

The Impact of Normative Standards in Negotiation Processes: Arguing in the Constitutional Debate of the European Convention

ALEXANDER BÜRGIN, *Mannheim Center for European Social Research (MZES)*

Abstract

EU member states had different institutional preferences concerning the role of the European Parliament (EP) in the institutional architecture of the constitution. How can the agreement on new competences for the EP be explained in the face of these differences? This paper argues that bargaining power alone cannot explain the result. Instead it postulates the importance of normative pressure: arguments based on common norms of democratic governance at the national level add legitimacy to preferences and mobilize social pressure on opponents in the interaction process – leading to compliance. The plausibility of this constitutionalization - hypothesis is demonstrated in a process analysis of three controversies: the appointment and budget competences of the EP and the role of national parliaments.

I. Explaining the empowerment of the European Parliament: The legitimacy-gap and normative reasoning

The constitutionalization-hypothesis (Schimmelfennig/Rittberger 2006, Schimmelfennig 2001, 2003) explains the empowerment of the EP in absence of consensus among the member state governments with two central factors: salience and coherence. Salience describes a perceived gap between the status quo of European governance and shared standards of parliamentary democracy (Rittberger 2005). The gap is the result of a sovereignty transfer to the European level which undermined the prerogatives of national parliaments. To repair this

loss of control the empowerment of the EP is one solution – but not the only one (for possible alternatives see Joerges 2001, Kohler-Koch 2000, Majone 1998). However, according to the constitutionalization-hypothesis it is the most successful strategy because the standards of parliamentary democracy (i.e. legislative and appointment functions) are a dominant frame among all member states and can be used in interaction processes in order to exert normative pressure on opponents who are against the transfer of these standards to the European level (Schimmelfennig 2003:225)¹. ‘Coherence’ refers to the existence of formal or informal institutional precedents within the EU, which makes it easier for an actor to legitimize an proposal as being in line with already accepted rules (path-dependency, see Pierson 1998) .

A qualitative comparative analysis (QCA) of the treaty revisions since the beginning of the European integration (insert contribution xy in JEPP) had shown the explaining power of these two factors. Whenever salience and coherence existed as context condition the EP gained competences in the subsequent treaty revision. The aim of the following process tracing analysis (Bates 1998) is to show the impact of these factors as arguments in the discourse.

II. Process Analysis: Definitions and Method

Types of arguments in the debate about legitimate governance in the EU

In order to show the relevance of salience and coherence in the negotiation-process a representative constellation of basic arguments has to be gathered. From the different dimensions of legitimate governance (input/output) and sources of legitimacy (nation/European citizen) (Jachtenfuchs 1998, 2002, Rittberger 2005, Scharpf 1999) justification principles for a position in favor or against a further parliamentarization can be deducted. The respective justification principle gives an argument its name. *Nation-*

¹ Social learning (Checkel 1999) or persuasion (Risse 2002) are not necessary.

Arguments justify a position with the nation state as the primary source of legitimacy, *Citizen-Arguments* with the European citizen. *Efficiency-Arguments* defend a proposal with the better functioning of the governance process (output-oriented legitimization). The procedural aspect of legitimate governance is stressed by *Salience-Arguments* which justify a position with a perceived lack of procedural legitimacy. *Resonance-Arguments* defend a position with its compatibility with national constitutional cultures. *Coherence-Arguments* justify a proposal with its connection to the existing EU-structure.

Representative selection of actors and plenary debates. It is assumed that all conflict lines and argumentative types can be collected if a selection of big and small member states with opposing preferences on further parliamentarization is analyzed. Among the big member states Germany has a rather pro-parliamentarization approach, France, the UK and Poland rather an intergovernmental approach. Among the smaller countries the Benelux countries and Ireland are rather in favor of parliamentarization whereas Finland, Austria and Denmark are rather in favor of intergovernmental solutions². All speech acts³ of actors of these countries, which make a statement to the respective conflicts about the institutional architecture, are categorized. For every conflict two core debates are analyzed whereby only proposals which can be classified as favorable or unfavorable for a further parliamentarization are categorized. As actors generally use several justification principles to strengthen their argumentation the speech act analysis classify all elements of an intervention separately.

