

Contested Delegation:
The European Parliament and Comitology

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1 Introduction

The problem of delegation is at the heart of politics. Why do democratically elected bodies delegate decision-making to executive bodies? To what extent does this delegation occur and how much discretion are delegates given? What are the implications of this delegation for democratic processes and political accountability? These questions of delegated decision-making have been of prime interest to political science since its very beginning and the object of much theorizing and empirical research. Particularly, the decision to legislate in a legislative body or to delegate decision-making to a smaller executive and/or expert decision-making body constitutes a central problem for democratic political systems. With each issue on the agenda, decision makers decide whether to base an item solely on legislation or to delegate the detailing of it to smaller executive and/or expert decision-making bodies. While involving efficiency gains, delegation also comes with a cost. Delegating the specification of legislative decisions to executive bodies and experts implies a loss of democratic control by legislators. The link to a direct legitimation by the electorate becomes more intermediate.

In this paper, we focus on a specific aspect of delegation in the European Union: the Council assigning decision-making power to the Commission when implementing Community legislation (comitology) and the role of the European Parliament under this system. It has been the Council, that - as a legislator - delegated implementing powers to the Commission to flesh out details of legislation, while at the same time guaranteeing that the Commission cooperates with member states in this specification of decision-making in the comitology committees. The Parliament's role in comitology, despite some smaller changes, has for a long time remained very limited. Only with the introduction of codecision did the EP's role in comitology substantially change. For one, the decision whether to legislate or delegate became an ever more politically contested issue between the Council and the Parliament. Secondly, if a decision was taken for delegation the contest for power evolved around the question of which comitology procedure to use. Each of the various procedures entails a different distribution of competences between

member states, the Commission and – most recently – the EP. It is this contest for power about comitology and in comitology that arises between the Council, the Commission and the EP, the underlying conflicts and their institutional outcomes which are at the center of our analysis.

Two explanations may be offered for the choice of legislation or delegation to comitology and, if delegation, for which comitology procedure. On the one hand one may propose an efficiency argument and argue that choosing delegation over legislation saves political transaction costs of bargaining over the details of legislation and having to engage in high side-payments to accommodate diverse interests and build a majority or a consensus. Adopting only framework legislation and delegating *ex post* rulemaking and implementation powers facilitates agreement in the legislative stage (Epstein and O'Halloran 1994, 1999). On the other hand the choice of delegation and comitology rules favoring specific institutional actors may also be interpreted as a contest for power between actors who see to maximize their institutional interests and, thereby, their influence over policy outcomes. The introduction of co-decision, which obliges the Council to negotiate with the EP as an equal partner in legislation, implies a relative loss of legislative power of the Council. With a more important role of the EP in legislation, the Council may seek to use more delegation to comitology, in which the EP until the turn of the century only played a marginal role, in order to maximize their own control over decision-making and to compensate for the relative loss of decision-making power. However, the EP is not helpless. It reacts by mobilizing all possible means in order either avoid delegation altogether or to limit its scope and if delegation to comitology is chosen, to strengthen its own role in comitology. As it succeeds in doing so, its opposition to the use of comitology decreases. In this article we focus on this second explanation for the choice of delegation to comitology, the specific rules of comitology procedures and the recent changes in the distribution of competences in the procedures applied in comitology.¹ We focus on this strand of explanation because we are interested in the

¹ We have developed this functionalist, transaction cost saving, argument for the use of delegation in Héritier, Moury, Bischoff and Bergström, 2009

analysis of shifts of power linked to the institutional change of codecision and its implications for comitology rules.

We organize the paper as follows: We first offer some background information on the Commission's implementing powers and the comitology system. We then develop a rational institutionalist argument based on Knight's (1992) distributive bargaining theory. In the application of the theory we go on to describe why which actors favor specific rules governing comitology and explain why delegation should increase after co-decision was introduced. We proceed to analyze how and why the EP's attitude towards comitology changes as a function of its increasing role in legislation and, indeed, in comitology. Subsequently, the hypotheses derived from the general argument are subject to an empirical test.

2. Setting the Scene: European legislation and Comitology

The issue of delegating implementing powers to the Commission has always been an issue of power contestation, i.e. a contest over the distribution of competences between the Commission, the Council and – increasingly so – the EP. The EU legislative process, i.e. the process of creating laws and regulations at the EU level, provides for the possibility both of legislation and delegation. Legislation is *directly* based on some provision of the treaty and specifies the rules and measures within the legislative item in question. Delegation consists of delegated rule making authority to the Commission or, more rarely, the Council, and relates *indirectly* to a treaty provision. The balance between legislation and delegation and the appropriate forms of control over delegation has been a long contested issue between the Commission, the Council and the Parliament.

The Council has traditionally been the dominant actor in legislation. Depending on the Treaty base of the issue in question, it may accept or reject legislation proposed by the Commission on the basis of unanimity, or a qualified majority vote. It may only modify the Commission's proposal on the basis of unanimity among member states. The Council is able to exercise considerable control over the Commission's implementation of policy through so-called comitology procedures (see below). It must be noted, moreover, that when the legislation takes the form of a directive, which requires to

achieve a particular result without dictating the means of achieving it, member states are left with a certain amount of leeway as to the exact rules to be adopted. The European Commission, for its part, acts to initiate legislation by making proposals to the European Council (as well as to the Parliament in many areas of policy after the introduction of codecision). It is also charged with fleshing out the details of regulations and implementation, in cooperation with the Member states. Finally, the EP has traditionally been the weakest of the three, but has recently seen quite considerable increases in its competences. Originally, the Parliament only had the right to be consulted on legislation; neither Council nor Parliament needed to take heed of its opinions, and typically neither did. However, it came to have some control over the European Union's budget, and, after the Maastricht Treaty, a greatly expanded role in the legislative process. The introduction of the legislative procedure of "codecision" put it on a much stronger legislative footing in many policy areas, where it became effectively co-equal with the Council. The Parliament has also had responsibility for supervising the Commission from the beginnings of the European Union. Formally, the Commission is responsible to the Parliament rather than the Council; the Parliament may call individual Commissioners to account, and may vote to dismiss the Commission. However, the Parliament has only moderate effective influence over the comitology system (although its influence has increased over time).

Much important policy in the European Union is conducted on the basis of delegation to the Commission (or other policy actors). Many Directives and Regulations are relatively loosely specified, and provide the Commission with the power to arrive at rules and decisions that will lend specificity to the broad heads of legislation. Article 202 (ex. 145) of the Treaty spells out the right of the Council to "confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down." The Council also has the power to "impose certain requirements in respect of the exercise of these powers," provided that these rules are "consonant with principles and rules to be laid down in advance by the Council, acting unanimously on a proposal from the Commission and after obtaining the Opinion of the European Parliament."

These Treaty articles very clearly identify the right to confer implementing powers as resting with the Council, rather than with the Commission and Parliament. Second, they provide the Council with explicit authority to lay down the conditions under which the Commission exercises its delegated authority. Third, they do *not* specify those requirements, instead merely requiring that they be consonant with rules and principles laid down previously by the Council. These Treaty rules (which date from the Single European Act) state that the Commission has to cooperate with oversight procedures (1961). The requirement that procedures be consonant with “rules and principles to be laid down in advance” is a later innovation, recognizing an acceptance by the Council that it should choose among a limited number of fixed procedures rather than creating ad-hoc solutions as it saw fit. Nonetheless, the Treaty texts preserve a high degree of flexibility over choice of procedure.²

There are three main types of committee procedure. First are advisory committees, the weakest variety, in which the committee’s vote is not binding on the Commission. However, the Commission is supposed to take “utmost account” of the committee’s opinion, and inform the committee of how it has lived up to this obligation.

Second are management committees. If the Commission adopts an implementing measure that a management committee disagrees with, the Commission must forward the measure to the Council, which may then modify or annul it. In one variant of this committee form, the Commission must also suspend the measure while it is on appeal to the Council.

Finally, within regulatory committees, the Commission is only able to adopt its envisaged rules if the committee explicitly approves. Should the committee not approve, or not be able to agree (on the basis of a qualified majority), then the Commission has to submit a proposal to the Council almost as if it were a proposal for legislation.³ If the Council, however, cannot reach a decision within a certain period of time, the Commission can proceed as it had originally planned. These committees have come to be

² In contrast to legislation, the Treaty does not specify which procedure should be associated with which policy area. Second, it reserves a primary role for the Council in determining which procedures should be applied in a given instance.

³ In contrast to a normal legislative proposal, the Council has no right to be consulted.

used in situations where the Commission was adopting long term implementing rules rather than short term measures.

A more restrictive variant of the regulatory and management committees, which is no longer applied since 1999, not only had a *filet* but a *contre-filet* (double safety net). Under this procedure, the Council could stop the Commission from acting on the basis of a simple majority vote, even after the expiry of the relevant period, and even if the Council could not agree on an alternative measure.

Regarding the power of the EP in comitology, three important reforms were adopted. In a nutshell, the reform of 1999, the Second Comitology Decision, eliminated the *contre-filet* varieties of both management and regulatory procedures. The Parliament obtained the right to be informed about planned implementing measures of legislation adopted under co-decision. It was also given the right to vote a resolution to oppose the measure if it considered that the Commission had exceeded its implementing power. However, the Commission was not bound by this resolution. Finally, if the regulatory committee delivers an unfavorable opinion or no opinion at all, the Parliament must be informed of the Commission's proposal to the Council. If the Parliament opposes the proposal, it informs the Council, which may "where appropriate in view of any such position" act on the Commission's proposal. As measured by its demands the EP was very discontent with the outcome of the Second Comitology decision in 1999 (Bergström 2005:249-285; Bergström and al. 2007; Bergström and Héritier 2007)⁴. However, since then, the EP showed "sudden willingness to reconsider the lifelong demand for the abolition of the regulatory procedure" (Bergström 2005:302). This shift, the author argues, is explained by the fact that the EP has been willing to trade its opposition to the existence of the regulatory committee against the removal of the *contre-filet* mechanism⁵.

⁴ This has been also acknowledged by one of our interviewee from the EP: "Parliament under the old system (i.e. 1999 decision) was very reluctant to delegate any power to the Commission, because once we delegate, that is gone for ever, we had no say. (...) we were not happy with the previous deal: we do get the information, we have a right to look at it and we could say that we think and we could object, but basically they would ignore us" Interview with a Member of the EP, constitutional committee, 18 October 2006.

⁵ In its final report on the Proposal for a Comitology decision, the Committee on Institutional Affairs advised the MEPs to amend the proposal so as to abolish completely the regulatory committee procedure.

In 2004, the EU Constitutional Treaty incorporated important changes regarding comitology. While the Constitutional Treaty contained the usual provision for adopting implementing acts through the conventional method via comitology committees, there was also the creation of a novel instrument called “Delegated European Regulation” (Article I-36). This Delegated Regulation would allow the Commission to implement legislation without necessarily going through comitology committees. Instead, a number of other control mechanisms were foreseen: first, the delegation of powers to the Commission might be limited in time (using a so-called “sunset” clause) and could be withdrawn at the initiative of another legislative institution; and second, if and when the Commission intended to adopt such a Delegated Regulation, the EP and the Council could object to the adoption within a prescribed time limit.

