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Environmental Effects of Codecision Under the Maastricht Treaty

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INTRODUCTION

Article 130 of the Single European Act[1] requires that environmental protection be a component of the European Union's[2] other policies.[3] The European Union Council of Ministers, which has traditionally had the final say in European Union (EU) legislation, has, however, often had minimal environmental goals.[4] The introduction of the new codecision procedures in the Maastricht Treaty[5] has created an opportunity for the more pro-environmental European Parliament (EP) to have more input in the legislative process.[6] By using these expanded powers, the EP can have a tremendous effect on the environmental impact of major EU legislation.[7]

Part I of this Note presents the major EU institutions involved in legislative processes. Part II discusses the legislative procedures in use prior to the enactment of the Maastricht Treaty in 1992. Part III examines the Directive on Municipal Waste-Water Treatment which

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[1] TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY [EEC TREATY], *in* ENCYCLOPEDIA OF EUROPEAN COMMUNITY LAW (1993) at B10005, amended by the Single European Act, 25 I.L.M. 503 (1986). The Treaty Establishing the European Economic Community was signed in Rome on March 25, 1957 and entered into force on January 1, 1958. *See* T.C. HARTLEY, THE FOUNDATIONS OF EUROPEAN COMMUNITY LAW 3 (1981) [hereinafter HARTLEY 1981].

The Single European Act was signed in 1986 and came into force July 1, 1987. *See* T.C. HARTLEY, THE FOUNDATIONS OF EUROPEAN COMMUNITY LAW 5 (1988).

[2] Under the Maastricht Treaty, the Member States of the European Community established among themselves a European Union. Maastricht Treaty, *infra* note 5, art. A. For consistency, both the European Community and the European Union will be referred to as the Union in this Note.

[3] EEC TREATY, *supra* note 1, art. 130r(2).

[4] *See Balancing Differing Positions on Environment in Parliament, Council Seen as Big Challenge,* [Current Developments] Int'l Envtl. Rep. (BNA) 537 (June 26, 1996).

[5] The Treaty on European Union was signed in Maastricht, the Netherlands, on February 7, 1992 and came into force on November 1, 1993. TREATY ESTABLISHING THE EUROPEAN UNION, 31 I.L.M. 247 (1992) [hereinafter Maastricht Treaty]; *see* T.C. HARTLEY, THE FOUNDATIONS OF EUROPEAN COMMUNITY LAW 7 (1994) [hereinafter HARTLEY 1994].

[6] *See* Dieter Kugelmann, *The Maastricht Treaty and the Design of a European Federal State,* 8 TEMP. INT'L & COMP. L.J. 335, 347 (1994).

[7] *See infra* notes 87–119 and accompanying text.

was promulgated prior to the enactment of the Maastricht Treaty. Part IV focuses on the new codecision procedure created by the Maastricht Treaty, with special emphasis on the role of the EP in the procedure. Part V examines the impact of the codecision procedure on the environmental protections found in the Trans-European Network guidelines and on the landfill management directive (which technically does not fall under the codecision procedure). Part VI analyzes the impact of the codecision process. Finally, this Note concludes that the EP now has the ability to have a major impact on important EU legislation and its effects in the EU.

I. LAWMAKING BODIES OF THE EUROPEAN UNION

EU legislation includes five types of acts: regulations, directives, decisions, recommendations, and opinions.[8] Three institutional bodies are involved in the formation of this legislation.[9] These institutions are the European Commission, the Council of Ministers, and the EP.[10] The members of the European Commission are appointed by the Member States but are required to be above national loyalties.[11] One of the Commission's most important activities is the formulation of proposals for new EU legislation.[12]

The Council of Ministers consists of representatives from the Member States.[13] When general matters are discussed, the foreign ministers of each state are involved, but when specialized matters are discussed, other ministers are involved, such as the Ministers of Agriculture for agricultural matters or the Finance Ministers for financial issues.[14] The Council makes the final decision on most EU legislation.[15]

The EP is intended to represent the individual citizens of the EU.[16] Members of the EP were originally selected by national legislatures but now are chosen through direct elections in the Member States, with each country allowed to create its own electoral procedures.[17] The role

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[8] *See* HARTLEY 1994, *supra* note 5, at 107.

