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Shifting EU Institutional Reform into High Gear

Report of the CEPS High-Level Group

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CHAIR: Danuta Hübner

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Members

Danuta Hübner MEP, Chair
Tom de Bruijn
John Bruton
Daniel Gros
Malcolm Harbour MEP
Karel Lannoo
Eva Lichtenberger MEP
Stefano Micossi
Paolo Ponzano
René Repasi
Philippe de Schoutheete
Günter Verheugen

Rapporteurs

Sonia Piedrafita
Steven Blockmans

Centre for European Policy Studies
Brussels

This report is based on discussions in the CEPS High-level Group on EU Institutional Reform. The group met four times between September and December 2013. Participants included MEPs, former members of the Commission and Commission officials, former members of COREPER and the Council and leading scholars on EU law and institutional affairs. A list of members and their organisational affiliation appears in the Annex.

The contents of the report reflect the general tone and direction of the discussions, but its recommendations do not necessarily represent a full common position agreed by all members of the High-Level Group, nor do they necessarily represent the views of CEPS or the institutions to which the members belong.

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Centre for European Policy Studies
Place du Congrès 1, B-1000 Brussels
Tel: (32.2) 229.39.11 Fax: (32.2) 219.41.51
E-mail: info@ceps.eu
Website: http://www.ceps.eu

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PREFACE

In December 2009, hopes were high that the enforcement of the Lisbon Treaty would equip the European Union with a more effective and democratic political system and transform it into a more unified and influential global player. Unfortunately, the EU was deeply mired in the most severe financial and economic crisis to have erupted in recent memory, which brought it a trio of challenges.

Firstly, the broad range of reforms in economic governance and financial-sector matters created a need for accompanying mechanisms of democratic legitimacy. These were not sufficiently provided, however. Moreover, cooperation between the European Parliament and national parliaments remained elusive. A severe democratic deficit thus emerged.

Secondly, the crisis also generated new layers of differentiation in the Union. The bulk of crisis-driven reforms targeted the common currency area, and non-euro area members aspiring to join the euro were not always taken on board. Moreover, different appetites for reform were also displayed even within the non-euro group of member states. These trends exposed the difficulty the EU faces in dealing with heterogeneity. It also called into question the cohesion, solidarity and integrity of the Union.

Thirdly, the crisis also brought to the fore the question of whether we have in place adequate institutional structures to deal with the problems of the Union and whether inter-institutional cooperation can meet the challenges of the day. Difficult concerns about the efficiency of the Union's institutions thus emerged.

The members of the CEPS High-Level Group believed that it was essential to address these challenges, particularly in the context of the upcoming European elections. A treaty reform might be unavoidable – and even advisable – in the future, but we cannot afford to wait for a more propitious political climate to arrive.

With these thoughts in mind, our aim was to pinpoint the main inter-institutional and intra-institutional weaknesses and put forward specific recommendations to shift the EU institutional machinery into high gear. I hope that the breadth and depth of the debates are fairly presented in this report and sincerely thank all members and the rapporteurs for their valuable contributions.

Danuta Hübner MEP, Chair
Brussels, March 2014

Recommendations of the High-Level Group at a glance

I. Initiation Phase

At the beginning of each legislative cycle, the Commission should develop a strategic legislative plan for the five years to come, subject to the scrutiny of the European Parliament and the Council. The Commissioners' portfolios should be clustered in groups of related policy areas under the leadership of a Vice-President. The number of Directorates General should be reduced and the role of the Secretariat General should be re-examined. Impact assessments should make better use of the consultation process, improve the appraisal of the implementation of the proposal and take better account of the Impact Assessments Board's opinion. The composition and rules of procedures of the IAB should be modified to guarantee its independence. The Early Warning Mechanism and the Commission's political dialogue with the national parliaments should be enhanced.

II. Negotiation and Adoption Phase

The adoption of inter-governmental treaties outside the EU legal framework should be confined to exceptional circumstances. The community method and the active role of the EP in EU decision-making should be assured whenever it is legally possible. All means of differentiated integration should preserve the rights and interests of those member states that might join in the future. The EP's committees should be aligned with the Commission's clustered portfolios, in-house expertise should be upgraded and bureaucratic rules governing inter-committee relations should be cut back. Coordination between the Council with the EP should be improved and measures should be taken to enhance the profile of the rotating Presidencies, e.g. reinforcing the role and visibility of the General Affairs Council. Parliamentary scrutiny of the European Council, both at national and EU level, should be improved. The instruments of inter-parliamentary cooperation between the EP and the national parliaments should be strengthened.

III. Implementation Phase

The EP standing committees should follow up how the relevant DGs in the Commission monitor the transposition and enforcement of EU legislation in member states. The Commission, the EP and the Council should agree on a clearer dividing line between implementing and delegated acts. The role of the EP in the European Semester should be reinforced by a better use of the economic dialogues. The Commission could also agree to take the EP's views on draft recommendations into account. It is also essential that the national parliaments are properly engaged in the scrutiny of the European Semester to guarantee the fullest possible legitimacy of the process. If the European Council finally decides to conclude arrangements of a contractual nature with individual member states, the EP should be entitled to authorise the budget appropriations and the agreements should be put to a vote in the national parliaments. The EP's oversight of the Banking Union should be enhanced.

INTRODUCTION

Barely four years after the entry into force of the Lisbon Treaty, there are growing concerns about the unity, efficiency and democratic legitimacy of the EU political system. The implementation of the treaty provisions reforming the institutions and the decision-making procedures and, especially, the management of the euro crisis have raised new challenges and re-opened questions that the Lisbon Treaty was supposed to have answered. Differentiated integration through either enhanced cooperation or international agreements outside the EU legal framework, the salient role of the European Council in the EU decision-making process and the shift of implementing and supervisory powers from the national to the EU level in the fiscal and financial domains, have all affected the very fundamentals of the EU, its institutional balance and democratic legitimacy. Indeed, the gap between the citizens and the EU seems to be widening. Voter turnout in the elections to the European Parliament hit an historic low of 43% in 2009 and citizens' support for the EU and trust in its institutions have declined ever since.

In the future, a revision of the treaties to address some of these concerns might be inescapable, but today's political climate is not favourable. Nevertheless, once the next European Parliament and European Commission take office, the EU should undertake a number of institutional changes within the confines of the current treaties to improve the efficiency and democratic legitimacy of the EU institutions and protect its integrity.

This report aims to identify the main inter- and intra-institutional weaknesses in the EU decision-making process and to propose concrete recommendations to improve the organisation and functioning of the EU that would not necessitate a reform of the treaties. The analysis is based on three operating principles, namely, efficiency, democratic legitimacy and flexibility. Efficiency is understood as the capacity to deliver results in a reasonable span of time with the optimal use of resources. Democratic legitimacy is assessed in terms of participation, political accountability and

institutional balance. Flexibility concerns the responsiveness of the institutional framework to reconcile heterogeneity within the EU.

The structure of the report follows the main phases of the EU decision-making process. Section 1 looks into the initiation phase, section 2 examines the negotiations and the adoption process and section 3 focuses on the implementation stage. Each section analyses the main inter- and intra-institutional weaknesses in terms of efficiency, democratic legitimacy and flexibility, and identifies specific institutional reforms that, without further treaty reform, could contribute to overcome them. The final section summarises the main recommendations and conclusions.

