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**Article — Published Version**

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Intereconomics

*Suggested Citation:* Torres, Francisco (2003) : How efficient is joint decision-making in the EU? Environmental policies and the co-decision procedure, Intereconomics, ISSN 0020-5346, Springer, Heidelberg, Vol. 38, Iss. 6, pp. 312-322

This Version is available at:

<https://hdl.handle.net/10419/41730>

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Francisco Torres\*

# How Efficient is Joint Decision-Making in the EU?

## Environmental Policies and the Co-Decision Procedure

*This paper looks at how the joint decision-making mode of governance enhances policy effectiveness in the field of European environmental policy. This is mainly due to the as yet neglected phenomenon of the interaction between representative institutions at different levels in the European Union that characterises joint decision-making.*

This paper looks at how the joint decision-making mode of governance enhances policy effectiveness in the field of European environmental policy. This is mainly due to the as yet neglected phenomenon of the interaction between representative institutions at different levels in the European Union that characterises joint decision-making.

While it could be argued at first sight that, with EMU achieved,<sup>1</sup> there was no other clear and powerful challenge left that could trigger a sustained change in political attitudes and policy stances (increasing the effectiveness and democratic quality of governance in the EU), new challenges have surfaced that, by being raised to political objectives, may fulfil that function.

New environmental constraints<sup>2</sup> are perceived in civil society at large, much more than in the case of EMU, as a set of pre-conditions for sustained development and quality of life. Therefore, the political consensus (and popular support within civil society in general and among NGOs in particular) is much stronger with respect to internalising environmental externalities (pollution) at the European level than

with respect to internalising monetary externalities (exchange rate instability) at the European level.<sup>3</sup>

However, contrary to what happened in the case of EMU, these constraints seem quite far from being transposed into clear goals involving a well-defined common strategy with an objective and timetable, like the one provided by the fulfilment of the Maastricht criteria as a pre-condition for EMU accession.

By themselves, however, such constraints may nevertheless constitute a set of principles for the conduct of national policies that is increasingly becoming the subject of both inter-governmental and (European) public opinion discussions about the future of Europe and the reform of its policies.<sup>4</sup> This

<sup>1</sup> For a parallel analysis of a supranational regulation mode of governance, namely Economic and Monetary Union, see F. Torres: EMU and EU Governance, in: F. Torres, A. Verdun, C. Zilioli, H. Zimmermann (eds.): *Governing EMU*, Florence forthcoming, EUI.

<sup>2</sup> The Amsterdam Treaty has laid down in two articles of the Treaty Establishing the European Community (TEC) that environmental protection requirements must be integrated into the definition and implementation of EU policies with a view to promoting sustainable development (Article 6) and that environment policy at the Community level shall aim at a high level of protection taking into account the diversity of situations with references to the precautionary principle and preventive action and the polluter-pays principle (Article 174 (2)).

<sup>3</sup> According to recent polls (Eurobarometer 56, Fig. 4.3), for 87 per cent of the European Union's population protecting the environment as well as food quality (very much linked to the broad category of environmental and quality of life issues that are used as an example in the paper) should be a priority for EU action. As far as EMU is concerned, even immediately before the launching of euro bills and coins (November 2001), the successful implementation of the single European currency was only a priority for EU action for 67 per cent of EU citizens. On the other hand, only 9 per cent thought the environment should not be a priority for the EU as compared to 26 per cent in the case of EMU.

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paper discusses how EU joint decision-making may help transform such constraints into common objectives, enhancing policy effectiveness in the field of environmental policy.

First the process of internalising environmental externalities at the EU level is discussed. The issues are then addressed of how the stage of economic development and some features of cohesion policy may hinder the capacity to reach new enduring consensual reforms in the EU and how the building-up of bottom-up pressures may have a counteracting effect. The question of the qualitative change in the process of continuously evolving governance in the EU is then dealt with, the role of the EP in bridging the gap between national and European representation discussed, and the co-decision procedure and the interaction between different representative institutions examined.

### The Making of New Common Rules

The Single European Act (SEA), the Treaty of Maastricht and the Treaty of Amsterdam introduced environmental policy into the Treaty on European Union (TEU) and the Treaty Establishing the European Community (TEC). They did so more in terms of operating principles than in terms of objectives.<sup>5</sup> In fact, Article 175 of the TEC is particularly relevant for specifying three legislative methods: the cooperation procedures; unanimity in the European Council; and the co-decision procedure for general action programmes. Most legal instruments take the form of European directives. There are also other types of instrument such as information campaigns and the European Environment Agency established in 1994. Many of these instruments are also designed to give effect to Environmental Action Programmes (EAP), adopted since 1973.

In this context, the currently developing institutions (in the broad sense of the term<sup>6</sup>) in the EU – such as EMU (which will potentially increase policy transparency in Euroland) and the new European co-decision procedure – do play a role in shaping new

common rules that are accepted by a majority of member states and, more importantly, by a majority of the European population. Furthermore, although through a multitude of different channels such as the European Convention, the IGCs, treaty changes and referenda or the European co-decision process, new common rules are increasingly the subject of multi-level political negotiation, allowing for increased participation of many different actors.

With a view to improving the rather unsatisfactory implementation record of environmental policies, the 5th Environmental Action Programme (1993-2000), "Towards Sustainability", has also increased the emphasis on shared responsibilities at different levels of government. This emphasis raises precisely the importance of the interaction between institutions, namely between representative institutions, and of enlarged participation and increased transparency in these multi-level forms of governance.

With the forthcoming enlargement of the EU and the prospect of a closer political union for a limited number of countries within the Union (reinforced co-operation), it might again be politically decisive for some member countries with less popular support for EU action on the environmental side always to be in the core of European integration and not to be perceived as laggards by their counterparts and by their constituencies.

