

## How is working the EP? Procedural evolution in Europe and in the US

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### Abstract

The empowerment of the European Parliament (EP) within the European institutional system is a well-known fact for political scientists. Nonetheless, the role that the organization of the parliamentary work has played in this evolution remains understudied. Scholars have developed theories searching to explain the organization of the legislative institution and the impact of procedural rules in the case of the United States (US) Congress, whilst these questions are largely neglected by EP's specialists. Apparently though, EP's trajectory was significantly influenced by its rules of procedure, which have allowed the assembly to optimize its competences and internalize reforms established by the treaties. This paper aims at contributing to the theorization of EP's institutional dynamics in the light of the North-American case. In order to do so, we will present the state of the art of theories concerning the evolution of US Congress legislative organization to apply it to the procedural changes which have impacted EP's development. This article is based on a qualitative analysis of the revisions of the EP rules of procedure from April 1979 to July 2010.

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The empowerment of the European Parliament (EP) within the European institutional system is a well-known fact for political scientists. Moreover, it is widely recognized that the EP has been an active agent which has adapted strategically to its changing environment by changing its working methods to maximize its influence in the EU system (Rasmussen and Toshkov, 2011). Nonetheless, the role that the organization of the parliamentary work has played in this evolution remains understudied. Surprisingly, very few studies have focused on the EP rules and their internal consequences. For a long time, the organisational structure of the supranational assembly has been neglected but even “modern analyses of the EU very rarely delve into the internal operating procedures of the European Parliament beyond a brief description of the hierarchical structures” (Kreppel, 2002: 91). Research has been done on the parliamentary commissions, the role of rapporteurs, the supranational party structure, the organization of the political groups and the individual MEPs (Bowler and Farrell, 1995; Hix, Noury, Roland, 2007; Hoyland, 2006; Kaeding, 2004; Scully, 1998; Settembri, 2006; Tsebelis and Garrett, 2000) but the rules affecting the daily work of those actors have been largely overlooked (Williams, 1995). Several authors described the rationalisation process of the functioning of the EP in a general way (Corbett and al., 2007; Costa, 2001; Judge and Earnshaw, 2008) while others analyzed some internal rules to focus on specific issues such as the development of a party structure at the EU level (Kreppel, 2002), the definition of a political group (Settembri, 2004), the impact of treaty reforms on the EP (Kreppel, 2003) or the changes in EU inter-institutional relations (Hix, 2002). Finally, legal experts paid some attention to the internal rules but in a quite descriptive way, to study the development of a European parliamentary law (Clinchamps, 2006). Whereas the EP rules of procedure structure the *de facto* operation of the institution and determine the rules of the game for its actors, it has not been studied in a systematic way.

In the United States, on the other hand, legislative studies have produced a fertile literature on Congress procedures. Several authors stress the importance of the procedural rules in the evolution of parliaments as well as for the legislative process (Cox, 2000; Hedlund, 1985; McKelvey and Ordershook, 1984; Norton, 2001; Shepsle and Weingast, 1984). They also show that changing a legislature’s procedural rules and organizational arrangements can have important effects on individual members (Davison, Krassa and Reagan 2005). Different theories have been developed to explain the factors that influence procedural choice and legislative organization from an endogenous point of view. Since the 1990s, central theories in this area can be identified to three main rationalist approaches of the foundations of congressional organization: distributive, informational and partisan.

The distributive perspective sustains that the organization of Congress depends on the distribution of potential electoral gains among members. These gains come from policy benefits, target expenditures, committee assignments and other legislative mechanisms sensitive to constituents. A logic of cooperation and exchange is then developed, in which members collaborate with each other in order to secure their own interests (Shepsle and Weingast, 1994). The committee system with its jurisdiction rules contributes to this arrangement as it institutionalizes mechanisms for exchanging support. Distributive committee's analyses include, for instance, the weight of sequencing, with committees holding power at the last stages of the legislative procedure having more chances of affecting the outcome and influencing antecedent policy actions (Shepsle and Weingast, 1987). They also explore the committee-floor relationship, asserting that committees are not representative of the assembly as they are composed of members interested in a particular policy area due to its level of demand in their district. Measuring economic, social and geographic data across time from different districts, Adler and Lapinski (1997) find evidence that many standing committees are composed of members with high demand constituencies. In other words, congressmen are motivated to serve economic interests of their electoral basis and they are best able to do so if they are members of committees which affect their constituencies. In this theoretical perspective, rules of procedure matter and any change of the rules is seen as an endogenous attempt to reduce transaction costs (Shepsle and Weingast, 1984).

