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European Legislation and Politics as Seen by Former Members of the European Parliament

A New Tool for Researchers

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Abstract

This article is based on the oral interviews that Members of the European Parliament (EP) from 1979 to 2019 have deposited at the Historical Archives of the EU (HAEU) and that are freely available to researchers. Their memories inspired us to focus on some specific features that are, in our view, relevant to the evolution and development of the European Parliament. In the forty years from 1979 to 2019 the EP completely changed its role: from mere discussion forum to co-legislator. Many manuals give an excellent and complete overview of formal and informal EP powers. This is not the aim of this article. Our ambition is to raise curiosity and interest sufficiently for readers to visit the HAEU website and to listen to some of the interviews.

Keywords: European Parliament, soft powers, legislative process, accountability, political groups



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A New Tool for Researchers

I. Introducing the Collecting Memories Project¹

This project started during a walk in the Oxfordshire countryside by two »young« pensioners, former officials of the European Parliament (EP), the authors of this article. We realized that we have had the great opportunity to have followed the evolution of the institution for a large part of the last 40 years, ever since the first 1979 direct elections, and we considered that it was regrettable that a large part of the story of the EP should be relegated to »old people's memories«.

We decided that our own personal memories should be kept for our grandchildren, but collecting the memories of Members of the Parliament (MEPs) was a worthwhile undertaking. Three other former colleagues joined us in this adventure, all with broad experience in different departments of the institution. The Collecting Memories project then took off, with the Historical Archives of the European Union offering to include the project in its oral history collection² – a collection which already includes an extensive set of interviews with Commissioners, Commission officials and other leaders inside the EU. The Parliament itself has carried out interviews with its past Presidents and Secretaries-General, but we wished to expand the set of former MEPs interviewed.

The project had inherent limitations. It was self-financed, relying on the goodwill of the interviewees and support from the Historical Archives, the Former Members' Association and a small group of students at Maastricht University. As we depended on participants to volunteer to contribute, we could not guarantee geographical, political or

gender balance. You will be disappointed, for example, if you are looking for Eurosceptic interviews, as none of these members responded to our invitation. The quality of the interviews is also not of a professional standard: often tea or coffee was served during the interviews and telephones were not always switched off, though in our view this adds to the human quality of the conversations.

Our ambition is that this oral history of the European Parliament will continue into the future. We and other colleagues who have since joined us will continue to add further interviews. A database now exists and we hope that researchers and historians will consult it and find it useful for their work. Even the book that we have published³ to accompany the archive is just an appetizer to encourage researchers to consult the primary source.

As one of our interviewees pointed out, it is rare that individual MEPs have a direct personal impact on the EU, but they have contributed »to a collective effort, which constitutes the output of the Parliament«. These memories of active MEPs are intertwined with personal comments and anecdotes that have made our work particularly attractive and interesting.

The 40th anniversary of the first direct election of the European Parliament offered the perfect opportunity to look back at what the Parliament has and has not achieved over the last four decades, and how its members have contributed to the creation of a unique model of parliamentary democracy at the European level. History is constantly being reviewed, so these interviews offer material to reflect on the evolution of the European Union. The contributions seem to us partic-

1 The Collecting Memories project is part of the Oral History programme of the Historical Archives of the European Union (HAEU), in Florence, where more than a hundred interviews are deposited.

2 All the interviews can be found and listened to, free, on the HAEU website: https://archives.eui.eu/en/oral_history/#CM_EP.

3 DE FEO/SHACKLETON (eds.) (2019).

ularly relevant at a time when the pressure to reform the functioning of the institutions is visible across much of public opinion.

One of the particularities of our project is that it has not followed an institutional path, even if a good number of office holders have been interviewed. There are also several backbenchers who have contributed and influenced the course of the European project. A second particularity is that it is not an academic work and does not aim to compete with the large literature on the EP.⁴ Rather we wanted to complement these academic analyses and to facilitate future research by looking at the history, evolution and character of the EP through the personal perspectives of its former MEPs: the human face of the evolution of the European Parliament.