[9] *See* Sari K.M. Laitinen-Rawana, *Creating a Unified Europe: Maastricht and Beyond*, 28 INT'L LAW. 973, 977 (1994).

[10] *See id.*

[11] *See* HARTLEY 1994, *supra* note 5, at 12.

[12] *See id.* at 11.

[13] *See* Heinrich Kirschner, *Symposium on U.S.-E.C. Legal Relations: The Framework of the European Union Under the Treaty of Maastricht*, 13 J.L. & COM. 233, 236–37 (1994).

[14] *See id.* at 237.

[15] *See* HARTLEY 1994, *supra* note 5, at 17.

[16] *See id.* at 27.

[17] *See id.* at 27–29.

of the EP in legislating has been quite limited but was expanded with the adoption of the Maastricht Treaty.[18]

Thus, the European Commission, the Council of Ministers, and the EP are involved in the formation of legislation, including regulations, directives, decisions, recommendations, and opinions, in the EU.[19] The Commission generally proposes all legislation, while the Council of Ministers makes the final decision on most legislation.[20] The role of the EP in legislating has traditionally been quite limited, but its role has expanded with the adoption of the Maastricht Treaty.[21]

II. LAWMAKING PROCEDURES BEFORE MAASTRICHT

Prior EU treaties established the procedures for enacting EU legislation, including the input that the EP would have in the process.[22] The EEC Treaty continued the consultation procedure instituted previously with the ECSC Treaty.[23] This consultation procedure, still in use today for many issues, provides that legislation will be initiated solely by the European Commission, which then sends its proposed legislation to the EP for "consultation."[24] During the consultation procedure, the EP formulates an "opinion" which the Council can choose to ignore.[25] After the consultation, the Council of Ministers adopts a "common position" and has the final decision.[26] The suggestions of the EP may, however, influence the Commission, which can amend the proposed legislation by unanimous vote at any time before the final vote by the Council.[27]

The Single European Act (SEA) introduced the procedures of cooperation and assent which have increased the involvement of the EP in the legislative process but fail to give the EP a true participatory role

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[18] *See* CLIVE H. CHURCH & DAVID PHINNEMORE, EUROPEAN UNION AND EUROPEAN COMMUNITY: A HANDBOOK AND COMMENTARY ON THE POST-MAASTRICHT TREATIES, 257 (1994).

[19] *See* Laitinen-Rawana, *supra* note 9, at 977; HARTLEY 1994, *supra* note 5, at 107.

[20] *See* HARTLEY 1994, *supra* note 5, at 11, 17.

[21] *See* CHURCH & PHINNEMORE, *supra* note 18, at 257.

[22] *See* HARTLEY 1981, *supra* note 1, at 19–20.

[23] *See* Pierre Mathijsen, *The Power of Co-Decision of the European Parliament Introduced by the Maastricht Treaty*, 8 TUL. EUR. & CIV. L.F. 81, 82–83 (1993); TREATY ESTABLISHING THE EUROPEAN COAL AND STEEL COMMUNITY, *in* ENCYCLOPEDIA OF EUROPEAN COMMUNITY LAW, *supra* note 1, at B2003. The European Coal and Steel Community is a predecessor of the European Union, and was signed on April 18, 1951 and entered into force on July 25, 1952. HARTLEY 1981, *supra* note 1, at 3.

[24] *See* Mathijsen, *supra* note 23, at 82.

[25] *See id.* at 83.

[26] *See id.* at 85.

[27] *See id.* at 83.

in the formation of the legislation.[28] The co-operation procedure gives the EP a second consultation and the ability to reject the Council's final position.[29] The Council can, however, override the parliamentary veto with a unanimous vote to enact the legislation.[30] The co-operation procedure is used on certain issues, including competition, transport and the environment.[31] The assent procedure is utilized primarily for decisions on the accession to the EU of new Member States and on bilateral or multilateral agreements outside the EU.[32] A majority of the EP must agree before the accession or agreement will be concluded.[33] The assent procedure effectively gives the EP veto power over these issues.[34]

