutions in 1975 to target growing concerns over the EP’s budgetary powers.⁶² These powers are important because they symbolise the evolution of the EP into a clear actor within the EU. Under the Budgetary Treaties of 1970 and 1975, Parliament was able to influence EU expenditure with final decision on non-compulsory expenditure whilst the Council remained in control of all compulsory expenditure.⁶³ Under Article 314(4) TFEU this differentiating factor between the two institutions has been removed and now the EP holds equal power to determine the allocation of all spending along with the

⁵⁸ Julia De Clerck-Sachsse and Piots Maciej Kaczyński, ‘The European Parliament – More powerful, less legitimate? An outlook for the 7th term’ (2009) CEPS Working Document 314. Accessed: 31 December 2012 <<http://ceps.eu>>, p.1.

⁵⁹ Diego Acosta, ‘The Good, The Bad and the Ugly in EU Migration Law: Is the European Parliament Becoming Bad and Ugly? (The Adoption of Directive 2008/15: The Returns Directive)’ *Eur J Migration & L*, 11 (2009), p.19 (p.24).

⁶⁰ Robert Thomson, ‘The Distribution of Power among the Commission, European Parliament and Council in the European Union’ European Union Studies Association Twelfth Biennial International Conference, Massachusetts, 3-5 March 2011, p.25.

⁶¹ *ibid.*

⁶² Corbett et al (n 2) p.193.

⁶³ Kristin Archick, ‘The European Parliament’ 2012 Congressional Research Service. Accessed: 31 December 2012 <<http://www.fas.org/sgp/crs/row/RS21998.pdf>>, p.3.

Council.⁶⁴ This provides an advantageous development for the EP whilst reconfiguring the balance of power between the Council and EP.

Parliament's budgetary powers induced anxiety within the Council because of the potential to block the implementation of legislation with budgetary implications.⁶⁵ Thus an overlap between EP budgetary and legislative powers is observed which gave rise to the conciliation procedure. Conciliation permits a primary dialogue between the Council and EP without interference and this has been extremely beneficial for both bodies. It has ensured that they become accustomed to dealing and negotiating with one another and as a formal part of co-decision, it heightens their collaborative legislative efforts.⁶⁶

This is reinforced by the conclusion of some including Moser, that the lack of Commission participation allows the EP to alter legislation substantially.⁶⁷ Tsebelis notes that the number of successful parliamentary amendments is significant enough to assert that the EP surpasses national Parliaments in its influence and legislative power over the executive using conciliation.⁶⁸ Such influence permeates the other institutions because the MS which are outweighed in Council legislation voting have another opportunity to make their views heard and implemented.⁶⁹ This incites further debate and scrutiny of legislation which can only aid democratic practice.

Nevertheless, there are certain objections to conciliation which begin with its position in the legislative process. It is argued that forming a conciliatory committee after the second reading in both the EP and Council is too late because they are both less inclined to compromise.⁷⁰ The Council may also be more reluctant to concede to Parliament's wishes as this could provoke re-negotiations within the Council itself, particularly in instances where it was originally divided on the legislation.⁷¹

⁶⁴ John Fairhurst, *Law of the European Union* (8th edn, Essex: Pearson Education Ltd, 2010) p.117.

⁶⁵ Corbett et al (n 2) p.193.

⁶⁶ Corbett et al (n 2) p.195.

⁶⁷ Peter Moser, 'The European Parliament as a Conditional Agenda Setter: What Are the Conditions? A Critique of Tsebelis (1994)' *APSR*, 90(4) (1996), p.834 (p.837).

⁶⁸ George Tsebelis, 'More on the European Parliament as a Conditional Agenda Setter: Response to Moser' *APSR*, 90(4) (1996), p.839 (p.843).

⁶⁹ John Sap, 'The Reflection of Calvinism in the Development of the European Parliament' *TFLR*, 6 (1997), p.257 (p.271).