Informational theories oppose the individualistic, conflictive and demand-side view of the distributive models. They argue legislative organization is based on an informed process of decision-making where collective objectives are added to individual rational behavior. These theories assume congressmen are not perfectly informed or are asymmetrically informed about policy procedures, contents and implications (Gilligan and Krehbiel, 1989). Some members, for instance, may be uncertain or have private information on the consequences of a public policy on their constituents. Additionally, if members' preferences cannot be considered homogenous, committees cannot be seen as unitary actors. Therefore, institutional arrangements such as organizational rules may reflect the need to acquire and disseminate information in addition to the need to solve distributional issues. The high level of specialization achieved by committee members is representative of their search for better information (Gilligan and Krehbiel, 1990). Informational and distributive perspectives are not necessarily contradictory, since even legislators seeking distributional gains benefit from reducing uncertainty about the consequences of a given policy (Gilligan

and Krehbiel, 1989). But the reduction of uncertainty also corresponds to a collective good that enhances the efficiency of rules.

Following the collective regard and the majoritarian premises of informational theories, partisan perspectives stress the role of the party (more precisely, the role of the majority party), which acts in order to secure control of the legislative agenda for its members. The party uses its hierarchical positions to influence legislative rules in the sense of its political priorities and its legislator's welfare. Caucuses represent therefore a factor of extra-legislative organization which contributes to institutional equilibrium (Cox and McCubbins, 1994). Parliament stabilization is explained by the fact that party members are bound by caucus rules, and the costs of defection are considered more important than the benefits. Intra-party cooperation is a means of securing gains as they organize procedural coalitions and determine the agenda, providing then intralegislative and electoral benefits. In this view, parties, not committees, are the main actors of legislative production, as the latter act according to the ends of the former. Along with distributive assumptions, the party-based model sustains that agenda control is partially decentralized, but subjected to strong and efficient regulatory efforts of party leadership. According to this conception, rules are determined endogenously: members make their own rules, or, more precisely, rules are entrenched by majority party caucus (Cox and McCubbins, 1994, 2005).

More recently, alternative explanations to legislative organization have been developed, mostly based on the aforementioned assumptions. Adler and Wilkerson (2008) present a theory centered on law-making capacity, arguing that committees exist to maintain and increase legislative production. The "governing theory" derives from the distributive perspective in the sense that it assumes that behavior of lawmakers is grounded in their electoral motivations, therefore in their will to satisfy demands of the voters. Nevertheless, it implies a collective commitment in improving institutional performance. In this sense, committees are conceived to assemble consensus on essential issues, which in turn benefits especially the majority party. Even though, committees, rather than parties or specialists, are the primary agenda setters in Congress. Institutional productivity and individual electoral interests are directly related to committees' efficiency in dealing with collective governing issues.

This article aims to explore the explanatory potential of such theories in the case of the EP. What drives legislative organization at the European level? What are the core problems MEPs are trying to solve through their choice of rules of procedure? We argue that the reforms of EP's institutional design are related to efforts in reinforcing its place in the

political system of the EU through legislative efficiency. Therefore, Adler and Wilkerson's governing theory seems to provide useful roots of analysis of the EP procedural evolution, considering the particularity that leading organs may replace committees in the role of agenda setters. In order to test this hypothesis, we analyze the internal challenges of the rationalization of the EPs' functioning with the aim of determining its impact on three key elements: the leadership structure and political groups, the deliberation in plenary sessions and the behavior of MEPs. We will demonstrate that the global "efficiency" of parliamentary work became an objective in itself, taking precedence over parliamentarians' freedom. Those modifications led to a pacification of the debates in plenary session and committees through the growing power of hierarchical structures and political groups, the reduction of possibilities for debate and finally a stronger control of the behavior of the individual MEPs. We will also show that some actors however maximize their interests through the revisions of the rules but that there are multiple lines of division around those reforms: small vs. large groups, leaders vs. backbenchers, groups vs. non attached members. This article is based on a qualitative analysis of the revisions of the EP rules of procedure from April 1979 to July 2010. More particularly, it focuses on the modifications adopted in the aftermath of the Maastricht treaty. Indeed, they deal in a detailed manner with the internal organization of the assembly, while the main objective of the previous revisions had been to strengthen the role of the EP within the EU regime (Kreppel, 2002 and 2003).

### **Consequences of procedural changes in the EP**

Since 1979, the internal rules have been modified many times. Without taking small changes into account, there have been 17 editions of the rules in 30 years (1979-2009); after the Lisbon Treaty entry into force the rules were once again revised on the 15<sup>th</sup> of June 2010. In order for the institution to adapt to its new competences, the document became increasingly precise but also very complex. While in 1979 it counted 42 pages, 54 rules and 2 annexes, in 1988 it had 167 rules and 9 annexes; currently it counts 216 articles and 20 annexes, and in total 239 pages. It is impossible to retrace and analyze all the changes in a systematic way here. We concentrate therefore on the evolution of the articles focusing on three aspects of the "rationalization" process the EP has experienced: the power and coordination role of the leadership structures and political groups, the organization of debates and the individual rights of MEPs.

## *The growing power of the hierarchic bodies and political groups*

The leadership structures of the EP consist of the President, the Bureau and the Conference of Presidents (of the groups)<sup>1</sup>. They take all the important decisions related to the organization of work in the assembly and are responsible for the main part of the “rationalization” of its functioning (Corbett and al., 2007; Costa and Brack, 2011).