Thus, before the enactment of the Maastricht Treaty, the EP could be involved in the legislation procedure via consultation, co-operation, or assent.[35] With consultation, the EP must be allowed to give its opinion, but this opinion can be ignored by the Council.[36] With co-operation, the EP has an additional opportunity to give its opinion, as well as the ability to reject the Council's final opinion.[37] The Council may, however, override this parliamentary veto with a unanimous vote.[38] With assent, the EP has an effective veto in very limited areas.[39] None of these procedures allows the EP actually to formulate and control the legislation.[40]

III. PRE-MAASTRICHT LEGISLATION: DIRECTIVE ON MUNICIPAL WASTE-WATER TREATMENT

The Directive on Municipal Waste-Water Treatment was promulgated prior to the enactment of the Maastricht Treaty in 1992.[41] This

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[28] *See id.* at 83–84.

[29] *See* Mathijsen, *supra* note 23, at 83–84.

[30] *See id.*

[31] *See* Michael H. Abbey & Nicholas Bromfield, *A Practitioner's Guide to the Maastricht Treaty*, 15 MICH. J. INT'L L. 1329, 1351 (1994).

[32] *See* DAVID O'KEEFFE & PATRICK M. TWOMEY, LEGAL ISSUES OF THE MAASTRICHT TREATY 196 (1994).

[33] *See id.*

[34] *See* Mathijsen, *supra* note 23, at 84.

[35] *See id.* at 82–84.

[36] *See id.* at 83.

[37] *See id.* at 83–84.

[38] *See id.*

[39] *See* O'KEEFFE & TWOMEY, *supra* note 32, at 196; Mathijsen, *supra* note 23, at 84.

[40] *See* Mathijsen, *supra* note 23, at 83–84.

[41] *See* 1991 O.J. (L 135) 40, tit.

directive attempts to harmonize the regulations governing municipal waste-water treatment among the Member States and deals directly with the prevention of environmental problems caused by sewage.[42] The directive was promulgated using the consultation procedure for the EP.[43] Due to the limited nature of the legislative procedures, the EP was only able to give an "opinion."[44]

In this "opinion," the EP suggested a number of changes to the directive.[45] The EP proposed adding wording on the control of fertilizers,[46] nitrogen, and phosphorus;[47] expanding treatment of waste-water discharged into "less sensitive" areas;[48] and including treatment of bacterial pollution.[49] The EP also suggested increasing the number of treatment plants affected (by including smaller plants within the scope of the directive);[50] introducing required, regular ecosystem monitoring;[51] and lowering the maximum allowable pollutant concentrations.[52] In addition, the EP proposal included increasing the protection of "sensitive" areas;[53] and changing the wording in several clauses from "should" to "must" in order to require, rather than merely suggest, compliance.[54]

The Council was able to enact the legislation regardless of this extensive "opinion."[55] Out of more than 50 proposed amendments, the Council made only one significant change.[56] The significant change was in requiring one contaminant to be reduced by at least 50% during waste-water treatment.[57] The original proposal required no reduction, while the EP proposal required an 80% reduction.[58] The Directive was indeed enacted as a Council Directive only, as opposed to a Council

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[42] *See* 1991 O.J. (L 135) 40–41, pmbl., art. 1.
[43] *See* 1991 O.J. (L 135) 40–52 app., *available in* LEXIS, Intlaw Library, Eclaw File.
[44] *See* Mathijsen, *supra* note 23, at 83.
[45] *See* 1990 O.J. (C 260) 185–97.
[46] *See id.* at 185.
[47] *See id.* at 189.
[48] *See id.* at 188.
[49] *See id.*
[50] *See* 1990 O.J. (C 260) 189–90.
[51] *See id.* at 191.
[52] *See id.* at 193–94.
[53] *See id.* at 189–90, 195.
[54] *See id.* at 186.
[55] *See* Mathijsen, *supra* note 23, at 83.
[56] *Compare* 1990 O.J. (C 260) 193 *with* 1991 O.J. (L 135) 41.
[57] *Compare* 1990 O.J. (C 260) 193 *with* 1991 O.J. (L 135) 41.
[58] *See* 1990 O.J. (C 260) 193.