1. THE INITIATION PHASE

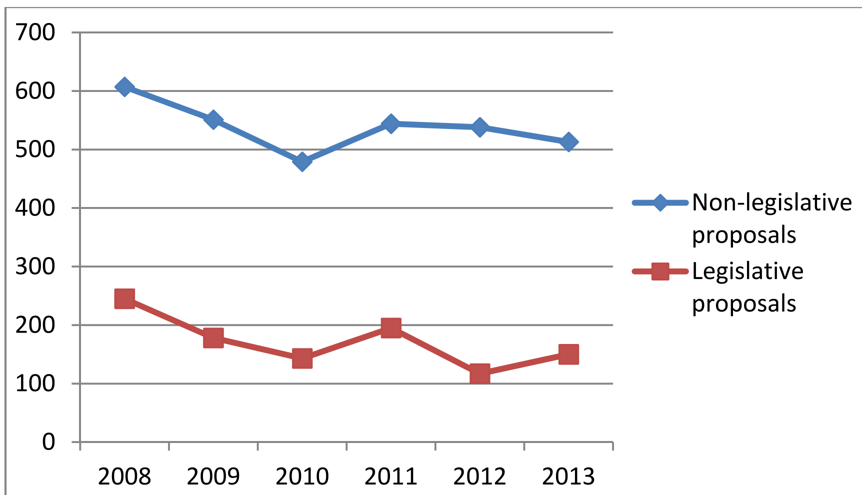
Despite the growing agenda-setting powers of the European Council, partly as the result of the institutionalisation of its Presidency and the evolution of the euro crisis, the European Commission remains the key player in the initiation phase. The European Parliament can ask the Commission to propose legislation (Art. 225 TFEU), but in the last legislature less than 20 own-initiative legislative reports were adopted. The efficient and legitimate exercise of the Commission's right of initiative is closely linked to the organisation of the College of Commissioners, whereas the impact assessment process and the control of the subsidiarity principle are key elements in streamlining legislation.

1.1 The College of Commissioners

The principle of collegiality, which should govern decision-making in the Commission (Art. 17.6 TEU), guarantees the equal participation of all the Commissioners and the collective responsibility for the decisions taken. As a collegiate body, the Commission shall promote the general interest of the Union and carry out its functions independently (Arts 17.1 and 17.3 TEU). In practice, however, important issues have increasingly been handled by the Commission President and the respective Commissioner(s) on a selective basis rather than through discussions within the College. Few decisions are taken by following the oral procedure (in comparison with the written and empowerment procedures) and they are hardly ever put to a vote (despite the controversy generated by some of them). Aimed at avoiding the shortcomings of a large College, this practice has proved counterproductive in terms of collegiality and has favoured a silo approach to policy-making. This stands at stark contrast to the demand for a more holistic approach to deal with increasing interdependencies between policies. The fact that there is one Commissioner per member state also fosters the perception that Commissioners may represent the interests of their country of origin rather than the EU common interest. However, member states and their citizens might benefit from having a Commissioner who speaks their language and knows more about each particular national context.

The large number of Directorates (33 DGs and 11 Services) makes effective internal coordination more difficult and increases the tendency to negotiate dossiers between the President and the respective Commissioner. This latter practice might open opportunities for vested interests to capture the agenda-setting. The high number of Commissioners and DGs also creates a bias in favour of excessive legislation. In the last four years, the Barroso II Commission adopted 605 legislative proposals, as well as another 2,074 initiatives such as communications, guidelines, reports, recommendations, Commission regulations, Green and White Papers. As shown in Figure 1, the Commission's efforts to reduce the volume of proposals have produced some effect, but the number remains high.

Figure 1. Number of the Commission's initiatives adopted



Source: Data collected from http://ec.europa.eu/atwork/key-documents/index_en.htm

1.2 Impact assessments

The systematic analysis of economic, social and environmental effects in the impact assessment (IA) process should serve the two-fold purpose of identifying the best alternative for action and stopping poor or disproportionate policy proposals.[1] However, by selective or inadequate

[1] The impact assessment process was launched by the Commission's communication on Impact Assessment COM(2002) 276 final, as was agreed at the Göteborg and Laeken European Councils. The process started in 2003. Revisions in

presentation of alternatives, DGs might use IAs to justify the regulatory proposals they want to push forward. The Impact Assessment Board (IAB), which brings together five permanent and four rotating Director-level officers from different DGs, publishes opinions on the IAs produced by the different DGs before the internal inter-service consultation takes place. In 2012, the IAB examined 97 IAs submitted by the Commission's DGs. It also issued 47 opinions on IAs that had been requested to be changed and resubmitted. In the report for 2012, the IAB noted that the percentage of cases where substantial changes were made by the DGs following the requests of the IAB had declined, showing special concern in the case of negative opinions.[2] Even in the event of a weak endorsement by the IAB, the Commission might adopt a legislative proposal without a proper justification. In addition, the fact that the members of the IAB are Commission officials poses questions about their independence and capacity to challenge the DGs' impact assessments.

The consultation process is not generally extended to involve the relevant stakeholders in the evaluation of policy choices set out in the impact assessments, thereby missing out on relevant information and insights. Moreover, the results of the consultation process might be simply 'attached' to the IA and not taken into account properly. Additionally, the IAs can be compiled on the basis of an earlier version of a proposal and may not reflect the changes made by the Commission during the inter-service consultation.

In a similar vein, if substantial changes are made to the legislative proposal during the negotiations in the Council and the EP, the estimated impact of the final legislative act remains unknown, given that neither the Council nor the EP provides a systematic analysis of the impact of those amendments. The capacity of both institutions to carry out impact assessments is very limited. The recently created Directorate for Impact Assessment and European Added Value (EAV) in the EP issued, in 2012, ten initial appraisals of IAs, one detailed appraisal (at the request of a

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the inter-institutional agreements and updated guidelines followed in the years after.

[2] *Impact Assessment Board Report for 2012* (http://ec.europa.eu/governance/impact/key_docs/docs/iab_report_2012_en_final.pdf).

committee) and three reports on EAV.[3] The Council does not have a similar unit or service, and only a few member states are carrying out IAs in a systematic way, although the Commission has encouraged them to provide their assessments on the complexity, costs and effectiveness of implementing EU legislation.

1.3 Subsidiarity control

Compliance with the subsidiarity principle by the EU institutions and the control by the national parliaments (Art. 5 TEU and Protocol 2) are essential to pre-empt unnecessary legislation and ensure that decisions are taken as closely as possible to the citizens. After four years in use, a number of shortcomings can be identified in the Early Warning Mechanism (EWM) established by the Lisbon Treaty to ensure that EU legislation complies with the subsidiarity principle.

Since its creation, the participation of national parliaments in the EWM has increased steadily. In 2012, the Commission received a total of 83 (compared to 64 in 2011 and 34 in 2010) reasoned opinions stating a breach of the subsidiarity principle in relation to 34 legislative proposals (out of around 160). However, this participation is uneven across national parliaments. Some 24 legislative chambers from 19 member states sent at least one reasoned opinion. Almost half were submitted by four chambers, namely, the Swedish Riksdag (21), the French Sénat (7) and the Dutch Eerste Kamer (6) and Tweede Kamer (6).[4]

With the exception of the Proposal for a Council Regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services ('Monti II'), all the other legislative proposals received fewer than five opinions. In the case of the Monti II proposal, 12 national parliaments issued reasoned opinions stating a breach of the subsidiarity principle, which triggered the 'yellow card' procedure for the first time since its establishment by the Lisbon Treaty (Art. 7 Protocol No. 2). The Commission decided to withdraw the proposal in January 2013. A yellow card was issued again

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[3] The EAV looks at the potential benefits of future EU action and at the costs of not taking any action at EU level. See *Annual Report 2012 on Subsidiarity and Proportionality*, European Commission, COM (2013) 566 final.

[4] *Annual Report 2012 on Subsidiarity and Proportionality*, European Commission, COM (2013) 566 final, Brussels, 30 July 2013.

recently when 14 chambers in 11 member states raised objections to the Commission's proposal for the European Public Prosecutor's Office. However, on this occasion, the Commission expressed its determination to go ahead with the proposal through the enhanced cooperation procedure (ECP). Article 86 (1) of the TFEU foresees this possibility in the absence of unanimity in the Council, but in this case there is also an alleged breach of the subsidiarity principle.

The impact of the contribution of national parliaments is weak. Only reasoned opinions that reach the threshold might get some visibility and have some effect, despite the fact that the Commission may still decide to go ahead with its plans. The Commission is in all cases committed to reply to the national parliaments, but it is difficult to know whether and how it takes their views into account. A few national parliaments also complain that the reply letters are sometimes too general and do not properly address the specific objections raised.[5] These shortcomings can discourage the constructive involvement of many MPs in the process. An additional weakness is that there is not a common approach to the subsidiarity principle. National parliaments usually make a broad interpretation of the concept of subsidiarity and most reasoned opinions fail to justify a violation of the subsidiarity principle in a strict legal sense, focusing instead on the content of the legislative proposal. Many of the opinions are motivated by domestic politics and some aim at protecting the national interest rather than responding to the objective to ensure the subsidiarity principle.