Given the fact that the Constitutional Treaty has not been ratified, a Second Comitology Decision was revised in 2006. The 2006 Decision creates a new regulatory procedure (‘regulatory procedure with scrutiny’) whereby the Commission has to submit its draft implementing measures to the regulatory Committee and to both the Council and the EP, even if it receives a positive opinion from the committee. Both institutions have the possibility to block the adoption of the proposed measure, sending the Commission back to the Committee. If rejected the Commission has to present a new draft measure or a new proposal for legislation. (Bergström 2005: 249-285; Bergström and al. 2007; Bergström and Héritier 2007). The EP, which saw its competencies considerably increased with this decision, was satisfied with the result⁶.

Table 1: Type of comitology decision

Comitology decision	Authority of the EP
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But after debate in plenary this amendment was reformulated to insist on the abolition of the regulatory committee *unless* the contre-filet was deleted (Bergström 2005:300).

⁶ As one of MEP declared: “the EP is happy with the new deal, we approved it by a large majority (...) However, he goes on “This deal maybe is not a peace treaty, it may only be a cease-fire, depending on how it works” (Interview with a Member of the European Parliament, 18th October 2006);

July 1987	No competences
June 1999	<p>1. For all committees, under co-decision: Parliament has the right to be informed on a regular basis of the activities of the comitology committees and may vote a resolution opposing the measure if it considers that the Commission had exceeded its implementing powers. In such cases, the Commission is required to "re-examine" the draft measure although it is not compelled to accommodate Parliament.</p> <p>2. In the regulatory committee, in co-decision: if this committee delivers an unfavorable opinion or no opinion at all, the Parliament must be informed of the Commission's proposal to the Council. If the Parliament opposes the proposal, it informs the Council, which may "where appropriate in view of any such position" act on the Commission's proposal.</p>
October 2004 (not ratified)	Delegated Regulation would allow the Commission to implement legislation without necessarily going through comitology committees. Instead, a number of other control mechanisms were foreseen: first, the delegation of powers to the Commission might be limited in time (using a so-called "sunset" clause) and could be withdrawn at the initiative of another legislative institution; and second, if and when the Commission intended to adopt such a Delegated Regulation, the EP and the Council could object to the adoption within a prescribed time limit.
July 2006	1. For the new Regulatory procedure with scrutiny (for quasi-legislative measures ⁷), in co-decision: The Parliament has the right to block the Commission's decisions if they believe the executive body has exceeded its mandate agreed in the legal act, or that the measures are outside the scope of the legislation, or, finally, that they do not respect the subsidiarity or proportionality principle. The Commission can respond either by presenting new draft measures or a new legislative proposal. If Parliament does not oppose the implementing measures in the time provided, the Commission can adopt them.

3. Theory and hypotheses

3.1. Distributive Bargaining theory

Institutions are defined as man-made rules of behavior facilitating and restricting social interaction (North 1990). They guide interaction in the accomplishing of joint tasks, such as legislation and delegation. The rules governing legislation and delegation

⁷ A quasi legislative measure is when the basic instrument provides for the adoption of measures of general scope and those measures are designed to amend non-essential elements of the basic instrument, inter alia, by deleting some of those elements or by supplementing the instrument by the addition of new non-essential elements.

allow the involved actors to incorporate the expectations of the actions of others into their own decision making (Lake and Powell 2002). Actors assume that the other actors will more or less abide by the rules and/or in case of non-compliance will be sanctioned.. Institutional rules, therefore, constitute an important source of information in forming expectations as to how the other actors are likely to behave. As such they affect the way actors form their strategies and choose their actions, and thereby influence the outcome of a conflict (Knight 1992:17; 49).

Multiple institutional rules that subsequently guide political interaction may be developed in order to deal with a cooperation and coordination problems. Although institutional rules produce gains or an increase of the overall benefits by allowing for cooperation, these benefits are not evenly distributed and thereby are linked to conflicts of interests among actors. The final form of an institutional rule is considered as a product of the conflict of interests among the relevant actors (Knight 1992 27). This begs the question of which actors systematically benefit from an institutional rule and how these actors obtained these benefits; and, finally, how is the underlying distributional conflict resolved.

The distributional conflict is resolved through an implicit or explicit bargaining process (Lax and Sebenius 1986, Osborne and Rubinstein 1990:1). In explaining the outcome power takes center stage. The (ex ante defined) power of an actor is reflected in an actor's capacity to influence the feasible alternatives available to the other involved actors⁸ (Knight 1992:41/42). This in turn depends on the credibility, risk aversion, and time preferences of actors (Bacharach and Lawler 1981, Raiffa 1982; Knight 1992: 131/132). Put differently, the more credible the restrictions stated by an actor, the lower his risk aversion, the less pressed for time an actor is and the better the fall-back position

⁸ First A can restrict B's feasible alternatives by precluding choices that are in B's interests. Second, A can expand B's feasible set by adding alternatives that are in accord with B's subjective interests but are contrary to B' real interests. Thrid, A can ail to act such a ways that it prevents certain alternatives from becoming available in B's feasible set. This failure can be a deliberate withholding of certain preferred alternatives, or it can merely be a failure to remove a constraint that prevents the possibility of making such choices. Fourth, A can alter B's valuation of the available alternatives by threatening a retaliatory action that would make an available alternative less attractive. Fifth, A can change B's understanding of the alternatives, by manipulating B's preferences" (Knight 1992:41/42)

in case of a bargaining failure, the more powerful will she be in negotiations and shape the bargaining outcome (Elster 1989; Maynard-Smith 1982:153, Knight 1992:127).

In the empirical assessment of our hypotheses we will focus on the first aspect of who benefits from and therefore favors specific rules or more specifically how the rules benefit or (fail) to benefit the EP. Elsewhere we show how the conflict over the change of institutional rules evolved over time and why it produced specific distributive outcomes (see Héritier, Moury, Bischoff and Bergström 2009)

3.2 Distributive Bargaining Theory Applied to Comitology

Our primary focus in this article is on *choice over procedure*; i.e. the battles over whether or not delegation or legislation should be employed, and which committee should be used..

We start from a set of empirical assumptions about actors' preferences, and seek to explain how these have changed over time *as a function of the particular institutional context*. We show how actors use their bargaining power *under given institutional rules* in order to shift the existing formal division between legislation and delegation. We argue that a particular actor's preferences over delegation will be a function of whether the actor has more ability to influence policy through delegation or through legislation. We furthermore predict that the degree to which a specific actor's preferences can prevail (in a setting where different actors have different preferences) will depend upon its bargaining power *under existing institutional rules, i.e.* its ability to impede or veto policy in order to change the division between legislation and delegation and the rules of delegation (Farrell and Héritier 2003; Bergström, Farrell and Héritier 2007a and 2007b).

3.2.1 Assumptions

We assume that actors are competence-maximizers – that is, they will seek to ensure that policy will be enacted through procedures which maximize their own degree of control over the process of policy-making, and not through procedures where they have little or no control. In other words, actors' preferences over delegation will be determined by the degree to which they have effective influence over policy that takes place through

delegation as opposed to legislation. As a result, in policy arguments, they will press for the widespread use of procedures that favor their own interests, and for less frequent use (and, where possible, the alteration or abandonment) of those procedures that do not.

3.2.2 . Hypotheses and specification of empirical indicators

We argue that the preferences of the actors over delegation will be a function of the existing distribution of competences and given institutional rules and that those preferences change as the attractiveness (or lack of same) of pursuing legislation changes.

In the European Union, given the distribution of competences described in the previous section, we expect that the relevant collective actors will have the following preferences over delegation.

The *Commission* will in general prefer extensive delegation, without control of member states or with only minimal control from the member states. However, its preferences will to some extent depend on the availability of alternative forms of policy making through legislation. Much previous work on comitology has treated the Commission only as an implementer of policy; however the Commission has the ability to propose as well as to implement legislation. Thus, in periods when the Commission has difficulty in proposing legislation that will be successfully adopted, it may be more amenable to extensive member state controls on delegation than it otherwise would be. With the introduction of codecision, it would be more difficult for the Commission to get its proposed legislation passed, because the Parliament became a co-equal legislator in areas of co-decision and because the conciliation procedure enables the Council to amend the Commission proposals without unanimity. By contrast under delegation, the Commission does not have to share decision-making power with the EP.

We therefore expect:

H1: With increasing legislative competences of the EP, the Commission will be inclined to delegate more to comitology.

The *Council* will prefer extensive delegation to the Commission, along with extensive control by the member states. This allows it to minimize transaction costs by delegating authority to a specialized policy actor – but also to ensure that this specialized actor does not deviate from its preferences. It will, however, be strongly opposed to forms of delegation that might allow the Commission to escape member state control. With the introduction of the co-decision procedure, the Member states in the Council have suffered a relative loss of influence in the legislative procedure, while their influence in implementing the laws will remain untouched. Given our assumptions, we therefore expect that, with the introduction of co-decision, in order to protect their own institutional power, the Council will be more inclined to delegate more to the Commission's implementing powers. In other words, actors who have to share decision-making power with a new actor seek to avoid sharing this power, and delegation offers such a possibility.

H2: With increasing legislative competences of the EP, the Council will be inclined to delegate more to comitology.

As a matter of fact, we could reasonably expect that the increased willingness of the Commission and of the Council to delegate starts, and is even the most important, in the period following the signature of a treaty introducing co-decision and preceding its entrance into force – i.e. when the Commission and the Council anticipate the loss of power which will be the consequence of codecision but are still in a position to delegate without having to face the veto of the EP.

The *European Parliament*, finally, will prefer legislation over delegation since - until very recently - its competences in comitology have been very limited. We first expect that, with the introduction of codecision, the EP will be ever more willing than before to insist on legislation and to oppose delegation. According to the same logic we also expect that with the expansion of the competences of the Parliament in comitology the EP's opposition to delegation will decrease. More specifically, up to the Council decision of 2006, which substantially increases the competences for the Parliament under

comitology, the latter is expected to oppose delegation. After 2006 this opposition is expected to diminish.

H3.1: After the introduction of codecision, the EP will seek to reduce delegation to comitology.

And

H3.2 With increasing competences in comitology the EP will less oppose delegation to comitology.

Different types of comitology procedures imply different distributions of competences between Member States and the Commission (and more recently the Parliament). Only for one of these procedures – the regulatory procedure – the voting rule requires a qualified majority, as it in the case for adopting legislation in the Council. In the two others committees, the advisory and the management committees, the Member states only give their advice, or – alternatively - need to obtain a qualified majority to *reject* the proposal. Hence, according to our assumptions, we would expect that, if the Council wishes to delegate more to circumvent the EP, it would want to link the increase in delegation to the use of the regulatory procedure.

The Commission is of two minds as regards the type of comitology procedure. On the one hand it has a preference for a comitology procedure which implies the least control by the Council, i.e. the advisory or management procedures. On the other hand it also anticipates the Council's opposition to these types of procedure. It therefore proposes a procedure which has the greatest chance to be adopted by the Council. We therefore expect that the Commission links the increase of delegation to the use of the regulatory committees and submit.

H4: With increasing legislative competences of the EP, the Commission will be inclined to use more regulatory committees.

And

H5: With increasing legislative competences of the EP, the Council will be inclined to more use regulatory committees.