⁷⁰ Craig and Harlow (eds) (n 15) p.160.

⁷¹ Corbett et al (n 2) p.194.

Moreover, in reality the EP is in a disadvantaged position because it lacks the law-making expertise possessed by the Council which may draw upon ministerial knowledge of legislating.⁷² This is exacerbated by the lack of a practical two-way exchange between the two institutions as it seems that information only travels from the Commission and Council to the EP.⁷³ Parliament's voice is therefore curtailed in these proceedings; with so many participants present at the conciliation its disadvantage is clear.⁷⁴ That being said, these criticisms which mainly pertain to practicalities are redeemed by the positive effects of this stage in legislation-making and may be addressed through further consideration.

These procedures and developments lead us to the current situation as provided for by the TFEU 2009 which extended the co-decision process to apply to most legislation whilst re-naming it the 'ordinary legislative procedure'.⁷⁵ This was another leap forward in combating the legislative process' democratic deficit. The change in nomenclature for EU legislating no longer needs to symbolise the establishment of the EP as a legislating organ but considers it obvious as evidenced by the word 'ordinary'. This represents a commitment by the EU to focus the legislative triangle of power towards the EP and is a clear effort to change perceptions of it as a weak legislator.

This procedure is essentially the same as co-decision and it stresses the equal status of the EP and Council for the legislative process.⁷⁶ It appears that the same merits and criticisms for co-decision are applicable here although one feature remains to be examined. This is the EP's potential to block legislation after the Council adopts it unanimously without parliamentary assent. The EP tends to capitalise more on the presence of this ability rather than actually exercising it which speaks volumes about the perception of EU power.⁷⁷ The block is seldom used, mainly because it is draconian and extreme in nature which does little to encourage communication or compromise between institutions. This reluctance also indicates the Parliament's resignation towards legislating and alludes to an attitude of flawed legislation being more acceptable than no legislation.⁷⁸ Such an approach is dangerous because the

⁷² Craig and Harlow (eds) (n 15) p.161.

⁷³ Craig and Harlow (eds) (n 15) p.160.

⁷⁴ Neuhold (n 13) p.14.

⁷⁵ Fairhurst (n 64) p.119.

⁷⁶ Craig and De Burca (n 2) p.32.

⁷⁷ Chalmers, Davies and Monti (n 10) p.106.

⁷⁸ *ibid* p.105.

Council and Commission could exploit this which does not bode well for democratic accountability or transparency.

Despite this issue, an overall consideration of the current legislating situation demonstrates the great progress that has been made by the EP in this area. Inevitably, further improvements are needed but this does not preclude us from unequivocally stating that the EP is now an extremely prominent legislative organ.

Initiating Legislation

The power to initiate legislation, although associated with the legislative organ of a State is in practice enjoyed by the executive.⁷⁹ This is mirrored at EU level as the Commission enjoys a monopoly on the right to formulate and initiate EU legislative proposals.⁸⁰ The EP and Council are therefore constrained as they may not act under their own initiative when legislating.⁸¹ This centralised right of initiation is problematic because the Commission has the potential to debilitate the EP and Council simply by not proposing legislation. The consequences of this could be grave as the legislative processes of the EU may be brought to a standstill.⁸²

Traditionally, the main control that the EP has had on the Commission and its legislative role dating from the Treaties of Rome 1957 until the present day⁸³ is the power to dismiss it entirely.⁸⁴ This sanction is extreme and ‘indiscriminate’ impeding effective supervision over the Commission⁸⁵ and rendering it ‘illusory’.⁸⁶ By having the power to dismiss it as a whole, the EP would cause the Commission’s work to ground to a halt, thereby causing significant delays as time was taken to appoint the Commission. This ensures that such Parliamentary supervision lacks efficacy and in reality, the EP would be reluctant to exercise such a draconian power. It is therefore apparent that further powers over the composition of the Commission which mitigate the EP’s severe control were required; this problem has been considered below.

⁷⁹ Corbett et al (n 2) p.217.