[5] *Sixteenth Bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny*, COSAC, October 2011.

Recommendations on the initiation phase

1. ***Promote strategic planning***

   It is important that the adoption of new legislation responds to clear strategic objectives established in advance. At the beginning of each legislative cycle, the Commission should develop a strategic legislative plan for the five years to come, subject to the scrutiny of the EP and the Council. This would contribute to improving the efficiency, political accountability and transparency of the EU legislative process. The EP could as well take a more active role in setting priorities by means of a better use of legislative own-initiative reports and a longer-term approach regarding the legislative agenda. The annual structured dialogue with the Commission should be focused on the rolling five-year plan and look ahead to pre-legislative reviews. The Commission's reviews of legislation should be carried out in groups of related legislation or make explicit reference to any particular interaction with existing legislation that should be taken into account.

2. ***Re-structure the College of Commissioners***

   The reduction of the number of Commissioners is politically unrealistic for the time being, especially in the terms of the current treaties. Clustering the Commissioners with related portfolios is therefore the best option to enhance collegial decision-making and improve the independence, efficiency and transparency of the Commission. Around eight clusters (e.g. external action, competitiveness, finances and economy) could be created bringing together three or four portfolios each under the leadership of a Vice-President. Clusters of Commissioners would present their common position for the College to decide. Temporary task forces reporting to the clusters could be created to deal with specific issues, such as youth unemployment or better regulation. The re-organisation of the Commission's portfolios should respond to the strategic plan presented by the candidate for Commission President to the EP.

   Internal rules should be changed to give the President more flexibility to deploy resources so as to meet the needs of priority projects. Commissioners should be given a stronger say on their budget and personnel, as well as on the selection of the Directors General. The size of the Commissioners' cabinets should nevertheless be reduced. The independence of the College should be further strengthened by discouraging the partisan activities of its members.

3. ***Reduce the number of DGs***

The reorganisation of the College of Commissioners around clustered portfolios would allow for the reduction of the Directorates General. Reducing the number of DGs and re-examining the role of the Secretariat General, which at present stands out as the extended arm of the President, is essential to improve coordination within the Commission and contribute to moving from a silo to a more holistic approach in policy-making. It would also make it more difficult for vested interests to capture a specific policy. The selection of the Directors General should focus more on their managerial skills.

4. ***Improve the impact assessment process***

The Commission's services should be endowed with the necessary resources to carry out sound IAs and deal with substantial changes proposed by the IAB. Impact assessments should make better use of the consultation process, take better account of the challenges and costs in the implementation phase and include the evaluation of the interactions between new proposals and existing legislation, identifying possible overlaps, contradictions and negative effects. The Commission should provide an overview of all legislative initiatives (including the review of existing legislation) for which it intends to undertake an IA. A reasoned justification should be provided when an IA is not performed. For all major projects a Strategic Policy Assessment, setting out the policy options under consideration and the quantified outcomes that will be evaluated in making a final decision, should be published before the final policy choices are made. Detailed IA reports should be published earlier and the IAB comments should be included with the Executive Summary. If the IAB opinion does not provide a clear endorsement, the Commissioner responsible should provide a statement setting out the reasons for proceeding with the proposal. The composition and the rules of procedure of the IAB should be modified to fully guarantee its independence.

Substantial amendments to a legislative proposal should be accompanied by a supplementary IA so as to improve the balance between the IAs and the final legislative acts. The Directorate for Impact Assessment and European Added Value in the EP should be reinforced. Guidelines could be published to promote and harmonise the use of IAs across committees. The lead committee could send a warning letter to the relevant Commission unit when dealing with poor IAs or legislative proposals. The shadow of a 'non-vote' could be used in extreme cases. As for the Council, it could be made compulsory that its legal service provides

an appraisal of the Commission's IA – together with the legal advice that it has to prepare for the working group when discussing a legislative proposal for the first time. Member state governments should be encouraged to carry out their own impact assessments and share information among themselves.

5. ***Enhance the engagement of the national parliaments***

In the EU, democratic legitimisation takes place at both the European and national level. It is therefore imperative to ensure the adequate engagement of the national parliaments. A common interpretation of the subsidiarity principle should be promoted. The principle of subsidiarity should focus more strongly on the real added value that the EU can provide on addressing a particular problem. The EWM should be enhanced in such a way that it becomes an effective tool for the national parliaments to control the subsidiarity principle and an incentive for their earlier engagement in EU policy-making. The participation in the EWM and the draft of the reasoned opinions across national parliaments should respond to a more homogeneous approach. The Commission should provide a better follow-up of how their views are taken into account.

A strategic approach to legislative planning and legislative reviews would facilitate the involvement of national parliaments and allow them to focus on (and not neglect) their priority files. Hearings of Commissioners in plenary or committee sessions in national parliaments could contribute to a better understanding of MPs about the Commission's annual work programme and the legislative road maps. All this would promote the parliamentary scrutiny of the national governments in relation to the most relevant proposals and, as part of a more genuine political dialogue with the Commission, would change the negative connotation that their current participation has in the EU decision-making process.

2. THE NEGOTIATION AND ADOPTION PHASE

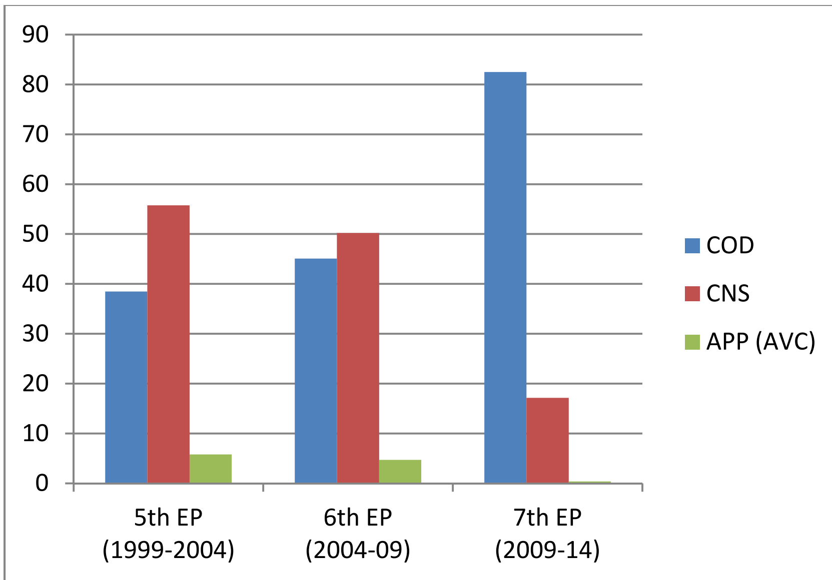
The use of the co-decision procedure has increased over time, becoming the ordinary legislative procedure (OLP) under the Lisbon Treaty. The EP has therefore acquired a central role in the legislative process. To ensure the delivery of results, informal tripartite negotiations between the EP, the Council and the Commission have increased. Most of the agreements are indeed adopted at first reading. The negotiation phase is also shaped by the growing salience of the European Council in EU decision-making and increasing differentiation.

2.1 The EP and the Council in the legislative process

The Lisbon Treaty extended the use of the renamed ordinary legislative procedure (OLP) to cover up to 83 policy areas and limited the use of special legislative procedures. As Figure 2 shows, the ordinary legislative procedures outnumber by far the other procedures. Council acts that only require the consultation of the EP are confined to the regulation of social security and social protection, own resources, taxation, fiscal provisions in environment and energy and a few issues within the domain of Justice and Home Affairs.[6] Special procedures that require the consent of the EP are used for measures to combat discrimination, the extension of citizenship-related rights, the European Public Prosecutor's Office, the uniform electoral procedure and the multi-annual financial framework. The Lisbon Treaty also reinforced the role of the EP in the budgetary procedure, where the Council is obliged to go to conciliation with the EP, if the latter does not agree on the Commission's proposal as amended by the Council in the first reading. As a result of the EP's stronger role in the legislative process, informal negotiations with the Council have been intensified and new inter- and intra-institutional challenges have emerged.