The methodology followed was very simple. We started with a questionnaire, followed by an oral interview, face-to-face where possible or by phone or Skype. Up to now the database contains more than 100 of these interviews (mainly in English but some in French, Italian and Spanish), which are mostly of around an hour in length. The interviews normally follow a similar pattern: you will hear the same kind of questions being asked by all five interviewers, although the emphasis given by each interviewee to each question does vary, as they go backwards and forwards between specific topics. To facilitate the work of researchers we structured the material derived from the interviews and questionnaires into around ten categories,⁵ and this became the backbone of the book we have co-edited on the project. Such a categorisation cannot capture all the richness of the information that we gathered, but we felt it was important to offer a point of departure for research rather than obliging listeners to make their way through a large volume of material, much of which might not be relevant to their particular interests.

To give a flavour of the interviews and of the book that accompanies them, here we identify three areas that may be of particular interest for legal researchers, not just looking back at the history of the EP but also in terms of the future development of the institution:

- The Role of Soft Law
- Scrutiny of the Commission
- Majorities in the Parliament

In each case we have indicated the particular contributions of members to the topic by placing their comments in quotation marks to differentiate them from the rest of the text, without indicating the name. At the end of the article, you will find the list of members that are relevant for this article.

II. The Role of Soft Law

The Treaty and secondary legislation establish the powers of each institution: this is what first year students are taught. The effective competences of a democratic parliament, however, can only be understood by looking beyond formal provisions. This becomes immediately obvious if one considers how these competences have been acquired. They were not given without a struggle, as our interviews attest. One MEP, newly elected in 1979, »complained to his Prime Minister about the lack of competences of the EP and asked for his support in the Council to reinforce EP competences. The Prime Minister responded bluntly: Forget it, no government will give powers to the parliament. If the EP wants more powers, it has to take them«.

The taking of those powers was not marked by the bloodshed that has accompanied the development of parliamentary institutions in some nation states, but rather witnessed the EP using all the means provided by the Treaties, both what was included and what was not forbidden, to extend its competences. It sought to establish practices which Member States found it difficult not to give formal status to. The Intergovernmental Conferences (IGC), which prepared the new Treaties, »have rarely introduced new institutional novelties, but, in most cases, the IGC formalised practices already consolidated in legal texts«.

The increase in the Parliament's authority has emerged through the development of practices established in documents, such as exchanges of letters, joint declarations and interinstitutional agreements, as well as through a degree of self-

4 Among others, two key publications: CORBETT/JACOBS/NEVILLE (2016) and RIPOLL SERVENT (2018).

5 The ten categories are: Choosing the Parliament, Working Inside the Par-

liament Machine, Living Inside the Political Groups, Playing a Part at Major Moments, Influencing and Shaping Policy, Scrutinizing and Holding to Account, Making a Mark

Beyond the EU, Communicating the Work of the Parliament, Keeping in Touch with National Societies and Looking to the Future.

empowerment. For the latter, one can look back as far as 30 March 1962, when the group leaders of the Assembly proposed a short resolution which stated: »Claiming that its name is not identical in the four official languages of the Community, decides to take the name »European Parliament««. It did not change the powers of the institution but altered how it was perceived and evaluated as a legislative body, rather than just a place of debate. Lawyers and diplomats from the Member States sitting in the IGC do not usually take hasty decisions. The change of name was formalised only 24 years later in the Single European Act (1986).

However, right from the start the Treaties had given the EP the power to set its own Rules of Procedure, adopted by qualified majority, to define internal procedures and voting rules. Such rules are not neutral. The »EP has often stretched the EP Rules of Procedure to impose procedures not foreseen by the Treaties, always trying to maintain a reasonable approach, to avoid that stretching the elastic too much, in case it breaks and you can harm your fingers«. These Rules and the various documents exchanged with the other institutions have contributed to the creation of what is often referred to as »soft law« – a category that is widely aired in the interviews.