⁸⁰ Thomson and Hosli (n 41) p.398.

⁸¹ Corbett et al (n 2) p.5.

⁸² Fairhurst (n 64) p.126.

⁸³ Jeffrey Stacey, ‘Displacement of the Council via informal dynamics? Comparing the Commission and Parliament’ *JEPP*, 10(6) (2003), p.936 (p.943).

⁸⁴ Weiler (n 19) 79; Stephen Weatherill and Paul Beaumont, *EU Law: The Essential Guide to the Legal Workings of the European Union* (3rd edn, London: Penguin, 1999) p.108.

⁸⁵ Weatherill and Beaumont (n 84) p.112.

⁸⁶ Weiler (n 19) p.79.

Some progress was made in moderating the Commission's dominant rights in this area with the creation of a Code of Conduct following the Maastricht Treaty. The EP may have gained a lot from this but it was unable to secure a commitment from the Commission to accept all parliamentary suggestions when formulating proposals.⁸⁷ This was a positive but insufficient step which necessitated more forceful action to remedy the lack of checks and balances provoked by the focus of power on one institution.

In spite of the EP's overtly limited role to initiate legislation, there are less formal procedures and circumstances which represent a different view of its powers. First, the Commission is obliged to consider parliamentary preferences when proposing legislation and under the Maastricht Treaty, the EP may request the Commission to submit proposals to it.⁸⁸ These principles are democratically beneficial because they promote the Commission's accountability to Parliament. A pragmatic view is also taken on the Commission's initiative rights because of its generally united position in comparison to the sometimes fractious Parliament and Council.⁸⁹

The Commission has cultivated a mutually beneficial relationship with the EP because the former requires the latter's democratic legitimacy whilst the Parliament avails itself of the Commission's technical knowledge.⁹⁰ Without such connections, the integration of the institutions and consequently their legislative roles would be weakened.⁹¹ It has been noted that the Commission has ameliorated this relationship in a number of ways. For example, Parliament is able to call for action by the Commission which often leads to new proposals.⁹² This creates an indirect albeit restrained power of initiation for the EP which is supplemented by the Commission's willingness to submit reports periodically outlining its response to parliamentary suggestions.⁹³ The reports are reviewed and publicly debated which increases the

⁸⁷ Stacey (n 83) p.942.

⁸⁸ Corbett et al (n 2) p.217.

⁸⁹ Thomson and Hosli (n 41) p.398.

⁹⁰ Craig and Harlow (eds) (n 15) p.140.

⁹¹ Juliet Lodge, 'The European Parliament and the Authority-Democracy Crises' *Annals AAPSS*, 531 (1994), p.69 (p.82).

⁹² Corbett et al (n 2) p.218.

⁹³ *ibid*; see also European Commission, 'The institutional system of the Community – Restoring the Balance' *Supplement 3/82 Bull EC* (1981) which represents a further example of the Commission's submission to parliamentary involvement as an initiator of legislation.

transparency of Commission activities thereby improving the checks on proposal formation procedures.⁹⁴

After Maastricht, the EP's impact on the Commission through powers of appointment was entrenched,⁹⁵ providing a balance to its power of censure.⁹⁶ By approving the Commission President and stating its confidence in the Commission as a body, the EP has the power to determine those who initiate legislation.⁹⁷ The 'vote of confidence' in the Commission is unofficially accompanied by parliamentary hearings as part of its Procedural Rules to investigate the individual Commissioners before their formal appointment.⁹⁸ This is an impressive ability which could serve to moderate its less practical power of censure. These powers of appointment also extend to the new role of EU Ombudsman under the EP's jurisdiction,⁹⁹ which has been long-awaited because it establishes another level of accountability for the Commission and the other institutions.¹⁰⁰ This democratises the legislative proposal and adoption processes even further.