Measuring the success of arguments. It plausible that arguments based on the standards of parliamentary democracy make a difference in the negotiation process, if: (1) the result does not reflect the initial constellation of positions among the big governments, (2) the development of draft articles until the final version of the IGC reflects rather the demands of

² For national approaches to European integration see Clegg 2002, Marcussen 1999

³ For an analysis of speech acts see Holzinger 2001

the pro-EP camp, (3) actors of the contra-EP-camp avoid a normative debate about the appropriateness of a further parliamentarization⁴, (4) actors change their position or arguments during the negotiation process.

The constellation of positions. Arguments can only make a difference if the positions of the governments are not converging: If a large majority is in favor of parliamentarization, and no government explicitly against it, normative reasoning is not necessary any more. But the higher the number of opponents of parliamentarization and the bigger their bargaining power the less probable such an institutional development from the perspective of a bargaining approach (Hix 2002, Moravcsik 1998, 1999, Pollack 2002). Formally the veto of one member state is enough to stop a further parliamentarization. But with side payments and package deals agreements can be achieved. These deals are less probable if the big member states are against a further parliamentarization. It is assumed that if at least two of the big member states are against increased competences of the EP they should have enough veto-power to avoid a further parliamentarization.⁵

The evolution of the drafts. The ongoing changes in the drafts of the articles are compared to a mapping of arguments in the key plenary debates concerning a certain issue. In view of the close contact between the presidium and the governments the first drafts can be considered as a compromise between the different positions of the governments. Changes in the drafts are then the result of the dynamics in the convention. As the non-governmental convention members cannot threaten with a veto in the following IGC their negotiation resources are mainly arguments. Therefore changes towards more EP-friendly drafts can be attributed to the impact of argumentation.

⁴ for the rhetoric in the convention see also Magnette 2003

⁵ for veto-players analysis see Tsebelis 1995

Avoid normative reasoning. If the hypotheses is true that shared norms can be used to exert normative pressure, then it is plausible that also actors with interests contrary to normative standards present themselves as being in line with them. They rhetorically accept the standards, argue with abstract and empty principles, deny conflicts between positions or try to reframe the meaning of certain principles. Thus, a real dispute about the legitimacy problems of the EU is avoided.

IV. The Executive of the EU and the appointment function of the European Parliament

The conflict: Balancing the executive power between Council and Commission and its implication for the appointment function of the EP

One of the biggest controversy in the convention was about how executive power should be shared between Commission and European Council. The controversy reflects the opposing models of a rather intergovernmental or a rather supranational institutional order, and the conflict between the big and smaller states, the later supporting the Commission in order to avoid a dominance of the big member states via the Council. This controversy was also of highest importance for a further parliamentarization of the EU. It is a shared norm of national parliamentary democracy that a government has to be accountable to the parliament. In order to exert normative pressure to make the Commission accountable to the EP, it is important that the Commission is considered as a quasi government of the EU.⁶ Only a strong Commission with an accepted governmental function let the question loom how such a power can be legitimized.

The controversy about the balance of power between European Council and Commission and the connected issue of the accountability of the Commission crystallized into two institutional

⁶ for such a characterisation of the Commission see Hooghe 2001

controversies: The conflict about a long-term president and the conflict about the election of the Commission president. A long term president of the European Council with far reaching functions has the potential to shift the power balance towards the Council. He would stand for the EU of governments and the intergovernmental approach and would probably further weaken the role of the Commission president. Such a counterweight to a more supranational structure of the EU would support the image of a powerless Commission which does not need to be legitimized by the EP. An elected Commission president on the contrary would signal a rupture with the old frame of the Commission as a technical agent fulfilling the tasks given by the European Council. Such a step would accept the political role of the Commission, which has to be legitimized through election.

The treaty of Maastricht was the first step to accept the appointment function of the EP. The EP received the right to confirm or to refuse the Commission colleague as a whole and the right to be consulted before the appointment of the Commission president. The treaty of Amsterdam extended its competences and gave it the right to confirm the appointment of Commission president. The Treaty of Nizza strengthened the image of the Commission president as prime minister of a government: He supervises now the other commissioners and can - with approval of the colleague - dismiss a commissioner.