Following a similar reasoning we expect that the EP, will opt for comitology procedure with minimal control by member states because the Commission is expected to be more susceptible to the EP's influence⁹ and to have preferences closer to the EP than the Council's. Hence, we expect that the EP will favor the advisory procedure as long as it itself does not have competencies in comitology. Once the regulatory procedure with scrutiny under which it has competencies has been introduced, it will favor this procedure.

H6: Before the introduction of EP competences in comitology the EP opposes the use of the regulatory committee procedure. After the introduction of EP competences in comitology (regulatory procedure with scrutiny), it will favour this type of committee.

The different hypotheses and the variables are specified in table 2.

Table 2: Hypotheses: Empirical indicators of (dis)confirmation

Independent variable	Dependent variable	Empirical indicators Confirmation
<i>Signature</i> of a treaty introducing co-decision in a specified issue area	H1: Proportion of delegating legislations proposed by the Commission / all proposals in a specific issue area.	Increase of the proportion of proposed delegation
<i>Signature</i> of a treaty introducing co-decision in a specified issue area	H2: Proportion of delegating proposals approved by the Council / all delegating proposals	Increase of the proportion of delegating proposals approved by the Council
<i>Enter into force</i> of a treaty introducing co-decision in a specified issue area	H3.1: Proportion of delegating proposals approved by the EP / all delegating proposals	Decrease of the proportion of delegating proposals approved by the EP
Adoption of the 2006 Council decision	H3.2: Proportion of delegating proposals approved by the EP / all delegating proposals	Increase of the proportion of delegating proposals approved by the EP
<i>Ratification</i> of a treaty introducing co-decision in a specified issue area	H4: Proportion of regulatory committees in the proposal / all committees proposed	Increase of the proportion of regulatory committee proposed

⁹ Under the Treaties the Commission is under the supervision power of the Parliament.

<i>Ratification</i> of a treaty introducing co-decision in a specified issue area	H5: Preference of the Council for the regulatory committee as expressed in the common position/ all committees chosen	Increase of the Council's preferences for the regulatory committee
Adoption of the 2006 Council decision	H6: Proportion of regulatory committees favoured by the EP in its first reading / all committees chosen by the EP	Proportion close to zero before 2006; proportion (of regulatory committee with scrutiny) close to 100% afterwards

4) Empirical results

4.1) Data bases

To test our hypotheses, we built three different data bases and empirically validate our hypotheses from the three perspectives. If the results from the three different data bases should allow for the same conclusions, we would consider our hypotheses to be confirmed.

A first data base uses the EU's Eur-lex and Pre-lex on line catalogues, looks at *all* the Commission proposals based on a specific treaty article from 1994 onwards, and traces them until their adoption. Earlier works have convincingly shown that delegation varies across issue areas, and according to the voting rule in the Council (Pollack 2006, Franchino 1999, 2000). We select our items according to treaty article and keep the former two aspects constant. We first look at the Commission proposals and then study the final act. This allows us to grasp the immediate effect of the change in the independent variable, i.e. the introduction of a decision modifying the procedures for legislation and delegation. We also deliberately selected *non-amending* proposals only, i.e. entirely new items of legislation. This helps us exclude the "natural growth" of delegation in the sense that the need for legislative specification and adjustments increases as a factor of time. There is nothing "natural" in an increase of delegation in non-amending legislation. Both controlling for policy area, decision-making rule and excluding amendments will allow us to focus on the causal effect of the institutional change granting more EP competences in comitology.

Furthermore, we focus on binding legal acts of general application (direct or indirect through member states), i.e. regulations and directives . This is not to say that decisions are not an important component of European law¹⁰, but it is plausible to argue that they are different because their aim is *not* to produce law of general applicability¹¹.

The EU's legal data base, Eur-lex, allows us to scrutinize all Commission proposals in their *full text* that have been made since 1994, thus enabling us to investigate proposals over a period of fourteen years (up to 2008 included). This data base was supplemented by data from Prelex, another site which reports all amendments referred to the draft up to the final adoption for the same time range. In order to scrutinize the possible impact of an increase of competences of the EP, we selected one article of the Treaty under which the competences of the EP were changed in a Treaty revision. We chose article 130s, par.1 on environmental policy (which under the Amsterdam Treaty became article 175). Legislation based on this article is subject to QMV for the entire period under investigation, but with the Amsterdam Treaty the corresponding legislative procedure shifted from the cooperation procedure to co-decision. This article was chosen because it is one of few where the procedure changed from cooperation or consultation to co-decision in the Amsterdam Treaty¹². Moreover, a rather large number of non-amending Commission proposals (103) are based on this article during the period under study.

In tracing the process of legislative items based on this particular article, we focus on the following questions:

(i) Does the proposal include delegation of legislative powers to the Commission? In other words: does the proposal allow the Commission, in cooperation with the committee of Member states, to adopt secondary legislation based on basic legislation? More

¹⁰ In quantitative terms regulations and decisions are the most frequent instruments of EU law, accounting for 31% and 27% of the legal acts in force, respectively (see Bogdandy, Arndt et al., 2004: p. 98-99).

¹¹ Franchino similarly only includes non-amending regulations and directives in his study of delegation in the EU (Franchino, 2007).

¹² The Eur-lex data base does not allow us to analyze the changes introduced with the Maastricht Treaty.

specifically, we will first identify among all proposals those which include at least one provision which enables the Commission to adopt implementing acts in collaboration with a comitology committee. These provisions are mainly provisions enabling the Commission to amend or even to adopt annexes to legislation and to adopt decisions detailing the legislation. A proposal including such a provision will be classified as a “delegating proposal”, while a proposal not including such a provision will be classified as a “non-delegating proposal”. Our measurement of delegation differs from the one used by Franchino (2001). Franchino, based on Epstein and O’Halloran (1999), measures delegation by counting the number of delegating provisions and compare it to the total number of provisions per act. He defines delegating provisions as “any major provision that gives... the Commission authority to move the policy away from the status quo” (Franchino 2001: 31). This includes the provisions above, but also the management of resources, the opening of public procurements, etc. Hence, he uses a much broader definition of delegation than we do. In the light of our focus on the question whether legislators are willing to delegate legislative powers rather than to legislate themselves, we opt for a narrower definition of delegation.

(ii) We analyzed whether the delegating proposal is supported by the Council (in its common position) and by the EP (in its first reading). In cases where the legislator(s) adopt(s) the proposal but remove(s) the delegating provision the delegating act was codified as non adopted. We also scrutinized whether the legislator(s)’ amendments provide for changing the *scope* of the delegating proposal. We distinguish between the *scope* of delegation (the extent of substantive areas covered by delegation) and the *procedural control* (constraints imposed on delegation). In order to measure whether the legislator changes the substantive scope of delegation as originally envisaged in the Commission proposal, we count the number of amendments increasing/decreasing the extent of substantive areas covered by delegation. To give a few examples of empirical indicators restricting delegation: the EP or the Council introduce an amendment to define in greater detail the provisions under which the Commission is allowed to adopt implementing acts; it eliminates provisions extending to the delegation of specific issues. If there was a majority of amendments extending/restricting delegation, we code the proposals as extending/restricting delegation, respectively. If there is a balance between

the number of amendments restricting and extending delegation, we code it as “no change in the scope of delegation”.

(iii) For each proposal, we codified which committee was proposed by the Commission (in its proposal), the EP (first reading), the Council (common position) and which committee was eventually chosen. If two different committees were selected, which is seldom the case, the proposal was codified twice.

In a second step, we complement this first data base with a second one, based on the Parliamentary online archives (Legislative Observatory Oeil), which includes all full text of Parliamentary reports from the same period (1994-2008). Using this online resource, we built a data base scrutinizing all legislative reports deposited by the EP¹³ during the codecision procedure, i.e. reports introducing amendments to the Commission proposal, to the Council Common Position and to the joint text of conciliation. We only analyzed reports adopted during codecision procedures in order to control for the legislative procedure. Here we do not focus on a single treaty article but include all issue areas in order to increase the number of N. We applied a key word search to all reports adopted by the EP. With this second data base, we complement our first data base which , controls for the issue area, with a second one looks at the general trend in EP’s amendments across all issue areas. Hence, some of our findings are not specific to the area of the environmental policy.

More in detail, we identified the reports based on *delegating* Commission proposals, by selecting reports using key words such as “comitology”, “commitology”, “Council decision”, “committee”, ”implementation”. We then selected from these reports those which introduce at least one amendment aiming at restricting the scope of implementing powers delegated to the Commission, i.e. the extent of substantive areas covered by delegation as defined above. We further codify whether the EP introduced an amendment to change the committee(s) proposed by the Commission.

¹³ <http://www.europarl.europa.eu/activities/plenary/ta/search.do?language=EN>

In short, we compare the number of reports including amendments restricting the scope of legislation, or introducing a change in the proposed committee to the number of the total number of reports commenting on *delegating* proposals. We chose the report as a unit of analysis rather than the individual parliamentary amendments, in order to calculate the *proportion* of reports restricting delegation as a proportion of the total number of reports taking issue with a delegating proposal. Our data collection starts with the reports of 1994 when data became available from the internet site of the EP and extends to March 2008.

An important bias of the quantitative analysis is that the aggregate numbers do not distinguish between the importance of acts thereby running the danger of conflating ‘the most important areas of legislative decision making with administrative and routinized activity.’ (Golub, 1999: p. 737). Distinguishing between legislated and delegated acts in this study, and focusing on directives and regulations tackles part of the problem. In order to focus on legislation that was particularly contested, we complement our two first data bases by an analysis of the cases which go all the way to conciliation, i.e. those cases that were important enough for the Council and the EP to disagree upon up to the third reading.

Finally, in order to measure the statistical significance of the correlation between the timing of the introduction of a proposal/amendments (for example ‘before vs after the Amsterdam treaty’) and the use of delegation and a certain committee, we used the phi coefficient. This coefficient is a measure of the degree of association between two binary variables. Since we are dealing with a population rather than with a sample, the significance of this coefficient should not concern us. However, its sign and its value provide us with a statistical tool to interpret our results.

A) DOES CODECISION SPUR DELEGATION?

1. Empirical findings: Environmental Policy (Art.130s/175), 1994-2008

How does our first hypothesis *H1: With increasing legislative competences of the EP, the Commission will be inclined to delegate more to comitology* hold up to empirical evidence when we look at the development of the number of proposals based on article 130s (environment, QMV) in the periods before and after the signature of the Amsterdam Treaty (1997)? Figure 1 shows the development of delegating and non-delegating Commission proposals, and the development of the proportion of delegating proposals over the total of proposals from 1994 to 2008 (inclusive).

