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# EIF Working Paper Series

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## Interinstitutional Agreements in the CFSP: Parliamentarisation through the Backdoor?

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**Andreas Maurer / Daniela Kietz / Christian Völkel**

**Working Paper Nr: 5**

**Institut für Europäische  
Integrationsforschung  
Institute for European  
Integration Research**

Österreichische Akademie  
der Wissenschaften  
Prinz-Eugen-Straße 8-10  
1040 Wien

**fon:** +43(1) 515 81-75 65  
**fax:** +43(1) 515 81-75 66  
**mail:** [eif@oeaw.ac.at](mailto:eif@oeaw.ac.at)  
<http://www.eif.oeaw.ac.at>

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## Abstract

*This paper tries to link the legal nature and political character of Interinstitutional Agreements (IIAs) to the ongoing process of parliamentarisation of the EU system. It is argued that IIAs are instruments used by the EP to strengthen its own position vis-à-vis the Council of Ministers. By tracing the negotiation process of the 1997 IIA on the financing of CFSP – which considerably strengthened the EP’s information and consultation rights – the following conclusions are arrived at: Precondition for the successful conclusion of IIAs between the major EU institutions seems to be the shared perception of interinstitutional conflict. The costs of interinstitutional conflict were by both Council and EP perceived to be higher than the accommodation of conflict through the IIA. Although in total the IIA changed the balance of power between the two institutions in favour of Parliament, the agreement however did not one-sidedly benefit the EP.*

## Introduction

One of the key features of the EU’s constitutionalisation process has been the incremental parliamentarisation – i.e. the increased delegation of supervisory, budgetary and legislative powers to the European Parliament (EP) – of more and more policy fields since the Single European Act (SEA) in 1987. In four Intergovernmental Conferences (IGCs) – 1985/1987, 1991/1993, 1996/1999, and 2000 – the EP has seen its own position strengthened.<sup>1</sup> To date, there have been few attempts to understand this process of parliamentarisation.<sup>2</sup>

Proponents of intergovernmentalism argue that the European Union (EU)’s constitutional order “has developed through a series of celebrated intergovernmental bargains” and that the “most fundamental task facing a theoretical account of European Integration is to explain these bargains”.<sup>3</sup> Viewed in this way, the strengthening of the EP depends solely on member states interests, which are negotiated at IGCs. However, both the underlying rationale and the importance ascribed to IGCs for the constitutional development have increasingly come under attack. On the one hand, it has been stressed that on the basis of the rationalist logic of consequentialism it is impossible to explain the at least partial parliamentarisation of the EU.

1 On the EP’s system development function see W. Wessels and U. Diedrichs, ‘A New Kind of Legitimacy for a New Kind of Parliament: the Evolution of the European Parliament’ (1997) 6, EIOP (<http://eiop.or.at>); A. Maurer, *What next for the European Parliament*, (London, 1999); A. Maurer and W. Wessels, *Das Europäische Parlament nach Amsterdam und Nizza: Akteur, Arena oder Alibi?* (Nomos, Baden-Baden, 2003), R. Corbett/F. Jacobs/M. Shackleton, *The European Parliament* (London, 2003).

2 Cf. S. Hix, ‘Constitutional Agenda-Setting Through Discretion in Rule Interpretation: Why the European Parliament Won at Amsterdam’ (2002) 2, *British Journal of Political Science*, pp. 259-280; B. Rittberger, ‘The Creation and Empowerment of the European Parliament’ 41 *JCMS* (2003), pp. 203-226.

3 A. Moravcsik, ‘Preferences and Power in the European Community, A Liberal Intergovernmentalist Approach’ 31 *JCMS* (1993), pp. 473-524 at p. 473.

Indeed, why should governments, which want to maximise their national interests, agree to create and empower a supranational parliament, whose powers could conflict with their own? On the other hand, it has been argued that IGCs do not act on a tabula rasa. Instead, existing institutional arrangements and practices of co-operation predetermine the outcomes of the negotiation process. Consequently, the EU's institutional development should not simply be seen as the result of isolated, free-standing interstate bargains but rather as the product of continuous process of informal and formal Treaty revision, with IGCs often merely formalising existing practices.<sup>4</sup> Looked at this way, the process of parliamentarisation occurs through developments which take place between IGCs. But how exactly does parliamentarisation between IGCs occur?

This paper tackles the puzzle of parliamentarisation by analysing the role of Interinstitutional Agreements (IIAs). The number of IIAs concluded between the EP, the Commission and the Council has sharply risen since the Maastricht Treaty.<sup>5</sup> IIAs are designed to facilitate interinstitutional co-operation and prevent conflicts between the institutions. However, IIAs are more than just pragmatic answers to interinstitutional co-operation problems since they tend to strengthen the EP's position in the EU's constitutional set-up by expanding the EP's control, information and legislative competencies, and placing it on an equal footing with the Council.

We restrict our analysis of the role of IIAs in the parliamentarisation process to the field of Common Foreign and Security Policy (CFSP). This is no arbitrary choice. The EU's intergovernmental second pillar as opposed to the communitarised first pillar, has always provided advocates of intergovernmentalism with an excellent example of the member states' dominance at the EU level. Following intergovernmentalist reasoning, it is here that one would expect to find the least delegation of powers to the EP. As we will see, however, even in the strongly intergovernmental CFSP, the EP has gained considerable ground. By tracing the process of negotiations leading to the conclusion of the IIA on the financing of the CFSP in 1997, we show how the EP slowly, and outside the formal Treaty revision procedure at IGCs, managed to increase its information and consultation rights and subject the CFSP to a transparent and reliable budgetary process. We suggest that the parliamentarisation of European foreign policy did not only take place during IGCs that lead to formal amendments of the Treaties. It is our main hypothesis that IIAs, which are part of the informal sphere of EU politics and are agreed upon between IGCs, have been crucial instruments for the extension of parliamentary competencies in this field.

The subsequent analysis is divided into four sections. The first presents IIAs from a legal point of view. The second part gives a short account of different approaches to the EU's constitutional development of which the parliamentarisation process is an important feature. It then continues to explore possible roles for IIAs in this process. The third part provides for a general account of the development of parliamentary competencies in the CFSP over time. We argue that the extension of the EP's competencies cannot be understood unless informal mechanisms, such as the 1997 IIA for financing the CFSP, are taken into account. This overview is followed by a detailed study of the negotiation process of the 1997 IIA (part 5).

4 G. Falkner, 'EU treaty reform as a three-level process' 9 JEPP (2002), pp. 1-11.

5 Cf. for a very good historical overview and empirical analysis W. Hummer, 'Interinstitutionelle Vereinbarungen und "institutionelles Gleichgewicht"' in W. Hummer (ed.), *Paradigmenwechsel im Europarecht zur Jahrtausendwende. Ansichten österreichischer Integrationsexperten zu aktuellen Problemlagen. Forschung und Lehre im Europarecht in Österreich* (Vienna 2004), pp. 111-180.