[6] Such as measures concerning passports, identity cards and residence permits, family law with cross-borders implications and operational police cooperation.

Figure 2. The use of co-decision, consultation and consent procedures (% of the total legislative procedures, excluding cooperation)

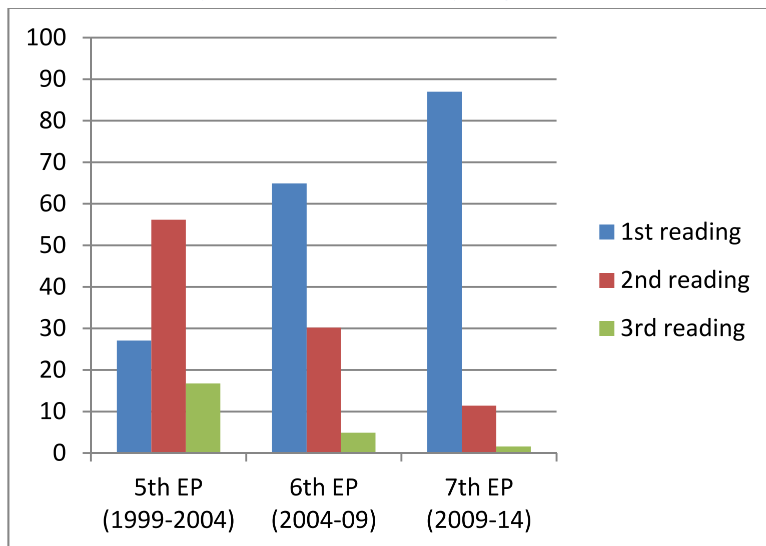


Note: COD = co-decision, CNS = consultation and APP (old AVC) = consent procedures.

Source: Data collected from the EP's *Legislative Observatory*.

In order to manage the workload and facilitate the negotiations, the decision-making between the Council and the Parliament in the OLP has been increasingly centred around informal trilogues and there has been a rise of agreements at first reading. The first reading in the EP only requires a simple majority of the votes cast and the Council can approve the EP's amendments by a qualified majority. Therefore, it is clearly in the interest of the EP to reach early agreements. Amendments to the Council's Common Position in the second reading require the absolute majority of the component members of the EP and the later endorsement of the Council – by qualified majority if they have the Commission's positive opinion or unanimity otherwise. While many Presidencies actively encourage first-reading agreements, it is clear that the Council has more control over the outcome by taking the procedure to a second reading. After all, the Common Position will then become the proposal to be negotiated, and its approval without amendments only requires a simple majority in the EP. The use of the Conciliation (third reading) in the event of a stalemate at second reading has become near obsolete (except for the special budget procedures).

Figure 3. 1st readings, 2nd readings and 3rd readings in the OLP (% of the total of Ordinary Legislative Procedures)



Source: Data collected from the EP's *Legislative Observatory.*

Trilogue meetings may vary from very technical discussions (involving staff of the three main administrations) to very political discussions (involving Ministers and Commissioners). However, as a general rule, they involve the committee chair – who usually chairs the negotiations – and the rapporteur from the EP (often accompanied by shadow rapporteurs from other political groups), the chair of COREPER or the relevant Council working party assisted by the General Secretariat of the Council, and representatives of the Commission (usually the expert in charge of the dossier and his/her direct superior assisted by the Commission's Secretariat-General and Legal Service). Despite the fact that trilogue negotiations facilitate early agreements and make the process more efficient overall, a number of shortcomings can still be identified.

The legal services of the three institutions sometimes fail to provide consistent legal opinions, which complicates and might even stall the negotiations. In the EP, delays in the first reading are usually caused by difficulties to identify the lead committee, a trend that has grown as the result of the increasingly holistic nature of policy proposals. In the event of discrepancies, the process to identify the lead committee (and thus associated and joint committees), involving the Conference of Committee

Chairs and the Conference of Presidents, might take over ten weeks.[7] Additionally, a high number of opinion-giving Committees creates a heavy burden and may add unnecessary delays. In-house expertise on highly complex issues is not plentiful and is allocated asymmetrically across members and committees, which might also undermine the EP's negotiating position.

The Council often takes a long time to agree on a common approach and representatives of the member states are sometimes adamant to secure exceptions, at the expense of the clarity and the quality of the piece of legislation. Coordination with the previous rotating Presidency of the Council is usually good but insufficient between members of the same trio of presidencies, whose relations remain confined to the elaboration of the joint programme at the beginning of the 18-month period. Stronger coordination would add consistency and contribute to strategic law-making. There is also a minor use of each other's human resources to plug gaps on specific dossiers – as suggested by the Lisbon Treaty, which could be quite useful for some small member states. In general, the profile of the rotating Presidency of the Council has waned due to the diminished role of the Ministers.

In terms of democratic legitimacy, a growing presence of lobbyists in the EP's activities adds up to the strong influence that some interest groups already exert in the capitals. Given the enhanced role of the EP in the legislative process, large firms have increased the resources they devote to lobbying MEPs. Their investments in such activities are approximating the amounts they spend in lobbying the Commission. MEPs need experts' inputs to build up their positions and draft the amendments and, thus, they have regular contacts with interest groups.[8]

2.2 The growing salience of the European Council

The number and scope of the meetings of the European Council have increased over the years. In the past, there were around three summits per year, focused on discussing major issues on EU integration. Nowadays, the European Council meets seven times or more per year and increasingly decides about specific issues and day-to-day business on core policy areas.

[7] Rule 188, *Rules of Procedure*, 7th European Parliament, July 2013.

[8] S. Hix and B. Høyland, *The Political System of the European Union*, Palgrave Macmillan, 2011, pp. 159-185.

The Lisbon Treaty contributed to this trend by giving the European Council the status of an EU institution, assigning it a full-time president and reinforcing its role in establishing the general political direction and priorities of the EU.

The Maastricht, Amsterdam and Lisbon Treaties gave the European Council a central role in leading and coordinating certain policies – usually partly or fully outside the so-called 'Community method' – such as the economic governance of EMU, the foreign, security and defence policies, justice and home affairs and employment and social policy. The European Council's debates in the last decade have mostly revolved around these policy areas but have also substantially dealt with other EU policies such as environment and energy.[9] In domains such as EU economic governance, some consider that the European Council interpreted its functions too extensively. Others, however, believe it was the only way to overcome the constraints that were undermining the management of the euro crisis at national level.

Despite the fact that the Lisbon Treaty states that the European Council shall not exercise legislative functions (Art. 15.1 TEU), the Parliament´s negotiating teams are sometimes confronted with statements from the Presidency, negotiating on behalf of the Council, that a particular issue has already been decided by the European Council. The Presidency is left without a margin of manoeuvre, which obstructs the purpose of the negotiations to deliver a common understanding between the EP and the Council and contributes to overshadowing the rotating Presidency of the Council.

Despite the growing prominence of the European Council in EU decision-making, the mechanisms to hold it democratically accountable have not been upgraded accordingly. The President of the European Council only reports to the EP after the summits, and often to the Enlarged Conference of Presidents instead of the Floor. Information received about the eurozone summits is quite limited and mainly confined to the report sent by the President of the European Council after the meetings. The President of the Eurogroup is not accountable to the EP. Parliamentary scrutiny of European Council meetings in many member states is also very

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[9] U. Puetter, "The European Council: The new centre of EU politics", *European Policy Analysis*, Issue 2013: 16, Swedish Institute for European Policy Studies (SIEPS), Stockholm, October.

weak.[10] Moreover, the meetings of the President's Cabinet with the 'sherpas' – representatives of the heads of government – have become a crucial forum in EU decision-making, which does not contribute to the transparency of the process and undermines the role of the General Affairs Council (GAC).

2.3 Increasing differentiation

The proliferation of 'opt-outs' from the treaties, enhanced cooperation and agreements between some member states outside the EU legal framework are raising questions on where the boundaries of differentiated integration lie in an organisation based on a unique legal order with common institutions and common principles.