In this respect, some new EU instruments might exert an important influence and even (democratic) conditionality (through the availability of structural and cohesion funds, especially for old and new cohesion countries) on the need for reform and on national policies. Those new instruments comprise the Nature 2000 network, the Environmental Action Programmes and many ensuing European directives that fall under the co-decision procedure, new agencies (as, for instance, food quality), and the new strategy for sustainable development (SSD), adopted in June 2001 by the European Council in Gothenburg.<sup>7</sup> The latter added the environmental dimension to the Lisbon strategy and to the Broad Economic Policy Guidelines (BEPG),<sup>8</sup> which are at the centre of economic policy coordination.

<sup>4</sup> These preoccupations are clearly present in opinion polls (for instance on food quality and the environment), national policy changes (the creation in Italy – under the previous government – in Germany and in Britain of ministries of food quality and consumer protection instead of the traditional production-oriented ministries of agriculture) and several political speeches on the need for European policies' (CAP) reform. Of course, the European Convention was the most significant forum in that regard.

<sup>5</sup> N. Nugent: *The Government and Politics of the European Union*, 4th ed., London 1999, MacMillan Press.

<sup>6</sup> The rules of the game. See D. North: *Institutions, Institutional Change and Economic Performance*, Cambridge 1990, Cambridge University Press.

<sup>7</sup> European Commission: *Commission Communication 9175/01: A Sustainable Europe for a Better World: A European Union Strategy for Sustainable Development*, 2001.

<sup>8</sup> These Guidelines are now also discussed before approval at a new level: joint meetings between national MPs and MEPs. The first of these meetings took place in Brussels on 23 February 1999. The Lisbon Summit of March 2000, stressing the need for a regular political discussion of the Broad Economic Policy Guidelines at the Council Spring Meetings, reinforced that cooperation.

What is new about the environmental dimension is the fact that, because of the pace of both globalisation and the European integration processes, global challenges such as the need to act upon the deterioration of the environment, which command much more popular support than the need to internalise other types of externalities, transform into EU policy constraints. This transformation takes place through a continuous political negotiation process carried out at multiple levels of government, in which the European Parliament might reflect the views of citizens, national parliaments and NGOs. Through such a process, in turn, EU policy constraints may also be raised to national political objectives (as happened directly, without any intermediate step, in the case of EMU) in spite of a sceptical attitude on the part of national policy-makers, forcing important changes in attitudes.<sup>9</sup>

#### **Environmental Awareness and the Level of Economic Development**

In the case of environmental policies, the situation is somewhat more complex than in the case of EMU, as it is much more difficult to monitor their implementation. As in the case of EMU, there are some EU member countries, such as Italy, where there seemed until recently (at least in the North) to be a stronger consensus about the need for higher environmental standards than in countries such as Portugal and Spain where that consensus may still be weaker. In fact, environmental awareness tends to be lower in less developed economies.<sup>10</sup> Nevertheless, Italy's performance both in terms of transposing EU directives and in the light of infringements and convictions before the European Court of Justice was no better than Portugal's and Spain's.<sup>11</sup>

Drawing on the experience of EMU, Italy and Spain likewise experienced a much stronger consensus on the need to meet the convergence criteria than Portugal that, given the flexibility of its economy but also its less developed social welfare system, was able to meet the Maastricht criteria with less effort. Portugal experienced a much stronger internal criticism during the period of convergence and it is coping at present with much greater difficulties in complying with the stability pact, mainly due to structural (systemic) weaknesses in both its health sector and the public administration.

In the case of environmental policies, the problem is that transposing European directives does not automatically mean enforcement, as clearly illustrated by many examples. In the case of Southern EU countries for instance there are still many serious problems that can certainly be ascribed to systemic deficiencies of political and administrative institutions. In Italy and Spain there is also vertical fragmentation (between state and regional governments) although horizontal fragmentation (among different ministries at the central level) has been reduced in most countries by strengthening the respective environmental ministries with significantly more competencies than before.

Like in the case of EMU, the level of economic development seems to affect some EU Members' attitudes towards environmental policies at least as far as some Southern EU members are concerned. It translates into the following reasoning: we should first grow to levels closer to our Northern partners before we can afford to have higher (monetary or environmental) standards that might hamper "real" convergence.

Recall that, in the mid 1990s, the EMU debate centred on the issue of real versus nominal convergence. It was claimed that monetary integration (nominal convergence) with more advanced economies (Germany) would significantly slow down the catching-up process (real convergence).<sup>12</sup> Since 1998 only few politicians, policy-makers and commentators have not come to recognise the advantages of EMU for sustained growth. Yet, many still argue that higher environmental standards (quality convergence), although a desirable aim in the long run, may hamper faster economic growth and hence real convergence.

<sup>9</sup> This process might be somehow symmetrical for "Southern" and "Northern" Member States as far as EMU and the environment are concerned. It takes place through different channels, however, in "Southern" and "Northern" Member States, namely the co-decision procedure in the case of the former and the smooth functioning of the single currency in the case of the latter.

<sup>10</sup> See G. Pridham, M. Cini: Enforcing Environmental Standards in the European Union: Is There a Southern Problem, in: M. Faure, J. Vervaele, A. Waele (eds.): Environmental Standards in the EU in an Interdisciplinary Framework, Antwerp 1994, Maklu.