The Bureau is responsible for matters regarding the budget and administration. Composed of the President of the EP, the 14 Vice-Presidents and 6 Quaestors elected by the assembly, it has seen his responsibilities gradually growing. Until 1993, it was only in charge of financial and organizational questions concerning the EP and its bodies, questions concerning civil servants and Quaestors, the nomination of the General Secretary and the preparation of the preliminary budget. Since then, its responsibilities have been extended to the conduct of the proceedings and questions concerning the behavior of Members within all EP’s buildings, the responsibility to authorize meetings of committees away from the usual working places, hearings and fact-finding journeys by rapporteurs and the implementation rules relating to the status and the funding of the European political parties (article 23, 2010).

The President has equally seen his powers extended. In addition to his representative function and his prerogatives in the legislative and budgetary process, he plays a leading role in the EP by chairing the plenary sessions, the Conference of Presidents and the Bureau. He also ensures the respect of the internal rules through his supervision on whole activities of the assembly and its bodies. During the first half of the 6<sup>th</sup> legislature (2004-2009), his influence has been extended by an interpretation of the rules intended to fight against abuses of the rules by some Eurosceptic MEPs. The then President of the EP, Hans-Gert Pötering, asked the Committee on Constitutional Affairs to think about this issue. Article 20 stipulates from now on that the President has all competences to preside over the deliberations of the EP and includes a list of procedures at his disposal to ensure the respect of the rules. This list includes in particular, the right to put an end to an excessive use of motions, explanations of vote and requests for separate, split or roll-call votes when the President “is convinced that these are manifestly intended to cause and will result in, a prolonged and serious obstruction of the procedures of the House or the rights of other Members”. Consecutively, the President also has the authority to decide about sanctions for deputies in case of non-respect of those rules of

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<sup>1</sup> One could also mention the Quaestors, the Conference of the Presidents of the parliamentary committees and the Conference of the Presidents of the delegations that play a less important role. As the role and prerogatives of those three organs have not much changed, we do not take them into account in the analysis.

conduct. Now, the President can, after having heard the parliamentarian, decide the appropriate penalty, which he has to notify to the MEP and to the presiding officers of the bodies, committees and delegations on which he sits, before announcing it to the whole chamber (article 153, 2009). As a consequence, the probability for a MEP to be punished increased, limiting thereby the filibustering strategies in which some had become expert.

The Conference of Presidents is the most important body in the hierarchy of the EP and the one that has evolved the most, in terms of its composition, its functioning and its areas of responsibility. Before the implementation of the Maastricht treaty and the resulting reform of the rules of procedure (1993), the enlarged Bureau (predecessor of the Conference of Presidents) was composed of the Bureau, the presidents of the political groups and two non-attached MEPs (without the right to vote). Its function was to decide all questions concerning the internal organization of the EP, notably to establish the agenda of the plenary sessions and the relations with other institutions and bodies (article 24, 1991). The 1993 reform of the internal rules changed its composition. It became a more restricted body, consisting only of the President, the presidents of the political groups and, since 2007, one non-attached MEP. In addition to the above-mentioned responsibilities, it also has now to take decisions on the organization of Parliament's work and matters of legislative planning and organizing structured consultation with European civil society (articles 24 and 25, 2009). The reform of 1993 also changed its decision-making process by introducing the principle of a weighting of the votes depending on the size of the groups: the rules of procedure precise that if no consensus is reached, the Conference of Presidents proceeds to a vote subject to a weighting based on the number of Members in each political group (article 23 1993; article 24 2010).

While those modifications can appear to be minor, in fact the role of the different hierarchical bodies became much more important in order to face the increasing heterogeneity of the EP and to ensure a political coordination of its activities on the highest level (interview with a civil servant of the Committee on Constitutional Affairs, 23 June 2010). These evolutions equally contributed to reinforce the influence of the two largest political groups on the activities of the EP. With the exception of temporary tensions (as during the 1999-2004 legislature), the socialist and christian-democrat groups (today groups S&D and EPP) share de facto the presidency, have the majority of the vice-presidents and can impose their point of view to the Conference of Presidents as a result of the weighted votes.

Political groups, at their turn, have seen their influence growing at the expense of the rights of non-attached or individual deputies. Since the creation of the assembly, the groups have been recognized by the internal rules (1953) as a result of the deputies' decision