## 1. The Foundations, Limitations and Legal Effects of IIAs

The Treaties do not explicitly encourage the EU institutions to conclude IIAs. However, article 10 TEU in combination with the Declaration No. 3 to Article 10 TEU, annexed to the final act of the Nice Treaty, is commonly interpreted as an implicit legal basis for the conclusion of IIAs. The article obliges national institutions and European institutions to cooperate loyally. According to the declaration, which for the first time officially recognises the existence of IIAs, this obligation of loyal co-operation also extends to interinstitutional co-operation at the European level. IIAs are, however, not allowed to alter or to complement primary law stipulations.<sup>6</sup> Whereas these limits are clear on a theoretical level, it is in practice much more difficult to determine if an IIA has altered or complemented primary law. A possible criterion for determining the limits of IIAs would be whether an IIA has altered the institutional balance of power or not. This is, however, difficult to determine since the EU's institutional structure – and thereby its institutional balance – is continuously changing. Moreover, given the specific items that IIAs deal with, an alteration of the institutional balance is likely to result from the combined effects of IIAs on EU governance. In practise, IIAs often do indeed at least complement primary law. The declaration furthermore legitimises only tripartite agreements and politically has to be interpreted as an attempt of the Council to put an end to an increasing number of bipartite agreements between the Commission and the EP which also had implications for the Council.<sup>7</sup>

As IIAs are neither primary nor secondary European law,<sup>8</sup> their legal implications are far from clear. This issue is further complicated by the fact that IIAs have taken various forms and do not form a homogenous category. They cover very diverse subjects, ranging from the budgetary procedure to fundamental rights. As a result of this categorical heterogeneity, the effects of IIAs can range from the mere expression of general principles of European law to the alteration of hard European Law.<sup>9</sup> For instance, most IIAs are published in the C-Series of the Official Journal, in which notices and general information are published, while others appear in the L-series, in which legal acts are published. This suggests a very different legal character and effect. Historically speaking, IIAs first took the form of an exchange of letters between the Presidents of the institutions concerned. A second phase was marked by joint declarations, typically involving all three institutions. The term “Interinstitutional Agreements” was first used in the 1988 IIA on the improvement of the budgetary procedure and has since been established as the predominant label for such agreements.<sup>10</sup>

In sum, IIAs do not fit easily into standard European legal categories. Key issues, such as their constitutional basis or their legal implications still remain unclear and disputed. This legal uncertainty surrounding IIAs is due to the fact that IIAs themselves are located on the border between law and politics, between a legal obligation and a political declaration. Once the Treaty establishing a Constitution for Europe (TCT)<sup>11</sup> into force, however, the legal

6 Cf. Hummer, note 5 above.

7 Cf. Hummer, note 5 above.

8 This is clear from the fact that IIAs are not mentioned in the catalogue of European legal instruments in Art. 249 EC Treaty.

9 For an extensive list of possible legal effects see F. Snyder, ‘Interinstitutional Agreements: Forms and Constitutional Limitations’ in G. Winter (ed.), *Sources and Categories of European Union Law. A Comparative and Reform Perspective* (Nomos, Baden-Baden 1996), pp. 453-466 at p. 463 and J. Monar ‘Interinstitutional Agreements: The Phenomenon and its new dynamics after Maastricht’ 31 *CML Rev* (1994), pp. 693-719.

10 This chronology follows F. Snyder, note 8 above, pp. 454-458 and Hummer, note 5 above.

11 Cf. Treaty establishing a Constitution for Europe, Official Journal of the European Union, No. C310, Volume 47, 16 December 2004.

status of IIAs will be clearer. The Treaty formalises IIAs by stating under title VI "The functioning of the Union" that the three major institutions "shall consult each other and by common agreement make arrangements for their cooperation. To that end, they may, in compliance with the Constitution, conclude interinstitutional agreements which may be of a binding nature" (III-397 TCT). When drawing up an IIA, the institutions can now refer to the Treaty and explicitly state whether the agreement is legally binding or not. Whether this will make IIAs a less attractive instrument to EU institutions, i.e. dissuade them from resorting to IIAs in cases where they want to regulate a subject in a rather informal way, remains to be seen.

## **2. Parliamentarisation as Part of the EU's Constitutional Development**

The process of parliamentarisation is an important feature of the larger debate on the evolution of the arrangements of collective problem-solving and transnational governance in the EU multi-level system. Only if by comprehending how the EU's institutional and decision-making system changes in general, can we understand how the empowerment of the EP occurred and which role IIAs play in this process. Therefore we first introduce different approaches to the constitutional development of the EU. We will show that the intergovernmentalist approach cannot sufficiently explain the parliamentarisation process. The historical neo-institutionalist and the structurationist perspectives of institutional change in the EU system offer better frameworks for understanding the role IIAs play in the increase in power of the EP across policy fields, including the CFSP.

### **2.1 The Intergovernmentalist Perspective**

The EU's dynamic political system is subject to a permanent process of institutional change. The very system is structured by process - an ongoing oscillation between para-constitutional Treaty amendments and Treaty implementation. From the intergovernmentalist point of view, the evolution of the EU system takes place through the short phases of IGCs as "big bargain decisions"<sup>12</sup> while the processes between IGCs deserve little attention. From this perspective, the member states' governments are the dominant actors at the EU level – in daily politics as well as in Treaty reform. At IGCs they make all the decisions on the reform of the institutional system on the basis of their fixed national interests. Supranational institutions have only been established and endowed with powers in order to help maximise the governments' national advantages, e.g. to resolve collective action problems and reduce transaction costs. However, the institutions remain at all times under the control of the member states. They implement the member states' decisions without having an autonomous reform agenda. The clearest expression of this is the fact that neither the Commission nor the Parliament have a decisive say on Treaty revisions at IGCs. Given this lack of formal decision-making rights in the 'big' Treaty revision procedures, advocates of intergovernmentalism conclude that the direct influence of the EP on the shape of the EU institutional and decision-making system is at the most indirect and dependent on the member states' willingness to transfer power to the EP. The EP would be identified as an actor able to steer political debates, to create tension in some parts of the agenda, to make issues public, but it is not a decision maker. According to this point of view, the influence of the EP appears to be rather limited and thus it cannot explain the increase in power of the EP.

12 Cf. A. Moravcsik 1993, note 3 above; A. Moravcsik 'Liberal Intergovernmentalism and Integration: A Rejoinder' 33 *JCMS* (1995), pp. 611-628; A. Hurrell and A. Menon, 'Politics Like Any Other? Comparative Politics, International Relations and the Study of the EU' 19 *West European Politics* (1996), pp. 386-402; A. Moravcsik and K. Nicolaidis, 'Explaining the Treaty of Amsterdam: Interest, Influence, Institutions' 37 *JCMS* (1999), pp. 59-85.