Since 1 January 2014, the euro area comprises 18 member states. With the exception of the UK and Denmark, which have opt-outs, the other member states (the so-called 'pre-ins') are legally bound to join once they meet all the criteria.[11] Twenty-two of the EU member states and the four EFTA countries participate in the Schengen Area.[12] Bulgaria, Croatia, Cyprus and Romania will eventually join when they meet the criteria, whereas Ireland and the UK have opt-outs. These two countries also have an opt-out from the Area of Freedom, Security and Justice, with the possibility to opt in on a case-by-case basis. As a result of the opt-outs, the EU is becoming not only multi-speed but also multi-layered, that is, with 'ins', 'pre-ins' and 'the others'. In relation to eurozone matters, there is also the risk of a 'two-tier Europe', that is, the development of a different institutional setting to decide on issues that only affect the euro members. Apart from the existing Eurogroup and Euro summits, ideas have been floated to create a special committee in the EP or a Euro-chamber with members of national parliaments. Non-eurozone members, and specially the pre-ins, are concerned about these developments. The gap between

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[10] C. Hefftler, V. Kreilinger, O. Rozenberg and W. Wessels, "National Parliaments: Their emerging control over the European Council", Notre Europe Policy Paper 89, Notre Europe, Paris, 29 March 2013.

[11] Sweden is not joining the ERM II in order to avoid compliance with one of the conditions (exchange rate stability) and thus the introduction of the euro. Monaco, San Marino and the Vatican also use the euro on the basis of formal agreements with the EU, whereas Andorra, Kosovo and Montenegro do it *de facto.*

[12] Monaco, San Marino and the Vatican can be considered as *de facto* members.

members and non-members of the eurozone is likely to grow when the Lisbon voting provisions enter into force in November 2014, given that euro members will constitute a qualified majority in the Council.

The Council can adopt a decision authorising enhanced cooperation between at least nine member states as "a last resort, when it has established that the objectives of such cooperation cannot be attained within a reasonable period by the Union as a whole".[13] Two Council regulations implementing enhanced cooperation have been adopted so far. One regulation, which entered into force in 2012 for the 14 participating member states, concerns the law applicable to divorce and legal separation.[14] The other, adopted by 25 member states, addresses unitary patent protection with regard to the applicable translation arrangements and will be applicable after the Agreement on a Unified Patent Court is ratified by at least 13 states.[15] After receiving the consent of the EP, the Council adopted a decision authorising enhanced cooperation in the area of financial transaction tax (FTT), but the implementing regulation has not yet been adopted.[16] The growing use of the enhanced cooperation procedure (ECP) has raised questions about what should be considered a 'reasonable period' when trying to reach an agreement that includes all member states, and whether nine member states will constitute a critical mass in a Union with more than 30 members. Also, the authorisation to proceed with enhanced cooperation must be granted by a qualified majority in the Council, but the regulations implementing the enhanced cooperation are adopted only by the participating members. According to the Treaty, the other member states may participate in the deliberations, their rights and obligations should be respected and the cooperation should be kept open, but this might be interpreted in various ways.

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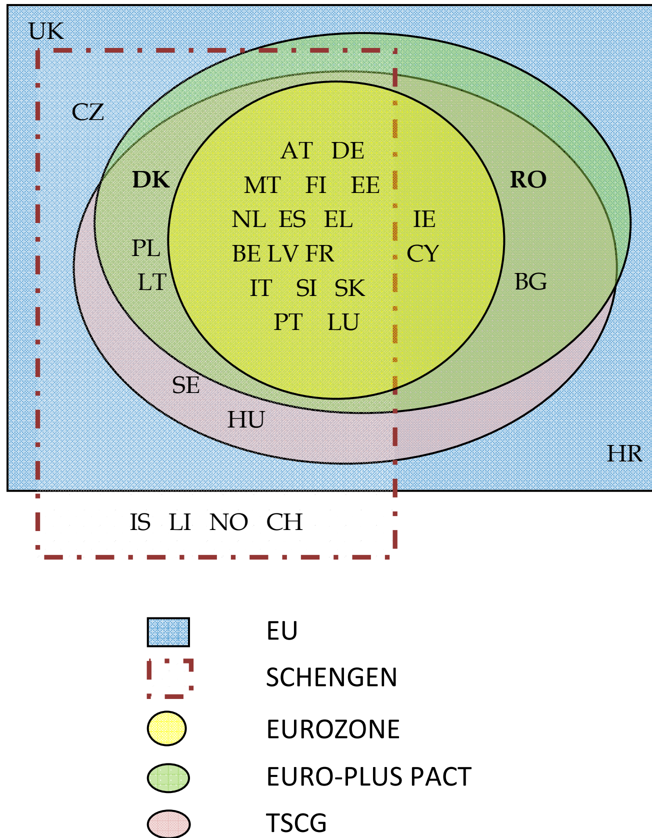
[13] Art. 20 TEU; Arts 326-334 TFEU. The Treaty of Lisbon also included the possibility for member states to create Permanent Structured Cooperation in the area of security and defence (Arts 42.6, 43.1 and 46 TEU).

[14] The provisions will apply to Lithuania as from 22 May 2014.

[15] Spain and Italy did not sign up and brought actions before the Court of Justice of the EU against the Council's authorisation to proceed with the enhanced cooperation on the creation of unitary patent protection with regard to the applicable translation arrangements. Actions were eventually dismissed. Italy ratified the Agreement on the Unified Court, whereas Poland adopted the Regulation but is now considering not ratifying the Agreement.

[16] The UK has challenged this decision before the CJEU.

Figure 4. Differentiated integration in the EU treaties and other inter-governmental treaties



Source: Own elaboration.

As Figure 4 illustrates, the adoption of international treaties outside the EU legal framework adds further complexity to the picture and raises additional concerns. The Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG) was signed by all the members of the EU except the Czech Republic and the United Kingdom (and Croatia). The Treaty is in force in the 24 states that completed the ratification process.[17] Denmark and Romania are bound by the fiscal provisions, while these provisions will only apply to the remaining non-eurozone states when they adopt the euro. All the eurozone members take

[17] Belgium has signed but not ratified the treaty.

part in the European Stability Mechanism (ESM) and together with Bulgaria, Denmark, Lithuania, Poland and Romania all participate in the Euro-Plus Pact. The EP does not participate in the negotiation and adoption of these inter-governmental agreements, which are not part of the *acquis communitaire* and therefore are not subject to ECJ's jurisdiction.

Recommendations on the negotiation and adoption phase

1. ***Promote the integrity of the Union and the Community method***

   Further integration through international treaties concluded outside the EU's legal framework should be limited to exceptional cases, giving priority to the OLP and ECP whenever this is legally possible. Where inevitable, the inter-governmental agreements should be open to all EU members, involve the EP and set a clear target to be incorporated into EU law. All means of differentiated integration should preserve the rights and interests of those member states that might join in the future.

2. ***Upgrade the organisational structures of the EP***

   The EP's committees should be aligned with the new clusters in the Commission. In-house expertise should be enhanced and balanced across committees. The Conference of Committee Chairs should be given delegated powers to identify the lead committee with exclusive competences. Parliament needs to cut back its overly bureaucratic rules for inter-committee cooperation and encourage more informal joint working methods and hearings. Lobbying rules in the EP should be strengthened. Public consultations on specific parts of the legislative dossiers would enable input from a wider range of stakeholders.

3. ***Improve the role of the Council in the legislative process***

   The Council should improve coordination with the EP and devote more attention to the clarity of the legislative acts. At later trilogue stages, the Presidency should have a clearer mandate from the Council. The participation of the chair of the Council's working parties in the trilogue negotiations should not preclude the adequate involvement of the Permanent Representatives so as to ensure appropriate political accountability. The General Affairs Council should regain the ground lost to the Presidency of the European Council and its meetings with the sherpas of the heads of government by setting a compelling strategic agenda to draw in representatives at Ministerial level. GAC meetings could be chaired by the Prime Minister of the country holding the rotating

Presidency. Assistance and cooperation between all the members of the trio Presidency should be strengthened on the basis of the common programme for the 18 months, which should take good account of the strategic legislative planning.