Figure 1: Absolute numbers of delegating and non-delegating legislative proposals, and proportion of delegating legislation proposals, N = 102 proposals

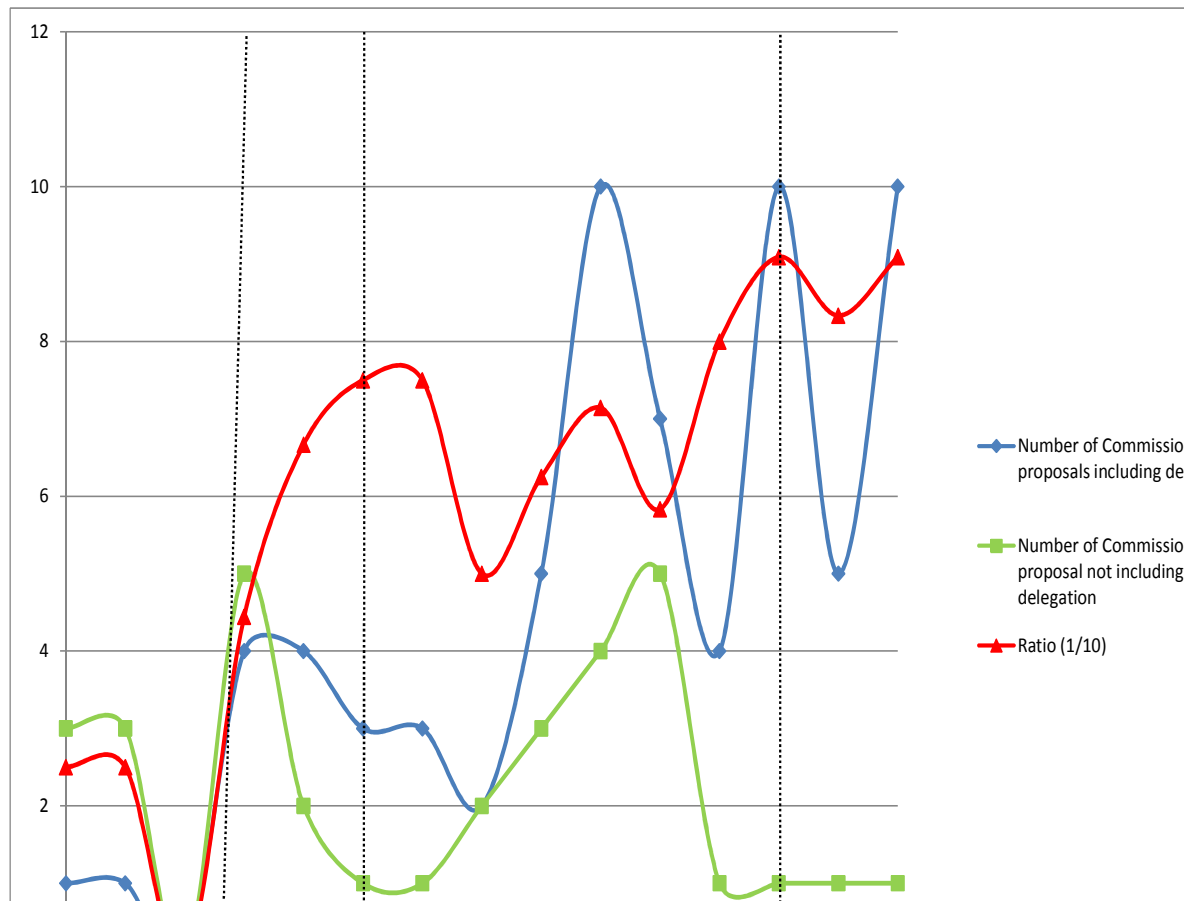
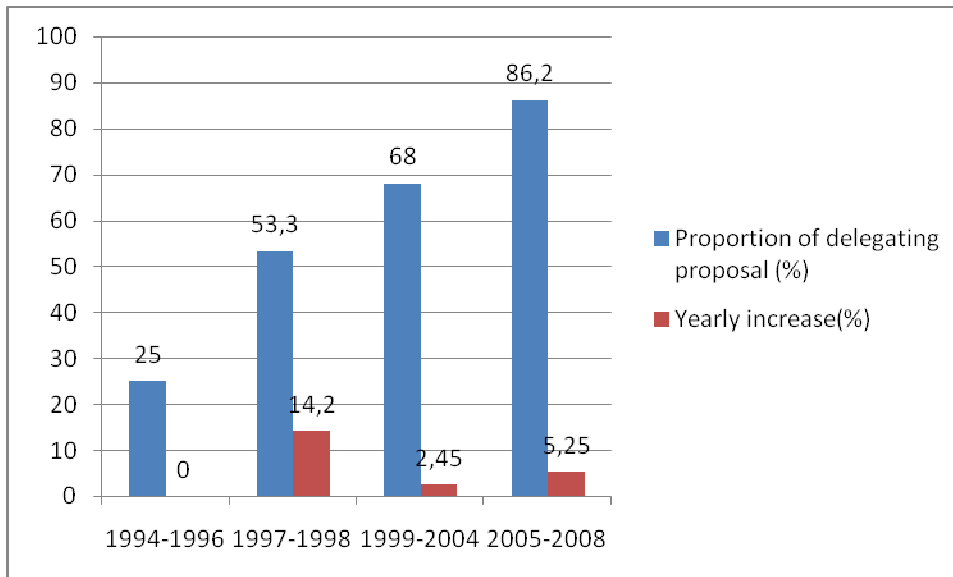


Figure 1 very clearly confirms our expectations. We do observe a strong increase in the proportion of delegating proposal (ratio 1/10) in the period 1997-1999. The proportion increases from 25% in 1994 to 68% in 1999, by a yearly increase of 14.2%. As expected,

we also observe an increase of this same proportion in the period following the introduction of codecision although this increase is more discontinuous and less important than the preceding one (yearly increase of 2.45%). We also observe a somewhat stronger increase in the period 2005-2008. Figure 2 presents the percentage, and the yearly increase, of delegating proposals.

Figure 2: Proportion of delegating proposals per period, N =102

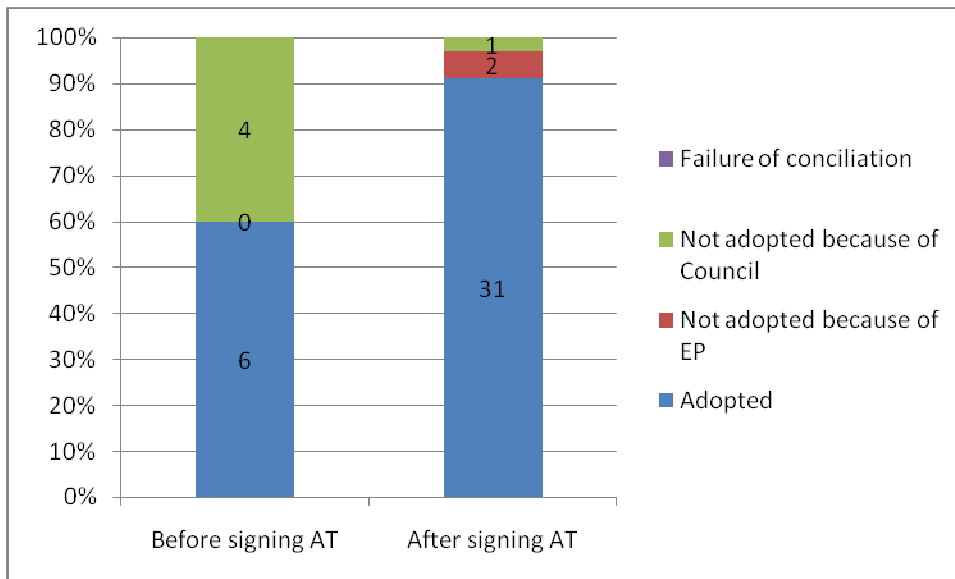


In sum, H1 is confirmed: we can show that, in environmental policy in view of the imminent increase of competences of the EP, the Commission has increasingly proposed to delegate implementing powers “to itself”, and that this increase is the most pronounced in the period between the ratification of the Amsterdam Treaty and its entering into force. Statistically speaking, we obtained a positive Phi coefficient of 0.26, as measured by the correlation between proposed delegation and the fact that this proposal was introduced after the Amsterdam Treaty.

In order to test *H2 With increasing legislative power of the EP, the Council will be inclined to delegate more to comitology* we further have to scrutinize whether the Commission’s proposals for delegation have been more frequently accepted by the Council after the signature of the Amsterdam Treaty. In Figure 3, we only focus on delegating proposals and classify the items according to whether the draft was passed by

the legislator, rejected by the EP or the Council¹⁴ or whether under co-decision it failed in the conciliation committee. Since it takes on average two years to adopt legislation, we only look at the proposals made before 2006. Although the N (proportion of adopted delegating proposals, proposed before 2006) here is quite small (44), it still clearly emerges that the *delegating* proposals which reached the Council after the signature of the Amsterdam treaty had a much lower chance to be adopted than the proposals which reached the Council in the following period. Before 1997 the Council rejected a delegating proposal in 4 cases out of 11 cases, while after 1997 the Council rejected a delegating proposals in only one case out of 34 cases. In other words, after the introduction of codecision the Commission was much more successful in seeing delegation accepted by the Council. Statistically, the Phi coefficient of correlation between ‘delegation accepted by the Council’ and ‘after Amsterdam Treaty’, for the population of delegating proposals reaching the Council is positive, and quite strong (+0.485). Hence our second hypothesis finds empirical support.

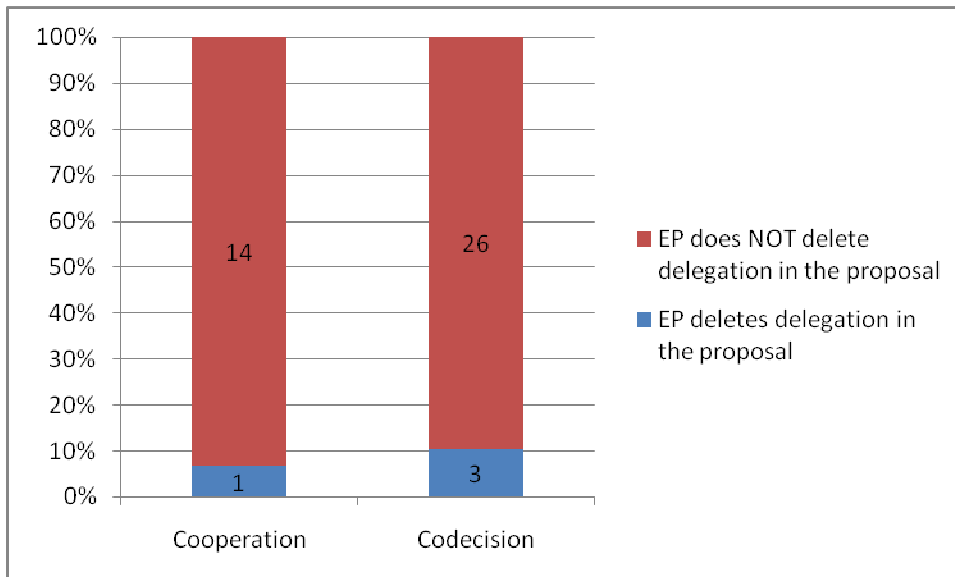
Figure 3: Proportion of adopted delegating proposals according to period and following the signing of the Amsterdam Treaty, N=44



¹⁴ When the Council failed to take a common position the draft proposal was considered as rejected.

However, Figure 3 also shows that the EP, in the great majority of the cases (93%¹⁵), does not oppose the adoption of delegating legislation although - under codecision - it technically could have done so. In Figure 4 we show the number of times the EP deleted the provision allowing the Commission to adopt an implementing act (in its first reading). We can see that it happened once under the cooperation procedure and three times during the codecision procedure. Although we do observe a slight decrease in the percentage of proportion of delegating proposals accepted by the EP during the codecision procedure in comparison to the cooperation procedure (from 93% to 90%), this decrease is very small. Consequently, the coefficient between the procedure in use and the EP's deletion of the delegation in the proposal is very weak (0.061), so that the effect of the procedure on the EP's unwillingness to accept delegation may be considered as inexistent.