<sup>11</sup> For data on EU members' performance in transposing EU directives and on infringements and convictions before the European Court of Justice see T. Börzel: Why There is no Southern Problem. On Environmental Leaders and Laggards in the European Union, in: Journal of European Public Policy, Vol. 7, No. 1, 2000, pp. 141-162. See also the annual reports of the ECJ and the annual reports of the European Commission on Monitoring the Application of Community Law. On the basis of actions taken due to the failure to fulfil obligations and judgments with which the state has not yet complied, countries where one would expect a stronger consensus about the need for higher environmental standards also perform rather badly.

<sup>12</sup> For various examples see E. Jones, J. Frieden, F. Torres (eds.): Joining Europe's Monetary Club: The Challenges for Smaller Member States, New York and London 1998, Martin's Press and MacMillan.

Along similar lines, it is still often argued by politicians and policy-makers in the catching-up countries that European environmental policies, like solid monetary institutions and sound fiscal practices, cannot be reconciled and are in conflict with, notably, the need to preserve and create employment<sup>13</sup> and the need to foster economic growth.

Furthermore, according to Michael Carley and Ian Christie,<sup>14</sup> there is a complex tension between centralisation and decentralisation over environmental policies. In fact, some EU member states are concerned that decision-making on environmental policy and impact assessment is over-centralised in Brussels while for other EU member states and/or many EU citizens and non-governmental organisations that very centralisation has not come a moment too soon, since environmental protection receives no more than lip service from national governments.<sup>15</sup> That apparent over-centralisation, it is argued below, may also reflect both democratic influences (namely decisions from the European Parliament) and “pressures from below” (citizens, NGOs and even national parliaments).

### **Wrong EU Incentives and Wrong National Perceptions on Real Convergence**

That sceptical reasoning that higher environmental standards and/or increased EU action on environmental matters may impede the process of catching-up with the most developed EU countries has received further support in the cohesion countries because of the need felt to take the most (and fast) advantage of the existence of Community Framework Support (CFS) programmes (basically structural and cohesion funds). By limiting national public deficits (and thus expenditures), the Stability and Growth Pact in fact limits the amount of community funds that can be used nationally due to the principle of additionality of EU and national resources. For the same reason, higher environmental standards, in conjunction with mandatory in-depth environmental impact assessment (EIA), would reduce the number of projects approved for EU co-financing.

That logic has been quite pervasive in many of the policy positions assumed by Greece, Portugal,

Spain and sometimes Italy with respect to the approval of some important directives. In addition, the perceived negative impact of the adoption of higher environmental standards on short-run competitiveness – a short-term consideration as opposed to restructuring and innovation in the wake of more demanding environmental standards that constitute a *de facto* industrial policy – may also be responsible for that reasoning.

Let me take two examples with different fates. The auto-oil programme – a series of EU directives (Directives 70/220/EC and 93/12/EC) under co-decision in the EU to reduce some forms of gas emissions and increase fuel quality standards – was a relative success. That was probably due to the fact that it fell under the co-decision procedure. In spite of vested interests (oil companies), that more than just lobbying before and during the co-decision procedure almost appeared to negotiate instead of some governments, the European Parliament managed to overcome those interests and the resistance of some national governments.

Due to rising public concern about global warming, the European Commission had in 1990 already proposed a combined tax on energy and CO<sub>2</sub> emissions to be levied by national governments. In the light of the strong opposition of industry and the lack of enthusiasm of finance ministers, supposedly also because of the technical difficulties it entailed, the proposal was never adopted, not even in its soft form (Commission amendment of 1995) that made its adoption voluntary. One of the political issues at stake was the exemption of catching-up countries.<sup>16</sup> The initial fierce opposition from the governments of the UK and of the four cohesion countries, Greece, Ireland, Portugal and Spain, finished the proposal off. More recently, in 1999, Spain and Ireland rejected in the Ecofin a compromise put forward by the German presidency of the European Council that would have allowed Spain to set low rates or grant exemptions.

These two examples seem relevant because, again like in the case of EMU, the policies proposed involved reforms and change in attitudes concerning issues very much present in the daily life (and discussions) of many European citizens.<sup>17</sup> The argument is that the relative level of economic development of

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<sup>13</sup> See G. Pridham, M. Cini, op. cit.

<sup>14</sup> See M. Carley, I. Christie: *Managing Sustainable Development*, 2nd edition, London and Sterling, VA, 2000, Earthscan Publications.

<sup>15</sup> Carley and Christie take up that issue on a global scale on questions such as ozone depletion and global warming.

<sup>16</sup> Again, the stage of economic development argument was put forward.

<sup>17</sup> Both at the European level and at the heart of national politics. Take the case of the *Ökosteuer* in Germany.

a country is important to push policies through. In some ways and through the mechanisms described in this section, the level of economic development affects the capacity of a (national) political system and in the end of a polity (or a polity in the making) such as the European Union to internalise some externalities.

Nevertheless, considerations referring to the level of economic development and wrong incentives of EU cohesion programmes as well as false perceptions on prosperity convergence with the rest of Europe have, unlike in the case of EMU, prevailed and impeded any leap forward with respect to other EU policy reforms.

### **The Build-up of Pressures from Below**

In some EU countries, namely in the so-called cohesion countries, although the change in attitudes and practices in the political and administrative systems may still be rather weak, there are visible signs of greater environmental awareness and better strategic planning behind public decisions, namely regarding the national approach to the latest Community Framework Support programme (Agenda 2000). This in turn has contributed to an increased effectiveness (outcomes) of environmental policies.

Moreover, this change in attitudes and practices in the political and administrative systems, although still feeble, is also slowly starting to respond to the democratic deficit in environmental management procedures and increasingly facing important bottom-up pressures.<sup>18</sup> Such a process also improves transparency and participation. It is noteworthy that one of the rare cases of infringement proceedings before the European Court of Justice happens to be the conflict between the promotion of investment and the protection of the environment.