## 2.2 The neo-institutionalist perspective

Neo-institutionalist explanations of institutional change in the EU system challenge the view that member states' governments are the key actors that determine the constitutional development of the EU. In line with neo-functional assumptions neo-institutionalists assert that a plurality of actors participate in the decision-making process. They acknowledge the role of autonomously acting supranational institutions that pursue their own reform agendas, as well as a dense cluster of governmental and non-governmental actors at all levels of the EU. At the core of sociological and historical neo-institutionalist arguments is the claim that the scope for action of all these actors is defined by the institutions (informal and formal rules, procedures, or norms) in which the policy-making process is embedded.<sup>13</sup> Moreover, historical analyses treat institutional change as a process unfolding over time. Restricting the analysis of the institutional change of the EU to IGCs will only yield a snapshot of constitutional development. The model of 'path-dependency' of policy preferences, institutions and procedures, policy-outcomes and policy-instruments<sup>14</sup> suggests that in such an institutionalised arrangement like the EC/EU, "past lines of policy [will] condition subsequent policy by encouraging societal forces to organise along some lines rather than others, to adapt particular identities or to develop interests in policies that are costly to shift".<sup>15</sup> Once policy decisions have been made or institutions introduced, they will be difficult to reverse. This is due to the institutional barriers to reform, the resistance of actors that were favoured by the institution, and the high costs of change once actors start to adapt to the new policies/institutions. Hence, every introduction of new rules constrains the decision-making options for all actors so that the institutional change incrementally develops along certain paths.

Whereas the original Treaties foresaw a restricted (clear) set of rules for each policy field, subsequent Treaty amendments have introduced new institutions and procedures. As a result, the Treaty provisions do not set out a clear nomenclature of rules to be applied to specific sectors. Instead, in an increasing number of policy fields, different procedural blueprints and interinstitutional codes compete for application and raise the potential for conflict between the actors involved. The growing variation of institutional and procedural rules reflects a variety of opportunity structures for access and participation in the EC/EU policy cycle. The new or revised institutional and procedural arrangements do not operate in a political vacuum but in a closely connected system and balance of power in which the architects of the Treaty have positioned them. Whenever institutions gain more autonomy, they do not use it in isolation but in a framework of established rules and centres of political power.

Therefore, this approach allows us to see the EP as an autonomous supranational actor with an independent reform agenda. Since its creation, the EP was able to use the constraints and opportunities arising from the mass of decision-making procedures and the multitude of actors in the EU's policy making process to subject more and more policy fields to parliamentary control and legislation.

13 P. Pierson, (1998), 'The Path to European Integration: A Historical-Institutionalist Analysis' in W. Sandholtz and A. Stone Sweet (eds.), *European Integration and Supranational Governance* (Oxford, 1998), pp. 27-58.

14 Cf. P. Pierson, note 12 above.

15 P. Hall and R. Taylor, 'Political Science and the Three New Institutionalisms' 44 *Political Studies* (1996), pp. 936-957 at p. 941.

### 2.3 The Structurationist View: Valleys and Summits

Structurationist approaches to the evolution of the EU system<sup>16</sup> come to similar conclusions. Like historical institutionalists they view the EU's constitutional development as an *unceasing process of incremental change* since the very beginning of the EC with a yet open end. They claim that instead of the member states' interests, the process of Treaty reform during which these are constructed must be analysed. Following the notion of path dependency, the reform process is structured by pre-defined demands on the IGC, the convergence of beliefs about the outcome and the constraints and opportunities established by past choices.

Proponents of this approach have described Treaty reform as a series of summits – the IGCs – and valleys – the periods of Treaty implementation between the summits.<sup>17</sup> IGCs are seen as high points in a lengthy process of Treaty review, reform and revision. However, the momentous developments of EU integration occur in between the summits, namely in the valleys. In the dense and pluralistic EU decision-making process, the introduction of new procedures or actors can have unintended consequences which were not predictable at the time when they were introduced. For example the content of the SEA and the internal market programme were influenced by previous events such as the Cassis de Dijon judgement of the European Court of Justice and the Commission's white paper on the internal market which already narrowed the options for change by identifying some reform proposals as *per se* inappropriate.<sup>18</sup> Thus Treaty reforms do not come out of the blue as a 'deus ex machina' dispatched by some distant masters but they are reactions to prior trends, for example IIAs. The reforms try to address institutional and procedural weaknesses identified during the implementation of previous provisions, or to adapt the Union to new – external and/or internal – contexts.

Looked at this way, system development takes place incrementally in a valley of day-to-day politics where reform is not simply a matter of inter-state bargaining. Incremental change suggests that Treaty reform is subject to a wide range of actors<sup>19</sup> and to an unceasing process of discovering political preferences and 'problem solving' in an unstable setting. Member states identify their preferences not simply as a fixed set of demands, but their rather preferences are shaped during the process of Treaty implementation and Treaty reform. They are but single players in a cluster of actors, each of which has an impact on the constitutional process and which are constrained by previous decisions and developments.<sup>20</sup> IGCs are the highlights of Treaty reform; they are not the most critical events. They often "merely codify" key institutional features "which have already occurred [...] away from the 'intergovernmental' negotiating table, in the depths of the valleys in between" such as the gradual "empowerment of the European Parliament".<sup>21</sup>

### 2.4 IIAs: Instruments to Beat Paths for Parliamentaryisation in the Valleys up to IGC Summits

Where can we place IIAs along the valleys and summits of constitutional reform? Currently,

16 Cf. T. Christiansen and K.E. Jørgensen, 'The Amsterdam Process: A Structurationist Perspective on EU Reform' (1999) 1 EIOP (<http://eiop.or.at>); T. Christiansen, 'Bringing Process Back In: The Longue Durée of European Integration' 21 *Journal of European Integration* (1998), pp. 99-121.

17 Cf. T. Christiansen and K.E. Jørgensen, note 16 above.

18 Cf. T. Christiansen and K.E. Jørgensen, note 16 above.

19 Cf. D. Skidmore and V. Hudson (eds.), *The Limits of State Autonomy: Societal Groups and Foreign Policy Formulation* (Boulder 1993).

20 Cf. U. Sverdrup, 'Precedents and Present Events in the European Union: An Institutional Perspective on Treaty Reform' in K.-H. Neunreither and A. Wiener (eds.), *European Integration after Amsterdam* (London 2000), pp. 241-265.