It is also observed that in reality, the EP also has some rights of initiative as part of special legislative procedures pertaining to the EP electoral procedures,¹⁰¹ the exercise of its inquiry¹⁰² and MEP regulation powers among others.¹⁰³ This demonstrates that the EP has both a direct and indirect influence on the initiation of legislation through a variety of means. Such a conclusion is indicative of a strong potential for reform in this area to balance power between the legislative institutions of the EU and increase Parliament's competences.

Applications to annul under Article 263 TFEU

It was strongly suggested in the Treaty of Rome¹⁰⁴ that no judicial action could be instigated by or against the EP,¹⁰⁵ which included the right to bring proceedings for

⁹⁴ Weatherill and Beaumont (n 84) p.111.

⁹⁵ Corbett et al (n 2) p.12.

⁹⁶ Weiler (n 19) p.79.

⁹⁷ Corbett et al (n 2) p.11.

⁹⁸ Stacey (n 83) p.945.

⁹⁹ Kreppel (n 1) p.889.

¹⁰⁰ Stacey (n 83) p.948.

¹⁰¹ Corbett et al (n 2) p.13.

¹⁰² A223(5) TFEU.

¹⁰³ A228(4) TFEU; Best (n 57) p.93.

¹⁰⁴ Article 173 EEC Treaty.

¹⁰⁵ Weiler (n 19) p.45.

the annulment of legislation under the now A263 TFEU.¹⁰⁶ This was in contrast to the privileged or full standing enjoyed by the other legislative organs and all of the MS which reflects the historically disadvantaged position of the EP. It should be noted that the Treaty was judicially interpreted to permit action to be taken against Parliament¹⁰⁷ which eventually led to the EP being able to initiate judicial proceedings.¹⁰⁸

Despite an ‘expansive’¹⁰⁹ interpretation of the Treaty article, Parliament’s right to become an applicant before the ECJ was initially limited which affected its ‘institutional prerogatives’.¹¹⁰ Having some *locus standi* to use A263 TFEU was important to the EP because of its weaker legislative status. It was not until the TEU 1992 that the EP’s standing was formalised and with time, the limited or semi-privileged status of Parliament has evolved into fully privileged standing because of the democratic interest it represents.¹¹¹

It is apparent that this improved status provides a myriad of benefits to the EP, not least an increased supervision over the other legislative institutions with the Court’s endorsement.¹¹² This initiation of applications to annul also allows Parliament to defend its legislative role by challenging the adoption of acts under a legal base which sideline its involvement.¹¹³ These merits attached to the EP’s privileged *locus standi* under the A263 procedure are moreover significant for its impact on Parliament’s own behaviour. As a result of possible annulment, the EP has utilised litigation to clarify the other institutions’ obligations towards it as well as improving its influence over legislation.¹¹⁴ It should be mentioned that this has provoked accusations of the EP employing purposeful strategies to challenge other institutions which are unproven.

¹⁰⁶ Margaret McCown, ‘The European Parliament before the bench: ECJ Precedent and EP litigation strategies’ *JEPP*, 10(6) (2003), p.974 (p.976).

¹⁰⁷ Case 294/83 *Les Verts v European Parliament* [1986] E.C.R. 1339.

¹⁰⁸ See Case 65/90 *European Parliament v Council* (‘Comitology’) [1992] ECR I-4593 and Case 70/88 *European Parliament v Council* (‘Chernobyl’) [1990] ECR 2041.

¹⁰⁹ Weiler (n 19) p.45.

¹¹⁰ Chalmers, Davies and Monti (n 10) p.414.

¹¹¹ Kreppel (n 1) p.891.

¹¹² Weatherill and Beaumont (n 84) p.113.

¹¹³ *Roquette Frères* (n 23); for further discussion see Paul Craig and Grainne de Burca, *EU Law Text, Cases and Materials* (5th edn, Oxford: OUP, 2011) p.54.

¹¹⁴ McCown (n 106) p.987.