to seat according to ideology rather than nationality. For a long time, their prerogatives remained nevertheless limited. Before the direct election of the EP, the political groups were mentioned by less than 10 articles of the internal rules; many of their rights were also granted to a small proportion of MEPs who did not belong to any group and therefore were relatively free to stay independent. Since 1979, the number of paragraphs mentioning the groups grew rapidly whereas the proportion of individual MEPs necessary to exercise the same rights as a group increased gradually. Today, the candidates for the presidency of the EP can be proposed by a group or have to be supported by 5.33% of the deputies (40 deputies out of 736); this proportion was 5.05% in 2004, 4.59 % in 1994 and only 2.44% in 1981. It is the same concerning the right to ask oral questions with debate: this is granted to a committee, a political group or 5.33% of the deputies and, again, in 1994 the same right was open to 4.59% of the deputies and only three years earlier to 1.35%. Some rights are even exclusive to groups: this is the case for the possibility to appoint permanent substitutes to the parliamentary committees (article 187, 2010). This type of rule penalizes individual deputies but particularly those which do not belong to any group, the so called 'non-attached members'. Since the 80's, they have seen their rights diminished step by step as the political groups, in particular the two large ones, strengthened their role in the functioning of the parliament and as the conditions to form a group became more constraining. Since 1999, it is impossible to form a group with deputies from only one member state. Back to 2009, the threshold is 25 MEPs, coming from one quarter of member states – i.e. 7 in the EU at 27. Because of their position on the national political scene and of their ideological orientations, most of non-attached members are unable or not willing to join a group or to fulfill the conditions to form one. Usually, they do not succeed to act in a coordinated way which excludes them from some rights opened to a certain number of MEPs (interview with a civil servant of the EP, 6 June 2010).

Additionally, more than any other actors, non-attached MEPs have suffered from several specific restrictions over time. First, their speaking time was formally reduced by the reform of the internal rules after the Maastricht treaty. Before, a first part of speaking time was divided between all the groups and a second part was divided in accordance to their respective size; the non-attached members were considered as a group in this division, and given the diversity of their opinion, their speaking time was doubled. In 1993, this principle of double speaking time was abolished. Secondly, their representation in the Conference of the presidents has been weakened in a two steps process. The two largest groups have, first, claimed a reduction of the representation (without the right to vote) of the non-attached



members in the Conference of presidents: since 2007, they can send only 1 delegate instead of 2 previously. The latest reform of the internal rules (15 June 2010) reduced even more the scope of this right: in the past, the non-attached members could choose their delegate but from now on President of the EP appoints this representative. Officially this was decided to put an end to the incapacity of the non-attached members to choose a representative. But as a matter of fact, it is more than likely that the President will choose a compliant deputy (interview with a civil servant of the EP, 6 June 2010). Finally, the non-attached members are also kept away from the very strategic meetings of the ‘coordinators’, i.e. the meetings of the group members in charge of each parliamentary committee. Since the beginning of the 7<sup>th</sup> legislature (2009), the meetings of coordinators, which used to be informal, are mentioned in the internal rules. The status of a coordinator being reserved to the members of the groups, non-attached members are excluded from those meetings which play a key role in the work of the committees and notably in the distribution of legislative reports and in the codecision procedure (interview with a civil servant of the EP, 6 June 2010).<sup>2</sup>

### *The gradual reduction of time for debates*

The debates in the EP might be seen as formal and soporific due to multiple constraints such as multilingualism and interpretation, the technical nature of the texts, the absence of a clear-cut division between majority and opposition, the strong specialization of MEPs, the predominant role of committee work and the importance of informal negotiations between the political groups (Costa, 2001). However, some of those constraints result from MEPs’ decisions: being under pressure to be as efficient as possible, the EP and its members tend to allocate its time strategically (Rasmussen and Toshkov, 2011) and to avoid filibustering. Through the years, they have given a priority to ‘efficiency’ and pragmatism of the deliberation over its liveliness and spontaneity.

First, one must note that the organization of debates has always been much codified in the EP. The speaking time is meticulously counted and precisely divided between political groups, non-attached members, rapporteurs and representatives of the Council and the Commission. The agenda mentions the names of the scheduled speakers for each topic as well as the time allocated to each of them. Any oral presentation is strictly timed, a speaker can take the floor only on invitation of the Chair and no interruption is allowed. The deliberation

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<sup>2</sup> In practice, some presidents of the committees allow the non-attached members to participate as observer while others are opposed to this (interview with a civil servant of the EP, 6 June 2010).

at the supranational level gives thus the unflattering image of a series of 30 seconds to 3 minutes prepared speeches, sometimes read and strictly timed. As the positions of the groups are known before the plenary (following the preliminary work of the committees) and as members cannot answer to the comments of their peers, they are generally not encouraged to follow all the debates carefully<sup>3</sup>. Since 1979, the organization of the plenary work has undergone an evolution toward a strict limitation of speaking time. The bulk of the agenda is now occupied by legislative debates that are held in two steps after the presentation by the rapporteur and the possible interventions of the Commission and Council. A first section comprises the list of speakers representing the political groups in order of size, and a non-attached member. The rest of the time is granted by the President to Members at their request, for speeches of maximum one minute – which is very short compared to all national chambers. At the end of the debate, the rapporteur and the representatives of the Commission and the Council may again take the floor to respond to interventions that have been made (article 149, 2010).

The internal rules provide members with various possibilities to get more speaking time, but they were gradually limited. Interventions on the minutes and on the agenda, procedural motions – such as a motion on the inadmissibility of a matter, the request for referral back to committee, the closure and the adjournment of a debate or a vote and the suspension or closure of the sitting – and personal statements do allow individual members to speak in plenary session. However, because these opportunities were abused by some members, their use has been gradually controlled and reduced. Speaking time attached to it was decreased from three to one minute per MEP. Similarly, points of order must now be limited to one minute (cons 3 previously) and members are required to quote the precise rule they refer to.