Governmental positions: Big member states favoring Council solutions

The big member states were reluctant towards the strengthening of supranational structures. Especially France, Spain and Great Britain were against every step that would recognize the Commission as equal partner of the Council in building the executive of the Union. The idea of a long-term Council presidency became dominant in the public debate in summer 2002 – known as the ABC-initiative after José Maria Aznar, Tony Blair and Jacques Chirac. The week before the Convention began, Britain's foreign secretary Jack Straw mentioned the

possibility of having longer term chairs.⁷ Short afterwards Chirac publicly floated the idea of a president for the European Union – saying that it is his priority to give more political leadership to Europe. The existing system of rotating presidencies would no longer be viable in an enlarged Union.⁸ In May he claimed that the European Council would continue to be the political apex of the Union and could have some extra powers.⁹ Also Tony Blair called for a full-time president and presented the twin ideas of a fixed chair of the European Council and sectoral Councils run by team presidencies.¹⁰ By early 2003 the UK government circulated ideas – showing that it wanted to have a very strong president with an “ultra ambitious job description” (Norman 2003: 139). The German Chancellor Schröder showed sympathy with the ABC-initiative and accepted the long-term presidency in a Franco-German contribution to the Convention¹¹. This paper also influenced governments which were against a permanent presidency. The Belgian prime minister Verhofstadt said that in view of the phalanx of supporters of a permanent presidency the rotation will not survive.¹²

Also the election of the Commission president by simple majority of the EP was refused by the big member states. In his speech in Cardiff Blair defined the role of the Commission as a nonpolitical agency “responsible for keeping Member States to the commitments they have agreed. This role as enforcer is unenviable, but essential”. He was against the election of the Commission president by the EP: “We must avoid at all costs turning the election of its (the Commission’s) president into a partisan wrangle, or allowing the Commission to become a prisoner of the parliamentary majority. We cannot simply see the Commission as an executive accountable to the Parliament. The Commission also has a crucial partnership with the Council which we must not weaken, and a vital independence which we must protect. The

⁷ in The Hague, 21.2.2002, <http://www.fco.gov.uk>

⁸ in Strasburg, 6.3.2002, <http://www.elysee.fr>

⁹ in Oxford, 20.5.2002, <http://www.europa.eu.int/futurum>

¹⁰ in Cardiff, 28.11.2002, http://www.number_10_gov.uk

¹¹ 15.1.2003, CONV 489/03

¹² http://eucon.europa2004.it/Watch1ed/Watch_A1.htm

French president Chirac stated in his speech in Strasbourg that the Commission has to be completely independent of political parties. Also Foreign Minister Villepin made clear that France is against the election of the Commission president by the EP: “Such a mechanism would change the institutional balance”¹³ (translation, A.B.). Although the German chancellor Schröder showed sympathy for the ABC-initiative he stuck with the traditional German approach in favor of strong Commission¹⁴. But this approach didn’t find its way in the Franco-German compromise paper, which demands an election of the Commission president by a qualitative majority in the EP.

Evolution in the Convention and the IGC: Limited Council president and politicized Commission

As there was no working group on the institutional architecture “institutional issues that would have to be resolved in the constitutional treaty swirled around the periphery of the Convention sessions for the whole of 2002” (Norman 2003: 135). On 28 October 2002 convention president Giscard published the first skeleton of the constitution. Title IV on the institutions stirred controversy because it floated the idea about a stable president of the European Council – before this idea was treated in plenum.

Also the Franco-German proposal (stable long-term presidency and an election of the Commission president by a qualified majority in the EP) structured the first plenary debate about the institutional architecture which took place on 20 and 21 January. Despite an overwhelming refusal of a long-term Council president Giscard drafted a strongly intergovernmental blueprint at 22 April which he leaked to the press without consultation of other presidium members. The draft defined the role of the European Council as *the highest authority* of the European Union, added *two vice presidents* to the president who shall give

¹³ Speech in Marseille, 2.12.2002, SG-2002-09581 , <http://europa.eu.int/constitution/futurum>