A. *The appointment of the Commission*

The control of the executive is one of the traditional parliamentary prerogatives. The EP has made the procedure of appointing the President of the Commission, the individual Commissioners and ultimately of the Commission, as a college, one of its institutional battles. The EP established procedures not only to influence the nomination but also the agenda of the future President of the Commission, none of which were laid down in the Treaties.

The Parliament elected in 1979 informally approved a resolution of endorsement of the Com-

mission but it was without any immediate effect. However, after the Parliament's request to be consulted, before the Council appointment of the President of Commission, was included in the internal procedure of the Council following the Genscher-Colombo initiative,⁶ the European Council of Stuttgart, in June 1983, went further and invited the President of COREPER⁷ to »consult the enlarged Bureau of Parliament on the candidate chosen by the Council«.

The Treaty of Maastricht (1992) formalized the consultation of the Parliament on the candidate chosen by the Council. The Parliament's Rules, defining the procedure, went further, indicating that in the case of a negative vote, the Council would be asked to withdraw the candidate. The psychological impact of these changes was evident when the next Commission was appointed. The Parliament »got Santer (the next Commission President) to make a commitment that he would resign if his new Commission did not have a majority in the EP«.

Subsequently, the Amsterdam Treaty (1997) formalized the procedure established by the Rules and gave the EP the power to approve the Commission. Parliament's Rules of Procedure (1999) once again went further and mentioned the »election« of the President based on a programme and confirmed that in case of rejection the Council has to appoint a new candidate. Ten years later, the Treaty of Lisbon finally recognized that the EP »elects« the President of the Commission.

B. *The »soft« budgetary powers*

»The budgetary power, since 1970, has been the first real competence of the European Parliament, but the rules of the Treaty had important limitation to this power«. The EP had the final decision on so-called non-compulsory expenditure (NCE),⁸ but with important restrictions.⁹ To avoid these limitations, the »EP supported the Delors proposal

6 Genscher-Colombo initiative by the German and Italian governments in November 1981 to give new impetus to the integration process, <https://www.bpb.de/nachschlagen/lexika/das-europalexikon/177014/genscher-colombo-initiative>.

7 Comité des Représentants Permanents / Committee of Permanent Representatives. See Conclusions of

the European Council of Stuttgart June 1983, https://www.consilium.europa.eu/media/20680/1983_june_-_stuttgart_eng_.pdf.

8 Non-compulsory expenditure was basically everything except agriculture, international agreements and pensions. In the 1980s it represented about 30% of total expenditure, by 2000 more than 50%.

9 EP could increase NCE by half of the Maximum Rate of Increase (MRI) calculated each year by the Commission.

to create a multiannual planning, which increased the rigidities, creating five categories of expenditures among the NCE, but at the same time, allowing a large increase over a period of the five to seven years«. The EP committed to respect the ceilings of the different categories of expenditure.

The global increase of expenditure was not the only advantage that the EP achieved. Following the agreement in 1988 on the Delors proposals,¹⁰ an interinstitutional agreement complemented the multiannual planning. »This Interinstitutional Agreement (IIA) – renegotiated at each renewal of the Multiannual planning – gave to the EP a stronger political role in all the procedures«.

Several examples of the way the Parliament was granted recognition were mentioned by MEPs during the interviews. The »EP was involved in the Common, Security and Foreign Policy (CSFP). A procedure to keep the EP informed was included in the IIA«. The same was true for international agreements where the EP was involved throughout the negotiations. An ad hoc procedure was also established for agriculture expenditure, so that the EP could present draft modifications to agriculture expenditure. Another area where the EP »imposed its approach was the introduction of budgetary flexibility and special funds outside the financial framework«.

Overall, since 1988, the budgetary procedure, in spite of the Treaty, witnessed a structure of dialogue between Council and Parliament that was not necessarily differentiated by the nature of the expenditure (compulsory or non-compulsory). This interinstitutional cooperation was then reflected in the Lisbon Treaty, which incorporated the pragmatic changes introduced since 1988 and eliminated the distinction between compulsory and non-compulsory expenditure. The formal end of this distinction was a mixed blessing for the Parliament, which lost some bargaining power. As was noted in the interviews, »soft« law gave the EP more flexibility and leeway for the negotiations but they (MEPs) all recognized that this loss of power in the budgetary area was largely compensated by the increase of EP competence in the legislative domain«, where the EP now shares decisions on almost all EU legislation with the Council.

