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## In Times of Lisbon and Crisis: The European Parliament at a Turning Point?

**Abstract:** *Both the Treaty of Lisbon and the global economic crisis have had a significant impact on the European Parliament (EP) – the only directly-elected institution of the European Union (EU). However, the oft-asserted broadening of the EP's powers under the Lisbon Treaty needs to be critically examined. An analysis of the EU budget adoption procedure might lead to a conclusion that these powers have actually been limited. Examples of policies like cohesion show, in turn, that even where the European Parliament has acquired greater legislative influence, this rests mainly on its ability to delete or dilute provisions already present in the European Commission proposal. Moreover, new formulations on key issues proposed by the EP are usually already known to form part of the Council position. Further research and possible future evolution notwithstanding, in these times of crisis – when the voice of the people, whom the European Parliament represents, is in a particular need to be heard – the EP may still best be described as a ‘negative legislator’.*

### Introduction

The global economic and debt crisis, underway since 2008, has been analysed by scholars in a variety of patterns. These analyses include the impact of the crisis on the functioning of the European Union (EU).<sup>1</sup> In fact, the EU's Acts of primary law, i.e. the Treaty of 7<sup>th</sup> February 1992 on the Euro-

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<sup>1</sup> See e.g. T. Kubin, *Kryzys gospodarczy i zadłużeniowy a zróżnicowanie integracji w UE* (*The economic and debt crisis and the differentiation of integration in the European Union*), “*Studia Europejskie*” No. 3/2012, pp. 71–92; M. Schulte, *The reform of economic governance in the European Union and the Euro Area* in: *EU Policies: an overview from decision-making to implementation*, eds. R.W. Strohmeier, I. Habets, Brussels 2013, pp. 57–87.

pean Union (TEU),<sup>2</sup> and the Treaty of 27<sup>th</sup> March 1957 on the Functioning of the European Union (TFUE),<sup>3</sup> have both been fundamentally adapted in order to meet the political challenges of the beginning of the twenty-first century, in particular, overcoming the democracy deficit within the EU institutional framework, and making this framework more effective.<sup>4</sup> This adaptation has taken the form of the so-called Reforming Treaty (the Treaty of Lisbon or the Lisbon Treaty) of 13 December 2007, signed a year before the outbreak of the global crisis,<sup>5</sup> just as its first phase, the United States of America subprime market crisis ('credit crunch'), was unfolding.<sup>6</sup> The parallel occurrence of these two phenomena facilitates the analysis of their influence on EU institutions.<sup>7</sup> This paper is focused specifically on the impact that the Treaty of Lisbon and the global crisis have had on the powers (competencies) of the European Parliament (the Parliament, EP).

The institutions of the European Union, as listed in Article 13 paragraph 1 of the TEU, are the European Parliament, the European Council, the Council,<sup>8</sup> the European Commission (the Commission, EC), the EU Court of Justice (ECJ), the European Central Bank (ECB) and the European Court of Auditors (ECA).<sup>9</sup> Of all these, only the European Parliament is directly elected. The ordinary EU citizens, who bear the brunt of the economic crisis, would therefore seem to be able to exert their influence in particular through this institution, which is to provide democratic legitimacy as well as accountability.<sup>10</sup> This aspect of the EP's activities remains important even though, in practice, many of the EU's currently ongoing economic crisis management activities are undertaken by the European Council, i.e. the heads of EU Member States or their governments.<sup>11</sup> Furthermore, since the entry of the Lisbon Treaty into force (on 1 December 2009), it has been asserted that the scope of competence

<sup>2</sup> Consolidated text, OJ 2012 C 326/13.

<sup>3</sup> Consolidated text, OJ 2012 C 326/47.

<sup>4</sup> R. Corbett, F. Jacobs, M. Shackleton, *The European Parliament*, London 2011, 8<sup>th</sup> ed., pp. 392–396; D. Dinan, *Ever closer Union. An Introduction to European Integration*, Houndmills 2010, 4<sup>th</sup> ed., pp. 1–4; R.W. Strohmeier, C. Ladenburger, M. Selmayr, *Europe and the Treaty of Lisbon: Origin, innovations and future prospects in: EU Policies: an overview from decision-making to implementation*, eds. R.W. Strohmeier, I. Habets, Brussels 2013, pp. 29–32.

<sup>5</sup> Cf. T. Kubin, op.cit., pp. 81–88.

<sup>6</sup> D. Dinan, op.cit., pp. 156–167; M. Schulte, op.cit., pp. 59–62.

<sup>7</sup> Cf. e.g. R.W. Strohmeier, C. Ladenburger, M. Selmayr, op.cit., p. 24.

