EUDO Brussels

- Codecision Transformed
- Comitology Transformed

- Adrienne Héritier
- EUI/RSCAS
- Florence 9.11.2011
• **Puzzle:**

• Empowerment of EP under Maastricht Treaty
• Co-equal legislator with Council
• Enhancing democracy in EU
• BUT
• Transformation of codecision to fast-track legislation
• Increasing seclusion of co-decision:
• Trialogues
• Early agreements or fast-track legislation
Transformation of codecision: TABLE

Source: European Parliament’s 2009 Activity Report

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of concluded files</th>
<th>Percentage of files concluded at 1st reading</th>
<th>Percentage of files concluded at 2nd reading</th>
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• 1 Why this institutional change?

• 2 Who wins, who loses…redress of lost power?
Based on

- Farrell and Héritier 2003 GOVERNANCE; 2004 CPS
- Héritier 2007 OUP
- Reh, Héritier, Bressanelli and Koop 2011 (CPS)
- Héritier and Reh 2011 (submitted to WEP)
- Héritier JCMS Anniversary Issue 2012
• Maastricht Treaty introduces codecision
• „Early agreements“ emerge

• *Amsterdam Treaty*
  Formalized conclusion at 1st reading
  Extended co-decision;
• Council‘s right to resubmit its position in case of failed conciliation abolished
• *Nice Treaty*
  • Further extension of co-decision

• *Lisbon Treaty*
  • Further extension of co-decision:
    • normal legislative procedure
Theoretical explanation

1. Whid did change happen?

Assumptions:

- Actors boundedly rational
- Actors seek to increase their institutional power to influence policy outcomes
- Transaction costs
- Contracts incomplete
- Council, EP, Commission unified actors
Theories of institutional change

a) Institutional design:
• bargaining of institutional change: New formal rules

b) Interstitial institutional change:
• Formal rules = incomplete contracts
• Are transformed in course of application
• Give rise to new (informal) rule
• Fast track legislation =
• *First step*: informal rule arising in application of formal rule = interstitial change
• *Second step*: informal rule is formalized

• *Alternatively*, incomplete institutional rule is re-negotiated at formal level, but higher transaction costs
Why did informal rule emerge?

- *Functionalist* political transaction cost saving argument

- Codecision all the way to conciliation: high transaction costs
- …therefore introduction of trialogues
- Early agreements at first reading under simple majority
  Before Council adopts formal Common position
- Before EP provides formal Opinion
- Simultaneity of decision-making of Council and EP
- Trilogues: Small circle of actors: Presidency, COREPER, Rapporteur, Commission
Early agreements help save transaction costs of negotiation,
...allow to faster adopt legislation

With enlargement of 2004 more members with diverse preferences...more negotiating costs.....more early agreements
• Hence

• H1  *With an increase of negotiating actors with diverse preferences, there will be an increase in early agreements*

• Empirical indicators:
• pre- and post 2004 enlargement
• Data set:
• All codecision process 5th and 6th EP
• 1999 July – 2009 July
• EU Legislative Observatory

• 797 procedures concluded at first reading or early second reading = empirical indicator dependent variable
• **H2** With an increase in overall number of legislative files, there will be an increase in early agreements

• Number of on-going proceedings

**H3** With an increase in complex files, there will be an increase in early agreements

Number of recitals in file;
• number of committee opinions
• Theory of power based distributive bargaining:
• After conclusion of (incomplete) contract,
• actors seek to widen their power during application of contract
  bargaining over specifics of contract....
• lead to transformation of contract
• Outcome determined by bargaining weight of players
• Bargaining weight or power is determined
• On players - patience /time horizon

• *H4 If file reflects priority of Council Presidency, it will be decided as an early agreement*

• Preference for file figures in Council Presidency Programme
Control variables

- anticipating 2004 elections
- policy distance between rapporteur and party representing minister of her country in Council
- EP committee
- type of policy
• Binary logistic regressions predicting probability of early agreement given specific values of explanatory variable.
• B coefficients
• and
• since non-linear relationship between dep and ind variables....also odds ratios
Findings

- H1 enlargement…confirmed
- H2 workload …confirmed
- H3 complexity: number of committees confirmed
- Functionalist transaction cost saving argument supported
• H4 Presidency preferences disconfirmed

• Smaller likeliness to be early agreement if in Presidency programme
2 Who wins, who loses?

Council: Presidency benefits,
- national parliaments lose

Parliament:
- Rapporteurs win
- Large political groups (coordinators) win
- Small political groups lose
- Normal committee member loses
- Plenary loses
EP: Redressing loss by institutional change

• Debate within EP:

• Early agreements danger for democratic legitimation of EP
• Democratic debate in plenary threatened
What is at issue?