21 T. Christiansen and K.E. Jørgensen, note 16 above, p. 17.

IAs are interpreted as pragmatic answers to interinstitutional tension “because they can be arrived at through ad-hoc interinstitutional negotiation [...] avoiding the cumbersome procedure of Treaty amendment.”<sup>22</sup> IAs matter insofar as they are instrumental in containing interinstitutional conflicts. The case of IAs in CFSP – which will be analysed in detail below – lends at least partial support to this interpretation. The successful conclusion of IAs seems to presuppose some kind of conflict or tension between the institutions. However, there is a need to go beyond this analysis.

Following the structurationist approach, IAs can be regarded as an important element that predetermines reform options *in the valleys between IGCs*. Indeed, many Treaty provisions refer to procedures formerly decided upon in IAs.<sup>23</sup> The Treaty only constitutes the formal framework for the EU’s institutional system. IAs are part of the informal interinstitutional activity (customs, routines etc.) taking place outside the treaty revision process. Even though they are informal, arrangements like IAs institutionalize and are able to modify the real institutional balance without formally changing the Treaties.<sup>24</sup> Even if IAs cannot amend the Treaties<sup>25</sup>, in practice they can go far beyond what has been agreed under the Treaties. IAs have sown “the seeds of future Treaty amendments”.<sup>26</sup> Based on the assumption of path dependency, IAs can be seen as rules or procedures that, once introduced, shape the realm for further developments by narrowing the scope for possible change and by indirectly obliging member states to think only of the incremental revision of existing arrangements. IAs can create facts. They start off at the micro-level by introducing informal procedures making the co-operation of the main EU institutions more concrete. However, these procedures, once agreed upon, will be difficult to reverse at some later point because of the resistance of actors who benefit from the IIA, the adaptation of actors to the provisions of the IIA and the high costs that interinstitutional conflict negotiation would involve. Every following IIA or treaty revision is likely to build on and go beyond the provisions of the existing IIA. Hence, IAs create constraints but also opportunities for actors to advance their interests. They can introduce procedures that can have unanticipated consequences and lead to shifts in the institutional balance of power. Often provisions introduced in IAs institutionalise and are at a later point integrated into the formal Treaty provisions.

In our view the EP has used IAs as instruments to strengthen its own position in the EU decision-making process.<sup>27</sup> Since the EP has no decision-making power at IGCs, it has deliberately used IAs – and not just in the field of the CFSP – to create irreversible facts, informally increase its power and precondition future Treaty reforms at IGCs. Numerous statements of MEPs and parliamentary reports show that parliamentary actors see IAs as instruments to counteract the EU’s democratic deficit by strengthening the EP’s role in the EU’s institutional set-up<sup>28</sup> and link the conclusion of IAs to the unfinished process of constitutionalisation.<sup>29</sup> In line with structurationist arguments set out above, IAs are seen as temporary solutions which should at a later point result in alterations of the Treaty provisions.

22 J. Monar, ‘The Finances of the Union’s Intergovernmental Pillars. Tortuous Experiments with the Community Budget’ 35 JCMS (1997), pp. 57-78 at p.69. Italics in the original.

23 For an overview see table 6 in A. Maurer and W. Wessels, note 1 above, p. 171.

24 Cf. J.A. Stacey, ‘Constitutional Re-engineering in the European Union: The Impact of Informal Interinstitutional Dynamics’, Paper presented at ECSA Seventh Biennial International Conference, 2 June 2001, Madison, Wisconsin.

25 Cf. J. Monar, note 9 above, p. 719.

26 MEP Metten in OJ 1993 Debates, Annex No. 3-429-252, EP Sitting of 11.3.1993, p. 251.

27 Cf. for an early statement in this direction M. Waelbroeck, Michel and D. Waelbroeck, ‘Les “Déclarations communes” en tant qu’instrument d’un accroissement des compétences du Parlement Européen’ in : J.-L. Victor and D. Waelbroeck (eds.), *Le Parlement européen dans l’évolution institutionnelle* (Bruxelles 1988), pp.79-86 at p.85.

28 Cf. Hummer, note 5 above.

29 For a clear expression of this finalité politique aspect see EP, Willcox report on the Incorporation of the Common foreign and security policy CFSP in the EC budget (1994), PE A4-0028/1994.

Against this background it is not surprising, that the EP has been the main initiator of IIAs since Maastricht.<sup>30</sup> According to Hummer, most IIAs serve the purpose of granting the Parliament decision-making competencies and participation rights, which it had been deprived of by the founding Treaties and he hence sees IIAs as *initiators of constitutional change*.<sup>31</sup>

### 3. The Parliamentarisation of European Foreign Policy

How did the EP's supervisory and budgetary powers in European foreign policy grow over time? It is especially interesting to examine this process in the intergovernmental second pillar of the EU, which, for advocates of intergovernmentalism, has always served as a major example of member states' dominance at the EU level. It is striking how even in this policy field the EP has gained considerable competencies going beyond the role foreseen for it in the Treaties.

#### 3.1. The EP in Foreign Policy through Maastricht

The first attempt to develop a "real" European foreign policy, the so-called European Political Co-operation (EPC), remained outside the European legal framework until the SEA. As the EPC rested on an intergovernmental structure, concrete and tangible rights for the EP remained fairly elusive. Article 30 IV SEA only obliged the member states to ensure that the EP was closely associated with the EPC and that its views on EPC matters were duly taken into consideration. It did not, however, specify how this was to be accomplished. The Maastricht Treaty codified the EPC and the newly created security policy, under the label of the CFSP, as the second pillar of the EU. The EP obtained the right to ask questions, to put forward recommendations to the Council and to be "regularly" informed by the Council presidency and the Commission about the progress made in the CFSP. How regular the information should be provided was however still open to differing interpretations. Also, the EP's right to be consulted was limited to the "main aspects" of the CFSP (ex-Article J.7 TEU), with the Council presidency alone deciding on the scale, content and timing of the information provided. Despite the new competencies, progress was hence modest at best.

Equally important, the Maastricht Treaty created a new battlefield by raising the issue of financing European foreign policy actions, thereby introducing, at least in principle, foreign policy issues into the core of parliamentary competencies, namely the budget. The EP's budgetary powers concerning the CFSP are its "hardest" competencies in the entire foreign policy field.<sup>32</sup> Central to the financing of the CFSP is the distinction introduced in ex-Article J.11 TEU between administrative and operational expenditures for the implementation of the CFSP. Operational expenditures are charged to the Community budget and therefore subject to the normal budgetary procedure except in cases where operations have military and defence implications or where the Council decides unanimously to charge the costs directly to the member states (ex-Article J.11.II TEU). Administrative expenditures are always charged to the Community budget but they are not subject to the ordinary Community budgetary procedure. Some member states considered CFSP administrative expenditures to be part of the Council's own administrative expenditures over which, by virtue of a Gentlemen's

30 Cf. Hummer, note 5 above, p. 133.

31 Cf. Hummer, note 5 above.

32 Cf. U. Diedrichs, 'The European Parliament in CFSP: More than a Marginal Player?' 39 *The International Spectator* (2004), pp.31-46 at p. 38; A. Laschet, 'Parliamentarisation of the European Security and Defense Policy' DCAF Working Paper No. 82 (2002).