¹⁴ Speech at 14.6.2001, http://europa.eu.int/constitution/futurum/documents/contrib/contjuin2001_de.htm

guidance for action, legislative and operational (art. 15). The articles about the Commission reflected the old technical understanding of its role: “The European Commission is called *on to give voice* to the general European interest. It shall *monitor* the application of the Constitution and steps taken by the institutions under the Constitution” (art. 18). In the appointment procedure the EP has the right to confirm the Council candidate rather than to elect the Commission President: “*Following the European elections*, the European Council, deciding by qualified majority, shall put forward to the European Parliament its proposed candidate for the presidency of the Commission. The Parliament shall reach a view, *by a majority of three-fifths of its constituent members*, on the candidate put forward by the European Council” (art.18a)¹⁵.

After harsh reactions the Presidium modified Giscard’s draft articles. But still the strengthening of the Council to the debit of the Commission (and therefore indirectly also to the EP) was kept¹⁶. The most obvious changes in the presidium’s articles were the removal of the reference to the European Council being the Union’s highest authority and the disappearance of the European Council vice-president. But still art.16a,3 talks about *a board* consisting of three of the European Council members. Opponents feared a new bureaucracy in competition concurrence to the Commission. Defining the election procedure for the Commission president, art. 18a states that the EP *elects the Commission president by the majority of its members* and that the *European Council has to take into account the elections* to the EP when choosing the candidate. This wording remained unchanged till the end of the Convention.

These draft articles were discussed in plenary on 24 April and on 15 May. Again conventioners disputed over the right balance of competences and functions between the

¹⁵ in Norman 2003: 343 ff.

¹⁶ CONV 691/03

European Council and the Commission, as well as the election procedure for the Commission president. On 31 May, the presidium re-drafted the highly contested Title IV of Part I¹⁷. The role of the Council and its president was further limited and the Commission as equal partner of the Council acknowledged. Instead of “guidance in legislative and operational action” the European Council “*provides the Union with the necessary impetus for its development, and shall define its general political directions and priorities (art. I-20)*. Art. I-21,2 adds now that the Council president ensures the external representation of the Union *without prejudice to the responsibilities of the president of the Commission* and the minister of foreign affairs. Concerning the election of the Commission president the need for a simple majority remained. In the final version¹⁸ art.I-21 further stresses the equality of the European Council president and Commission president: The president of the European Council “shall chair it (the European Council) and drive forward its work, shall ensure its proper preparation and continuity in cooperation *with the president of the Commission*. The following IGC didn’t change these articles anymore¹⁹.

Normative Standards in negotiation processes: Salience as explaining factor

In view of the reluctance of many member states to accept the simple majority for the election of the Commission president and the will of many member states to establish a strong Council president the evolution of the drafts of articles in the convention is puzzling. The ABC-initiative wanted a real chief of the Council. Now he is only a chairman. And the appointment of the Commission president becomes a real election (Becker/Leiß 2005:196). An analysis of the plenary debates of 20/21 January 2003 and of 15 May 2003 maps the argumentative constellation²⁰.

¹⁷ CONV 770/03

¹⁸ CONV 850/03

¹⁹ CIG87/04

²⁰ For the content of all plenary debates, see: www.europarl.eu.int/europe2004

Mapping of arguments concerning the election of the Commission president. Proposals and positions belong to the ‘pro-parliamentarization’-category if they ask for an election of the Commission president with simple majority of the EP. The ‘contra-parliamentarization’ category consists of speech acts which require more than a simple majority in the EP and prefer that the EP rather confirms the Council’s choice than elects the Commission president. The most used argument in favor of an election of the Commission president was salience (38% of pro-arguments), connected with the frame of a political Commission (24%). This argumentation attributed a quasi-governmental function to the Commission and complained its lack of accountability. The opponents of a further parliamentarization replied this argumentation with the frame of the technocratic Commission which should not be politicized and does not need an own legitimacy (54%).