<sup>8</sup> Despite the similarity in names, these are in fact two different institutions – cf. e.g. General Secretariat of the Council, *The European Council and the Council. Two institutions acting for Europe*, Luxembourg 2010, pp. 3–10.

<sup>9</sup> See e.g. D. Dinan, op.cit., p. 171.

<sup>10</sup> M. Schulte, op.cit., p. 80.

<sup>11</sup> D. Dinan, op.cit., pp. 157–165; T. Kubin, op.cit., pp. 81–88; R.W. Strohmeier, C. Ladenburger, M. Selmayr, op.cit., pp. 50–51.

of the European Parliament in various important fields (e.g. its budgetary powers), has increased.<sup>12</sup> It is true that the making of EU secondary law – in principle constituted by regulations, directives, decisions, recommendations and opinions issued by EU institutions (Article 288 of the TFEU)<sup>13</sup> – in a number of policies has been made subject under the Lisbon Treaty to the so-called co-decision procedure (now formally the ‘ordinary legislative procedure’ – Article 294 of the TFEU). Under this procedure, the co-legislators, i.e. the EP and the Council, are supposed to enjoy equal legislative powers.<sup>14</sup>

The main thesis of this paper is that the actual scope of application of these acquired EP competencies and their practical impact puts into question such an apparently wide-ranging expansion of the European Parliament’s powers under the Lisbon Treaty. An attempt to prove this thesis is undertaken with the assistance of selected, important cases. One will be the aforementioned EP powers with respect to the budget of the European Union; another – its competencies in the field of cohesion policy (regional development policy, structural policy).<sup>15</sup> The latter has been selected because it is a major EU policy, which was made subject to the co-decision/ordinary legislative procedure already some time ago (albeit still relatively recently, i.e. gradually between 2003 and 2009),<sup>16</sup> and also is not subject to very many immediate political pressures<sup>17</sup> nor frequently put in the media spotlight (which might distort the analysis). Owing to these factors, the latter part of this text includes a somewhat more detailed description of the legislative negotiation process between the EP and the Council. It needs to be noted that the legal and scholarly sources used in the analysis are supplemented by practical observations made by the author in his capacity as legislative adviser in the European Parliament.

## 1. The European Parliament and the budget of the European Union

Due to the multinational and long-time nature of projects funded by the European Union, its budgetary cycle and procedures are somewhat different

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<sup>12</sup> R. Corbett, F. Jacobs, M. Shackleton, *op.cit.*, pp. 3, 5–6; R.W. Strohmeier, C. Ladenburger, M. Selmayr, *op.cit.*, pp. 39–41.

<sup>13</sup> See e.g. D. Dinan, *op.cit.*, pp. 303–310.

<sup>14</sup> R. Corbett, F. Jacobs, M. Shackleton, *op.cit.*, pp. 5, 232.

<sup>15</sup> See e.g. P. de Buhr, Ch. Haider, *European structural and cohesion policy in: EU Policies: an overview from decision-making to implementation*, eds. R.W. Strohmeier, I. Habets, Brussels 2013, pp. 391–439.

<sup>16</sup> *Ibidem*, p. 396.

<sup>17</sup> Which may be corroborated, *inter alia*, by the very rare references to this policy made *ibidem*, pp. 5, 251, 261.

than these of a nation state, including EU Member States. Above and beyond the annual budgets, EU financing has been, since 1988, constituted by a succession of financial perspectives, or Multiannual Financial Frameworks (MFF), which constitute binding structures of income and expenditure levels ('ceilings') for the thus created 'programming periods' of EU-funded projects (1988–1993; 1994–1999; 2000–2006; 2007–2013).<sup>18</sup> These levels are currently equal to approximately 1 per cent of the Gross National Income of the European Union Member States combined.<sup>19</sup>

The high political sensitivity of the MFF has meant for a long time that the multiannual budget was not enshrined in primary law, but based on an inter-institutional agreement (IIA), reached as a result of political negotiations between the Member States (in the Council), the European Commission, and the European Parliament.<sup>20</sup> Since 2005, the EP has expressed its position in each MFF negotiations through a resolution, adopted following a report of its extraordinary committee on policy challenges for the forthcoming programming period.<sup>21</sup> Such resolutions have included rather specific requests as to the type and amount of expenditure,<sup>22</sup> which had to be seriously considered by the other institutions involved.<sup>23</sup>

Since entry into force of the Treaty of Lisbon, the situation has changed in terms of the legal status of the Multiannual Financial Framework. In Title II of the TFEU ('Financial provisions'), Chapter II is entirely devoted to the MFF, though consisting solely of Article 312. This article therefore deserves a more in-depth analysis.