Agreement between the Council and the Parliament, the EP does not exercise control. In sum, the Maastricht provisions opened the door to parliamentary oversight of CFSP spending. In practise, these provisions were interpreted so as not to extend democratic control over foreign policy funds, but rather to keep parliamentary control to a minimum.

Like other Treaties before and after it, the Maastricht Treaty left the EC institutions with a wide range of questions, particularly regarding their roles and powers in the policy-making process. A number of IIAs concluded since October 1993 were a pragmatic answer to ease the resulting tension between the main institutions. However, the EP's proposal (December 1993) for an IIA on the implementation of the CFSP failed.<sup>33</sup> In February 1994 the Council informed the EP that it did not wish to enter into negotiations.<sup>34</sup>

### 3.3. The Treaties of Amsterdam and Nice

The Treaty revisions following the Maastricht Treaty did not expand the powers of the EP regarding the CFSP.<sup>35</sup> This is especially striking considering the dynamic evolution of the CFSP during the same period, the shortcomings pointed to above, and the EP's general increase in legislative and supervisory competencies in most policy fields since 1993. However, "real" progress in the parliamentarisation of the CFSP can only be correctly assessed if informal mechanisms like the IIA on the financing of the CFSP are taken into account.

#### 3.3.1. The Amsterdam IIA on the CFSP

The conclusion of the Amsterdam Treaty was directly linked to the conclusion of an IIA on the financing of the CFSP. The IIA consists of three core features concerning budgetary rights. First, it states unmistakably that CFSP expenditures shall be treated as non-compulsory expenditures, thus granting the EP the final say over CFSP expenditures charged to the Community budget. Second, within the CFSP budget chapter, it proposes six concrete budgetary lines, e.g. EU envoys and conflict prevention, into which expenditures resulting from CFSP action must be entered. Third, it makes clear that no operational CFSP expenditures shall be entered into a reserve, thereby excluding a parliamentary rejection of a proposed reserve transfer. However, the Commission's right to make credit transfers between articles within the CFSP chapter is reasserted, which provides for the necessary flexibility in implementing the CFSP budget. Another main achievement of the IIA is the extension of the normal concertation procedure<sup>36</sup> to the CFSP for cases where the EP and the Council cannot immediately reach an agreement on the total amount of CFSP expenditures and on the allocation to the different budgetary items.<sup>37</sup>

However, the agreement goes beyond the financial competencies of Parliament. It links the budgetary issue to the EP's ex-ante-consultation and ex-post-information rights. The Treaty provisions regarding informing the EP about CFSP matters are reaffirmed and new obligations for both the Council and the Commission introduced. The agreement establishes a formal consultation procedure with the Parliament about the main aspects of the CFSP. It

33 Cf. Draft IIA on the CFSP of 1. December 1993 (PE.207.087).

34 Cf. J. Monar, note 9 above, pp. 716-717; A. Maurer, 'Perspektiven für das Europäische Parlament' in A. Maurer and B. Thiele (eds.), *Legitimationsprobleme und Demokratisierung der Europäischen Union* (Marburg 1996), pp. 15-38; A. Maurer, note 1 above.

35 Cf. U. Diedrichs, note 32 above, p. 32.

36 Cf. IIA of 29 October 1993 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure. OJ C 331, 7.12.1993.

37 Cf. IIA of 16 July 1997 between the European Parliament, the Council and the European Commission on provisions regarding the financing of the Common Foreign and Security Policy, OJ C 286, 22.09.1997.

requires the Council to consult with the EP yearly on the main aspects of CSFP, including the financial implications for the Communities' budget. According to the agreement, the Council shall, each time it adopts a decision entailing expenses in the field of the CFSP, immediately communicate to the EP a detailed estimate of the costs envisaged in the form of a “fiche financière”. Finally, it requires the Commission to inform Parliament on an at least quarterly basis of the implementation of the CFSP and to provide financial forecasts for the remaining period.<sup>38</sup>

On the basis of the preliminary draft budget established by the Commission (which therefore keeps the right of initiative in the case of the CFSP budget), the two branches of the budgetary authority need to agree on the total amount to be spent on CFSP activities as well as the allocation of the amount among the respective sections of the CSFP budget chapter. EP powers come to the fore if the Council and EP cannot reach an agreement on the amount to be spent on the CFSP. If this is the case, the above mentioned concertation procedure shall be set up. If, however, a consensus can still not be found, an amount similar to the prior year's expenditures shall be fixed. The Council is thus prevented from acting alone. As with the co-decision procedure, the Parliament's consent is necessary. If a budget is agreed upon but becomes insufficient during a financial year, the EP and the Council together have to find a solution – based on a proposal of the Commission. Here again the EP's consent to further financial planning is necessary. IIAs have thus proven instrumental in strengthening the EP's role in the CFSP. By deciding on the total amount of the budget and on allocation within the chapter the EP substantially participates in the active and policy-making in the field of the CFSP.

Overall, the 1997 IIA sensibly extends the EP's information and consultation rights in the field, confirms its budgetary powers and introduces concrete budgetary procedures that lead to increased planning reliability – a process which restricts rival actors' ability to assert their preferences and thereby increases the reliability/predictability of outcomes – for both the EP and the Council. In light of this IIA, it is certainly correct to say that the Treaty provisions give only “a very incomplete picture of the role of Parliament in contributing to budgetary policy.”<sup>39</sup> Despite the significant changes introduced by the IIA, was published in the C-series suggesting its non-legal character.

In May 1999 the short text of the 1997 IIA was integrated into the comprehensive new IIA on budgetary discipline and improvement of the budgetary procedure for reasons of transparency and coherence.<sup>40</sup>

### 3.3.2. Post-Amsterdam Developments in the CFSP

Due to ongoing dissatisfaction of the EP with the quality and timely delivery of the information by the Council, the 1997 IIA was amended by a Joint Declaration of the three institutions in 2002.<sup>41</sup> Very concrete dates and procedures for the budgetary process and the Council's annual CFSP report were introduced – for example the EP has to be informed no later than five days after the Council took a decision that entails CFSP expenditure. This declaration also provides for a regular political dialog on the CFSP in the framework of which the Council shall “give early warning on CFSP Joint Actions which might have important financial implications”. The EP is however still dissatisfied with how these arrangements