Question Time is another opportunity for open debate. This procedure was introduced consecutively to the accession of the United Kingdom (1974), modeled on the question time of the House of Commons. It allows any member to ask a question orally to representatives of other institutions, which are required to respond immediately. Again, a trend towards reduction of debate is noticeable. Whereas until the early 1990s, Question Time could be followed by a one-hour discussion at the request of a political group or at least seven members (article 61, 1991), this possibility was abolished with the reform of the rules after

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<sup>3</sup> The broadcasting of the plenary sessions often gives the impression of inattentive MEPs, as many come and do not always wear their headsets in the room and are thus unable to follow the speeches in languages they do not understand.

the adoption of the Maastricht Treaty. Moreover, whereas the regulation still stipulated in 1991 that any Member could ask one question to the Commission, one to the Council and one to the Ministers for Foreign Affairs, but also a supplementary question on each item appearing on the Question Time agenda, the post-Maastricht Reform (1993) restricted the number of supplementary questions to 2 for the Commission and one for the Council. The current rules set a maximum of 2 additional questions for each member (Annex II, 2010).

The reform of EP's functioning after the Maastricht treaty also entailed the disappearance of the possibility for any MEP to submit a question on a specific point to the enlarged Bureau, which decided the status of the question (for oral answer during question time, oral without debate or for written answer). A period of half-day maximum was devoted to these questions in each session, during which the questioners could speak for 10 minutes (article 59, 1991). This procedure existed alongside the 'oral questions with debate', which could be asked by a group, a parliamentary committee or at least 7 members. In that case, the rules provided that the authors had 10 minutes to ask the question and, after the answer, other Members could intervene once for a maximum of 5 minutes. Both procedures were time consuming and therefore modified. Currently, the only remaining possibility is for a group, a committee or at least 40 members to put an oral question with debate. One of its authors has then 5 minutes to speak (instead of 10 minutes before the reform) and the answer cannot lead to another question anymore (article 115, 2010).

The 'debates on topical and urgent subjects of major importance' were an important part of the EP deliberation in the 1980s. They were a distraction for MEPs who were lacking concrete legislative powers. It allowed them to defend a more important role for their assembly in the European public sphere. In the 1990s, MEPs could, within this procedure, discuss freely for 3 hours on 5 topics during each session. These debates were much more spontaneous and passionate than the legislative ones, because of the issues under discussion (prospects of European integration, political situation in the Member States or third countries, violations of human rights, armed conflict, natural disasters...) and because of the reduced level of constraint on speaking time. In addition, the adoption of final resolutions is by simple majority of voting members, not by a majority of all members (currently, 378 on 754), as it is often required for legislative and budgetary matters. The opinions of speakers were therefore less constrained by the need to preserve the compromise negotiated behind the scenes between the political groups. To give more space to legislative debates, and to support the increase of the EP's legislative powers, these debates were replaced in 2002 by the 'debates on breaches of human rights, democracy and the rule of law', limited to three subjects and one

hour time. To partially compensate for the reduction of free debates due to this reform, the rules introduced the extraordinary debates, for one hour on a major issue of EU policy (rule 141, 2010).

Vote explanations are a last opportunity for members to intervene in plenary. But here again, the time allowed by the rules has been changed so that an individual MEP has now 1 minute instead of 1 minute and a half and a political group has 2 minutes instead of 3. In addition, in 1994, an amendment to the rules allowed the President to place vote explanations after the final vote, rather than before it. Most members were in fact using these explanations to continue a closed debate and convince their peers of the relevance of their position or amendments. Today, as most members leave the chamber or cease to listen right after an important vote, members who wish to explain their vote have often to do it in an almost empty hemicycle, which strongly discourages them from doing it.

The increasing restrictions on public speaking and the strict supervision of the plenary work eventually deprive the public deliberation of its interest. As the deliberation process first takes place in committee and group meetings, MEPs tend to speak rather briefly in plenary session, without real dialogue between them (Abélès, 1992). Voting time presents a different picture of the plenary: most MEPs are present in order to vote on legislation that has already been discussed in plenary. They vote so recklessly on texts that are barely presented that any external observer can generally not understand what is being discussed. Deliberation is more visible during the discussions that follow some speeches from a representative of the Commission or during the adoption of an initiative resolution, but these activities only occupy a limited place on EP's agenda. The House is also livelier during Question Time as members are overwhelmingly present, but again, the rules of procedure do not allow them to discuss freely among themselves or with representatives of other EU institutions.