Such an analysis commences with an extensive quote from its paragraph 1: '*The multiannual financial framework shall ensure that Union expenditure develops in an orderly manner and within the limits of its own resources. It shall be established for a period of at least five years. The annual budget of the Union shall comply with the multiannual financial framework.*'

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<sup>18</sup> Cf. e.g. D. Dinan, *op.cit.*, pp. 315–318; R. Corbett, F. Jacobs, M. Shackleton, *op.cit.*, p. 273.

<sup>19</sup> Cf. e.g. S. De Corte, N. Groenendijk, C. Suceveanu, P. Tokarski, P. Toporowski, *The Next Multiannual Financial Framework: From national interest to building a common future*, Brussels 2012, pp. 6–7, 13–15; P. Steven, R.W. Strohmeier, *EU budget policy in: EU Policies: an overview from decision-making to implementation*, eds. R.W. Strohmeier, I. Habets, Brussels 2013, pp. 93–94, 98–100.

<sup>20</sup> *Ibidem*, pp. 99–100.

<sup>21</sup> R. Corbett, F. Jacobs, M. Shackleton, *op.cit.*, p. 168.

<sup>22</sup> Cf. European Parliament resolution of 8 June 2005 on Policy Challenges and Budgetary Means of the enlarged Union 2007–2013, OJ 2006 C 124/373; European Parliament resolution of 8 June 2011 on Investing in the future: a new Multiannual Financial Framework (MFF) for a competitive, sustainable and inclusive Europe, OJ 2011C 380/89; see also: P. Steven, R.W. Strohmeier, *op.cit.*, pp. 101–102.

<sup>23</sup> D. Dinan, *op.cit.*, pp. 316–317.

The text of this provision draws attention to the issue of the duration of an MFF. While earlier multiannual budgets had been six-year long, in the twenty first century their duration has been extended by one year, which reflects the aforementioned long-term nature of many EU-funded projects. In fact, the formulation in the Treaty (implying a five-year MFF) reflects the idea expressed, *inter alia*, in the European Parliament, that the MFF ought to be aligned to the terms of office of both the EP and the European Commission (however it should be noted that the latter preferred a ten-year duration, with an obligatory comprehensive revision midway through the period).<sup>24</sup> These points of view, however, were not shared within the Council, as changes in the MFF's duration would in its view put into question the financing of several important long-term projects (e.g. in the field of cohesion policy).<sup>25</sup> Therefore, after some discussion in the Parliament (through 2009–2011) on possible solutions, it was eventually agreed within the Council to retain the seven-year programming period, and this has been reflected in the formal proposal for the MFF regulation eventually put forward by the European Commission.<sup>26</sup>

This regulation is described in the second paragraph of Article 312. Its analysis might turn out to be crucial, as it provides that: *'The Council, acting in accordance with a special legislative procedure, shall adopt a regulation laying down the multiannual financial framework. The Council shall act unanimously after obtaining the consent of the European Parliament, which shall be given by a majority of its component members. (...)'*

It is worth noting that the adoption procedure in the European Parliament is described in the analysed provision as 'consent', clearly referring to the procedure known formerly (before the entry into force of the Lisbon Treaty) as 'assent',<sup>27</sup> whereby the EP can accept or reject a proposal by the European Commission in its entirety, but cannot amend it.<sup>28</sup> Bearing in mind the aforementioned structurally binding character of the MFF (formally stated by the third paragraph of Article 312 of the TFEU), application of such a procedure in its adoption puts into question the powers of the EP with respect to each annual budget.<sup>29</sup> This, as indicated above, is especially visible in reference to

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<sup>24</sup> Cf. R. Corbett, F. Jacobs, M. Shackleton, *op.cit.*, p. 274; S. De Corte, N. Groenendijk, C. Suceveanu, P. Tokarski, P. Toporowski, *op.cit.*, pp. 22–23, 69.

<sup>25</sup> *Ibidem*, pp. 35–36, 57; P. Steven, R.W. Strohmeier, *op.cit.*, pp. 104–105.

<sup>26</sup> European Commission, Proposal for the 2014–2020 Multiannual Financial Framework, Publications Office, Luxembourg 2011, p. 3; P. Steven, R.W. Strohmeier, *op.cit.*, p. 103.

<sup>27</sup> Cf. e.g. P. Steven, R.W. Strohmeier, *op.cit.*, p. 99.