III. Scrutiny of the Commission

Scrutiny is one of the key activities of any Parliament. Due to the particular institutional architecture of the EU, the scrutiny activity of the European Parliament is necessarily more focused on the Commission than on the Council.

A. *The fall of the Santer Commission*

A large number of our interviewees drew attention to the case of the dismissal of the Santer Commission, widely perceived as a »significant milestone in the history of the European Parliament, even a high watermark of parliamentarism«. As one interviewee put it, »the Santer Commission was a mess. It had been so bad that we needed to do something. Parliament needed to show that it would not tolerate this type of abuse«. The decision was not easy, as the facts relating to budgetary discharge were intertwined with political considerations, dividing those who did not want to sanction an EPP President of the Commission and those who were unwilling to vote against a Socialist Commissioner.

In the end, a large majority was ready to vote for the motion of censure but the interviews reveal different reasons for such a vote. For some it was the result of the Commission failing to understand its changing position in the EU. It showed itself to be »arrogant, counting itself to be central to Community life and independent, whereas in a democracy no institution can be politically independent«. From another perspective, it was rather the result of the way the questions at stake were framed. »The issue was not one of accountancy but of public accountability«. Once the dispute was presented in this way, President Santer could no longer defend his position in terms of collective responsibility. »The shield of responsibility was transformed into a sword of accountability«. In this sense, the events of 1999 were the result of a struggle over the nature of parliamentary democracy at EU level.

¹⁰ The proposals also included the launch of the Single Market and the doubling of the structural funds.

B. *Scrutiny of the legislative cycle*

Following the resignation of the Santer Commission, the EP wanted to enlarge its scrutiny to include the whole legislative cycle. Romano Prodi, Santer's successor as Commission President, found himself »obliged to agree a first Framework Agreement designed to structure relations between Commission and Parliament«. In particular, it was meant to enable the EP to oblige the Commission to respond more directly to its political agenda from the drawing up of a legislative programme through to its implementation. This Framework Agreement, which was renewed with each incoming President of the Commission, irritated the Council¹¹ considerably. It felt the EP was trying to acquire a right of legislative initiative through the backdoor, hence the »massive attack« that it launched against the Parliament. In the end, the Council did agree to participate in the 2016 Inter-institutional Agreement on Better Law-Making,¹² which sets a series of initiatives and procedures to improve the cooperation in all phases of the legislative cycle.

C. *Hearings of Commissioners*

In 1995 the EP decided for the first time to submit individual Commissioners to hearings modelled on US Congress »confirmation hearings« on presidential nominations to judicial and executive posts. It was »not easy to get it through. Delors was absolutely against in the beginning. The College of Commissioners would be undermined if there were votes on individual Commissioners. We agreed to renounce on single votes in return for Delors' and Member State Governments' support for the new procedures which had no Treaty base«.

In practice, this innovation has worked remarkably well and has come to be accepted by all parties as contributing to greater transparency. On several occasions, the Parliament has successfully requested the replacement of a nominee or a change of portfolio, without governments or the Commis-

sion President demurring. 2019 is the most recent example, with three Commissioners not passing the test of the hearings and being replaced. At the same time, it is a procedure that has never found a place in the treaties nor indeed has the investiture of individual Commissioners, underlining once again the importance of »soft law« in the development of the Parliament's influence.

IV. Majorities in the EP

Since the first European Assemblies in the 1950s, delegates have always been organized in political groups and not national delegations. Priestley¹³ defines the political groups as »the stand-out feature of Parliament's organisation. The decision that members should be grouped by political family rather than national delegation is one of the main reasons why the Parliament has developed politically as an institution«.

The majorities created by the political groups are the real motor of the European Parliament decision-making process. Since the beginning, the presidents of the different groups have created a coordination structure, which has been called the Conference of Presidents since 1993. The decisions of presidents of the groups have constantly shaped the policy of the institution.