This situation raises the recurring controversy on the functioning of the EP between the advocates of a more open and spontaneous debate on the one hand and the leadership structures and the chairs of the major groups on the other hand. The latter believe that this is the price to pay to ensure the effectiveness of the EP's actions in the inter-institutional relations and to fight against filibustering moves of some MEPs. In order to address the sterilization of the debate, while discouraging filibustering, the possibility of one-minute speeches was introduced in the internal rules in 2002. Like in the US Congress, the agenda includes 30 minutes during the first part of each session for any member to intervene during one minute on any subject that he considers important (article 150, 2009). The 2009 reform also introduced the "blue card". This new procedure allows any member to raise his blue card

to ask the Chair the permission to intervene on another member's intervention, if the latter agrees and if the Chair believes that this is not likely to disrupt the debate (article 149, 2009).

### *A strong impact on MEPs room for maneuver*

The pacification of the deliberation results from an increasingly rigorous supervision of the conduct of parliamentary sittings. Even if, according to Richard Corbett *et al.* (2007: 56), "individual 'back-bench' members do play a considerable role in the life of the Parliament", the analysis of the internal rules' evolution shows that members have chosen to sacrifice their individual freedom to favor the 'efficiency' of parliamentary work and the ability of the EP to take advantage of its formal powers. Several developments testify this trend.

First, as mentioned earlier, the rights of the non-attached members were gradually reduced while the proportion of individual MEP necessary for certain initiatives or rights has been slowly increased. Similarly, potential filibustering tactics through the use of procedural motions were gradually limited.

Secondly, the rights available to individual members have also been weakened. Today, the rules guarantee any parliamentarian five types of rights. The first is the right to ask a written question to the other EU institutions. It constitutes an important resource for any representative, whereby he may obtain information or control the action of the Commission and the Council, or prove to his constituents or national party that he is active on a key issue (Raunio, 1996). Therefore, members tend to make an extensive use of it. An individual MEP can also intervene during Question Time, but the number of questions and supplementary questions has been progressively reduced. Thirdly, an MEP has the right to submit a vote explanation, by written or orally; as explained above, since 1994, the Chair may decide to postpone oral arguments after the final vote. An MEP can also make a personal statement, that is to say, speak to correct his own declarations or refute statements made against him during the debates. Finally, a parliamentarian can make a written declaration and table a motion for resolution. Although it rarely leads to the adoption of a resolution by the EP, this type of personal initiative allows a member to enjoy a certain publicity, especially vis-à-vis his constituents.

These rights are important and give some freedom to individual representatives in the EP. However, in the early 1990s, every member enjoyed two additional rights, that were much more essential: the right to table amendments in plenary session (article 69, 1991) and

to request referral back to committee (article 103, 1991). Today, only the responsible committee, a political group or at least 40 Members may table amendments in plenary session (article 156, 2010). An individual member can only table amendments in committee, provided of course that he is a member of that committee (article 195, 2010). Similarly, the request for referral back to committee, which leads to the suspension of the debate and the vote in plenary, is now the sole prerogative of a political group or at least 40 members (article 175, 2010). MEPs have thus been deprived of two major instruments of influence on EU legislation and EPs work.

The behavior of the individual members in the Chamber has also undergone a process of rigorous supervision since the 1980s. Usually, the deliberation of PE is relatively polite, especially compared to most national chambers. The tone is friendly and the speakers are rarely interrupted by their peers. The Presiding officers rigorously apply the internal rules and do not hesitate to interrupt speakers who exceed their allocated time, engage in personal attacks or reopen closed debates. The nature of the relationship between MEPs also contributes to the serenity of the deliberation as, unlike members of national parliaments, they do not know each other very well and do not constitute a political class with all it implies in terms of complicity but also rivalries and conflicts. Of course, it happens that members raise their voices or make some attacks towards their political opponents. This tendency increases since the growing number of Eurosceptic MEPs who loudly express their opposition to European integration encourages others members to adopt a sharper style. But as on average members seldom speak and when they do, it is on topics they are experts in. They thus tend to favor the clarity of their speech and do not engage on comments on other members statements (Costa, 2001, p. 412).

Since the end of the 80s, the control of MEPs has become a recurrent issue in the rules reforms. Indeed, several events have created a great agitation in the chamber and led, almost systematically, to a tightening of the rules of procedures concerning the behavior of MEPs in plenary. The first reform took place after two specific events. In October 1988, the Reverend Ian Paisley, leader of the Democratic Unionist Party of Northern Ireland, created a scandal in the House during the visit of Pope John Paul II. He interrupted the speech of the Pope, shouting “Death to the antichrist!” and waved placards “Pope John Paul II Antichrist” before being struck by another member and expelled by the Chair with the applause of his colleagues.<sup>4</sup> The following year, members of the Technical Group of the European Right

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<sup>4</sup> Video of this even can be found on : <http://www.youtube.com/watch?v=hRxtkIEhY8w>

provoked unrest in the chamber to protest against their exclusion from the leadership structures of interparliamentary delegations, leading to a brawl and the suspension of the meeting. The MEPs voted a strengthening of the powers of the Chair to face such situations: after the revisions, he could to call to order the troublemaker twice before ordering his immediate expulsion from the Chamber and proposing a vote of censure against him. If this proposal was accepted by the EP, the MEP was then excluded for a period ranging from 2 to 5 days.