<sup>28</sup> R. Corbett, F. Jacobs, M. Shackleton, *op.cit.*, p. 250–251; P. Craig, G. De Burca, *EU Law: Text, Cases and Materials*, Oxford 2006, 4<sup>th</sup> ed., p. 117.

<sup>29</sup> In fact, both D. Dinan, *op.cit.*, p. 318, as well as R. Corbett, F. Jacobs, M. Shackleton, *op.cit.*, pp. 274–277 seem to be very concise and extremely cautious in describing these powers under the primary law provisions currently in force.

policies of a more ‘expensive’ and long-term nature, like cohesion. Since their funding, due to the existence of annual expenditure ‘ceilings’ provided for in the MFF for each of its ‘headings’ (encompassing policy areas),<sup>30</sup> cannot be treated with any sort of flexibility, annual budgets are of very limited importance for these policies.

The European Parliament seems therefore to have become deprived of most political instruments which would enable it to influence the thus-defined Multiannual Financial Framework, since its political powers under the previously-existing informal inter-institutional agreements have not (and, arguably, could not have) become legally-binding under the consent procedure. In exchange, the TFEU provisions have granted the Parliament the ‘nuclear option’ of rejecting the entire regulation (MFF), which could have been considered as a course of action in any case, including under the previous (extra-)legal situation. The analysed treaty formulations thus reflect a shift, leading away from the unregulated, but in practice quite strong position of the EP in the former inter-institutional negotiations, towards a situation where the Parliament is expected to give only one ‘wholesale’ answer to all budget questions, without any flexibility or qualification.<sup>31</sup>

In practice, this has meant that confusion has reigned beginning with the early stages, in 2011, of proceedings on the MFF regulation in the EP (e.g., even one of the parliamentary co-rapporteurs of the regulation seemed convinced at the time, that it was subject to the ordinary legislative procedure). In addition, it shows that the practical influence of the Parliament has been seriously undermined, as the negotiations became increasingly Council-centred.<sup>32</sup> However, the European Parliament, under the consent procedure, can still adopt an interim report making recommendations for modifications of the legislative proposal.<sup>33</sup> Such an interim report was adopted in a parliamentary resolution of late 2012,<sup>34</sup> taking a critical position towards some important views expressed by the Council. This was followed with an even more critical resolution in early 2013,<sup>35</sup> which led to much posturing by the respon-

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<sup>30</sup> See e.g. P. Steven, R.W. Strohmeier, *op.cit.*, p. 102.

<sup>31</sup> A procedure which, before the entry into force of the Lisbon Treaty, has been restricted to situations such as the accession of new Member States or conclusion by the EU of international agreements.

<sup>32</sup> This is indirectly admitted by e.g. P. Steven, R.W. Strohmeier, *op.cit.*, pp. 105–106.

<sup>33</sup> *Ibidem*, p. 103; P. Craig, G. de Burca, *op.cit.*, p. 117.

<sup>34</sup> European Parliament resolution of 23 October 2012 in the interest of achieving a positive outcome of the Multiannual Financial Framework 2014–2020 approval procedure, see: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2013-78> (last visited 23.11.2013).

<sup>35</sup> European Parliament resolution of 13 March 2013 on the European Council conclusions of 7/8 February concerning the Multiannual Financial Framework, see: <http://www.europarl>.

sible Members of the European Parliament (MEPs), and an understandable media ‘hype’ over ‘*rejection of the long-term budget*’.<sup>36</sup>

However, the practical effects of these actions were limited. The negotiations on the MFF regulation might, at first glance, have looked like they were previously. In fact however, the power now seemed to have shifted to the side of the Council – where unanimity has to be obtained among 27 or 28 Member States, with their representatives meeting *in camera*, compared to the absolute majority required among the seven hundred fifty MEPs, elected within the Member States and casting their votes in public.<sup>37</sup> This shift was deemed serious enough to have led to the desperate resignation, in mid-2013, of one of the parliamentary co-rapporteurs, expressing exasperation over how little could be achieved in the negotiations, ‘*if they could be called such at all*’.<sup>38</sup>

When in the autumn of that year the EP withheld its vote in plenary on its consent to the MFF regulation until the final position of the Council, presented to other institutions, had been formally approved at the level of ministers, it already seemed to be no more than a face-saving postponement of the inevitable through procedural measures. The Regulation of the European Parliament and the Council laying down the Multiannual Financial Framework for the years 2014–2020 was eventually adopted on 2 December 2013.<sup>39</sup> All these events put the final provision of Article 312 of the treaty in a very interesting context, as it states that ‘*Throughout the procedure leading to the adoption of the financial framework, the European Parliament, the Council and the Commission shall take any measure necessary to facilitate its adoption.*’

It is therefore Article 312 of the TFEU, and in particular its paragraph 2 making adoption of an MFF subject to the consent procedure, that poses some of the most serious questions as to whether the powers of the European Parliament on major issues (such as the budget) have really been broadened as a consequence of entry into force of the Lisbon Treaty.<sup>40</sup>

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[europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0078&language=EN](http://europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0078&language=EN) (last visited 23.11.2013).