### **The Pull and Push Model**

According to Tanja Börzel's Pull and Push model, environmental policies stand a good chance of being effectively implemented when the authorities are "sandwiched" between domestic non-governmental actors, NGOs and, one could add, national parliaments, and the EU.<sup>19</sup> The perception of this pressure from "below" and "above" may also prompt the authorities and also politicians in general to shift from a reactive to a proactive stance. The aforementioned political change reflects the pressure from "below" and from "above".

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<sup>18</sup> Namely complaints from NGOs, groups of citizens and even national parliamentarians to the European Commission.

Note that, as in the case of bottom-up pressures, pressures from below push for more democratic participation. Unlike top-down pressures, however, pressures from above, in the case of the shaping of environmental policies in the EU, allow for the influences of representative (parliamentarian) institutions. These influences – basically the decisions of the European Parliament, in some cases taken in conjunction with national parliaments or at least with some national parliamentarians – are increasingly powerful and obviously push for more democracy.

In any case, such a move towards a proactive attitude has a more direct impact on policy formulation than on policy implementation. This is quite significant, firstly, in terms of democratic decision-making and, secondly, for traditional "laggards" that do not have clearly structured environmental policy frameworks (again, very much like in the case of monetary reform).

### **Conditionality and Subsidiarity Issues**

The pull and push model can be much more effective in practice if there are some mechanisms of conditionality (namely of financial resources) involved in the processes of building up both pressures from above and pressures from below (bottom-up conditionality).

The need for fiscal consolidation has already led to a more careful – not necessarily better in environmental terms – planning of the use of structural and cohesion funds. Moreover, conditionality has always been a feature of the Cohesion Fund, with the need to respect the convergence plan (before EMU) and the Stability and Growth Pact (since the beginning of EMU's third phase).

Recently, eco-conditionality started to play a role, too. In March 2000, the European Commission threatened to withhold regional aid from countries that did not respect (read implement) the Nature 2000, a European ecological network, selecting and appointing Special Protection Areas (SPAs, under the Birds Directive 79/409/EC) and Special Areas of Conservation (SACs, under the Habitats Directive 92/43/EC). That move was backed by the European Parliament and has generated pressure from "below", including national parliaments and some political parties or some ("greener") factions of those parties.

Although the Commission had only stated that it would hold back funds from countries that failed to

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<sup>19</sup> See T. Börzel, *op cit.*

provide satisfactory information on how they were implementing that specific legislation, softening its stance by adding even that the principle of proportionality would be respected,<sup>20</sup> the principle of conditionality was brought up and entered European and national discussions. Note, however, that in this case the principle of conditionality was not set to work automatically as in the case of the cohesion fund and the convergence and stability and growth programmes and that, of course, the subsidiarity principle may also contribute to avoiding any automatism, preventing conditionality from working at all in practice.<sup>21</sup>

In fact, that link between conditionality and subsidiarity and indeed both concepts have not been used coherently (let alone rigorously) in the political arena. And yet they are always present in political discussions about European common policies involving financial resources.

It would be important to further develop the link between conditionality, subsidiarity and accountability in order to allow for the development of some forms of bottom-up conditionality. It is clear, however, that, once more, the interaction of representative (parliamentarian) institutions is already playing an important role in establishing the basis for some form of bottom-up conditionality, while respecting the principle of subsidiarity and enhancing the democratic accountability of different agencies in charge of specific programmes.

These developments would have been impossible at the inter-governmental level alone. The interaction of different representative (parliamentarian) institutions at different levels of the permanent process of political negotiation in the EU, both among themselves and with other institutions (the European Council, the EU Council of Ministers, the European Commission, etc.) and actors in civil society, is allowing for the building-up of more appropriate (and legitimate) incentives for the correct implementation of common policies.<sup>22</sup>

<sup>20</sup> This principle provides wrong incentives: countries may shy away from any ambitions in terms of nature protection. This was already the case of conditionality of the Cohesion fund on the convergence programmes (where there was an incentive not to be too ambitious in terms of fiscal consolidation) but it is no longer the case with the Stability and Growth Pact.

<sup>21</sup> Already at the 1985 Intergovernmental Conference (IGC), the Single European Act while giving the EU (at that time EC) a wide scope for environmental action (Article 130r.1) invoked for the first time in the EC Treaty (Article 130r.4) the principle of subsidiarity. It was cancelled when the general subsidiarity clause was included in the TEU. See D. Dinan: *Ever-Closer Union: An Introduction to the European Union*, 2nd Ed., London 1999, Palgrave.

### The Qualitative Change in the Nature of Governance in the EU

The process of European integration is a good example of how different challenges posed by an evolving (“ever closer”) political cooperation may contribute to achieving a model of sustainable development that is compatible with the other objectives enshrined in the treaties.<sup>23</sup> The concept of sustainability implies that development is bound by some limits that, if surpassed, may cause its reversal. One can also argue that a development process may be reversed if based upon non-democratic (and/or unaccountable) institutions.

Evolving political cooperation has been increasingly subject to a multi-level political negotiation process in the EU. That process comprises, among others, co-decision and all ensuing EU directives and legislation in general, the discussion and approval of the Broad Economic Policy Guidelines (an increasingly important tool of soft policy coordination in EMU, supporting a more deliberative way of governance), the new open method of coordination (OMC), the new European Council Spring meetings, all sorts of European and national recommendations and parliament resolutions, the adoption of summit agendas and conclusions and of European strategies and white papers and, quite importantly, the domestic and European debate that takes place.