and EP Directive, as would be available under the new codecision procedure.[59] If the EP had been able to utilize the codecision procedure, it is almost certain that the directive would have been more environmentally stringent.[60]

Thus, the EP recommended that the proposed directive on municipal waste-water, promulgated pre-Maastricht, be changed to include more strict environmental requirements.[61] The Council, however, enacted the legislation without including these changes.[62] The lack of power granted to the EP under the pre-Maastricht procedures made this result possible.[63] If the EP had been able to utilize the codecision procedure, it is likely that the directive would have provided greater protection of the environment.[64]

IV. LAWMAKING AFTER MAASTRICHT

The Maastricht Treaty expanded the powers of the EP by establishing the new codecision procedure.[65] The Treaty text, however, does not actually mention this expression but instead refers to the "procedure provided for in Article 189(b)" of the Maastricht Treaty, which details this procedure.[66] This power is nevertheless referred to generally as the codecision procedure.[67] This procedure is similar to the co-operation procedure described above in that it gives the EP a second consultation and the ability to reject the Council's final position.[68] With the codecision procedure, however, the Council cannot override the parliamentary veto with a unanimous vote to enact the legislation.[69] Instead, the EP may effectively block the enactment of legislation.[70]

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[59] *See* 1996 O.J. (L 228) 1, tit.; 1991 O.J. (L 135) 40, tit.; *infra* notes 65–86 and accompanying text.

[60] *See* 1990 O.J. (C 260) 185–97.

[61] *See supra* notes 45–54 and accompanying text; *see generally* 1990 O.J. (C 260) 185–97.

[62] *See supra* notes 55–58 and accompanying text; *see generally* 1991 O.J. (L 135) 40–52.

[63] *See generally* 1990 O.J. (C 260) 185–97.

[64] *See id.*

[65] *See* CHURCH & PHINNEMORE, *supra* note 18, at 257.

[66] *See* Mathijsen, *supra* note 23, at 81. A revision of the treaties governing the European Community is being considered which would simplify the codecision procedure. *See* 1997 O.J. (C 33) 1, art. 39.

[67] *See* Mathijsen, *supra* note 23, at 81–82.

[68] *See id.* at 83–85.

[69] *See id.* at 86.

[70] *See* CHURCH & PHINNEMORE, *supra* note 18, at 299. If the Parliament has rejected the common position of the Council, the Council has the option of proceeding to the conciliation procedure or dropping the legislation. *See id.* at 299.

The EP may also propose legislative amendments.[71] If the parliamentary amendments are opposed by the Council or the Commission, the conciliation procedure, a special sub-procedure within the codecision process, is utilized in an attempt to resolve the differences.[72]

The conciliation procedure begins with the creation of the Conciliation Committee.[73] The Committee is convened by the President of the Council in agreement with the President of the EP.[74] The Committee consists of the members of the Council and an equal number of representatives of the EP.[75] The Committee attempts to produce a joint text which is then presented to both the EP and the Council of Ministers.[76] The joint text is a compromise version of the proposed legislation developed by the Committee members in negotiations over six weeks.[77] If both institutions approve the joint text, it becomes promulgated as law.[78] The legislation is then identified as a product of both the Council and the EP, as opposed to the practice under pre-Maastricht legislative procedures of designating legislation as emanating from the Council only.[79] In the absence of a joint text, the Council may again present its original version to the EP, which again has the ability to accept or reject it, with no possibility of override by the Council.[80] The codecision procedure applies only to legislation in certain topic areas, including environmental action programs, the Trans-European network (TEN), research frameworks, internal market legislation, the right of establishment and free circulation of workers, education, health, and consumer protection.[81]

Thus, in certain limited subject areas, the Maastricht Treaty has expanded the powers of the EP by establishing the new codecision procedure.[82] The Council can no longer override a parliamentary veto

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[71] *See* Mathijsen, *supra* note 23, at 86.

[72] *See* CHURCH & PHINNEMORE, *supra* note 18, at 299.

[73] *See* Mathijsen, *supra* note 23, at 86.

[74] *See* Maastricht Treaty, *supra* note 5, art. 189(b), at ¶ 3.

[75] *See id.*, at ¶ 4.

[76] *See id.*, at ¶¶ 4, 5.