Figure 4 Proportion of delegating proposals accepted by the EP, according to procedure in use, N=44



This disconfirms our hypothesis H3.1: *After the introduction of codecision, the EP seeks to reduce delegation to comitology*, as we had expected. The EP does not appear to be categorically opposed to delegation. As Figure 5 shows: 86% of the proposals including

¹⁵ Of the proposals getting to the council after the introduction of codecision.

delegation were adopted by the legislators (by the Council only under cooperation and the Council and the EP under codecision). This amounts to 1% more than all the non delegating proposals. Hence, in environmental policy, the legislators in a large majority of cases were willing to adopt delegating legislations¹⁶. This shows that the EP does not wish to prevent the adoption of delegating legislation on categorical grounds, but indicates a certain ‘pragmatism’ in accepting to delegate to an arena in which – until 2006 - it had no power of formal control to speak of.

Figure 5: Percentage of adopted delegating legislation based on article 130 s (N= 74)¹⁷

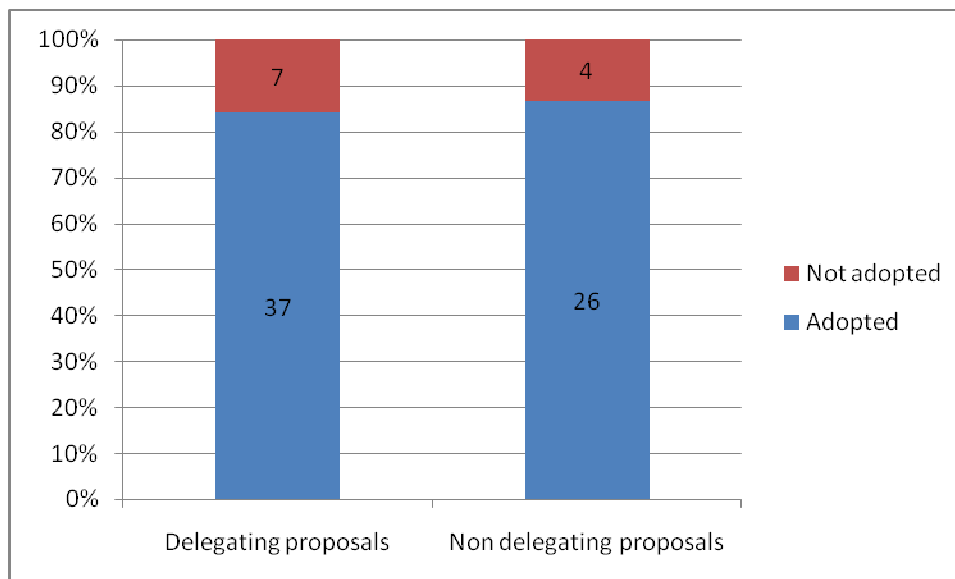


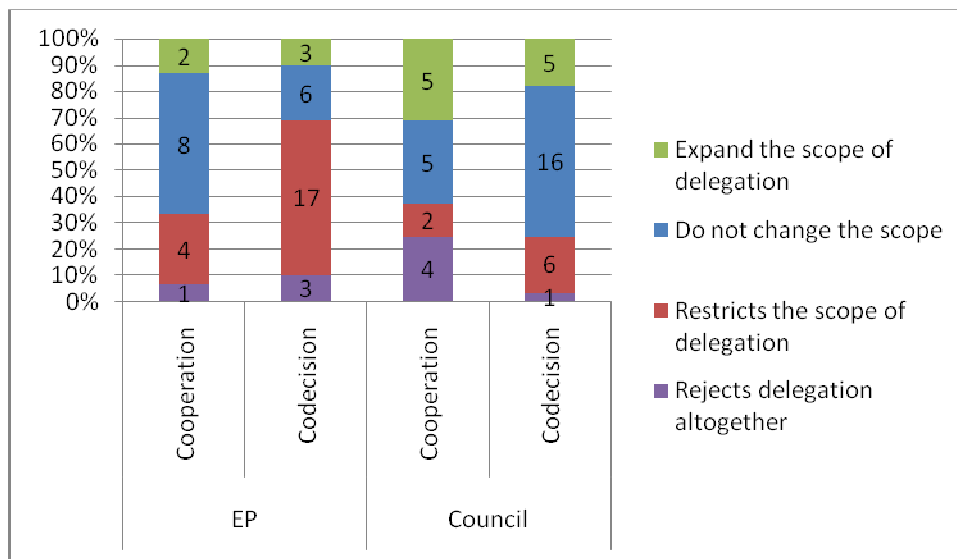
Figure 6 gives more information on the non-adoption of Commission proposals under the codecision and the cooperation procedure respectively. This helps us better understand the behavior of the EP which – against our expectations – under codecision did not reject delegation to comitology. The figure shows that the EP – while rarely entirely rejecting delegation, restricts its scope, and does it to a much higher extent under the codecision

¹⁶ Below we will show what changes have been made to the Commission proposals.

¹⁷ Proposed before 1st January 2006.

procedure than under the cooperation procedure. Under the cooperation procedure the EP either rejected delegation or reduced the substantive extent of delegation such as proposed by the Commission in one third of the cases, By contrast it did so in almost 70% of the cases under the codecision procedure. The Council, for its part, did so much more often during the cooperation procedure (in 38% of the cases), but it did so in only 24% of the cases under the codecision procedure. It also increased the scope of delegation as proposed by the Commission much more frequently than the EP.

Figure 6: EP's and Council's modification of Commission's delegating proposals, per type of procedure in use N = 44.



These results disconfirm hypothesis 3.1. The EP, rather than opposing delegation altogether - even if it could formally do so after the introduction of codecision – instead prefers to restrict its *scope*. One reason for this might be that the EP generally in favour of deeper integration is well aware that delegating implementing power to the Commission is necessary pre-condition for such an integration (see Héritier and al. 2009). At the same time it clearly is keen to restrict the substantive scope of delegation. Statistically speaking, we observe a relatively strong Phi coefficient of correlation (0.341) between the EP's restriction of the scope of delegation and the procedure in use. Our Hypothesis 3.1, then needs to be modified: the EP is only opposed to an extensive scope of delegation not delegation per se.

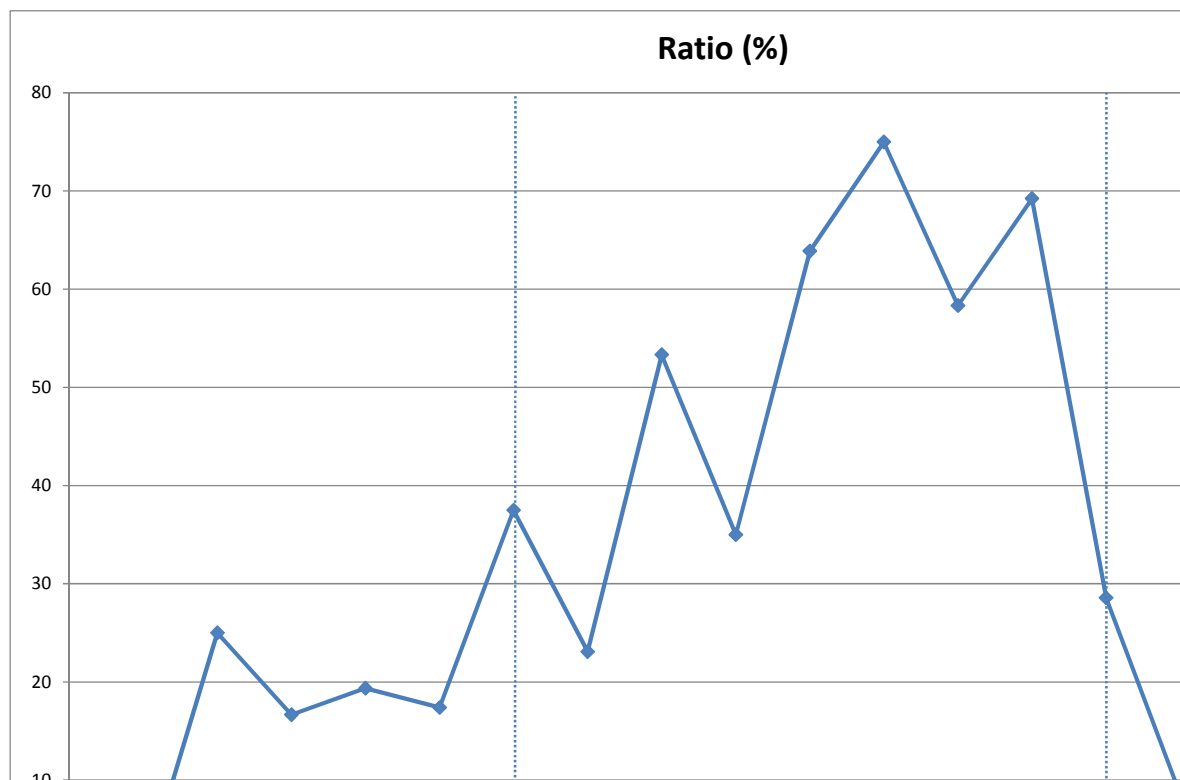
Turning finally to H3.2., *With increasing competences in comitology the EP will less oppose delegation to comitology*, our N is too small to allow for a systematic testing. Still the limited total number of cases lend some empirical evidence to H 3.2. Since the Council decision of 2006, 15 proposals for Directives or Regulations had been adopted by the Commission, amongst which 13 were delegating legislative power to the Commission. 5 had already been adopted by the Legislators. Not in a single case did the EP or the Council try to restrict the scope of what was delegated to the Commission.

2. Empirical findings: Parliamentary reports (1994-2008)

To further empirically validate our claims, we use our second data collection, based on the EP online archives of all parliamentary reports *across all policy areas*. We calculated the *proportion* of reports (as a percentage of all reports regarding delegating proposals) adopted during the codecision procedure which include amendments restricting the scope of delegation allowed to the Commission. Figure 7 shows the percentage of legislative parliamentary reports as a percentage of all legislative reports on delegating proposals that includes at least one amendment aiming to reduce the scope of discretion left to the Commission in comitology. We observe a continuous increase in this scope from 1994 up to June 2006 (2006, 2) when the Second Comitology decision of 1999 was revised. After 2006, the percentage drops considerably. The proportion of legislative reports including a restriction of the scope of comitology goes down from 70% in the first part of 2006 to 9% and 0% in 2007 and 2008, respectively. By contrast, the adoption of the Second Comitology Decision in 1999 did not reduce the willingness of the EP to limit the scope of delegation – rather the contrary. It strengthened its opposition to delegation. This may plausibly be explained by the very meager increase in competences that the Council decision of 1999 purveyed upon the Parliament. The graph below illustrates well implicit bargaining strategy applied by the Parliament to widen its competences under comitology: in order to gain concessions in the negotiation over the second comitology decision, it launched an offensive by systematically introducing amendments to restrict the scope of delegation (Bergström and al. 2007, Corbett 1998:258). Between 1999 and 2006, 50% of the legislative reports concerning delegating proposals that were adopted restricted the scope of delegation left to the Commission.