More recently (since the Amsterdam Treaty), even intergovernmental conferences (IGCs), convened to revise the treaties, are increasingly characterised by multi-level political negotiations. In fact, these intergovernmental conferences include representatives of the European Parliament that is regularly briefed by the negotiators and can give its views on the issues under discussion. Moreover, the European Parliament’s views on the IGCs are increasingly important in shaping European public opinion on these matters and therefore the inter-governmental negotiation process.

<sup>22</sup> Interestingly, the desired role of the EU in people’s daily lives in five years in Greece and Portugal scores higher than the EU average while it is highest in Italy and more or less average in Spain (Eurobarometer 56, Fig. 3.10b). Portugal, Italy and Greece are also the three EU countries where people are not satisfied with national democracy (Eurobarometer 56, Fig. 2.3). Italy, Greece and Spain, but not Portugal, also score above the average (at the top of the scale) regarding both the average level of support for EU decision-making (for 26 policy areas) and the number of policy areas where EU decision-making is more popular than national decision-making (Eurobarometer 56, 4.1). Portugal, Italy and Greece are also the countries where people tend to trust the EU more than the UN and national governments; in all other EU countries the UN, or the national government in the case of Luxembourg, come first (Eurobarometer 57, 4).

<sup>23</sup> The objective of sustainable development was enshrined in the Treaty on European Union, Article 2, by the Amsterdam Treaty.

National parliaments, too, participate in that process. Not least, they retain the ultimate power of ratifying the treaties. Moreover, they also participate in the process through regular hearings with national (and other) IGC negotiators, through bilateral and multilateral meetings with the European Parliament's Constitutional Committee and through internal and open discussions (increasingly with representatives of civil society) and resolutions. The European Convention was the maximum exponent of the (multi-level) involvement/participation of many parties in such a process. It is through such a process that those EU policy constraints transform into European and national political objectives.

Such a multi-level political negotiation process in the EU allows for a continuous discussion of processes and outcomes. That permanent discussion in turn permits increased transparency of and participation in the entire process of European integration. Moreover, the multi-level political negotiation process has also repeatedly allowed for the creation of a national and European consensus for reform at the EU level.

Furthermore, the European Union is currently in a process of transition towards a wider political union in Europe together with an increasingly important role of representative institutions. In such a situation, European institution-building, with more efficient and transparent bodies and even transnational political parties may be a way of reinforcing the democratic quality of the European integration process (and its reach), namely the link between participation and "responsible representation" of the voters and the guarantee that the existing social structures remain open and accessible to pressures from below.

In most EU countries European integration challenges such as Economic and Monetary Union have worked not only as mechanisms for economic stabilisation but also, and perhaps more importantly, as prerequisites for structural reform and long-term development.

The responses to European integration challenges provide good examples of evolving governance in the EU because they go together with the more clearly perceived need for democratic control of its new institutions. In addition, they also allow for an increased participation of representative institutions and civil society in the discussions that take place before the approval of treaty changes and their ratification about the goals of the envisaged reforms, i.e. on the envisaged type of model of society.

Despite the fact that Europe (yet) has neither a constitution nor a government and that it suffers the impact of globalisation on national political systems (that are unable to deal with new global problems without sharing sovereignty), it may be argued that such conditions may also be leading to an improvement in the democratic quality of EU governance.

In fact, the European Union has been experiencing a permanent re-drafting of its treaties, necessary to accommodate important institutional changes (such as the Internal Market, EMU, Schengen and the communitarisation of other matters of justice and internal affairs) that involve an explicit transfer of national sovereignty to the Union level. At the time of each constitutional change the question of democracy is discussed both Europe-wide and at the level of each Member State, in some cases in conjunction with a referendum and, especially in traditionally more centralised states, it is also focused on that very transfer of sovereignty.<sup>24</sup>

A multi-level political negotiation process may render policy-making more efficient by allowing for a continuous confrontation of positions at various levels of government, making it possible and easier to converge to an acceptable (for all and at the various levels of government) common position.

It follows that national parliaments, the European Parliament and European citizens in general may all have become more aware of the need for more democratic control of new European institutions but also of the need for regaining democratic control over national governments and institutions that have become more unaccountable through the process of globalisation.

Therefore, despite the non-existence of a European constitution to date and of a European government, EU governance seems not to be hindering European democracy but rather extending it, bringing in some new important features, such as new forms of participation, through the interaction of different institutions and citizens in a multi-level political negotiation process.

### **National and European Representation**

The process of globalisation made the tension between increasing complexity and the growing felt need for democracy in modern societies more

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<sup>24</sup> That transfer of sovereignty alone does not involve its external affairs aspect because other sources of power (such as the United Nations, NATO or simply the United States) superior to that of the EU and its territory exist and both European citizens and member states recognise that. Recent world events illustrate this point well.



acute. In fact, with globalisation, concentrated decision-making and larger organisational structures are well beyond the reach of the democratic influence of national social and political systems. Moreover, many of the various problems that modern societies face cannot be dealt with successfully by national political systems – monetary and financial instability and global warming, just to mention two problems related to EMU and environmental policy.

On the other hand, governments of different countries, by getting together, can only partly deal with that type of transnational problem and incurring additional costs. This is because at the intergovernmental level the process of reaching decisions is obviously more complicated: there are thus (very concrete) additional costs in terms of efficiency (concerning all the difficulties in reaching agreement among governments, then to get the approval of their respective parliaments etc.) and citizens may feel even more acutely the need for more democracy, given the lack of transparency and/or the insufficient participation in that type of decision.<sup>25</sup> In fact, it can be argued that the inter-governmental level alone, while necessary for carrying on the European integration process both in terms of processes and outcomes, is neither an efficient nor a transparent or participatory way of governance in the European Union.