<sup>36</sup> See e.g. J. Chaffin, *EU Parliament rebuffs budget*, “The Financial Times”, 13.03.2013.

<sup>37</sup> The importance of this particular aspect of the EU legislative process is highlighted by R.W. Strohmeier, C. Ladenburger, M. Selmayr, *op.cit.*, p. 28.

<sup>38</sup> As quoted in: D. Keating, *MEPs cast doubt on budget deal*, “The European Voice”, 20.06.2013.

<sup>39</sup> OJ 2013 L 347/884.

<sup>40</sup> These doubts are currently being raised in the European Parliament draft report of 16 January 2014 on negotiations on the MFF 2014–2020: lessons to be learned and the way forward, see: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=%2f%2fEP%2f%2fNONGML%2bCOMPARL%2bPE-527.841%2b01%2bDOC%2bPDF%2bV0%2f%2fEN> (last visited 23.01.2014).

## 2. The European Parliament and the European Union cohesion policy

The European cohesion policy has been in constant development since the 1950s as an instrument for improving the economic conditions in various regions of Europe, with the aim of removing (or at least alleviating) the economic, social and territorial disparities between them.<sup>41</sup> In doing so, the cohesion policy is geared towards making the regions more competitive, fostering economic growth and creating new jobs. This policy also has a role to play in the wider challenges for the future, including climate change, energy supply, and globalisation.<sup>42</sup>

The European Union cohesion policy covers all regions in the EU, although they fall into different categories, depending mostly on their economic situation. In the 2014–2020 programming period, the EU cohesion policy consists of two objectives (now usually renamed into ‘goals’): growth and jobs, and European Territorial Cooperation (ETC).<sup>43</sup>

Together with the Common Agricultural Policy (CAP), the cohesion policy accounts for an overwhelming majority share of EU expenditures (more than 70 per cent – including almost 33 per cent for the cohesion policy itself).<sup>44</sup> In financial terms, the EU cohesion policy is being implemented through structural and investment funds. These are the European Regional Development Fund (ERDF), the European Social Fund (ESF), and the Cohesion Fund. Apart from these, there also exist funds in other policy fields (rural development, fisheries) which have the potential to contribute to the regional development, and which therefore, like the structural and investment funds, are not only covered by their separate, constituent regulations, but also by a ‘Common provisions regulation’ (CPR). The sheer number and scope of regulations on the cohesion policy prove their importance, both in financial as well as legislative terms.<sup>45</sup>

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<sup>41</sup> See e.g. P. de Buhr, Ch. Haider, *op.cit.*, pp. 393–396, 412, 416.

<sup>42</sup> D. Dinan, *op.cit.*, pp. 347–352; J. Olbrycht, M. Sapała, *The future of the EU cohesion Policy: how much, what for, and how?*, “European View” No. 2/2011, pp. 241–248.

<sup>43</sup> *Ibidem*, pp. 244–245; in the 2007–2013 programming period there were three objectives: Convergence, Regional Competitiveness and Employment, and ETC; the first two of these covered, respectively, either the less-developed or more-developed regions (with a regional Gross Domestic Product on the level of at least 75 per cent of the European Union GDP being the demarcation line between the two categories), while the ETC covered all EU regions. These objectives have respectively replaced the previous three policy objectives of the 2000–2006 programming period, which were simply known as Objectives 1, 2 and 3; cf. e.g. P. de Buhr, Ch. Haider, *op.cit.*, pp. 397–400, 409, 425–426.

<sup>44</sup> *Ibidem*, p. 413.

<sup>45</sup> See: Regulation no. 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the



Nevertheless, these pieces of legislation are frequently overlooked both by political pundits and the media. The reason for this might be that since every political actor – whether on the EU, Member State, regional or local level – represents a specific region, there is not much interest in political infighting over these regulations. This factor notwithstanding, due to the impact the cohesion policy has in times of financial and economic crisis,<sup>46</sup> the regulations in question seem important with respect to an analysis of the current political powers of the European Parliament.

As has been pointed out, already in the run-up to the 2007–2013 programming period, the EU cohesion policy was made subject to the ordinary legislative procedure, sometimes referred to as the ‘community method’, which in contrast to ‘the intergovernmental methods’ (such as the consultation procedure or the open method of co-ordination)<sup>47</sup> is supposed to put the European Parliament and the Council on an equal footing.