4. ***Enhance the democratic accountability of the European Council***

The President of the European Council should address the plenary of the EP before and after European Council and Euro summits. In the framework of the so-called 'economic dialogues', the possibility to invite the President of the European Council to report and explain its decisions on reinforced budgetary surveillance, the coordination of economic policies, the excessive deficit procedures and macroeconomic imbalances should be promoted.

5. ***Reinforce inter-parliamentary cooperation between the EP and the national parliaments***

Double legitimisation in the EU requires strengthening cooperation between the EP and the national parliaments. The EP can benefit from the MPs' views and expertise, whereas MPs can improve their say in EU decision-making and their knowledge and interest in EU affairs, which would benefit their scrutiny of national governments and the implementation of EU legislation. The Inter-parliamentary Committee meetings, organised by a committee of the EP to discuss specific legislative proposals with the members of the respective standing committees at national level, should be promoted. Financial support should be provided at committee and rapporteur level on specific dossiers. The meetings should bring together the most appropriate representatives at the right time, avoiding large events that make dialogue and debate more difficult. They could be conducted by video conference using EP interpretation facilities. The EP and the national parliaments could conclude an agreement setting the basic features of the antiparliamentary cooperation, the rules and reciprocal commitments, as well as specific arrangements to promote the relations. Cooperation in the framework of inter-parliamentary conferences should also be upgraded and measures should be taken so as to improve their visibility, influence and attractiveness. In particular, the Commission and the Presidency should participate at the highest level possible in the recently created Inter-parliamentary Conference on Economic and Financial Governance of the European Union envisaged in the Article 13 of the TSCG, and national parliaments should ensure the high profile of their delegations.

3. THE IMPLEMENTATION PHASE

For various reasons, the European Commission plays an essential role in the implementation phase. On the one hand, it is responsible for the oversight of the application of EU law in member states. On the other, the European Parliament and the Council can delegate powers to the Commission to supplement, amend or implement legislative acts. In recent years, important supervision and implementing powers in the fiscal and financial domains have also been transferred from the national to the EU level, reinforcing the role of some institutions, such as the Commission, the European Central Bank (ECB) and the European Council. This section will look into the main intra- and inter-institutional challenges posed by all these developments.

3.1 National implementation of EU law

Despite the Commission's efforts to improve the oversight of the application of EU law, member states often fail to fully comply with their responsibilities to transpose, implement and enforce EU legislation. Table 1 shows the number of letters of formal notice sent by the Commission to member states for not communicating the transposition of EU directives in their national legal orders in recent years. Although figures depend on the number of directives to be transposed every year (e.g. in 2012, there were only 56 directives, compared to 131 in 2011 and 111 in 2010), infractions remain high on average. In the case of incorrect transposition or wrongful application of EU legislation, following an initial assessment of more than 2,800 complaints in 2012, the Commission opened bilateral discussions with the member state concerned in relation to 621 complaints. In 2012, the Commission also initiated first bilateral discussions with member states from 791 investigations launched on its own initiative.

Table 1. Infringements detected in the transposition of EU legislation in member states

Year	Letters of formal notice for "non-communication"	Number of complaints	Own-initiative cases	Total	Open infringement cases at end of year
2012	445	621	791	**1857**	1343
2011	1154	619	1271	**3044**	1775
2010	855	244	190	**1289**	2092
2009	531	772	356	**1659**	2892
2008	816	1038	369	**2223**	3433
2007	1196	958	512	**2666**	3408
2006	904	1049	565	**2518**	3255
2005	1066	1154	433	**2653**	3567
2004	1519	1146	328	**2993**	3655

Note: In 2011 and 2012, the number of complaints and own-initiative cases refers to the initial bilateral discussions undertaken by the Commission with the member states before opening an official infringement procedure. In the previous years, the number reflects the infringement procedures opened as a result of complaints or own-investigations.

Source: Data collected from Commission's annual reports on Monitoring the Application of EU Law.

Despite the Commission's recent initiatives, such as the EU pilot to improve the application of EU law, the transposition of EU legislation in member states is still deficient. Their support to SOLVIT tools, which provides citizens and business with a fast track to find pragmatic solutions to problems caused by the breach of EU law by a public authority, is also weak. The Commission has also improved the handling and reduced the time of the infringement procedures, but this is still long. As Table 2 shows, 1,343 infringement cases remained open at the end of 2012 (compared to 1,775 in 2011 and 2,092 in 2010).[18] During that year, the Court delivered 46

[18] In 128 procedures, the Commission could not yet confirm whether the member states concerned had complied with the Court judgments.

judgements under Art. 258 TFEU, 42 of which favoured the Commission's position.

3.2 Implementing and delegated powers

With the entry into force of the Lisbon Treaty in December 2009, the old comitology was replaced by a new system of delegated and implementing powers that a particular legislative act can grant to the Commission so as to complement or implement specific provisions of secondary legislation. In the case of the delegated acts (Art. 290 TFEU), which aim to supplement or amend certain non-essential elements of a legislative act, the EP and the Council have the right to object to a delegated act adopted by the Commission by the deadline specified in the original legislative act (usually two months, with a possible extension of two more). Both institutions also have the capacity to revoke the delegation at any time. In the preparation of the delegated acts, the Commission is committed to consult experts from national authorities of all member states (expert meetings) and to send all the related information to the Council and the EP. At the request of the EP, the Commission might also invite Parliament's experts to attend the meetings. Since the entry into force of the Lisbon Treaty, the Commission has adopted 65 delegated acts, and 37 more are awaiting the expiry of the objection period.[19] These data show that the new system is working well in terms of efficiency, especially due to the fact that if no objection is raised and no extension is requested by either the Council or the EP, the delegated acts enter into force automatically (usually within two months). Since the enforcement of the new system, only the EP has raised a few objections, which were eventually withdrawn after an exchange of views with the Commission.

The implementing acts (Art. 291 TFEU and Regulation 182/2011) aim to ensure the uniform implementation of EU legislation across member states. In this case, the Commission's proposals must be examined by committees of national representatives. In the advisory procedure, the committee's opinion is not binding for the Commission, whereas in the examination procedure, the Commission cannot adopt the implementing act in the event of a negative opinion. However, it can refer the case to the appeal committee, consisting of national representatives at a higher level of

[19] Register of Commission documents (http://ec.europa.eu/transparency/regdoc/index.cfm?fuseaction=search).

representation. In the event of a non-opinion also in the appeal committee, the Commission tends to adopt the act in any case. So far this has happened in relation to 17 (out of 20) implementing acts.[20] Where a basic act is adopted under the OLP, either the EP or the Council may at any time indicate to the Commission that, in its view, a draft implementing act exceeds the implementing powers provided for in the basic act. In such a case, the Commission shall review the draft implementing act and inform the EP and the Council whether it intends to maintain, amend or withdraw it. Since the entry into force of Regulation 182/2011 of 18 February 2011, the Commission has adopted over 3,450 implementing acts.[21] The new system has not suffered in terms of efficiency, given that a similar number of comitology decisions were taken on a yearly basis in the past.

The main weakness in the system introduced by the Lisbon Treaty is indeed the thin line dividing delegated and implementing acts. On many occasions, either could be applied and EU institutions disagree on which one to select. This choice thus becomes the object of negotiation during the adoption phase of a legislative act. The delegated acts give a greater leeway to the Commission and stronger oversight powers to the EP, whereas the member states have an important role to play in the adoption of implementing acts. It is therefore usual that the Council questions the (many) delegated acts in the Commission's proposals and pushes to change them into implementing acts during the negotiations with the EP, which might be tempted to give way in exchange for concessions on the substance of the legislative act.

3.3 Implementation and surveillance of the new fiscal rules

In the early 1990s, member states of the European Communities decided to proceed with the creation of the monetary union without first coordinating their fiscal and economic policies. The Stability and Growth Pact (SGP) was established as a peer-review mechanism to encourage coordination and approximation. The euro crisis has unveiled the flaws of the system and obliged member states to reform the SGP and adopt new measures to ensure the convergence of the fiscal and economic policies of member states, namely the Six- and Two- Packs and the Fiscal Compact.