The strategy was explicitly stated during the discussion of the second comitology decision : “I warn the Council... if the working continues to be so restrictive on Parliament’s right to intervene, then (...) we will continue in legislative procedure after legislative procedure to block the comitology measures” (Corbett, 1999 cited in Bergström and al. 2007:263). That this strategy was successful is documented by the fact that the EP – with the regulatory procedure with scrutiny – obtained important competences in 2006 (Héritier 2007).

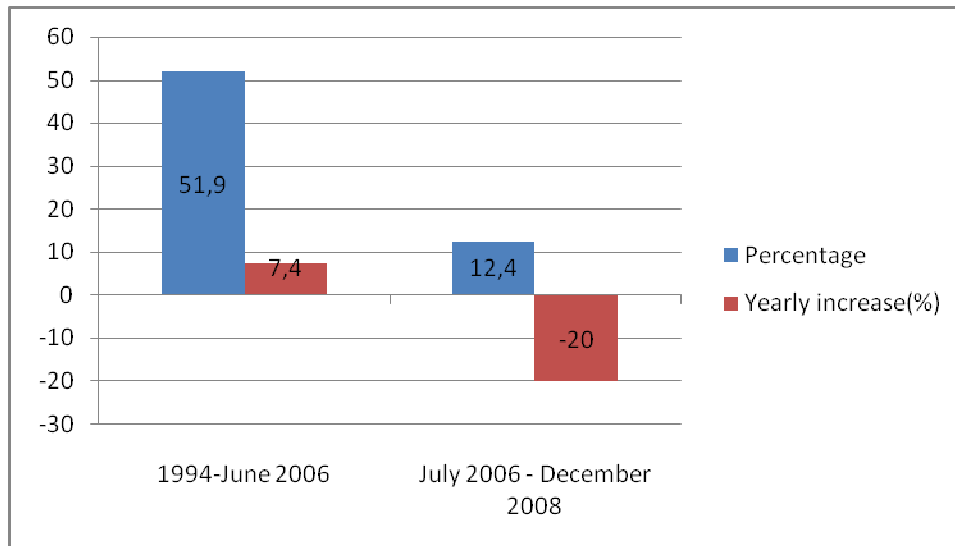
Figure 7: Percentage of legislative reports restricting delegation/ all legislative reports regarding delegating proposals (N=315 reports)



In Figure 8, we compare two periods, i.e. before and after the revised Comitology decision of 2006. From our initial starting date (1994) up to 2006, we observe a yearly increase of 7.4%; while after that we observe a very considerable yearly decrease of 20%. Statistically, we find a positive correlation between amendments restricting the scope of delegation in the parliamentary reports and the circumstance of being adopted *before* the

Council decision of 2006 (Phi coefficient of .217). This lends empirical support to H3.2 “With increasing competences in comitology, the EP will less oppose delegation to comitology”.

Figure 8: Proportion of legislative reports restricting the scope of delegation/all legislative reports concerning comitology per period of Comitology Decision N=315 reports



3. Empirical findings: Legislation in conciliation

Finally, additional empirical insights are offered by looking at those cases which go to conciliation because the EP opposed the scope of what is to be delegated to the Commission. These instances represent cases of high importance to both the EP and the Council. This is reflected in the fact that – in order to decide them – they are willing to go all the way to conciliation. In accordance with what has been observed earlier it emerges that limiting of what is left to comitology became an important issue in the period from the second comitology decision (1999) to its revision in 2006. Between the introduction of co-decision (1993) and the adoption of the second comitology decision (1999), three cases went all the way to conciliation because the EP wished to restrict the scope of delegation (on average one case every two years). By contrast between 1999 and 2006 (the revision of the second comitology decision) seven cases (or an average of one case

per year) were brought to conciliation. No case restricting the scope of delegation went to the conciliation committee in 2006, 2007 and 2008.

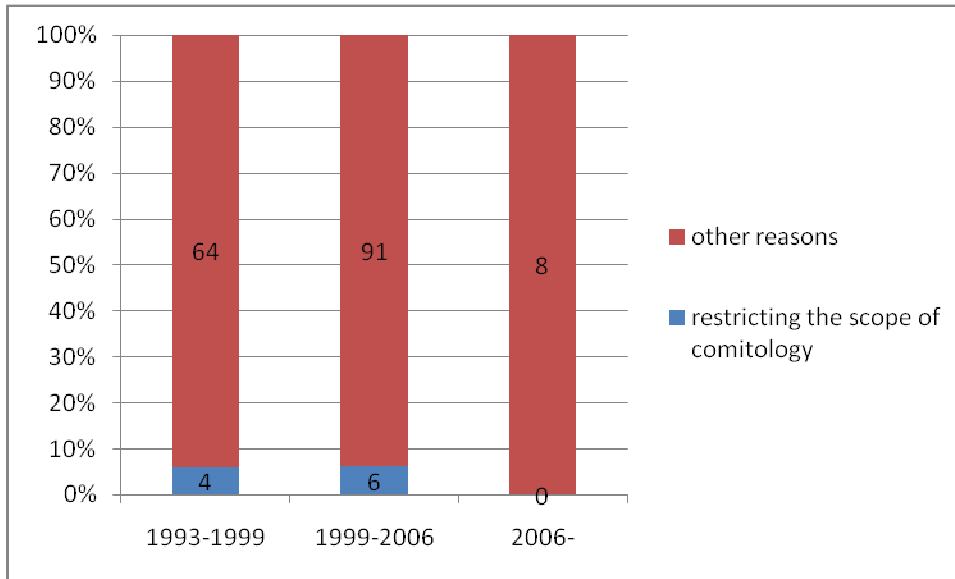
Table 3: legislation dealing with the restriction of delegation during conciliation

Date of conciliation committee	Title	points of conflict up to conciliation included (quests of the EP)
08-11-1994	Packaging waste	EP wanted that implementing measures amending the directive should be adopted by co-decision
08-11-1994	Volatile organic compound emissions	EP wanted that implementing measures amending the directive should be adopted by co-decision
07-03-1997	Trans-European telecommunications networks	Projects of common interest, identified in an annex, could not be amended in comitology
09-12-1999	Multiannual programme for the promotion of energy efficiency (SAVE) (1998-2002).	“going into greater detail on the categories of actions and measures which the programme should finance”.
08-10-2001	Vehicles used for the carriage of passengers comprising more than eight seats in addition to the driver's seat	Removing the technical annexes of the Directive.
11-06-2002	Community Environment Action Programme 2001-2010	“regulatory measures based on the program should be adopted by co-decision”
27-01-2003	Cosmetic products	Removal of exceptions to the timetable through co-decision and not comitology
25-04-2003	Animal-health requirements applicable to non-commercial movement of pet animals	European Parliament insisted on a clarification of the definition of the implementing measures to be adopted by the Commission under the comitology procedure.
19-05-2003	Recreational craft	Limits the scope of comitology
31-03-2004	Prevention and remedying of environmental damage	To reduce discretionary power of the Commission

Figure 9 shows that before 2006 6% of the cases were brought to conciliation because the EP's wished to restrict the scope of delegation; while after 2006 0% of cases were brought to conciliation on these grounds. Although the very small numbers of the cases

resolved in conciliation after 2006 does not allow us to be conclusive on this point, this brings additional evidence for H3.2.

Figure 9: Percentage of cases which go to conciliation about restriction of what is delegated to Commission, N = 173



B) WHICH COMITOLGY PROCEDURE ?

Our theoretical argument suggests that with increasing delegation the Council – in order to preserve control over the Commission - would wish to delegate only to regulatory committees. Hence the increase of delegation following the ratification of the Treaty of Amsterdam should lead to an increase of the use of regulatory committee procedures.

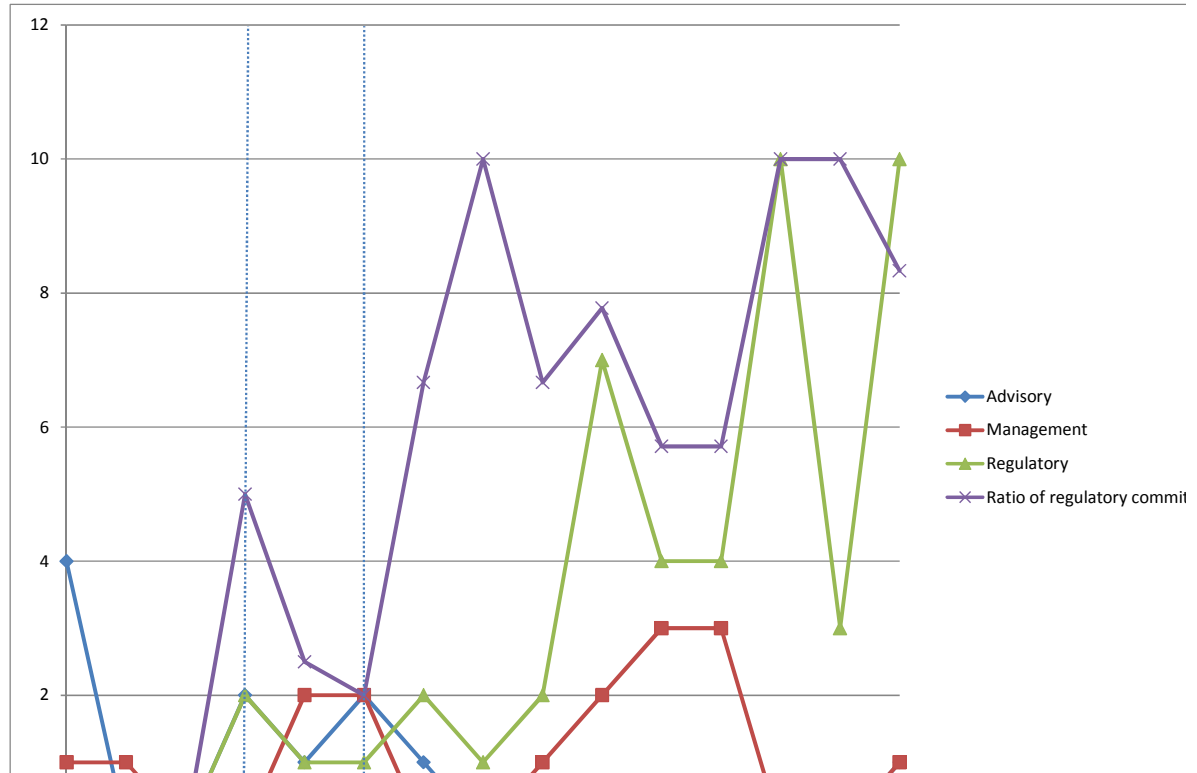
As argued above we do not expect the EP to oppose the choice of this committee type from 2006 on when it obtained important competences in the regulatory committee. The Commission which – pre 2006 - dealt only with member states under comitology, has a comparatively stronger role to play in comitology than under codecision where it has to share power with the Council and the EP. We therefore expect it - with increasing delegation - to propose regulatory committees.¹⁸ The period before and after the introduction of the codecision above constitute our cases.

1. Empirical findings: Environmental Policy (Art.130s/175)

Does the increase of delegation which we identified as a result of the introduction of co-decision lead to an increase of regulatory committee procedures which maximizes the control of the Member states? In accordance with our previous procedure, we start from the Commission proposals. In Figure 10, we show the committee proposed by the Commission as measured in our data based on article 130s/175 (environmental policy, co-decision and QMV). Our N is the total number of committees introduced in non-amending Commission proposals (regulations and directives) delegating to the Commission the competence of adopting secondary legislation. For each of these proposals, we identified which committee has been chosen. If two different committees were chosen, the proposals were codified twice.