38 IIA, note 33 above.

39 R. Corbett/F. Jacobs/M. Shackleton, note 1 above, p. 217.

40 IIA of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure, OJ 1999/C 172/01.

41 Declaration of the European Parliament, the Council and the Commission on financing the CFSP in accordance with the IIA of 6 May 1999, [http://www.eu-oplysningen.dk/dokumenter/ft/bilag/2002\\_2003/20030305/](http://www.eu-oplysningen.dk/dokumenter/ft/bilag/2002_2003/20030305/).

work in daily politics.<sup>42</sup> This makes future amendments to the IIA likely.<sup>43</sup>

From the EP's perspective, the TCT does bring some preferable changes to the CFSP. The new Foreign Minister, for example, will have to consult and inform the EP on the main aspects and basic choices of the CFSP. It should also be recalled that the EP's rules of procedure do provide for the individualized appointment of all Commissioners and that this will also be applied to the new Foreign Minister in his function as Vice-president of the Commission. Besides these changes, there was no political will at the 2003/2004 IGC on the TCT to endorse the parliamentarisation of the CFSP, since the formulations used in Art. I-40 § 8 and I-41 § 8 TCT are still similar to the provisions of the Maastricht Treaty.<sup>44</sup> There is, however, one small improvement. Instead of once a year, as laid down in the Treaty of Nice, the EP shall in future hold a debate twice a year on the implementation of the CFSP. Accordingly, it is very likely that on this basis the EP will ask the Council to deliver in future two annual progress reports instead of only one.

#### **4. Interaction of Formal and Informal Arenas of Treaty Revision**

Our overview reveals a certain tension between the formal Treaty revision procedure and the informal mechanism of Treaty revision. In the IGCs, governments were reluctant to increase parliamentary rights in the CFSP, leaving the EP frustrated with the outcomes of Treaty negotiations. By contrast, informal mechanisms like the IIA tend to increase parliamentary competencies. The next section tries to shed some light on this tension by analysing in depth the process that led to the 1997 agreement. The conclusion of the IIA on financing the CFSP offers a good example of how different arenas of Treaty development can interact, since not only was it linked to the IGC but its key provisions are also diametrically opposed to the first IGC drafts.

##### **4.1 The Background: The First CFSP Actions**

During the first year after the ratification of the Maastricht Treaty the EP concentrated only on strengthening its consultation and information rights in the CFSP. Its negotiations with the Council on an IIA on the implementation of the CFSP – which failed in spring 1994 – did not cover financial issues at all.

The implementation of the first CFSP joint actions, however, brought to light the problems generated by the Maastricht Treaty provisions on financing the CFSP, which gave rise to considerable institutional tension between the two arms of the budgetary authority. This in turn severely decreased the efficiency of the first European actions under CSFP.<sup>45</sup> At first many member states were in favour of financing actions through national funds. They were reluctant to use the Community budget for CFSP actions in order to prevent a “communitarization of intergovernmental action through the back door”<sup>46</sup> since CFSP expenditures were non-compulsory expenditures over which the EP had the final say. The first actions however showed that most member states did not even come close to fulfilling their financial obligations due to tight national budgets. It became clear that there was no

42 Cf. Justification of Committee of budgets of proposed amendment 0767 the 2004 budget, Annex to texts adopted at the sitting of Thursday 23 October 2003, <http://www3.europarl.eu.int/omk/omnsapir.so-/calendar?APP=PDF&TYPE=PV2&FILE=2003-10-23ena4.pdf&LANGUE=EN>, p.38.

43 Cf. U. Diedrichs, note 32 above, p.40.

44 Cf. U. Diedrichs, note 32 above.

45 For a detailed account see J. Monar, note 22 above.

46 J. Monar, note 22 above, p. 57.

alternative to the use of EC funds. However, the Council again tried to circumvent Parliament by declaring huge sums – which in part were obviously operational costs – as its own administrative expenditures which are not subject to parliamentary scrutiny.

The EP was “outraged” about the decisions of the Council. In late 1994, its Budget Committee issued a report on the CFSP financing. It highlighted the tension created by the “constitutional oddity”<sup>47</sup> of the Treaty provisions for the CFSP, namely the division of competencies regarding on the one hand the definition of CFSP contents which lies with the Council and on the other hand the budgetary competence in this field which is divided between the EP and the Council.<sup>48</sup> The report took the view that the definition of administrative and operational expenditures had an overarching importance and that every arbitrary division was to be considered as a unilateral breach of the aforementioned Gentlemen’s Agreement. This report was a clear signal to the Council that the EP would terminate the Gentlemen’s Agreement not to interfere with the Council’s administrative costs if the Council continued to finance CFSP actions through its administrative budget. It put severe pressure on the Council for more co-operation. This pressure still increased when negotiations on an IIA on the funding of CFSP actions once more failed in 1995.<sup>49</sup> Against this background and as foreseen by the 1993 IIA on the improvement of budgetary discipline, Treaty provisions concerning the budgetary procedure were reconsidered during the Amsterdam IGC.<sup>50</sup>

#### 4.2 The EP’s Position at the Amsterdam IGC

In light of these interinstitutional tensions, the EP criticised the implementation of CFSP joint actions at several occasions in the period between the introduction of the CFSP to the EU Treaty and the Amsterdam IGC. The EP complained that there was no clear structure for the costing of actions, which made an effective comparison of actions in financial terms impossible. Moreover, the Council had neither defined the objectives of joint actions in a transparent and operational way nor informed the EP about detailed costs.<sup>51</sup> In all EP documents, the prevailing belief is that according to “the principles of parliamentary democracy, which are amongst the most fundamental values of the EU”, only the EP’s participation supplies European foreign policy with sufficient democratic legitimisation.<sup>52</sup>

In the run-up to the IGC, the EP formulated its critique in the field of the CFSP along the lines of budgetary rights and information and consultation rights. It should be mentioned, however, that these were of course only two issues out of many. While topics such as the introduction of a High Representative for the CFSP dominated the majority of discussions at the IGC itself, the information and budgetary rights of the EP were dealt with in informal side arenas.

The EP repeated its longstanding demand to abolish the distinction between compulsory (CE) and non-compulsory expenditures (NCE).<sup>53</sup> This has remained a major demand of the EP because the EP only exercises its budgetary authority over NCE. In case of CE, defined as the expenditures directly based on Treaty provisions – which is a purely

47 J. Monar, note 22 above, p. 59.

48 Cf. EP, note 29 above.

49 Cf. J. Monar, note 22 above, p. 70.

50 Cf. IIA, note 36 above.

51 Cf. EP, Report on the Proposal for an Interinstitutional Agreement between the European Parliament, the Council and the European Commission on provisions regarding the financing of the Common Foreign and Security Policy. Committee on Budgets. 15 July 1997. PE 222.910fin (1997).

52 EP, Bericht über die Fortschritte bei der Durchführung der Gemeinsamen Außen- und Sicherheitspolitik (Matutes-Report), A4-0083/95, point 3 (1995).