- *Rules governing early agreements:*
- Who is negotiating for EP?
- Mandate to the rapporteur?
- Substantive or procedural mandate?
- Reporting back to committee?
- Cooling off period?
Actors’ preferences

- Leadership EP: Restrictive rules
- Small political groups: Restrictive rules
- Large political groups: Flexible rules
- Rapporteurs: Flexible rules
- Constitutional Affairs committee: Flexible rules
Theory and Hypotheses

• Given actors’ assumed preferences about desirability of institutional reform

• Systematic variation of two environmental conditions:
  1) low vs high number of “early agreements” (EA)
  2) existence vs absence of overall reform programme
1) **Steep increase of EA**

**H1** A steep increase in the number of early agreements will lead to an institutional reform providing for more stringent rules of fast-track legislation

**Causal mechanism**

- pressure from “losers” inside Parliament
- pressure from outside actors not able to follow codecision process anymore
2) *Existence of overall parliamentary reform agenda*

- Gives political momentum to individual reform, i.e. early agreements

H2 *The existence of an overall parliamentary reform agenda will lead to an institutional reform including elements of a strict regulation of fast-track legislation*
Two causal mechanisms

2a. Rational Choice Institutionalism

- higher saliency
- pressure to succeed
- package deals and issue linkages
2b Strategic Normative Framing

- overall reform agenda allows to frame institutional change as re-establishing core parliamentary norms
- normative frame can mobilise actors beyond “losers” and can pressure “winners” into accepting reform
Empirical Assessment

H1  A steep increase in the number of early agreements will lead to an institutional reform providing for more stringent rules of FTL

• Comparison of a period of moderate increase with a period of steep increase, controlling for overall reform
  - 1999-2004
  - 2004-2006
⇒ Empirical data does *not* support expectation

• with low level of EA, lenient reform proposals
• but with steeply increasing number of EA in spite of several attempts at reform
  - non-binding and vague restrictions
  - even encouragement of EA
H2  The existence of an overall parliamentary reform agenda will lead to an institutional reform including elements of a strict regulation of FTL

• Comparison of two periods of steep increase, one combined with the presence of overall reform
  - 2004-2006
  - 2007-2009
⇒ Empirical evidence confirms our expectations in part

- outcome = *Code of Conduct*
- formally binding, included in EP’s Rules of Procedure
- however many vague terms open for re-negotiation
Causal mechanisms

2a. $RCI = \text{political momentum of overall reform/pressure to succeed … package deals and issue linkages}$

- considerable empirical evidence
- very contested negotiations in reform group and constitutional affairs committee
- package deal struck; something had to be adopted
2b Overall reform allows for mobilization of normative concerns that overcome opposition of “winners”

- considerable empirical evidence for normative concerns inside and outside EP
- Working Party provides momentum to frame reform around core parliamentary norms
- yet no broad public debate in plenary before adoption of the Code of Conduct
- plus compromise character of the Code indicates that normative frame could not fully overcome opposition
Conclusion

Resistance of “winners” of shift of decision-making power partially overcome

- If a stark increase in fast-track legislation as a necessary condition
- If a macro reform agenda lending impetus to reform of individual reform issues
Comitology

Adrienne Héritier, Catherine Moury, Carina Bischoff, Carl-Fredrik Bergström
OUP forthcoming 2012
Data

- Entire population of EU laws
- 1970 – 2006/08
- Eurlex
Regulations and Directives passed 1970-2006

• Regulations
  • Legislated 19,6%  Delegated 80,4%

• Directives
  • Legislated 60%  Delegated 40%

• All
  • Legislated 22,8%  Delegated 77,2%
Regulations and directives in force (Sept. 2008)

- Regulations
  - Legislated: 18.3%  Delegated: 80.4%

- Directives:
  - Legislated: 56.4%  Delegated: 43.6%

- All
  - Legislated: 25.9%  Delegated: 74.1%
• **Data base**

• Eur-lex and Pre-lex on-line catalogues, *full text* of all Commission proposals and parliamentary amendments that have been made since 1994,
• fourteen years (up to the end of 2008).
• Pre-lex all parliamentary reports (in full text) based on this proposal.
EP in comitology – contest for power

• *H 1: With increasing legislative competences of the Parliament under codecision, the Commission will be more inclined to propose delegation to comitology.*

• Confirmed
• H 2: With increasing legislative competences of the Parliament under codecision, the Council will be inclined to delegate more to comitology.

• Confirmed
• H 3: The increase in delegation accepted by the Council will be accompanied by an increase in the use of the regulatory committee.

• Confirmed
• **H 4:** With the introduction of codecision, the Parliament will seek to veto delegation and press for legislation only.
  
  • *Disconfirmed*

• *But EP restricts scope of delegation*