In the European Union, where regional, national, inter-governmental and federal structures overlap, the tension between increasing complexity and the growing felt need for democracy in modern societies is thus even more evident than at the national level. In the EU there is an on-going evolution in terms of sharing sovereignty that should raise efficiency. Stable forms of political cooperation among the EU Member States are hence (quite an important) part

of the solution as a way of improving efficiency (and therefore output legitimisation) but also part of the problem in terms of transparency and accountability as well as participation and deliberative processes (input legitimisation). Given that in the EU responsibility is much more diffuse than in national systems, it becomes even more difficult to bring the various institutions that formulate policies and/or take decisions at different levels into account.

The question then is how to address the identified democratic deficit in terms of democratic accountability and transparency (and participatory and deliberative processes one might add) in the EU. In this paper the European Parliament was chosen to illustrate the point that it is the European institution that comes closest to fulfilling the functions of responsible representation and of principal for other EU supranational bodies.

In fact, the European Parliament is the representative institution at the EU level, directly chosen by the people. Thus, one can argue that not only in the case of EU supranational bodies' decisions but also in the case of qualified majority voting (QMV) where national governments may be outvoted in the Council, and therefore cannot be held accountable to national parliaments, the European Parliament can be seen as an alternative (to a certain extent, and under a particular perspective, complementary to national parliaments) for democratic accountability.<sup>26</sup>

By its very nature,<sup>27</sup> the EP is also relatively open and accessible to pressures from below (and to lobbying, one might add), allowing for instance for citizens' petitions and questioning; it also somehow facilitates the development of other emerging social structures, such as European parties or party families, independent of the national states, the Commission and the European Council.

Moreover, the European Parliament, again as a representative institution, has a unique role in an overlapping political structure such as the European Union: it interacts more and more with the various national parliaments,<sup>28</sup> bridging the gap between

<sup>25</sup> For some authors, majority voting, although increasing the effectiveness of decisions in the EU at the intergovernmental level, infringes the sovereign right of the Member States to ultimately decide what is and what is not acceptable to their national constituencies. See B. Kohler-Koch: *The Evolution and Transformation of European Governance*, in: B. Kohler-Koch, R. Eising (eds.): *The Transformation of Governance in the EU*, London and N.Y. 1999, Routledge. Note that this presupposes, however, that the state still had *de facto* sovereignty in the first place. By pooling sovereignty in the EU some Member States might at least influence some decisions that they could not affect before.

<sup>26</sup> According to opinion polls (see Eurobarometer, 56 and 57), in the EU the European Parliament is the institution, among the main EU institutions and agencies, which people tend to trust most on average; exceptions are Germany, Denmark, Finland, Sweden, Austria, the Netherlands and Luxembourg where the Court of Justice and/or the ECB tend to score higher. The EP is also the best known EU institution (Eurobarometer 56, fig. 7.10) and it is perceived as playing the most important role in the life of the EU (Eurobarometer 56, fig. 3.6).

<sup>27</sup> Different MEPs and staff tend to listen to and receive all kind of different experts and organised and non-organised interests as a way of negotiating and advancing their own proposals and reports. They are also quite open (to citizens, the media, researchers, etc.) regarding their political and policy options.

<sup>28</sup> The European Parliament holds regular meetings with members of the relevant national parliamentary committees on a wide range of issues: EMU and hearings of the ECB's President, the BEPG, the IGCs, EU enlargement, etc., not to mention the COSAC – Conference of European Affairs Committees of the EU (and applicant countries) National Parliaments and the European Parliament – and the European Convention.

national and European representation; it is recognisably more open and accessible than any other European institution to pressures from below, allowing for an increased participation of European citizens in the Community's life; and it provides more transparency to the process of decision-making in the EU, thus allowing for some accountability of other European institutions, such as the European Commission and the European Central Bank.<sup>29</sup>

In the case of environmental policies, the European Parliament may have a leading role in adopting new common policies that internalise at the European level some important external effects such as pollution regardless of differentiated national resistances. At the same time, those pressures from above (new EU directives, for example) may also reflect pressures from below (for instance environmental groups of activists, non-governmental organisations and European citizens in general that may include especially motivated individual national politicians and parliamentarians with special political clout) because of the European Parliament's participation in the process of policy-making, for instance through the co-decision process, and degree of openness and accessibility, and the views of national parliaments.

The European Parliament may then well increase the efficiency of governance at the European level by smoothing out various resistances to the acceptance of some common policies. But it increases efficiency as a consequence of more transparency and participation and not at the cost of driving political decision-making further away from citizens.

This role for the European Parliament has been somehow neglected in the literature. Most authors dealing with the legitimacy problem, the democratic deficit and the effectiveness problem of the European Union, hold that it would have to opt to be either a federal political union, with one government and one parliament, or a confederation of sovereign states, without majority voting. Some authors argue that the European Parliament has "an inferior representative quality".<sup>30</sup>

It is possible to argue, however, that the representative (of the European population) quality of the

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<sup>29</sup> F. Torres, *op. cit.*

<sup>30</sup> B. Kohler-Koch, *op. cit.*, p. 17. This "inferior representative quality" of the European Parliament is in general attributed on the basis of the "inferior quality" of European elections (disputed not on European but on domestic political grounds and with very low turnouts and different national voting rules and party lists) and of the lack of clear political and ideological cleavages (MEPs remain rather technocratic).

European Parliament is also evolving. It has been assigned new roles in the Treaty Establishing the European Communities by the Maastricht and Amsterdam treaties and this fact is certainly perceived by European public opinion or the different Member States' public opinions, as shown by the polls referred to above.<sup>31</sup> That fact was certainly perceived by all national parliaments that ratified those treaties.