53 Cf. EP, Resolution of 17 May 1995 on the functioning of the Treaty on European Union with a view to the 1996 intergovernmental conference - implementation and development of the Union.

political definition – the Council has the last say on the final amounts. Concerning the CFSP in particular, a more transparent and detailed way of financing joint actions was called for.<sup>54</sup>

As far as information rights in the second pillar are concerned, the EP again demanded to be both better and more quickly informed on the basis of the Maastricht provisions, which had not yet been implemented. It regretted especially that the Council did not issue a yearly written report on the implementation of the CFSP, which the EP could have used as the basis for its annual foreign policy debate (Article J.7 TEU).<sup>55</sup> The EP even wanted to see its role strengthened by making parliamentary hearings mandatory before the adoption of a common position or strategy!<sup>56</sup>

The first yearly report of the EP's Committee on Foreign Affairs on the progress in the field of the CFSP brought the two issues of financing and information rights together and proposed to settle them together in an IIA. It did however not link the demand for an IIA to the IGC.<sup>57</sup>

Altogether two points are evident: First, since 1993 the EP openly had favoured and repeatedly demanded the conclusion of an IIA on financial, implementation and information issues related to the CFSP, which was turned down by the Council several times. Second, the EP did by no means want to obstruct progress in the field of the CFSP. It did not, however, want to retain its input into the financing and political scrutiny of the contents of actions in order to ensure a democratic and efficient decision-making and implementation process in the CFSP.

#### 4.3 The Council's and the Presidencies' Positions at the IGC

Not surprisingly, the Council's Report on the functioning of the Treaty on European Union of April 1995 was very critical of delegating more competencies, be it budgetary or information rights, to Parliament. It stated, that the "experience gained in the area of CFSP financing shows up the discrepancy between the EP's powers of political control and its budgetary power as the Parliament tries to increase its involvement in CFSP by exercising its budgetary powers."

Regarding the financing issues, a majority of member states during the negotiation phase of the IGC - with the notable exception of the UK and France – wanted to finance CFSP actions through the Community budget to avoid national costs.<sup>58</sup> However they were in favour of changing the nature of CFSP expenditures by considering it as compulsory, which would give the Council the final say. The classification of CFSP expenditures as compulsory would not only deprive the EP of its budgetary power but also runs completely contrary to the EP's long established demand to abolish the distinction between NCE and CE altogether! Proposals by the Presidencies included amendments to the then article J.11 TEU which declared that operational CFSP expenditures were compulsory.<sup>59</sup> This must be interpreted against the background of the "tortuous experience" of financing the first CFSP actions as described above.<sup>60</sup> The funds would have been quickly available, national costs avoided, and the EP

54 Cf. EP, note 52 above.

55 Cf. EP, note 52 above.

56 Cf. EP, note 53 above.

57 Cf. EP, note 52 above.

58 Cf. EP, Briefings on the Intergovernmental Conference, Briefing No. 17, Budgetary Issues and the IGC, 21st September 1995, [http://www.europarl.eu.int/igc1996/fiches/fiche17\\_en.htm](http://www.europarl.eu.int/igc1996/fiches/fiche17_en.htm).

59 Cf. Amsterdam IGC 1996/1997: Irish Presidency. The European Union today and tomorrow. Adapting the European Union for the benefit of its peoples and preparing it for the future. A general outline for a draft revision of the treaties, 5 December 1996, Document CONF/2500/96 and Italian Presidency, Progress report on the Intergovernmental Conference to the European Council– Draft texts, 17 June 1996, Document 38/60/1996.

60 Cf. J. Monar, note 22 above, p. 76.

'legally' excluded from decision-making. This rationale was clearly laid down in the several documents of the Council presidencies during the IGC which set forth that because CFSP expenses were currently classified as non-compulsory, the EP has the final say in budget matters and can therefore acquire significant participation in the political decision-making.<sup>61</sup> Despite strong criticism by the EP, which considered the amendment as hostile to its interests and contradictory to the Treaty,<sup>62</sup> the proposal was included in the Draft submitted by the Dutch Presidency in March 1997.<sup>63</sup>

#### 4.4 The Final Deal

The President of the EP harshly criticised the proposals of the Council presidencies<sup>64</sup> and the EP decided to push for an IIA on the financing of the CFSP in order to avoid the classification of CFSP expenditure as compulsory.<sup>65</sup> Informal negotiations started on the IIA to solve the issue of financing the CFSP outside of the formal IGC arena. An agreement was reached directly after the IGC that linked the non-revision of expenditure classification to the conclusion of an IIA on financing the CFSP. At large, the IIA represents a compromise between the EP's interest not to see the classification of expenditure in the field of the CFSP revised at the IGC and the member states' interest to retain the separation between the political substance of the CFSP and the EP's budgetary powers, in other words not to grant the EP substantial political rights that go beyond information.<sup>66</sup>

All in all, the IIA clearly strengthened the role of the EP in the field of the CFSP. Why did the Council agree to an IIA this time? This question needs to be examined in detail.

First, when the Council declined the EP's previous offers for an IIA, it was still hoping to finance CFSP actions through national budgets. The experiences with the implementation of CFSP actions however soon showed that they needed to be financed through the EC budget. Foreign policy actions have to be implemented immediately once agreed upon. Any delay can be detrimental, as witnesses by developments in former Yugoslavia. Therefore the quarrel on financing between member states and between Council and Parliament needed to be kept at a minimum. The financing through the regular budgetary procedure and co-operating with Parliament gave the Council the planning reliability which is essential in short notice matters such as CFSP actions. It can therefore be assumed that the Council made the concessions in order to ensure planning reliability and enhance the efficient implementation of CFSP actions. Here, the fact should not be overlooked that because of the IIA, the EP lost the right to introduce a special CFSP reserve to the budget, to which it used to allocate bigger sums than to the actual CFSP budget. For each transfer out of this reserve to finance CFSP actions the Council needed the EP's approval. This provision of the IIA constitutes a loss in influence for the EP and provides the Council with much more planning reliability. It clearly shows that the IIA did not one-sidedly advantage the EP. Furthermore, the IIA did not go beyond ex-post

61 Cf. Amsterdam IGC 1996/1997: Note no. 26, Italien Presidency, Financing the CFSP (and JHA) Document CONF/3826/96.

62 Cf. EP, as note 51 above.

63 Cf. Amsterdam IGC 1996/1997: Dutch Presidency, Note on IGC Ministerial Meeting - 29/30 April 1997. Provisions on a common foreign and security policy, 21 April 1997 Document CONF 3889/97.

64 Cf. EP, Initial Analysis of the Treaty of Amsterdam, Committee on Institutional Affairs, [http://www.europarl.eu.int/topics/treaty/index\\_en.htm](http://www.europarl.eu.int/topics/treaty/index_en.htm). (1997).