The majorities created within and between the groups are essential for political decisions to be reached. This is especially the case in all those areas where a qualified majority is required, such as the election of the President of the Commission, the signature of international treaties/agreements (including enlargements), annual and multiannual budgetary decisions, ordinary legislation (at second reading) and all the consent procedures.

Since 1979 one can identify from the interviews three specific phases in the development of the system of political majorities:

- The enlarged family
- *Grosse Koalition* or Grand Coalition
- Variable majorities

11 A Statement was issued by the Council on October, 21st 2010, denouncing the Framework Agreement, which could modify the balance of power established by the Treaties, https://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/genaff/117238.pdf.

12 Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better

Law-Making, OJEU L123, 59, 12.05.2016, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2016:123:FULL&from=en>.

13 PRIESTLEY (2008).

A. *The enlarged family*

In the ten to fifteen years after the first direct elections, the leaders of the political groups worked together to find solutions that were acceptable to almost all groups. »Decisions were not predetermined by the big political families but taken in a quite consensual way. This was also possible as all the political groups had the common objective to fight to get more power and every single opportunity was used to reinforce the EP role in the EU Institutional triangle«.

In the 1980s, there were six main political groups. All were quite homogenous internally with diverse ideological approaches. In addition to the two largest groups, EPP and PSE, there was a Gaullist group, composed mainly of French members, a powerful conservative group almost exclusively made up of British MEPs, a sizeable communist group, and a liberal group. At that time, »cooperation between political groups was possible on many subjects, often with majorities beyond the traditional right/left division«. Several decisions were taken within this framework, from setting up committees of inquiry to determining the way in which the Parliament should be managed, as well as questions of substance. It was also possible to discuss and elaborate legislative texts on important areas, something naturally favoured by the limited powers of the Parliament.

B. *Grosse Koalition or Grand Coalition*

The friendly atmosphere of the 1980s faded with the strengthening of EP legislative competences »and the two largest groups assumed a greater role in driving the Institution, marginalizing the smaller groups«. This approach was favoured by the presence, in the two largest groups, of a strong component of German MEPs from the CDU, CSU and SPD, who were used to this approach at the national level. In reality, to give continuity and stability to the EP, if the Parliament was to take advantage of its growing legislative role, there was little alternative. The *Grosse Koalition* reached its

high point in 2014 (before and after the elections) with the agreement between European People's Party (EPP) and the Socialists & Democrats (S&D) to reject any candidate for President of the European Commission proposed by the European Council who had not been put forward by one of the European Political Parties before the European elections (the so called *Spitzenkandidat* procedure).

The solidity of the agreement of the two major groups, supported by most of the other groups, convinced reluctantly the European Council to appoint Jean-Claude Juncker, candidate of the EPP, group with the highest number of seats after the elections. The *Grosse Koalition* consolidated after the appointment of J.-Cl. Juncker. Monthly meetings of the Leader of the EPP and S&D group with the President of the Commission¹⁴ were the motor of the activity of the Commission, contributed to set the political agenda and outline the solutions for the most sensitive dossiers.

However, such an institutional alliance could not eliminate political differences. There had always been a tension in the search »to maintain a balance between political confrontation and cooperation for legislative issues«, with a strong desire of some not to underplay the right/left difference. One way of doing this was by looking for majorities with other groups. Here the Liberals in particular have played an important part as a swing group that »allied itself with the centre left on the environment and civil rights, but with the centre right on defence and economy and thereby exerted a strategic effect on the positions of the Parliament«. In liberal eyes, the group represented a »genuine microcosm of the political landscape of the centre parties in Europe, assuring balance and multiplication between the political traditions of the south and the north«.