Some even argue that the opposite is true because of the amount of legislation with contestable legal bases which has been tolerated.¹¹⁵

The EP's standing under A263 advocates the diligence of all of the institutions with the Council and Commission being deterred from neglecting parliamentary involvement.¹¹⁶ Parliament has consequently become more observant on legal bases¹¹⁷ to ensure that all possible steps are taken before resorting to judicial action. This improved behaviour not only strengthens the 'inter-institutional dialogue'¹¹⁸ between the organs but has lessened the tensions over choice of legal base as they collectively seek to avoid litigation.¹¹⁹

Concluding Remarks

It is clear that the EP has undergone a remarkable transformation throughout the EU's history. However, this journey has been difficult and it has often struggled to extend its competences. This is particularly true of its legislative role which was originally limited under consultation and cooperation but has increased progressively under co-decision and the current ordinary legislative procedure. Issues do still exist which require attention such as the lack of transparency to the process but in time these may be improved to promote a better balance of power between the three legislative organs.

With regards to Parliament's right to initiate legislation, although the Commission enjoys a dominant role in this field, it is subject to various checks by Parliament. Moreover, upon closer examination of the right to initiate, it appears that the EP does possess some competences to initiate certain pieces of legislation. These are limited and may be expanded in the future to increase the democratic legitimacy of proposal making in the EU; which would be advantageous to perceptions of the process among other benefits including a rebalancing of law-making power in favour of the EP.

The final area explored on the EP's standing as an applicant before the ECJ also represents a significant development in Parliament's status in the EU. The upgrade of

¹¹⁵ Craig and De Burca, *The Evolution of EU Law* (n 2) p.106.

¹¹⁶ McCown (n 106) p.989.

¹¹⁷ McCown (n 106) p.986.

¹¹⁸ *ibid* p.988.

¹¹⁹ Fairhurst (n 64) p.149.

its standing in cases concerning its prerogatives to a fully privileged status equal to the other main EU institutions and MS has been beneficial for Parliament's legislative role and relationship to other legislative organs. Inevitably, there is the potential to ameliorate the EP's presence within the EU but it is apparent from this discussion that many positive steps have been taken to attend to this.

Bibliography

Legislation and Cases

European Coal and Steel Community (ECSC) Treaty 1951

Article 173 European Economic Community (EEC) Treaty 1957

Single European Act (SEA) 1986

Treaty establishing the European Union (Maastricht) 1992

Treaty of Amsterdam 1997

Article 46 Treaty on the Functioning of the European Union (Lisbon) 2009

Article 50(1) Treaty on the Functioning of the European Union (Lisbon) 2009

A223(5) Treaty on the Functioning of the European Union (Lisbon) 2009

A228(4) Treaty on the Functioning of the European Union (Lisbon) 2009

Case 138/79 *Roquette Frères v Council* [1980] ECR 3333

Case 294/83 *Les Verts v European Parliament* [1986] ECR 1339

Case 65/90 *European Parliament v Council* ('Comitology') [1992] ECR I-4593

Books

Chalmers D, Davies G and Monti G, *European Union Law* (2nd edn, Cambridge: CUP, 2010)

Corbett R, Jacobs F and Shackleton M, *The European Parliament* (3rd edn, London: Cartermill Publishing, 1995)

Craig P and Harlow C (eds), *Lawmaking in the European Union* (London: Kluwer Law International, 1998)

Craig P and de Burca G, *EU Law Text, Cases and Materials* (5th edn, Oxford: OUP, 2011)

--, *The Evolution of EU Law* (2nd edn, Oxford: OUP, 2011)

Fairhurst J, *Law of the European Union* (8th edn, Essex: Pearson Education Ltd, 2010)

Lasok KPE and Lasok D, *Law and Institutions of the European Union* (7th edn, London: Butterworths, 2001)

Peterson J and Shackleton M (eds), *The Institutions of the European Union* (2nd edn, Oxford: OUP, 2006)