Despite this reform, other events disturbed the conduct of the proceedings. In 1995, many MEPs reacted vehemently to the announcement by French President Jacques Chirac to resume nuclear testing in the Pacific. In June 1995, MEPs from the left and the greens decided to put the decision of Jacques Chirac on the agenda for “debate on topical and urgent subjects of major importance” and on the 11<sup>th</sup> of July, Jacques Chirac, at the time also President of the European Council, had to intervene in front of the EP to take stock of the French presidency. He had to speak in an assembly that turned into a forum for protest and suffered a large frond of some Members, especially Greens, Communists, Socialists and Radicals<sup>5</sup>. Dozens of deputies interrupted the start of the presidential speech but the President of the Assembly could not do anything to stop the protest. For the first time in the history of the institution, a significant proportion of the members refused to applaud the speech of a Head of State or Government. But given the scale of the protest, no action was taken to punish the troublemakers.

A second important reform took place after some incidents caused by the growing presence of members opposed to the Union within the EP, especially during debates on European integration. The plenary session of January 2005 was particularly troubled when British and Polish Eurosceptic MEPs came with large banners opposing the vote of the European Constitution and refused to lower them when asked to do so by the Chair. Their action disrupted the launch of the official information campaign on the EU constitution, causing unrest, fights and scuffles inside and outside the chamber and eliciting an internal investigation.<sup>6</sup>

Such incidents led to a new revision of the rules to further regulate the behavior of MEPs. Leadership structures of the EP became aware at that time that they were defenseless

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<sup>5</sup> Jean Quatremer gave this title to his article in the newspaper *Libération*: “Cries, protest, banners and even a few blows, it is a real parliamentary bronca that welcomes Jacques Chirac to take stock of the French Presidency” (“Cris, protestations, calicots et même quelques horions, c’est une véritable bronca parlementaire qui a accueilli Jacques Chirac venu dresser le bilan de la présidence française”), *Libération*, 12 July 1995.

<sup>6</sup> N. Smith, ‘Vote no’ protest sparks EU scuffles, *The Telegraph*, 13/01/2005.

against the perpetrators of so-called 'violent behavior'. Existing sanctions (exclusion from the plenary and, as a matter of fact, denial of voting rights) were rarely implemented as they interfered with the exercise of the representative mandate of parliamentarians.<sup>7</sup> The rules governing the conduct of the members were thus deeply reformed in 3 key aspects: the principles that MEPs must comply to, the available sanctions in case of trouble and the authority competent to impose them. For the first time in its history, the EP included in its rules of procedure some principles that members must respect: "Members' conduct shall be characterized by mutual respect, be based on the values and principles laid down in the basic texts on which the European Union is founded, respect the dignity of Parliament and not compromise the smooth conduct of parliamentary business or disturb the peace and quiet of any of Parliament's premises" (article 9, paragraph 2, 2010). Members have however been cautious during the reform, adding that the application of this paragraph shall in no way detract from the liveliness of parliamentary debates nor undermine Members' freedom of speech. An Annex was also added to the rules to further clarify the interpretation of this provision. It makes a distinction between visual actions, which may be tolerated provided they are not offensive and/or defamatory, remain within reasonable bounds and do not lead to conflict, and those which actively disrupt any parliamentary activity whatsoever. The appendix also extends the Members' responsibility to all their staff, who must now respect the rules of conduct applicable to parliamentarians and that, in all EP buildings (Annex XVI, 2010).

New penalties were also introduced. If immediate measures remain unchanged (call the member to order and possible exclusion from the Chamber, if necessary with the assistance of the ushers), the President may now, in case of serious disturbance or disruption of Parliament, punish the troublemaker without submitting to the EP a proposal to vote a censure. The range of sanctions is broad: reprimand, forfeiture of entitlement to the daily subsistence allowance for a period of between two and ten days, temporary suspension from participation in all or some of the activities of Parliament or any of its bodies for a period comprised between 2 and 10 consecutive days (without prejudice to the right to vote in plenary), submission to the Conference of Presidents of a proposal for the Member's suspension or removal from one or more of the elected offices held by the Member (article 153, 2010). But the application of these sanctions is still controversial. It is indeed difficult in

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<sup>7</sup> The same kind of events as in 2005 happened again during the plenary session of December 2007, during the proclamation of the Charter of Fundamental Rights as some Eurosceptic MEPs shouted down the speakers and called for a referendum on the Lisbon treaty.



practice to identify all the troublemakers in case of collective protest. Moreover, some group leaders, including Daniel Cohn-Bendit (Greens/European Free Alliance), are against the physical exclusion of MEPs, in the name of democracy. It was not until February 24, 2010 that sanctions stipulated in the internal rules were applied, when Nigel Farage, leader of the UKIP and the British co-chairman of Europe of freedom and democracy (ELD), insulted in plenary session the President of the European Council<sup>8</sup>. Farage, who had already been reprimanded on another occasion and refused to apologize for his remarks, was sanctioned by the President of the EP. He lost his allowance for a period of 10 days, which represents a bit less than 3,000 Euros.<sup>9</sup> However, according to his statements to the press, he is unlikely to change his behavior despite the penalties.