C. *Variable majorities*

The day after the EP elections in May 2019, it appeared clear that the alliance between EPP and S&D was no longer sufficient to guarantee a qualified majority in the European Parliament,

14 Those meetings of the parliamentary majority of the Commission were called G5, as they grouped the President and Vice President of the Commission, the Leaders of the two largest groups and the President of the EP.

with the two parties no longer enjoying more than 50% of parliamentary seats. This situation is not entirely new, as several interviewees pointed out. Since the first direct elections, three Presidents of the EP were not chosen by the EPP or PSE, as a result of an agreement between the two groups: there have been two Liberals, Simone Veil and Pat Cox, and one European Democrat, Lord Henry Plumb. If we exclude Simon Veil, who was elected by a large horizontal majority, »the other two Presidents were elected by an alliance of the EPP with the Liberals and the Conservative parties«.

However, it now seemed to be becoming a much more deliberate policy choice. Already in the run-up to the 2019 elections, »the S&D group decided to abandon the principle of the ›Grosse Koalition‹ and regain more autonomy to mark its differences by the EPP. This led to the end of the structured majority and the creation of more variable majorities, linked to the different proposals«. This experiment has become the rule in the EP elected in 2019. To reach a qualified majority, necessary for the most significant EP decisions, the contribution of other political groups is now essential. Vote Watch¹⁵ shows how, in the first six months of the 2019 Parliament, the RENEW group (former ALDE or Liberal group) was the group that was part of the winning majority for the largest number of votes (more than 90% of decisions), while S&D and EPP were both below 90%. Two other groups follow: the Greens were in the winning majority close to 80% of the time and surprisingly, given its size, the GUE or Left Unity group was in that majority for 70% of decisions. The variable majorities that have emerged in the first part of this parliamentary term show that a left coalition wins on environmental issues and home affairs, while the centre right dominates on trade and foreign policy.

Another element to keep under consideration is the unity of each political group. If in the past, the traditional political groups shared many of the same values and showed a high level of unity especially on important votes, the EP elected in 2014, and even more so the EP elected in 2019, has a much less monolithic feel to it. National parties

often adhere to a political group more for functional utility than because they share a strong ideological view. In addition, the political groups are increasingly pragmatic and ready to increase their size even if this leads to lesser ideological cohesion. In conclusion, the groups appear less united than before, which necessarily has an impact on the search for majorities.

Clear majorities will, however, be crucial as soon as the EP has to decide on financial resources for the next programming period, to authorize important measures like supporting the fight against Covid-19 and to approve future legislation. The existence of different possible majorities will make the work of the Commission harder, as on each single measure they will have to find the majority ready to support its proposals. At the same time, if the EP does not express a clear majority, it will lose influence, giving more space to the Council and the Commission.

V. Concluding remarks

The points raised above give a simple overview of how individual MEPs have perceived their influence on the institutional balance within the EU. However, it is important not to end without mentioning a topic touched on by nearly all the interviewees, namely the institution's impact on legislation, with the development of co-decision, or what is now called the ordinary legislative procedure, and the consent procedure for international agreements.

A few examples can be cited of the kind of balances that the institution was able to help to achieve. The EP had a decisive role in shaping the REACH legislation for chemical products.¹⁶ The »legislation, adopted, takes into account the needs of big and small companies as well of those of final users. The legislation made Europe a world leader in the sector. An outcome that could not have been reached without the MEPs' contribution and the cooperation among the major political groups«. Similarly, in the negotiations leading to the adoption of the Services Directive,¹⁷ the compromise

15 Vote Watch: European Parliament: current and future dynamics, January 2020, <https://www.votewatch.eu/blog/european-parliament-current-and-future-dynamics/>.

16 Reach Regulation 1907/2006 OJ L 396, 30.12.2006, p. 1.

17 Directive 2006/123/EC on services in the internal market OJ L 376, 27.12.2006, p. 3.

proposed by the responsible committee, »to find a balance between liberalising the production but maintaining a monopoly on transport and distribution of energy«, facilitated the agreement. And the EP could also be very influential on international agreements. No national parliament would have been capable »of stopping an international agreement signed by all Member States and the EU with the US Government to transfer personal

data from the Society for Worldwide Interbank Financial Communication (SWIFT) to the US territory«. The EP rejected this agreement and only approved it after »substantial modifications were introduced in the balance between security and protection of civil rights«.



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