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[20] Comitology register (http://ec.europa.eu/transparency/regcomitology/index.cfm?do=List.list&NewSearch=1).

[21] Ibid.

Box 1. Fiscal and macroeconomic coordination and surveillance

The Six-Pack (five regulations and one directive) defined quantitatively a significant deviation from the medium-term objective (MTO), introduced the 'macroeconomic imbalance procedure' (MIP), established financial penalties for breaching either the deficit or debt limits under the excessive deficit procedure (EDP) and the reverse QMV in the Council for most sanctions. It also codified the European Semester to provide a six-month timeline to elaborate, discuss and adopt the country-specific recommendations on the member states' Stability or Convergence Programmes (fiscal plans) and National Reform Programmes (structural reforms and measures to boost growth and jobs).

The Fiscal Compact (Title III of the Treaty on Stability, Coordination and Governance of the EMU TSCG) established a stricter limit for the structural deficit in eurozone member states, included the obligation to enshrine the 'balanced budget rule' and the 'debt brake rule' in their constitutional or legal orders, provided an alert mechanism to identify member states whose macroeconomic situation needs to be scrutinised in more depth and also extended the use of the reverse QMV to most sanctions.

The Two-Pack further enhanced the fiscal and macroeconomic surveillance of all euro-area member states, and especially those under an excessive deficit procedure, experiencing (or at a risk of) financial instability or participating in a financial assistance programme. Regulation 473/2013 established the obligation of euro members to submit their draft annual budgetary plans before mid-October for the Commission to check (and the Eurogroup to discuss) whether they are in line with the SGP and with the recommendations of the European Semester, as well as the requirement for countries in an EDP (Economic Deficit Procedure) to inform the Commission about relevant fiscal policy decisions. The Regulation set up an (alternative) enhanced surveillance procedure for member states facing serious financial difficulties and receiving financial assistance.

The strengthened fiscal and macroeconomic coordination and surveillance takes place in the framework of the European Semester. The involvement of the EP and the national parliaments in this procedure is insufficient.[22] Nevertheless, during the negotiations of the Six- and Two-Packs, the EP succeeded in introducing the so-called 'economic dialogues'. The competent committee of the EP may invite the President of the Council, the Commission and, where appropriate, the President of the European Council or the President of the Eurogroup, to appear before the committee to discuss decisions adopted in the framework of this legislation. National parliaments and the EP can also require the Commission to explain its opinions on the draft budgetary plan submitted by the government of the concerned eurozone member. In the case of countries under enhanced surveillance, the competent committee of the EP and the parliament of the member state concerned may invite representatives of the Commission, the ECB and the IMF to participate in an economic dialogue.

At the moment, negotiations are being carried out on the terms of the 'individual arrangements of a contractual nature with the EU institutions on the reforms promoting growth and jobs'.[23] The main purpose is to establish an incentive-based enforcement of the country-specific recommendations when legal sanctions under the corrective arm of the MIP cannot be imposed. Compliance will be reassured through the selective use of financial assistance, somehow resembling the Memoranda of Understanding of the ESM Treaty. In principle, the agreements will be adopted by the Council, based on a proposal by the Commission. Negotiations seem to indicate that the EP will at least have a role in the oversight of their implementation as they will affect the application of the EU budget. Given that the arrangements will not be treaties, they might not require ratification by some national parliaments.

In addition to these democratic concerns, the new EU economic governance also poses a number of challenges in terms of flexibility. The Six-Pack applies to all EU member states, but there are special provisions for the euro members. The scoreboard of macroeconomic indicators is

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[22] Mark Hallerberg, Benedicta Marzinotto and Guntram B. Wolff, "An assessment of the European Semester", EP, DG-Internal Policies, September 2012.

[23] H. Van Rompuy, "Towards a Genuine Economic and Monetary Union", Brussels, 5 December 2012 (www.consilium.europa.eu/uedocs/cms_Data/docs/.../en/.../134069.pdf).

different, there is a discussion in the Eurogroup of the Commission's Annual Report and financial sanctions are only applicable to euro members. The Two-Pack applies exclusively to the euro area. The TSCG was signed by all EU members except the Czech Republic, the United Kingdom and Croatia, although non-euro members with the exception of Denmark and Romania are not bound by the fiscal provisions (Title III). The TSCG provides for Euro Summit meetings to take place at least twice a year to discuss questions regarding the single currency, the governance of the euro area and the rules that apply to it, as well as strategic orientations for macroeconomic policies. The heads of state or government of non-euro members can participate in discussions concerning competitiveness, the modification of the global architecture of the euro area and the fundamental rules that will apply to it in the future, as well as, when appropriate and at least once a year, in discussions on the implementation of the TSCG.

3.4 Bank supervision and resolution powers

In addition to these measures aimed at improving the control of the EU over national fiscal and macroeconomic policies, other initiatives have been adopted to facilitate the supervision and resolution of banks and to assist member states with financial difficulties. The Treaty establishing the European Stability Mechanism (ESM) was signed on 2 February 2012, with the mechanism becoming operational in October 2013. The ESM issues debt instruments in order to finance loans and other forms of financial assistance to euro area member states. The direct recapitalisation of banks is possible under certain circumstances. Given that it was an international treaty, the EP did not take part in the adoption process. The ESM Board of Governors consists of the Ministers for Finance of the eurozone member states and is chaired by the President of the Eurogroup. The Commissioner for Economic and Monetary Affairs and the President of the ECB participate in the meetings as observers.

The Single Supervisory Mechanism (SSM), which came into force in November 2013, set up a supervisory board in the ECB in charge of the direct oversight of the European banks in cooperation with the supervisory authorities in the member states. Art. 20 of Regulation 1024/2013, conferring specific tasks on the ECB concerning policies relating to the prudential supervision of credit institutions, provides that the ECB has to cooperate with any investigations by the EP and that, upon request, the chair of the supervisory board will hold confidential oral discussions with

the chair and vice-chair of the competent committee of the EP. The approval of this Regulation only required the EP to be consulted, but the EP used its powers in the negotiations on the related Regulation 1022/2013 amending the European Supervisory Authority to force an inter-institutional agreement with the ECB on the oversight of these supervisory tasks. According to the agreement, the chair of the supervisory board has to appear once a year before the EP to present the annual report on the execution of these tasks and has to participate in two public hearings, as well as in additional *ad hoc* exchanges of views and special confidential meetings. The appointment of the chair of the supervisory board requires the approval of the EP. The ECB also has to reply in writing to written questions put to it by the EP and provide the competent committee with a record of the proceedings of the supervisory board, including a list of the decisions adopted and those objected to by the Governing Council. In the event of the winding-up of a credit institution, non-confidential information shall be disclosed *ex post*.

Non-euro members can become participating countries in the SSM and be represented in the Supervisory Board. However, the Governing Council of the ECB, where only eurozone members are represented, has the final power to reject or accept the decisions of the Supervisory Board. Additionally, pre-ins will only have access to the Balance of Payments facility (BoP), which, contrary to the ESM, does not envisage loans for the direct recapitalisation of banks.

Negotiations on an SRM are also on their way. In its meeting of 18 December 2013, the Ecofin Council agreed on a common approach to the single resolution board and committed to negotiate an intergovernmental agreement on the single resolution fund (outside the EU legal framework). The EP has challenged the decision of the Council to resort again to an inter-governmental treaty when the reforms could have proceeded following the Commission's proposal within the Community legal framework. The EP has also stated concerns about the vagueness and at the same time high complexity of the text. The EP can now issue its co-decision power in the regulation to exert some influence in the inter-governmental treaty. Pre-ins have also raised concerns about the transitional period until the mutualisation of the banks' paid-in contributions is completed. During this time, eurozone members can resort to the ESM when their own allocations in combination with possible loans from the other 'national compartments' prove insufficient. However, pre-ins would be obliged to follow a cumbersome procedure through the BoP, which again would not allow for breaking the banking-sovereign link.