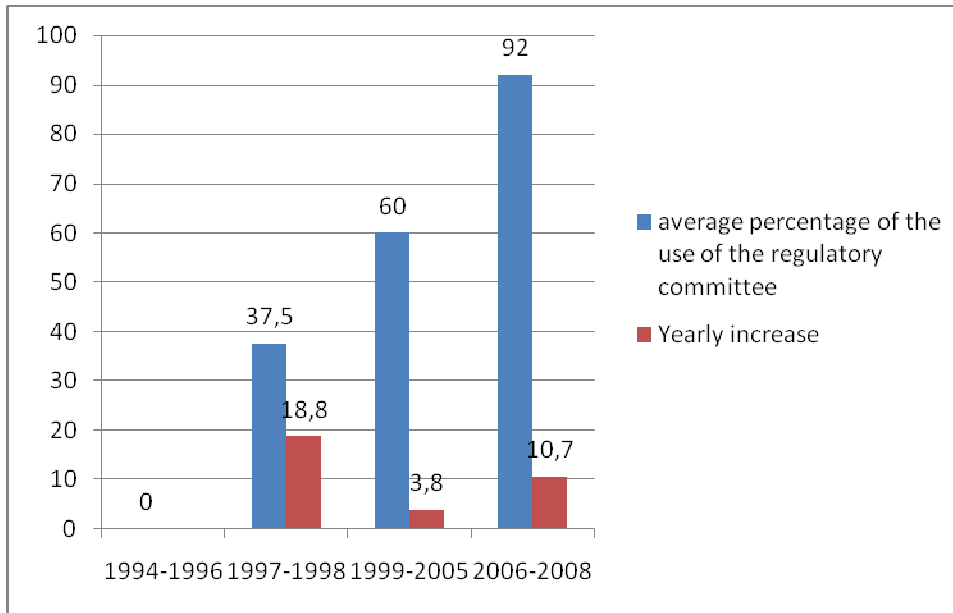
Figure 10: Committee in the Commission proposal, N=65

¹⁸ Although in terms of its meta-preferences the Commission would prefer the advisory or management committees because they allow for less member state control



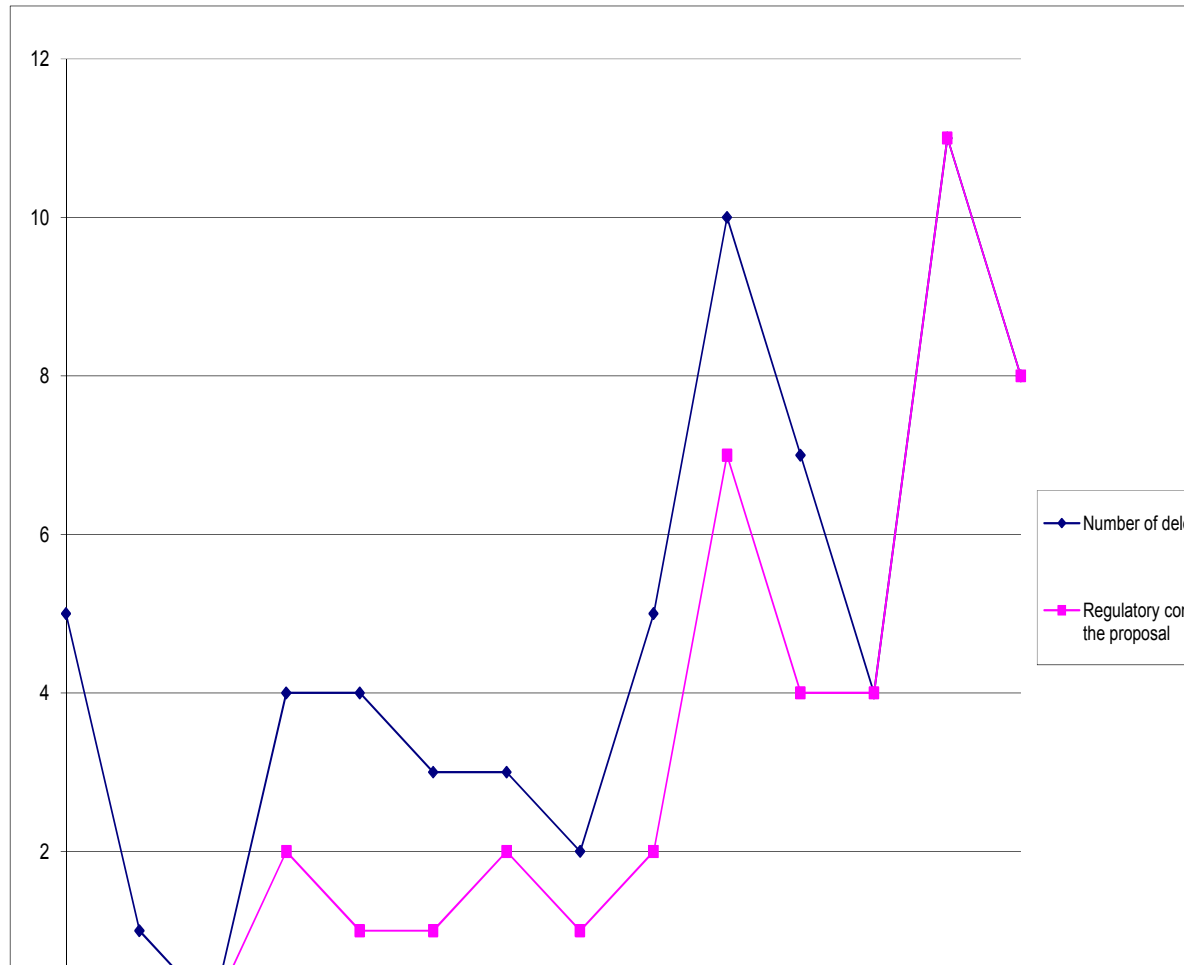
We observe an irregular, but clear, increase in the use of the regulatory committee from 1997 onwards. As a consequence, it appears that the Commission anticipated that it would be successful if proposing delegation under a regulatory committee, and acted accordingly. In Figure 11, we show the proportion of the regulatory committees proposed by the Commission per period of time. The highest increase takes place in the period preceding the signature of the Amsterdam Treaty and following its entering into force; however, the proportion of regulatory committees continues to increase. It rose from virtually 0% in 1994 to 100% in 1997. Hence, it becomes evident that the Commission imposed more procedural control upon itself when exercising its implementing powers. As a consequence, the correlation between the period before and after the ratification of the Amsterdam Treaty and the use of the regulatory committee in the Commission proposal is positive and relatively important (.310).

Figure 11: Proportion of regulatory committees chosen and yearly increase



In Figure 12 we simultaneously present the number of delegating proposals based on article 130s/175, and the types of committees chosen for this proposal. We observe a strong relationship between the increase of delegating proposals and the use of the regulatory procedure. It further illustrates that the Commission is well aware of the fact that member states only will delegate more if, at the same time, they have more control over delegated matters in new areas. *H4: With increasing legislative competences of the EP, the Commission will be inclined to use more regulatory committees* is thus confirmed.

Figure 12: Number of delegating proposals and number of committee chosen, N=68 proposals



After analyzing the committee types *proposed* by the Commission we now turn the committee that was actually chosen by the Legislator(s), with the purpose of testing *H5*: *With increasing power of the EP, the Council will be inclined to use more frequently regulatory committees*

and

H6. Before the introduction of EP competences in comitology the EP opposed the use of the regulatory committee procedure and will favour the type of procedure allowing for EP competences (regulatory procedure with scrutiny) after that

Figure 13 shows the percentage of times when the regulatory committee is chosen by each institution, for every year. Unsurprisingly the Council never turns down the proposal

of the Commission to use a regulatory procedure. Contrary to our expectations, we also see that the EP increasingly favours the regulatory procedure after 1999. This is a very clear trend, and it obliges us to reconsider H6, according to which the EP will oppose the use of the regulatory committee until it get important competences in this particular committee, as it happens in 2006. As told above, the 1999 reform only very slightly increase the competences of the EP in the regulatory committee. The increase, however, is so unimportant that it makes it difficult to consider this as an explanation of the sudden willingness of the EP to delegate in the regulatory committees. Another alternative explanation is that this same reform also abolishes the contre-filet mechanism, and hence strengthens the Commission's role in this committee. Both reasons might have been enough for the EP to agree to stop opposing this committee, so wanted by the Council, from 1999 onwards¹⁹.

However, we do observe that the EP starts to support the regulatory committee in 100% of the cases after 2006. To be noted, each time after 2006, the EP insisted to have the new version of the regulatory committee (i.e the regulatory committee with scrutiny). Hence, it clearly emerges that *before the introduction of the comitology decision of 1999, the EP opposed the use of the regulatory committee procedure and will favours it afterwards. This opposition will be close to zero after the Comitology Decision of 2006.* We call this new finding F7.

Figure 13: Percentage of regulatory committee preferred by each legislator, N = 65

¹⁹ A similar view is also shared by Bergström. The author sees the sudden willingness of the EP to abandon its fight for the abolition of the regulatory committee, if it obtained the abolition of the contre-filet mechanism, as the result of a bargain between the Council and the EP.

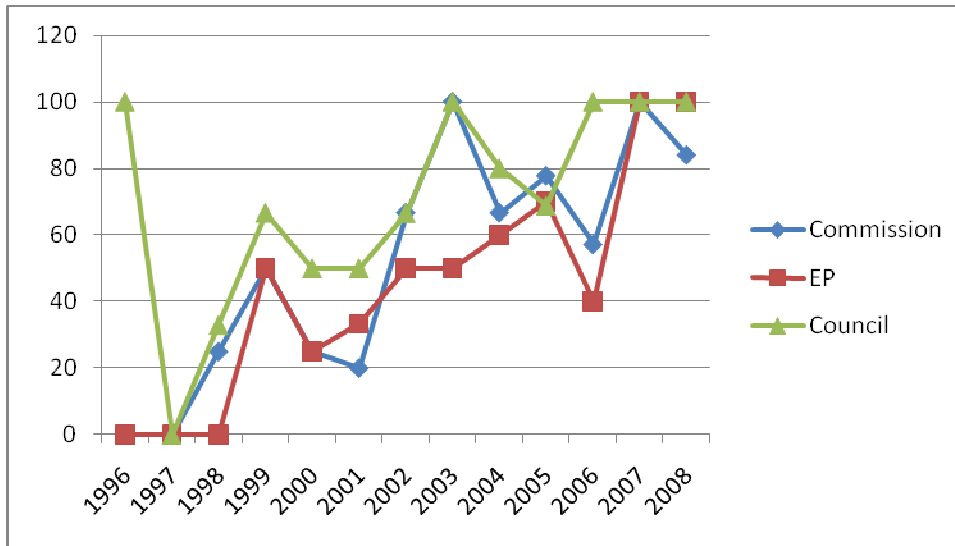
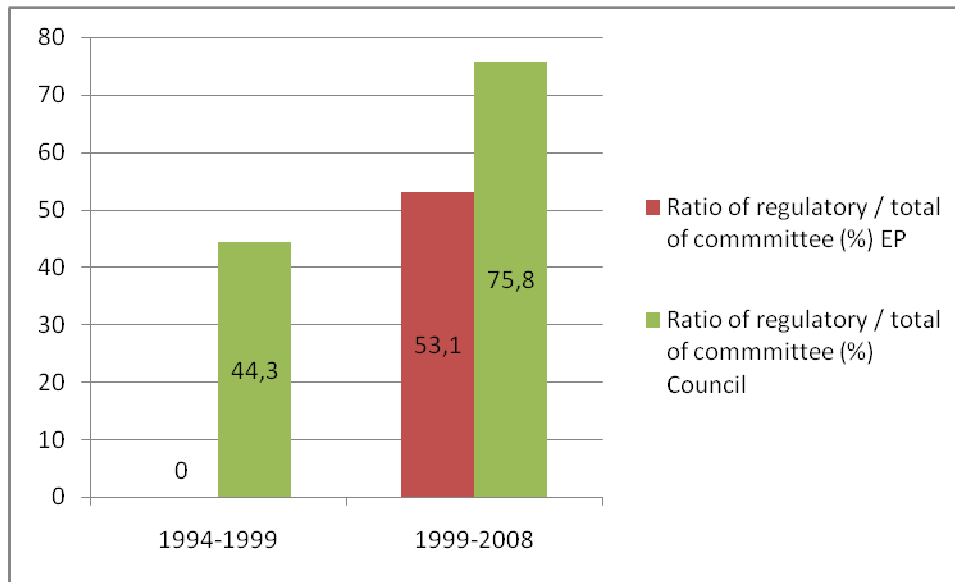