The ordinary legislative procedure – following the submission of a proposal from the European Commission to the Parliament and the Council – consists of two readings at each of the co-legislating institutions. In the first reading the Parliament adopts its position. If the Council approves it, then the act is adopted. If not, it shall adopt its own position and return it to Parliament with explanations. In the second reading, the act is adopted if the Parliament approves the Council's text or fails to take a decision. The Parliament may, however, also reject the Council's text, leading to the law not being adopted,

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European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006, OJ 2013 L 347/320; Regulation no. 1304/2013 of the European Parliament and of the Council of 17 December 2013 on the European Social Fund and repealing Council Regulation (EC) No 1081/2006, OJ 2013L 347/470; Regulation no. 1301/2013 of the European Parliament and of the Council of 17 December 2013 on the European Regional Development Fund and on specific provisions concerning the Investment for growth and jobs goal and repealing Regulation (EC) No 1080/2006, OJ 2013 L 347/289; Regulation no. 1299/2013 of the European Parliament and of the Council of 17 December 2013 on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal, OJ 2013 L 347/259; Regulation no. 1300/2013 of the European Parliament and of the Council of 17 December 2013 on the Cohesion Fund and repealing Council Regulation (EC) No 1084/2006, OJ 2013 L 347/281.

<sup>46</sup> P. de Buhr, Ch. Haider, op.cit., pp. 405–407, 429; S. De Corte, N. Groenendijk, C. Suceveanu, P. Tokarski, P. Toporowski, op.cit., pp. 41, 60–61; European Parliament resolution of 6 July 2010 on contribution of EU regional policy towards fighting the financial and economic crisis, with a special reference to Objective 2, see: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2010-0255&language=EN&ring=A7-2010-0206> (last visited 27.11.2013).

<sup>47</sup> P. Craig, G. de Burca, op.cit., p. 145.

or modify it and pass the modification on to the Council. If, within three months of receiving Parliament's new text, the Council approves it, then it is adopted. If it does not, then the Council President, with the agreement of the Parliament President, convenes a Conciliation Committee composed of the Council and an equal number of MEPs (with the attendance of the Commission as moderator).<sup>48</sup>

However, such a theoretical structure needs to be confronted with reality, where conciliation is an exception, and the second reading is also becoming an increasingly rare occurrence.<sup>49</sup>

In practice, it is important to note that currently the first reading begins with an approval of the text in the form of a 'mandate for negotiations' in both:

- 1) the relevant European Parliament committee (in 2012, Rules 70 and 70a have been respectively amended and added to the EP Rules of Procedure<sup>50</sup> specifically to reflect this situation),
- 2) the Committee of Permanent Representatives (COREPER – acronym for the French name *Comité des représentants permanents* – composed of thus-named ambassadors of Member States to the EU)<sup>51</sup> in the Council,

If the both mandates are not verbatim, the negotiations – 'informal first reading' – are conducted in the form of 'trilogues', i.e. semi-formal meetings of representatives of the three institutions concerned. There, the negotiating teams of the co-legislators (co-chaired by the chairman of the EP committee responsible or the parliamentary rapporteur, and a high-ranking diplomat from the EU Member State holding the rotating, semi-annual Presidency of the Council)<sup>52</sup> discuss the legislative proposal in detail, in the presence of the Commission officials, on the basis of their respective mandates, and prepare further proposals. These are both included in quasi-confidential 'four-column

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<sup>48</sup> The committee draws up a joint text on the basis of the two positions. If, within six weeks, it fails to agree on a common text, then the act has not been adopted; if it succeeds, and the committee approves the text, then the Council and the Parliament must approve the said text (third reading); if either fails to do so, the act is not adopted; R. Corbett, F. Jacobs, M. Shackleton, *op.cit.*, pp. 232–240, 247.

<sup>49</sup> *Ibidem*, p. 240.

<sup>50</sup> European Parliament resolution of 24 March 2011 on the European Parliament Rules of procedure, OJ 2011 L 116/1, with subsequent changes, notably European Parliament decision of 20 November 2012 on amendment of Rule 70 of Parliament's Rules of Procedure on inter-institutional negotiations in legislative procedures, see: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2012-422> (last visited 27.11.2013).

<sup>51</sup> D. Dinan, *op.cit.*, pp. 216–217.