### **The Co-decision Procedure and Institutional Interaction**

Since the ratification of the Amsterdam Treaty it became even more interesting for national parliaments to propose resolutions (namely at the initiative of their European Affairs Committees) with respect to the position of their respective governments in the Council for a number of directives, entering in this way the process of shaping different EU policies. This is possible because the Amsterdam Treaty has further extended the scope of the co-decision procedure, namely with respect to environmental policies (Article 175 of the Treaty Establishing the European Community).<sup>32</sup>

The co-decision procedure was extended to most of what was covered before by the so-called cooperation procedure and indeed to most areas of legislation, unless otherwise specified as exempted or falling under one of the other procedures.<sup>33</sup>

In fact, the co-decision procedure developed and extended the cooperation procedure created by the Single European Act to speed up the process of decision-making with a view to the completion and well-functioning of the Single European Market (SEM), allowing for the European Parliament to step in (out of legitimacy considerations and also under considerable pressure from the EP) in the case of qualified majority voting in the Council (for efficiency reasons).

In order not to increase efficiency at the expense of democracy (in the case that a national government was outvoted in the Council by QMV), the European

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<sup>31</sup> Regarding knowledge about the EP, how it is perceived to play the most important role in EU life and how it is the institution which on average people tend to trust most in the EU (Eurobarometer, 56).

<sup>32</sup> Article 95 of the TEC has also been changed by the Amsterdam Treaty, allowing for exceptional measures based on environmental considerations that may not be in accordance with Internal Market rules. The European Commission has then a six-month time limit to review such measures.

<sup>33</sup> See H. Wallace: *The Institutional Setting. Five Variations on a Theme*, in: H. Wallace, W. Wallace (eds.): *Policy-Making in the European Union*, 4th Ed., Oxford 2000, Oxford University Press.

Parliament was granted in the cooperation procedure (SEA) the power to propose amendments on legislation, albeit concerning a very limited number of Community areas. In the case of qualified majority voting there would thus be a kind of complementary accountability to national parliaments and to the European Parliament.

The Treaty of Maastricht created the co-decision procedure (Article 189b), giving the EP veto power over a legislative proposal.<sup>34</sup> This power was then extended from 15 Maastricht Treaty articles to 37 Amsterdam Treaty articles (see Article 251 of the consolidated Treaty establishing the European Community). In fact, with the exception of EMU, external trade issues, fiscal harmonisation, the Common Agricultural Policy (CAP) and Justice and Home Affairs (JHA), most European legislation is subject to the new co-decision procedure.

With this new version of the co-decision procedure, one can argue that the European Parliament has substantially increased its legislative powers.<sup>35</sup> Moreover, co-decision has certainly enhanced democratic accountability in the sense that the European Commission, a non-elected body, had to share its exclusive rights concerning draft legislation (a less contentious issue, even before the ratification of the Amsterdam Treaty<sup>36</sup>) with the European Parliament.

As a matter of fact, the European Parliament has had a strong influence on the adoption of environmental legislation at the European level.<sup>37</sup> Its role is particularly relevant in the field of environmental policy because it has managed to force the approval of more stringent rules than the ones initially proposed by the European Commission and the ones desired by the European Council and/or the European Union Council of Ministers. The co-decision procedure

has been decisive in that respect. In the already mentioned auto-oil programme for instance, the conciliation procedure triggered by the co-decision procedure led to more rigorous regulations than had originally been agreed by the EU Council.<sup>38</sup>

The co-decision procedure has also undoubtedly increased the possibility of a wider participation in the European legislative process, namely by providing a new channel of participation for the national parliaments.<sup>39</sup>

Until recently, some EU countries, in particular the cohesion countries but not only, tended to ask for derogations with respect to European environmental directives that had an immediate economic impact. This was due to the level of economic development, wrong national perceptions and EU incentives, as pointed out in the previous section.

In the case of the auto-oil programme, the European Affairs Committee of the Portuguese Parliament adopted a resolution project considering that the derogation that was expected (already during the co-decision procedure) to be granted by the EU (and also accepted by the European Parliament, whose already mentioned more stringent and "greener" approach to the programme was favoured by the Portuguese parliamentary committee during the co-decision procedure) to Southern countries, namely Greece, Italy, Spain and Portugal, "could have had potentially very negative consequences for Portugal, namely with respect to the negotiation of Agenda

<sup>34</sup> Note also that the protocol to the Amsterdam Treaty requires the European Council, the European Commission and the European Parliament to use co-decision as expeditiously as possible.

<sup>35</sup> Before the extension of its scope that issue was somewhat contentious, although the record of legislative amendments made by the European Parliament and accepted by the European Commission and the Council of Ministers suggested otherwise. On the increase of power of the European Parliament with co-decision prior to its revision by the Amsterdam Treaty, for a cautious approach (pointing to the need for further research) see for instance L. Martin: *Economic and Political Integration: Institutional Challenge and Response*, in: B. Eichengreen, J. Frieden (eds.): *Forging an Integrated Europe*, Michigan 1998, University of Michigan Press, pp. 129-157. For a negative answer, see G. Tsebelis: *The Power of the European Parliament as a Conditional Agenda Setter*, in: *American Political Science Review*, Vol. 88, 1994, pp. 128-42; G. Tsebelis: *Will Maastricht Reduce the "Democratic Deficit"?*, paper presented at the American Political Science Association annual meeting, Chicago 1995; and G. Garrett: *From the Luxembourg Compromise to Codecision: Decision Making in the European Union*, Stanford University 1995, manuscript.