[77] *See* O'KEEFFE & TWOMEY, *supra* note 32, at 195.

[78] *See* Abbey & Bromfield, *supra* note 31, at 1351.

[79] *See* Mathijsen, *supra* note 23, at 86; *compare* 1996 O.J. (L 228) 1, tit., *with* 1991 O.J. (L 135) 40 tit.

[80] *See* Mathijsen, *supra* note 23, at 86.

[81] *See* Abbey & Bromfield, *supra* note 31, at 1331; CHURCH & PHINNEMORE, *supra* note 18, at 300. A revision of the treaties governing the European Community is being considered which would expand the use of the codecision procedure to other areas. *See* 1997 O.J. (C 33) 1, art. 11, 31, 38.

[82] *See* CHURCH & PHINNEMORE, *supra* note 18, at 257.

where the EP has rejected the Council's position, as was possible under the pre-Maastricht procedures.[83] Instead, the EP may effectively block the enactment of legislation,[84] propose legislative amendments,[85] or help to create a more acceptable version of the legislation in the conciliation procedure.[86]

V. POST-MAASTRICHT LEGISLATION

With these new legislative powers, the EP has been able to affect the final form of regulations which impact the environment.[87] Part A of this section examines the impact that the EP has been able to have on the environmental protections included in major transportation legislation due to the new codecision procedure. Part B shows that this expansion of power has led to a new respect for the EP, so that the EP is able to provide input into legislation even where this input is not technically required.

A. *Environmental Protection in the Trans-European Network Guidelines*

The TEN guidelines are a set of programs that will create large, interlocking transport, telecommunications, and energy proects throughout the EU.[88] As originally proposed by the Commission andadopted as a common position by the Council, the TEN legislation decision did not include specific provisions on the need for environmental protection.[89] However, the EP made use of the codecision procedure to force the inclusion of protections for the environment in the final TEN legislation decision.[90]

The final guidelines dealing with the Trans-European Transport Network were promulgated using the complete codecision procedure.[91] After the EP suggested amendments which the Council rejected, the conciliation procedure was initiated and resulted in final

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[83] *See* Mathijsen, *supra* note 23, at 85–86.

[84] *See* CHURCH & PHINNEMORE, *supra* note 18, at 299.

[85] *See* Mathijsen, *supra* note 23, at 86.

[86] *See* CHURCH & PHINNEMORE, *supra* note 18, at 299.

[87] *See infra* notes 87–119 and accompanying text.

[88] *See* 1996 O.J. (L 228) 1; 1996 O.J. (L 161) 1; 1996 O.J. (C 134) 4.

[89] *See generally* 1995 O.J. (C 331) 102–03.

[90] *See Future Guidelines on Trans-Europe Network to Address Environmental Impact Assessment*, [Current Developments] Int'l Envtl. Rep. (BNA) 540 (June 26, 1996) [hereinafter *Future Guidelines*].

[91] *See* 1996 O.J. (L 228) 1 app., *available in* LEXIS, Intlaw Library, Eclaw File.

guidelines which were promulgated as a joint decision of the Council and the EP.[92] The procedure took more than two months to complete.[93] During this time, the parliamentary members refused to lessen their demands and were ultimately successful in including specific environmental protections in the final decision.[94] The guidelines were published as a joint act of the Council and the EP, unlike the previously discussed Municipal Waste-Water Treatment Directive which was published as a Council directive only.[95]

In response to suggestions by the EP, the Council's first amendment, made before the initiation of the codecision procedure, gave several concessions in the environmental arena.[96] First, the amended version added references to environmental protection, both in the preamble (not legally binding) and in the enacting terms.[97] Second, the amended proposal contained a rewritten Article 7 which provides that environmental aspects will be taken into account at every stage of network development.[98] The Council refused, however, to incorporate a separate article in its amended version dealing specifically with the need for environmental protection, contending that this was unnecessary given the concessions mentioned above.[99]

The EP, however, was not satisfied with the concessions made by the Council in its amended version.[100] By forcing the issue during the conciliation procedure, the EP succeeded in having a separate article dealing specifically with the need for environmental protection inserted into the decision, thereby expanding the effects of environmental impact assessments previously mentioned only in the preamble.[101] Article 8 on environmental protection specifies that Member States must execute environmental impact assessments of TEN's projects and also that the Commission will develop methods for evaluating the environmental impact of the entire network.[102] By moving the requirement for environmental impact assessment into the body of the

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[92] *See id.*; 1996 O.J. (L 228) 1, tit.