Figure 14 shows us the average percentage of preference for the regulatory committee after and before July 1999 and July 2006. It emerges that the EP came to favour this committee from zero to 50% of the cases, while the Council's willingness to use this committee almost doubled from 44% to 76%. Statistically, we find positive and very strong correlation (.690) between the introduction of codecision and the preferences for the regulatory committee of the Council. H5 is thus confirmed. We also observe a strong correlation (.575) between the introduction of the 1999 Council decision and the preferences for the regulatory committee of the EP, as the first element of our new finding suggests.

Figure 14: Percentage of regulatory committee before and after July 1999 supported by Council and EP

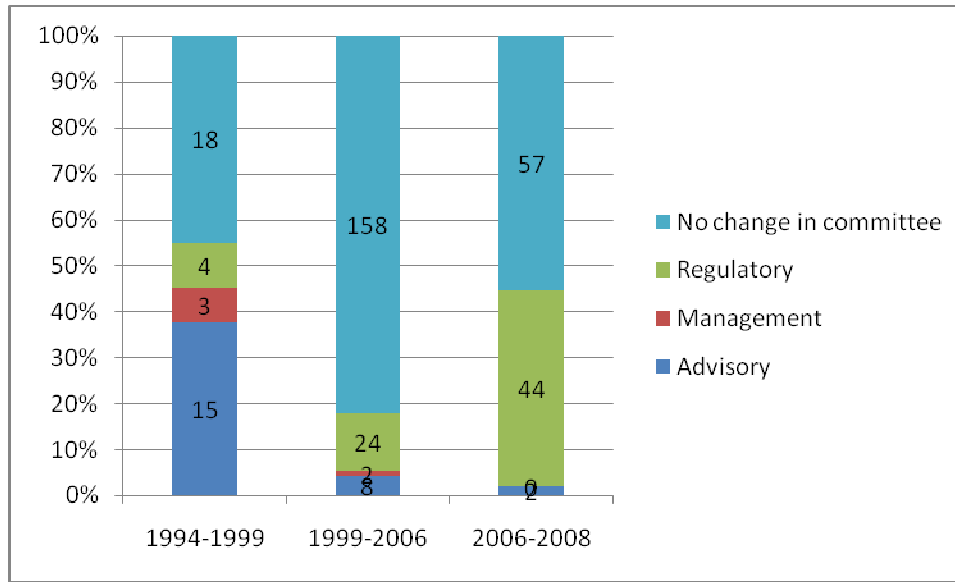


2) Empirical findings: parliamentary amendments

In Figure 15, we return to our second data base of all the amendments in all issue areas made by the EP under the codecision. We show the proportion of amendments asking for the introduction of a specific type of committee and distinguish according to the type of comitology decision in force. The treaty article is not kept constant. We further only look at amendments which ask for a *change* of committee since the parliamentary reports only include the amendments made to the Council or Commission proposal. From this it follows that the more the proposals already include the EP's favoured committee, the less the EP will ask to change the committee. Not surprisingly, and in accordance with the data based on article 130s (environment), we can observe that the EP was much less active in promoting the advisory and the management committees after the Comitology decision of 1999. While under the first comitology decision of 1994 the EP introduced amendments to change the committee to an advisory or a management committee in 45% of the cases, under the second comitology decision of 1999 (revised in 2006) it did so in 5% and 2% of the cases respectively. After July 2006, the EP started to introduce amendments proposing the regulatory committee (with scrutiny) which allows the EP to reject a Commission proposal in a bit less than half of the cases. Statistically, we do have a strong correlation (0.465) between the support for the regulatory committee and the period of time (before and after the Comitology decision of 1999 and before after the

Comitology decision of 2006). H6, again, it disconfirmed, while our new F7 is confirmed.

Figure 15: amendments introducing a particular type of committee, out of the total of amendments introducing a change in committee, N=102 amendments



3) Empirical findings: conciliation

Finally, we also scrutinize the cases going to conciliation on account of a conflict about a particular comitology committee. What becomes evident is that the EP in all cases except one supported a committee which is less constraining than the one favoured by the Council, and in all cases except two it supported the committee proposed by the Commission. In five cases the EP opposed the use of the regulatory committee as wished by the Council. This happened twice after the Council decision of 1999²⁰.

Table 4: Conciliation cases over conflicts regarding committee choice N=11

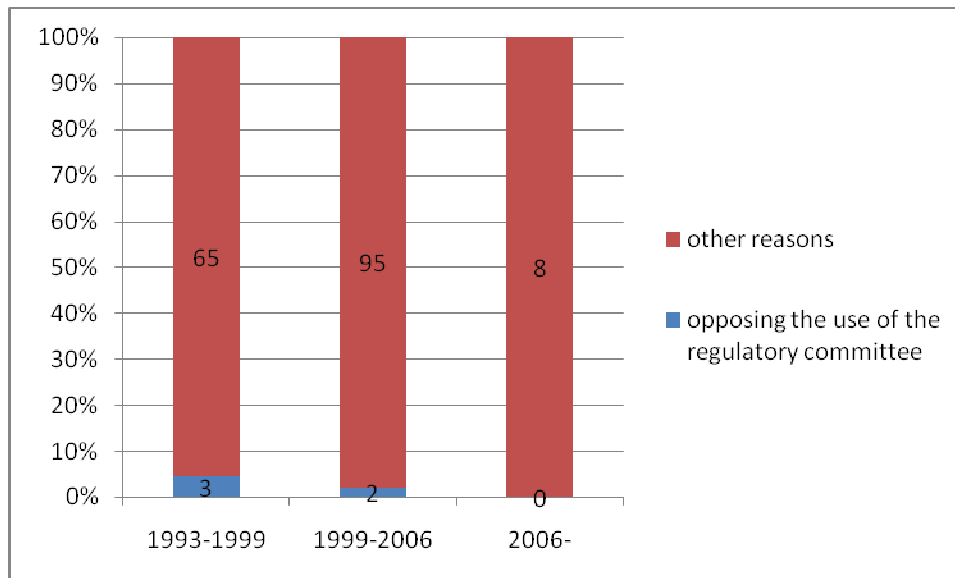
Date of the opinion of the EP	Date of the resolution of conciliation	Name of legal act	Committee initially proposed by Commission	Committee favored by EP	Committee favored by Council	Committee chosen
23-11-1992	05-05-1994	Mechanical coupling devices	Advisory	Advisory	Regulatory	No delegation
26-04-1993	26-06-1994	Voice telephony	Advisory	Advisory	Regulatory	Proposal fails
1-05-1995	16-07-1996	Kaleidoscope	Advisory	Advisory	Advisory +	Management

²⁰ One was ‘inherited’ from the preceding period.

					management	committee only for general guidelines
17-05-1995	28-03-1997	Free movement of doctors	regulatory	Management	regulatory	Management
30-10-1995	02-07-1997	Community action program in the field of cultural heritage	Advisory	Advisory	Advisory + management	Compromise: Management committee only for general guidelines
14/04/1999	21/6/2000	Life III	Management	Management	Regulatory	Regulatory
05/05/1999	11/07/2000	Conservation of tropical forests in developing countries	Advisory	Advisory	Management	Compromise (Management for higher budget and no committee)
05/05/1999	7/11/2000	Full integration of the environmental dimension in the development process	Advisory	Management	Advisory	Management and advisory
15/10/2000	4/10/2001	General product safety	Advisory	Advisory	Regulatory	Regulatory committee but the Commission must report to the Council and EP on its programs.
04/04/2001	3/7/2002	Community action in the field of public health	Management and advisory	Management and advisory	Management	Management and Advisory
03/09/2002	20/11/2003	Safety of third countries aircraft	Advisory	Advisory	Only power of recommendation to the Commission	Regulatory

In comparative terms what we can observe in Figure 16, is that there is a slight decrease of the percentage of cases where the EP contests the of the regulatory committee after the Council decision of 1999, from half (4% to 2%). In spite of the small number of cases at issue, these results throw additional confirming light on F7.

Figure 16: Percentage of cases which go in conciliation procedure to oppose the use of the regulatory committee, N = 173



Conclusion

In this paper we develop a distributive institutionalist argument of why with increasing legislative competences of the Parliament, the Council and the Commission tend to more frequently resort to delegation to the implementing powers of the Commission. Based on the assumption that all actors seek to maximize their institutional power we argue that having to share legislative power with the EP motivates both the Council and the Commission to try to circumvent the Parliament through delegation, i.e. secondary legislation in comitology. Parliament for its part has sought to contest the use of delegation. Before 1999, it has particularly sought to hinder the use of the regulatory committee procedure allowing for important controls of member states over the Commission. With the introduction of codecision the Parliament received a leverage to lend power to its demands and has sought to counteract .

We first show for the area of in environmental policy, that, with the introduction of co-decision the Commission and the Council have indeed been more willing to rely extensively on delegation. The increase in delegation following the ratification of the Amsterdam treaty indicates that the Council anticipated its relative loss of power to the EP, and rushed to delegate as much as possible to the Commission before the effective

introduction of co-decision. However, the Council was only willing to delegate more to the Commission under the condition that it could exert control over the procedure (i.e. by the use of the regulatory committees).

With the introduction of codecision we expected that the EP would oppose delegation altogether. This expectation was not confirmed. It emerges that the EP does not oppose delegation altogether but, rather, systematically restricted its scope. It also used this strategy after the second comitology decision of 1999 which only minimally extended the competences of the EP in comitology and used amendments to restrict the scope of delegation in order to gain new concessions as regards its role in comitology. However, it did not oppose the use of the regulatory committee. With the revision of the second comitology decision in 2006 and the regulatory procedure with scrutiny purveying important competences on the EP, it systematically favors this committee procedure.

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