65 Cf. Amsterdam IGC 1996/1997: Copy of Letter from Ms Elisabeth Guigou and Mr Elmar BROK, Representatives of the European Parliament to the Intergovernmental Conference to Mr Michiel PATIJN, Chairman of the Intergovernmental Conference Group of Foreign Ministers' Representatives on the CFSP, 10 April 1997, Document CONF 3885/97.

66 Cf. EP, note 51 above.

information rights for the EP. It does not allow for an *a priori* consultation before the decision on common strategies. This would have been completely unacceptable for member states such as the UK.

A second point is that even though the EP did not have the formal means to keep member states from declaring CFSP expenditures as compulsory at the IGC and thereby solving all problems related to the financing, the Parliament can always put pressure on the Council through its general budgetary rights. It can simply reduce appropriations for budgetary lines that are very important to the Council even if not related to the CFSP and it can in the worst case scenario refuse to agree to the annual budget. As Farrell and Héritier state, the EP's bargaining power in negotiations with the Council is enhanced for several reasons.<sup>67</sup> The EP is likely to use this power by threatening non-co-operation and delaying the budget or legislation in order to put pressure on the Council and push for concessions. It has often shown that it is "willing to lose in the short term" by e.g. obstructing legislation/budget "in return for (constitutional) reforms that guarantee its interests in the longer term".<sup>68</sup>

This bargaining power could be somewhat lowered by the TCT provisions. On the one hand, the Constitutional Treaty largely strengthens the EP by introducing a reformed annual budgetary procedure which finally abolishes the distinction between CE and NCE and hence gives the EP authority over the whole budget. On the other hand the informal procedure of negotiating IIAs and multiannual financial perspectives, which set the framework for the annual budgets, is incorporated into the Treaty and hence made obligatory. This deprives the EP not only of a certain room for manoeuvre. It could in the worst case also reduce the EP's role in the negotiation of the multiannual financial frameworks which are now only subject to the simple assent procedure.

## 5. Conclusions and Suggestions for Further Research

Taking our example of the CFSP, this essay has tried to link the wider phenomenon of parliamentarisation to the increasing importance of IIAs. We outlined the principal general approaches that set out to explain the change in the EU's institutional set-up. The intergovernmental reasoning offers only limited explanations for the parliamentarisation process. Neo-institutionalist and structurationist explanations of how the EU's institutional systems changes are better suited for this purpose. The EP acts as an autonomous supranational actor which pursues its own reform agenda over the long-term and has various means of incrementally impacting the reform process, especially in the informal arena. We identified IIAs as examples of such informal rules or procedures that are established in between formal Treaty reforms at the micro level and which incrementally change the institutional set up of the EU. Often seen as pragmatic answers to interinstitutional conflicts, we argued that IIAs possess non-pragmatic aspects and that further research is needed to capture their importance for the EU's constitutional development and, more specifically, for the process of parliamentarisation.

The CFSP example broadly confirms our main hypothesis that the EP uses IIAs as instruments to increase its powers vis-à-vis the Council and the Commission. The IIAs in the CFSP have acknowledged and even increased the political role of the EP in the EU's policy-making process. The EP managed to confirm its budgetary control and increased its

67 H. Farrell and A. Héritier, 'Formal and Informal Institutions under Codecision: Continuous Constitution Building in Europe' (2002)3, EIOP (<http://eiop.or.at>), p. 594. The EP e.g. has a longer time frame for action than the Council due to the rotating presidencies which seek to see a progress during their short periods in office and the EP is not as sensitive to failure since the governments in the Council are immediately evaluated in their home countries regarding the progress in policy fields that are crucial to them.

68 Hix, note 2 above, p. 271.

information and consultation rights, which were very vague in the Treaty provisions and never entirely implemented by the Council. In line with the argument that the EP deliberately uses IIAs as an instrument to strengthen its position, we saw that the EP clearly takes the role of an agenda setter in the negotiation of IIAs in the CFSP. This active role contrasts with the EP's formal non-role at the IGC. The informal arena tends seemingly to offer a favourable environment for the realisation of EP demands.

The example of the 1997 IIA lends some support to the concept of rule-specification.<sup>69</sup> As Treaty provisions result from interstate bargaining processes, their wording is often ambiguous and, hence, leaves room for different and sometimes not easily reconcilable interpretations. According to the hypothesis of rule-specification, the EP is able to exploit vague Treaty wording to propose interpretations that strengthen parliamentary competencies.<sup>70</sup> The 1997 IIA on the CFSP can be interpreted as an attempt to translate the vague Treaty description of the EP's consultation rights in the CFSP into practise in order to attain more influence on the content of CFSP actions. In general terms, IIAs make parliamentary rights more tangible, often by institutionalising specific consultation or information procedures, and thus reduce the discretionary powers of the Council or the Commission.

Nevertheless, it should be noted, that the EP's calls for an IIA remained unanswered for a long time, with two draft IIAs turned down by the Council.<sup>71</sup> This example warns not only against generally overstating parliamentary bargaining power in the informal arena, but suggests that the successful conclusion of IIAs depends on a number of factors, most importantly the shared perception of interinstitutional conflict. We showed that the IIA did not one-sidedly advantage the EP or that the EP threatened the Council into the agreement by using its general budgetary powers. The Council itself had its own reasons for entering into the agreement such as the planning reliability for common actions.

Furthermore, we showed that in line with the notion of path dependency, interinstitutional negotiations do not take place in an institutional or political vacuum. The final 1997 IIA goes back to at least two failed IIAs, many critical reports of the EP repeating reform proposals, and reflects the problems of implementing the first CFSP actions. The IIA was not restricted to institutional experiences made in the CFSP, e.g. it introduced the well-established conciliation procedure to the CFSP. The trade-off between the in beginning diametrically opposed positions of the EP and the member states shows how existing practises and power constellations narrowed down the options for change. Both the member states' demand to classify CFSP costs as compulsory expenditures and the EP's demand for *a priori* consultation on every decision taken in the CFSP lay outside the range of possible options. There is a clear path towards slowly increasing parliamentary information in the sensitive field of the CFSP without however offering the EP the same influence as in the first pillar.

The present essay suggests that relevant research questions open to theoretical modelling include, inter alia, the interaction of constitutional and infra-constitutional arenas of Treaty development and differences in bargaining power. More research is also needed on failed IIAs. Under what circumstances does the EP succeed in proposing and agreeing on an IIA? Based on our example, the shared perception of institutional conflict seems to be a necessary condition for the successful negotiation of an IIA.

69 This mechanism was first identified by Hix, note 2 above.

70 Cf. Hix, note 2 above.

71 Cf. EP, Roumeliotis Report of the Committee on Institutional Affairs on the conclusion and adaptation of interinstitutional agreement, A3-0043/93.