<sup>52</sup> R. Corbett, F. Jacobs, M. Shackleton, *op.cit.*, p. 241; General Secretariat of the Council, *op.cit.*, pp. 7, 9–10; R.W. Strohmeier, C. Ladenburger, M. Selmayr, *op.cit.*, p. 39.

documents', containing the positions of the European Commission, the Council, the European Parliament, and decisions taken in negotiations. These trilogue meetings are in fact the core substantive part of the legislative process under the ordinary legislative procedure.<sup>53</sup> In at least three-fourths of the cases<sup>54</sup> (a proportion which seems to be consistently on the rise) they lead to an agreement on the text of the act in question.<sup>55</sup>

This structure of negotiations, while also generally followed in the MFF adoption process described above (where however – as has been shown – the importance of negotiations has diminished since the introduction of the consent procedure) gives many more opportunities to the European Parliament in the fields of policy covered by the ordinary legislative procedure. For the analysis of the actual scope of EP powers it is important to determine, however, how these opportunities are used in practice, especially when important questions in particular pieces of legislation are being considered. To this end, two significant examples from the current negotiations on the cohesion policy regulations for the 2014–2020 programming period have been selected and analysed. The issues (and regulations) in question are: the 'macro-economic conditionalities' (in the CPR), and the eligibility of energy distribution, storage and transmission systems projects for funding (under the ERDF regulation).<sup>56</sup>

'The macro-economic conditionalities' are connected with the EU's economic governance which, in the wake of the economic crisis, lays down a set of objectives that are to be achieved by the Member States.<sup>57</sup> To achieve these objectives, which cover the Member States fiscal and economic policies, a set of European economic governance procedures has been put in place. The European Commission proposal for the CPR envisioned that if a Member State does not comply with European economic governance recommendations, the European Commission could request a change in national cohesion policy strategic documents (partnership contracts). The European Commission would subsequently be able to suspend cohesion policy payments if a Member State does not sufficiently modify its national cohesion policy. The EC proposal in question also foresees mandatory

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<sup>53</sup> See e.g. R. Corbett, F. Jacobs, M. Shackleton, *op.cit.*, p. 241–244.

<sup>54</sup> *Ibidem*, p. 240–241, a conservative estimate of 72 per cent for the 2004–2009 EP term is provided.

<sup>55</sup> This is followed by its formal first-reading adoption by the EP committee and COREPER, and then the plenary of the European Parliament as well as the Council formation composed of ministers representing the governments of European Union Member States (Article 16 of the TEU).

<sup>56</sup> Cf. e.g. P. de Buhr, Ch. Haider, *op.cit.*, pp. 422–424.

<sup>57</sup> Cf. M. Schulte, *op.cit.*, pp. 64–71; P. de Buhr, Ch. Haider, *op.cit.*, pp. 419, 421.

suspension of cohesion policy funding in cases where the European economic governance corrective or financial assistance procedures move beyond their early stages.<sup>58</sup>

As it might be expected, such a strong ‘carrot-and-stick’ approach, connected to economic indicators of which there is naturally no certainty as far as their future behaviour is concerned, has met with a wide variety of responses from different Member States as well as MEPs.<sup>59</sup> It seemed that so controversial a measure could not be expected to pass in the ordinary legislative procedure, or that it would be traded for other issues. However, following a long and complex negotiation process over the CPR (taking place in trilogues held between mid-2012 and late 2013) by autumn 2013 this issue has remained the very last obstacle to the first reading agreement. Its introduction into the regulation enjoyed an increasing majority in the Council, where net contributor Member States (i.e. those which contribute more to the EU budget than they receive from it) were able to convince many others.<sup>60</sup> At the same time, it was vehemently opposed by some of the major political groups in the European Parliament and, even more significantly, a number of MEPs even beyond these groups. In consequence, the negotiating mandates of both the co-legislating institutions represented completely different positions on the European Commission proposal in this respect. The two-month long impasse has eventually been broken in October 2013, with a compromise solution keeping the ‘macro-economic conditionalities’ in the text of the regulation (Article 23 of the CPR). Its formulation, however, makes the imposition of sanctions dependent on an economically (recession longer than two years) and socially (high unemployment and poverty levels) ‘significant’ situation in the Member State in question, and excludes the suspension of funding supporting small- and medium-sized enterprises or combating youth unemployment. It goes without saying that such limitations would at least dilute the entire idea of ‘macro-economic conditionalities’ and make its application less strict. This shows the considerable influence exercised by the MEPs taking part in the actual negotiations.<sup>61</sup> Nevertheless, the ‘macro-economic conditionalities’ remain an integral part of the regulation, and may be invoked by the European

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<sup>58</sup> European Parliament, *Macro-economic conditionalities in cohesion policy*, Luxembourg 2012, pp. 9–10.