[93] *See Future Guidelines, supra* note 90, at 540.

[94] *See id.*

[95] *Compare* 1996 O.J. (L 228) 1, tit., *with* 1991 O.J. (L 135) 40, tit.

[96] *See* 1995 O.J. (C 331) 102–03.

[97] *See* 1995 O.J. (C 331) 102–03. Provisions concerning the environment were added in the preamble and Article 2, 2a, and 5h. *See id.*

[98] *See* 1995 O.J. (C 331) 102.

[99] *See id.*

[100] *See Future Guidelines, supra* note 90, at 540.

[101] *See id.*; 1996 O.J. (L 228) 1, pmbl., art. 8.

[102] *See* 1996 O.J. (L 228) 1, art. 8.

document, the EP has succeeded in ensuring that the Member States will be required to perform environmental impact assessments on TEN's projects.[103] In addition, the preamble now contains a clause that suggests that the environmental impact assessment should not only be performed, but be the basis for deciding whether or not to continue with the project.[104]

B. *Landfill Directive*

Furthermore, the EP has succeeded in using its newly acquired power to change a directive that it has no actual technical power to change.[105] The directive on the landfill of waste is being promulgated under the co-operation procedure of the EU.[106] The directive covers landfilling of hazardous and non-hazardous waste but would not apply to landfills of up to 50,000 tons final capacity.[107] The Council has adopted a common position on the legislation[108] and has consulted with the EP as required.[109] In the face of overwhelming opposition by the EP, the European Commission has decided to withdraw its proposal, even though it technically could ignore the parliamentary opinion.[110] The EP has objected that, because landfills up to 50,000 tons capacity may not be regulated, the number of landfills that would be covered by the directive is minimal—as many as 70% of the landfills in the EU may not be covered by the directive[111]—thus making the directive ineffective in providing environmental protection. The Commission will draft new legislation that will expand the number of landfills covered by the directive, even though it is not technically required to do so by the co-operation procedure.[112] The Commission's actions are being taken out of respect for the EP.[113] The actions by the Commission could indicate a new tendency to include the EP in the

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[103] *See* 1995 O.J. (C 331) 102–03.

[104] *See* 1996 O.J. (L 228) 1, pmbl.(9).

[105] *See Commission to Withdraw Landfill Proposal in Light of European Parliament Opposition*, [Current Developments] Int'l Envtl. Rep. (BNA) 590 (July 10, 1996) [hereinafter *Commission*].

[106] *See* 1992 O.J. (C 305) 50, tit.

[107] *See* 1996 O.J. (C 59) 1, art. 3.

[108] *See* 1996 O.J. (C 59) 1, tit.

[109] *See Commission*, *supra* note 105, at 589.

[110] *See id.* at 590.

[111] *See* 1996 O.J. (C 59) 1, art. 3; *Commission*, *supra* note 105, at 589.

[112] *See Commission*, *supra* note 105, at 589.

[113] *See id.*

legislative process, even where that is not technically required under the treaties.[114]

Thus, in both the TEN's guidelines and the landfill directive, the EP was able to use its powers under the codecision procedure to obtain greater environmental protections.[115] First, the TEN guidelines now include a separate article dealing with the need for environmental protection.[116] This article was originally opposed by the Council but supported by the EP.[117] Second, all TEN projects must include an environmental impact assessment which may be a criteria for deciding the fate of the project.[118] Finally, the landfill directive that will be proposed by the Commission will regulate more of the Community landfills than originally proposed by the Commission.[119]

VI. ANALYSIS: THE IMPACT OF CODECISION

Under the codecision procedure of the Maastricht Treaty, the EP now has sufficient power to affect the substantive content of Community legislation.[120] Comparing the legislative outcomes of municipal waste-water treatment with those of the TEN and landfill management, it is apparent both that the EP has more power and that it has used that power to increase the level of environmental protection provided by EU legislation.[121] The codecision procedure has also produced a new respect for the EP on the part of the Council.[122] In the TEN's guidelines procedure, the Council made concessions to the EP prior to the conciliation procedure itself,[123] perhaps in the hopes of avoiding the necessity of the conciliation procedure. In addition, after completion of the conciliation procedure the guidelines were much stronger environmentally than originally proposed.[124] With the landfill management directive, the EP was able to have an impact on the regulations even though technically the codecision procedure would

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[114] *See id.* at 589–90.