Recommendations on the implementation phase

1. ***Improve the implementation of EU law***

The EP standing committees should follow up how the relevant DGs in the Commission monitors the transposition and enforcement of EU legislation in member states. This would bring additional pressure, both on the Commission to continue improving the oversight of the application of EU law and on the member states to improve transposition and ensure enforcement. A fast-track infringement procedure could be created and more information should be provided by the Commission on the quality of the transposition.

By means of an inter-institutional agreement, the Council, the EP and the Commission should agree on a clearer dividing line between implementing and delegated acts. Members of the competent committees in the EP should more often attend the expert groups consulted by the Commission in the preparation of the delegated acts.

2. ***Reinforce the role of the EP in the European Semester***

The role of the EP in the European Semester should be enhanced through the formal arrangement of specific economic dialogues with the Commission and the Council. In particular, the Commission should appear before the relevant committee of the EP to present the Annual Growth Survey and the Alert Mechanism before a new European Semester starts, and again in May to explain the draft country-specific recommendations. By means of an inter-institutional agreement, the Commission could commit itself to take in the views of the EP in its proposals for recommendations and decisions to the Council. The President of the Council should appear before the EP in early July to discuss the variations between the final recommendations endorsed by the European Council and adopted by the Council and those originally proposed by the Commission. In autumn, the Commission could participate in an exchange of views on the implementation of the country-specific recommendations by member states. All this would feed into the EP resolution on the European Semester cycle in October. Both the Commission and the President of the Eurogroup should appear before the competent committee of the EP to discuss the opinions on the national draft budgetary plans.

3. ***Engage the national parliaments in the scrutiny of the European Semester***

The participation of MPs in the inter-parliamentary European week in January/February (or in the Inter-parliamentary Conference on Economic and Financial Governance of the European Union) should enable them to

debate the key findings and conclusions from the Annual Growth Survey, the Alert Mechanism and other related issues. The member governments should then be responsible for informing their respective parliaments on the draft national programmes to be submitted to the Commission. Once the Commission has examined these drafts and issued the country-specific recommendations, these could be communicated to the national parliament concerned in the framework of the political dialogue, so that national parliaments can question their respective governments before (and after) the adoption of the recommendations in the Council.

The possibility provided in Regulation 473/2013 to request the Commission to appear before a national parliament to present its opinion on the national draft budgetary plans submitted in October should be institutionalised. Then, the national minister could give account of the subsequent discussions in the Eurogroup. The Commission and the ECB should commit to participate in an economic dialogue with the parliament of a member state under enhanced surveillance upon its request.

4. ***Underpin the legitimacy of the individual arrangements of a contractual nature***

If the European Council finally decides that the individual member states should conclude arrangements of a contractual nature in the context of the European Semester, the EP should be entitled to authorise the appropriations for the funds to compensate them for specific costly reforms. The agreements should be put to the vote of the respective national parliaments.

5. ***Ensure the adequate involvement of the EP in the Banking Union***

The EP should make the best use of the scrutiny mechanisms established in the inter-institutional agreement with the ECB to ensure the accountability of its new supervisory powers. The new role of the ECB makes necessary a stronger oversight by the EP. In the framework of the 'economic dialogues', the President of the Eurogroup should report to the EP on the ESM, where appropriate. The resort to inter-governmental treaties outside the EU legal framework for issues that could be regulated following the Community method, such as the SRM, should be avoided. The decision-making of the resolution board should be simplified and the political accountability ensured. The interests of the pre-ins and opt-outs should be properly taken into account.

4. CONCLUSIONS

The promotion of strategic legislative planning, the re-organisation of the Commission's portfolios and the reduction of DGs are essential to increase the efficiency, transparency and political accountability in the initiation phase. At the beginning of each legislature, the Commission should submit a five-year legislative plan to the European Parliament and the Council. This strategic legislative plan should focus the annual structural dialogue with the EP, which should also promote the use of the own-initiative legislative reports. In order to avoid excessive legislation and enhance its quality, the impact assessments need to be improved and the independence of the Impact Assessment Board must be guaranteed.

The practice to resort to inter-governmental treaties outside the EU legal framework should be restricted and the Community method, whenever possible, promoted. The rights and interests of the non-participating member states, also in the case of the enhanced cooperation procedures, should be better protected.

The European Parliament needs to align its standing committees with the re-organised Commission portfolios, enhance in-house expertise and cut back its overly bureaucratic rules for inter-committee cooperation. The Council should improve coordination with the EP and devote more attention to the clarity of the legislation. The profile of the rotating Presidency of the Council should be upgraded and cooperation between members of the same trio should increase. The EP's scrutiny of the European Council and the Eurogroup needs to be improved.

It is also necessary to clarify the dividing line between delegated and implementing acts by means of an inter-institutional agreement. In the particular case of EU economic governance, the role of the EP in the European Semester should be enhanced and a number of economic dialogues should be institutionalised. The EP should be entitled to authorise the appropriations for the financial incentives in the event of individual arrangements of a contractual nature. In a similar vein, it is essential that the EP plays a role in the oversight of the single supervisory and resolution mechanisms.

The framework agreement on relations between the European Parliament and the European Commission should be enhanced and could address many of the inter-institutional issues related to the initiation, adoption and implementation phases. The inclusion of the Council in the agreement is highly recommended.

A strategic approach to legislative planning and legislative reviews, the agreement on a common approach to the subsidiarity principle and the participation in the Early Warning Mechanism, a proper report on how the national parliaments' opinions are taken into account and a strengthened political dialogue with the Commission, would all contribute to ensuring the subsidiarity principle and underpinning EU legitimacy. To facilitate the engagement of the national parliaments in EU affairs, it is also essential to enhance inter-parliamentary cooperation between national parliaments and with the EP. This would also carry benefits for EU legislation. In the particular case of the new framework for fiscal and macroeconomic coordination and surveillance, inter-parliamentary cooperation between the EP and the national parliaments and a closer dialogue with the Commission are essential to ensure the double democratic legitimacy of the system. The individual arrangements of a contractual nature on the reforms promoting growth and jobs should be put to a vote in the respective national parliaments.

Annex
Members of the CEPS High-Level Group

Danuta Hübner, Chair, Member of the European Parliament and former member of the European Commission

Tom de Bruijn, Member of the Council of State and former Permanent Representative of the Netherlands

John Bruton, Chairman of IFSC and former Prime Minister of Ireland

Daniel Gros, Director of CEPS

Malcolm Harbour, CBE, Member of the European Parliament and Chairman of the Committee on the Internal Market and Consumer Protection

Karel Lannoo, Chief Executive Officer of CEPS

Eva Lichtenberger, Member of the European Parliament and former Member of the National Council of Austria

Stefano Micossi, Director General of Assonime, Professor at the College of Europe and former Director General at the European Commission

Paolo Ponzano, Senior Fellow at the European University Institute and former Director General at the European Commission

René Repasi, Assistant Professor at the Ruprecht-Karls-Universität Heidelberg and Senior Fellow at the Institute for European Economic Law

Philippe de Schoutheete, Member of the Board of Directors of Egmont and former Permanent Representative of Belgium

Günter Verheugen, Honorary Professor for European Governance at University Viadrina and former Vice-President of the European Commission

Rapporteurs

Sonia Piedrafita, Research Fellow, CEPS

Steven Blockmans, Senior Research Fellow and Head of the EU Politics and Institutions research unit, CEPS

Members of the CEPS High-Level Group on EU Institutional Reform

Danuta Hübner MEP, Chair
Tom de Bruijn
John Bruton
Daniel Gros
Malcolm Harbour MEP
Karel Lannoo
Eva Lichtenberger MEP
Stefano Micossi
Paolo Ponzano
René Repasi
Philippe de Schoutheete
Günter Verheugen

Rapporteurs

Sonia Piedrafita
Steven Blockmans

Centre for European Policy Studies
1 Place du Congrès
1000 Brussels, Belgium
Tel: 32(0)2.229.39.11
Fax: 32(0)2.219.41.51
E-mail: info@ceps.eu
Website: www.ceps.eu

CENTRE FOR EUROPEAN POLICY STUDIES