<sup>59</sup> See e.g. S. De Corte, N. Groenendijk, C. Suceveanu, P. Tokarski, P. Toporowski, op.cit., pp. 49–50, 73–74.

<sup>60</sup> Cf. P. de Buhr, Ch. Haider, op.cit., p. 428.

<sup>61</sup> Cf. R. Corbett, F. Jacobs, M. Shackleton, op.cit., pp. 244–245; D. Dinan, op.cit., pp. 306–307.

Commission throughout the entire programming period. This example might therefore prove that under the ordinary legislative procedure, the European Parliament, as an institution capable of deleting or watering-down provisions proposed by the EC rather than being able to replace them with its own proposals (especially when faced with opposition coming from the Council),<sup>62</sup> can be described as a ‘negative legislator’.

The eligibility of energy distribution, storage and transmission systems projects for funding from the European Regional Development Fund (in practice, the only EU structural fund that could possibly be burdened with what essentially amounts to oil and gas pipeline funding) has been surrounded by a different set of circumstances. Support for these types of projects was not foreseen in the European Commission proposal. Attempts to include it in the negotiating mandate were undertaken in the Council by practically only one Member State – Poland, for which it is of strategic importance – and in the European Parliament by Polish MEPs in the responsible committee (Committee on Regional Development). While in this latter case the attempt initially failed, as a committee majority in its favour could not be obtained, the Council’s mandate for negotiations has included it in the text (which once again, like in the case of MFF, might make one ponder the difference between the number of Member States in the Council and the number of MEPs that need convincing). In the subsequent negotiations in trilogues (September 2012 – June 2013) a majority of the European Parliament’s negotiating team (consisting of representatives of all political groups, with their votes weighted according to the respective numerical strength of the groups) eventually agreed to these projects being funded by ERDF (Article 5 point 7(e) of the ERDF regulation). This has since been ratified by both co-legislators in accordance with the procedure described above. That example shows a *prima facie* ability of the EP to also include new elements in legislation. However, while role of the MEPs in the process should not be underestimated (one should note though that both the committee chair and the rapporteur responsible were Polish), the role of the Council as the institution where the formulation in question was first accepted as a prospective part of the content of the regulation, and which formally brought it to the negotiating table, has to be underlined. Therefore, this example as well shows the limitations on the strength of the European Parliament, even where it is supposed to possess and be able to use its powers stemming from the ordinary legislative procedure.

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<sup>62</sup> Cf. R. Corbett, F. Jacobs, M. Shackleton, *op.cit.*, pp. 245–246.

## Conclusions

In times of crisis the voice of the public needs to be especially well heard, not least in the European Union. The European Parliament, composed of directly elected representatives of the people, would seem to be uniquely posed to respond to this need. This statement would be particularly valid if the Parliament was equipped with broader powers – as has been asserted following the entry into force of the Lisbon Treaty – and if their broadening was perceived to be streamlining the functioning of EU institutions and making them more accountable, which would specifically include attaining the ‘*objective long sought by Parliament*’ of extension of the ordinary legislative procedure, as well as ‘*bringing all expenditures under full democratic control*.’<sup>63</sup> However, a more detailed analysis of the current scope of the EP’s competence, based on the MFF and cohesion policy examples, leads to certain qualifications of such assertions.

Placing the MFF adoption process – hitherto a broadly unregulated political process between three institutions, where the European Parliament enjoyed a no small measure of influence – into the framework of the consent procedure has paradoxically led to reduction of the parliamentary powers to a simple ‘yes or no’ vote on the entire regulation. Furthermore, even in at least some cases where the ordinary legislative procedure has been made applicable (like the cohesion policy), the European Parliament can do more to exclude certain formulations it finds undesirable from the proposed legislation than it can to have its own new formulations approved. Somewhat wide political and national differences among its members – as well as linguistic barriers between them, and their not negligible geographical dispersion – make the creation of a consistent parliamentary majority position much more difficult when compared to the Council. As a consequence, the latter still seems to be prevailing in terms of political initiative-taking in the legislative process. Notwithstanding possible further research and future evolution of its powers, the Parliament, even under the Lisbon Treaty and in times of global crisis, apparently continues to be relegated to its role as envisaged at the time of creation of the former co-decision procedure – that is, that of the previously-mentioned ‘negative legislator’.

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<sup>63</sup> R. Corbett, F. Jacobs, M. Shackleton, *op.cit.*, pp. 395–396; R.W. Strohmeier, C. Lademburger, M. Selmayr, *op.cit.*, p. 40.