<sup>36</sup> L. Martin, *op. cit.*

<sup>37</sup> For an account of its increased importance, namely through the increasingly powerful and aggressively-led European Parliamentary Committee on the Environment, Public Health and Consumer Protection, see A. Sbragia: *Environmental Policy. Economic Constraints and External Pressures*, in: H. Wallace, W. Wallace (eds.): *Policy-Making in the European Union*, 4th Ed., Oxford 2000, Oxford University Press, pp. 293-316. For Henry Farrell and Adrienne Héritier, the European Parliament has been successful in advancing its interests over time, increasing its role in the European legislative process, precisely through the strategic use of the relationship between formal and informal institutions. Cf. H. Farrell, A. Héritier: *Formal and Informal Institutions under Codecision: Continuous Constitutional Building in Europe*, Max Planck Project Group – Common Goods: Law, Politics and Economics, Bonn 2002, MPI. I stress here, in this regard, the interaction between the European Parliament and national parliaments.

<sup>38</sup> A. Young, H. Wallace: *Regulatory Politics in the Enlarging European Union: Weighing Civic and Producer Interests*, Manchester 2000, Manchester University Press.

<sup>39</sup> The Amsterdam Treaty included a protocol on the role of national parliaments, giving the COSAC (*Conférence des Organes Spécialisées aux Affaires Communautaires*), the bi-annual meetings of the Conference of European Affairs Committees of the EU (and applicant countries) National Parliaments and the European Parliament, the right to send comments on EU legislative proposals to the European Commission, the European Council and the European Parliament.

2000". This meant playing the "European card": the need not to be perceived as a laggard in the European integration process, especially during an important negotiation of financial resources.

The auto-oil resolution project (with no votes against in the European Affairs Committee of the Portuguese Parliament) had an important role in obliging the domestic oil sector to comply with the abolition of leaded gasoline six months ahead of schedule instead of making use of a derogation of two to three years. Following that decision the Portuguese Government later adopted a more open attitude in the European Council in 2000 (again during its presidency of the EU) which made possible a considerable shortening of the derogation for the adoption of the outstanding part of the auto-oil programme in Portugal.<sup>40</sup>

The example is interesting because it indicates that the interaction between EU national parliaments and the European Parliament may make it possible to overcome both specific interests and strong lobbying or the more accommodating (sometimes short-sighted) positions of the Council and/or of the Commission.<sup>41</sup> It may also suggest that it is possible to overcome sometimes unjustified fears of national governments of appearing to be too radical ("fundamentalist") and/or of being accused of not adequately defending the "national" interest (that is, in the case of the auto-oil programme, of not well defending the "national" oil sectors).

Thanks to the co-decision procedure and to its discussion in national parliaments, discussions and deliberations of the European Parliament as well as European environmental directives are now followed up and in some cases strengthened before being torpedoed by some derogation and/or by special conditions.<sup>42</sup> What happened in Portugal with the auto-oil programme may happen in any other EU Member State with European directives such as the defence of special protected areas and/or spe-

cies. The European directives on birds and habitats collide in many instances with the accommodation of private interests; the Commission and the ECJ (pressures from "above") may then be allies of public interest (pressures from "below" or bottom-up pressures).

A new attitude with respect to the importance of internalising environmental externalities has then a much better chance of thriving if different national actors (parliamentarians, politicians in general, NGOs and citizens movements) succeed in obtaining a firm backing from the European institutions. As already stated above, a clearer conditionality of structural funds concerning the compliance with environmental policies would also be of great help in ensuring a wider participation of the affected population in recipient countries. That is only possible with an enhanced role of representative (parliamentarian) institutions in the process of policy-making in the European Union.

### Conclusion

The joint decision-making mode of governance has contributed to enhanced EU policy effectiveness especially in regard to European environmental legislation. The European Parliament, as a co-legislator with veto power in the co-decision procedure, has been a crucial organisational actor. It has, to start with, obliged the European Commission, a non-elected body, to share with it its rights concerning draft legislation. In addition, its interactions – "informal institutions" – with other actors, such as national parliaments, the Council of Ministers and the European Commission, have been particularly relevant in the building-up of more appropriate and legitimate incentives for the correct implementation of common policies, internalising many environmental externalities. Such interactions have also allowed for a more active role of EU national parliaments in the EU legislative process, increasing their leverage *vis-à-vis* their respective governments as far as European legislation is concerned. They may help in the future to develop a democratic form of conditionality for the more efficient use of EU and national resources in fostering the wider EU goals of sustainable growth and, indeed, cohesion.

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<sup>40</sup> It appears, however, that the Portuguese national oil sector delayed as much as possible the full implementation of the directive as far as diesel was concerned.

<sup>41</sup> Noury and Roland found out that in votes held under the co-decision procedure, where the EP is most powerful, MEPs participate more and are more party-cohesive. A. Noury, G. Roland: More Power to the European Parliament?, in: Economic Policy, Vol. 17, No. 35, October 2002. These findings reinforce the idea, already expressed above with respect to EMU and to the Stability and Growth Pact, that the European Parliament cannot be so directly influenced by the electoral or other short-term concerns of one or two governments in the EU. This in turn reinforces the importance of the European Parliament as a representative institution for the democratic quality of the European governance and integration processes and their outcomes.

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<sup>42</sup> Examples of this co-operation have been discussed at COSAC meetings. The auto-oil resolution project of the Portuguese parliament was also stressed by the President of the Belgian Parliament as exemplary at a Speakers' conference in Vienna in 1998 and discussed, as an example of an enhanced role for national parliaments, at the COSAC in Vienna.