[115] *See Future Guidelines, supra* note 90, at 540; *Commission, supra* note 105, at 589.

[116] *See* 1996 O.J. (L 228) 1, art. 8.

[117] *See* 1995 O.J. (C 331) 102.

[118] *See* 1996 O.J. (L 228) 1, pmbl.(9).

[119] *See Commission, supra* note 105, at 589.

[120] *See supra* notes 87–119 and accompanying text.

[121] *See supra* notes 55–60 and accompanying text; *supra* notes 87–119 and accompanying text.

[122] *See Commission, supra* note 105, at 590.

[123] *See* 1995 O.J. (C 331) 102–03.

[124] *See Future Guidelines, supra* note 90, at 540; 1996 O.J. (L 228) 1, pmbl., art. 8.

not be used.[125] In comparison, the municipal waste-water treatment directive contained virtually none of the environmental protection suggestions proposed by the EP.[126]

With both the TEN guidelines and the landfill management directive, the substantive changes forced by the EP will have effects beyond environmental ones.[127] The requirement for environmental impact assessments for TEN projects means that the costs for the projects will increase and that the projects themselves could be stopped or at least delayed by the environmental impact assessment process.[128] The landfill management directive suggested by the EP will cover more landfills than the Commission originally intended, thereby increasing the costs associated with operating these facilities.[129] Thus, the EP, with the advent of the codecision procedure for certain issues under the Maastricht Treaty, now has the ability to have a major impact on important EU legislation and its effects in the EU.

CONCLUSION

The European Commission, the Council of Ministers, and the EP are involved in the formation of legislation, including regulations, directives, decisions, recommendations, and opinions, in the Community. The Commission generally proposes all legislation while the Council of Ministers makes the final decision on most legislation. The role of the EP in legislating has traditionally been quite limited, but its role has expanded with the adoption of the Maastricht Treaty. Before the enactment of the Maastricht Treaty, the EP could be involved in the legislation procedure via consultation, co-operation, or assent. In the directive on municipal waste-water, promulgated pre-Maastricht, the EP recommended that the proposal be changed to include more strict environmental requirements. The Council, however, was able to enact the legislation without including these changes due to the EP's lack of power under these pre-Maastricht procedures. The Maastricht Treaty has expanded the powers of the EP by establishing the new codecision procedure. The Council can no longer override a parliamentary veto where the EP has rejected the Council's position, as was

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[125] *See Commission, supra* note 105, at 589.

[126] *See generally* 1990 O.J. (C 260) 185–97.

[127] *See Future Guidelines, supra* note 90, at 540; 1996 O.J. (L 228) 1; *Commission, supra* note 105, at 589.

[128] *See Future Guidelines, supra* note 90, at 540; 1996 O.J. (L 228) 1, pmbl.

[129] *See Commission, supra* note 105, at 589–90.

possible under the pre-Maastricht procedures. Instead, the EP may effectively block the enactment of legislation, propose legislative amendments, or help to create a more acceptable version of the legislation in the conciliation procedure.

In both the TEN's guidelines and the landfill directive, enacted post-Maastricht, the EP was able to use its new powers under the codecision procedure to obtain greater environmental protections. Comparing the outcomes observed in the instances of municipal wastewater treatment with those of the TEN and landfill management, it is apparent both that the EP has more power and that they have used that power to increase the level of environmental protection provided by Community legislation. With both the TEN's guidelines and the landfill management directive, the substantive changes forced by the EP will have effects beyond the environmental ones. Thus, the EP, with the advent of the codecision procedure for certain issues under the Maastricht Treaty, now has the ability to have a major impact on important Community legislation and its effects in the Community.

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