EP leaders seem actually unable to stop outrageous behaviors of some members, such as those from the radical left or right, separatists or Eurosceptics<sup>10</sup>. These members argue that they were elected to assert, by any means, their positions and ideas, and not to comply with what the authorities expect from the members. The sanctions have had only a limited impact on them. If the penalty consists of reprimands or financial sanctions, they bring to the troublemakers the publicity they seek (Brack, 2011). If it goes beyond, and takes the form of a ban on participation in the proceedings, it makes those MEPs martyrs of the European integration and raises the question of the legitimacy of excluding regularly elected members from the room. It is indeed in reference to excessive constraints on MEPs' behaviors and to the fundamental principles of representative democracy, mainly freedom of speech, that these members usually justify their excesses.

## Conclusion

The analysis of EP's rules through time shows that a constant flow of reforms has occurred since the mid-eighties in the name of the 'efficiency' of the parliamentary work. Leadership structures have seen their power extended over time: the President, the Bureau and the Conference of Presidents have nowadays a much more important role than some years ago and are best able to secure internal political coordination. This evolution has strengthened the influence of the two major political groups, while the individual role of MEPs has

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<sup>8</sup> Video of that plenary session is available on : <http://www.youtube.com/watch?v=byPLwI5AQvY>

<sup>9</sup> See the Letter of Jerzy Buzek to Nigel Farage, 02/02/10.

<sup>10</sup> Again, on the 24 November 2010, a Eurosceptic MEP shocked the EP by insulting another member with a Nazi slogan, revealing the impotence of the EP President to face that kind of behavior and raising once again the controversy of the rules and their application. See for instance G. Durand, «Des propos fascistes choquent le Parlement européen», *Le Soir*, 24/11/10.

significantly decreased, specially the rights of non-attached members. Accordingly, the speaking time in plenary sessions has been slightly reduced over the past three decades. Deliberation has always been strictly organized within the EP, but lately debates are even more controlled and rationalized. These evolutions were envisaged in order to increase the ability of the EP to take advantage of its formal powers. Their impact is contrasted: on the one hand, the EP is becoming a more homogenous assembly, less representative of ideological pluralities; on the other, it is supposed to be more capable of expressing itself in face of the Council and the Commission.

The complexity of EU's institutional structure and legislative system has led the EP to adapt its procedures in order to intervene more efficiently in the communitarian process. This would increase its chances to have its positions taken into account by other institutions and, therefore, contribute to increase its role in the supranational political system. The bipartisan coalition model, reflected in the EP, show that members of both parties have reasons to work together and care about the collective performance of the assembly. This does not mean MEPs do not try to promote their constituents' interests; however, in the face of non-discretionary legislation, which is a rule in the EU level, the efficiency of the institution as a whole is a better artifact to show voters they are doing their job. Ultimately, the search for efficiency within the EP results from a distributive concern expressed in a collective way, as Adler and Wilkerson's governing theory predicts. Reinforcing the role of the institution means to reinforce the individual image of MEPs vis-à-vis their voters.

This exploratory analysis indicates that the governing theory has much to contribute to the understanding of the evolution of EP's organizational rules in the sense of efficiency and law-making productivity. Some points remain however to be studied. The main one is the role of committees, conceived as central agenda-setters in Adler and Wilkerson's formulation. Governing theory suggests that the committee system was conceived to increase parliamentary lawmaking capacity. Future work should then investigate the extent to which the EP relies on its committees and what is the balance of power between committees and hierarchical bodies. It is possible that, in the European case, leading organs replace committees as the actors responsible for defining political priorities. Instead of delegating formal responsibilities for managing issues to committees, the EP would primarily delegate this task to leaders, especially to the Conference of Presidents (of the groups). The postulate according to which the objective of increasing the legislature's decision-making capacity motivated the formation of a permanent issue-based committee (Adler and Wilkerson, 2008)

may be extended, in the case of the EP, to the reinforcement of its political leadership powers. If this is the case, partisan perspectives should also be considered in the study of EP's rules.

The use of US theories of congressional organization to explain EP's procedures show that the evolution of EP's rules results not only from external challenges, like the adaptation to the dynamic EU system and the demand for more powers, but also from internal factors, such as EP's institutionalization, the strengthening of efficiency and power struggle. Therefore, rules go beyond the organizational level and affect the distribution of power and authority within the institution (Sheingate, 2010). Further work is needed to establish at what point American literature can reinforce our comprehension of these mechanisms underlying the daily work at the EP. Even if most of these theories are rational-choice oriented, they can provide useful bases from which EP studies could be developed, also through the inclusion of ideational and cultural elements. While theoretical formulation on these issues is absent in European legislative studies, Congress studies can surely act as inspiration resources if scholars are attentive to environmental and institutional sensitivity (Martin, 2008).

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