Weiler JHH, *The Constitution of Europe “Do the Clothes have an emperor?” and other essays on European Integration* (Cambridge: CUP, 1999)

Weatherill S and Beaumont P, *EU Law: The Essential Guide to the Legal Workings of the European Union* (3rd edn, London: Penguin, 1999)

Articles

Acosta D, ‘The Good, The Bad and the Ugly in EU Migration Law: Is the European Parliament Becoming Bad and Ugly? (The Adoption of Directive 2008/15: The Returns Directive)’ *Eur J Migration & L*, 11 (2009), p.19

Archick K, ‘The European Parliament’ 2012 Congressional Research Service. Accessed: 31 December 2012 <<http://www.fas.org/sgp/crs/row/RS21998.pdf>>

Best E, ‘Legislative Procedures after Lisbon: Fewer, Simpler, Clearer?’ *Maastricht J Eur & Comp L*, 15(1) (2008), p.85

Bieber R, ‘Democratic Control of European Foreign Policy’ *Eur J Int’l L*, 1 (1990), p.148

Bilancia P, ‘The Role and Power of the European and the National Parliaments in the Dynamics of Integration’ *Perspectives on Federalism*, 1 (2009), p.1

De Clerck-Sachsse J and Maciej Kaczyński P, ‘The European Parliament – More powerful, less legitimate? An outlook for the 7th term’ (2009) CEPS Working Document 314. Accessed: 31 December 2012 <<http://ceps.eu>>

European Commission, ‘The institutional system of the Community – Restoring the Balance’ *Supplement 3/82 Bull EC* (1981)

Follesdal A and Hix S, Andreas Follesdal and Simon Hix, 'Why There is a Democratic Deficit in the EU: a Response to Majone and Moravcsik' *JCMS*, 44(3) (2006), p.533

Haiback G, 'Comitology: A Comparative Analysis of the Separation and Delegation of Legislative Powers' *Maastricht J Eur & Comp L*, 4 (1997), p.373

Kreppel A, 'Necessary but not sufficient: understanding the impact of treaty reform on the internal development of the European Parliament' *JEPP*, 10(6) (2003), p.884

Lodge J, 'The European Parliament and the Authority-Democracy Crises' *Annals AAPSS*, 531 (1994), p.69

Mathijssen P, 'The Power of Co-Decision of the European Parliament Introduced by the Maastricht Treaty' *Tul Eur & Civ LF*, 8 (1993), p.81

McCown M, 'The European Parliament before the bench: ECJ Precedent and EP litigation strategies' *JEPP*, 10(6) (2003), p.974

Moser P, 'The European Parliament as a Conditional Agenda Setter: What Are the Conditions? A Critique of Tsebelis (1994)' *APSR*, 90(4) (1996), p.834

Neuhold C, 'The "Legislative Backbone" keeping the Institution upright? The Role of European Parliament Committees in the EU Policy-Making Process' Accessed: 31 December 2012 <<http://eiop.or.at/eiop/texte/2001-010a.htm>>

Patijn Report, adopted on 14 January 1975; OJ C 32, 11-02-1975

Sap JW, 'The Reflection of Calvinism in the Development of the European Parliament' *TFLR*, 6 (1997), p.257

Sobiech A, 'The European Parliament and the European Commission: Institutional Changes' *TFLR*, 8 (1999-2000), p.281

Stacey J, 'Displacement of the Council via informal dynamics? Comparing the Commission and Parliament' *JEPP*, 10(6) (2003), p.936

Thomson R and Hosli M, 'Who Has Power in the EU? The Commission, Council and Parliament in Legislative Decision-Making' *JCMS*, 44(2) (2006), p.391

Thomson R, 'The Distribution of Power among the Commission, European Parliament and Council in the European Union' European Union Studies Association Twelfth Biennial International Conference, Massachusetts, 3-5 March 2011

Tsebelis G, 'More on the European Parliament as a Conditional Agenda Setter: Response to Moser' *APSR*, 90(4) (1996), p.839