Position changes in the opponent-camp. It is plausible that the salience argument has mobilized normative pressure. In the January debates the German and French foreign ministers Fischer and Villepin defended the bilateral agreement of 15 January as the best possible compromise and were supported in the plenary by the government representative of the UK, European affairs minister Peter Hain. Villepin refused a politicized Commission stating that the institutional balance has to be maintained. Even the acceptance of a qualified majority vote is still a big commitment by France. Hain argued that an election of the Commission president will destroy the independence of the Commission. In the debate in May and June the governmental representatives of Germany, France and the UK gave up the demand for an election of the Commission president with qualified majority vote in the EP. Villepin accepted the politicization of the Commission stating “the presidium has the courage to defend a vision and ambition: (...) a more political Commission” (translation, A.B). Additionally, Fischer did not feel obliged to the compromise paper of January anymore and argued for an election of the Commission president with the majority of the members of the

EP – “in order to strengthen European democracy”. Hain accepted the election with simple majority as part of a deal: “If we start re-opening the basic compromises, namely, on the election of the President of the Commission, which Britain did not agree with, on the election of the full-time Chairman of the Council, which others did not agree with, you will put the whole thing up”.

Mapping of arguments concerning the role of the European Council presidency. 14 arguments in favor of a ‘strong’ president with more than just coordinative tasks are categorized, and 58 arguments favoring no or a ‘weak’ president of a European Council representing more a coordination body than ‘the government of Europe’. Adherents of this category want to maintain the rotation or accept a stable presidency only under the condition that its function is strictly limited. The supporters of a strong president used efficiency-arguments (in an enlarged Union the rotation cannot work any more; 64% of ‘pro-president-arguments’) and referred to the institutional balance (which the president will not alter, 21%). Both arguments were highly contested by the ‘weak president’ - camp. They argued that a strong president would weaken the Commission and destroy the institutional balance (34%), and that an efficient coordination in the European Council is also possible under the rotation system (26%). Thus, the supporters of a strong president were in a weak argumentative position because their justification principles were not strong enough to exercise normative pressure. In reverse the opponents of a strong president could take salience- (president violates the accountability principle; 21%) and coherence-arguments (respect of the role of the European Council as coordination body; 12%) in order to mobilize normative pressure.

Reactions to normative pressure. The impact of normative pressure is visible in the argumentative strategies of the supporters of a strong president who avoided a debate about its implication for the procedural legitimacy of EU governance. They wanted a strengthening of

the European Council at the cost of the Commission and the EP. But they hid their motives behind the empty norm of institutional balance which they allegedly wanted to preserve. Therefore they did not choose the existent institutional balance as starting point for their argumentation, but chose a vision of an institutional balance, which they wanted to achieve with their proposal – what means to change the actual institutional balance. Hain argued for a strong European Council in order to re-establish an institutional balance, which did not exist at the moment (debate at 15 May). Stuart (MP of UK) said that she “wants (...) a proper balance”, what means that “the European Council needs to change the way it operates” (debate at 20 January 03). By framing the meaning of the notion of institutional balance they tried to be in line with the accepted standard of the balance between the institutions.

Changes of the argumentation in the plenary debates. Compared with the January debate both sides used less efficiency-arguments in the May debate. Apparently the ‘weak President’- camp had successfully discredited the efficiency-argument, stating that a better coordination is also possible in the rotation system and that the job description in the presidium draft reveals the real motive: Not a more efficient coordination but a power shift towards the European Council. Another change in the May debate was that some members of the ‘weak-President’ camp gave up their opposition against a long-term president and tried instead to limit its competences.

V. The budget power of the European Parliament

The conflict: The EP as co-legislator - the coherent application of an uncontested principle

The last treaty revisions have increased the role of the EP as co-legislator. One conflict in the convention was about how consequent this principle should be applied to the budget of the EU. This conflict has two levels: The revenues and the expenditures of the budget.

The revenues of the EU budget are mainly contributions of the member states which are fixed in the Council and which have to be approved by the national parliaments. Additionally the budget of the EU is composed of further own resources: custom duties, agricultural levies and a part of the value-added tax of the member states. Changes in the system of own resources can be decided unanimously in the Council. The EP is only consulted. Thus, the EP has no competence to change the global amount of the revenues of the EU.

At the expenditure side the financial perspective and the annual budgetary procedure have to be distinguished. The financial perspective, applied since 1989, is the central instrument to fix the ceiling of the annual budget and the most important categories of the budget. Despite of its importance it is not part of the treaties. Decisions are taken unanimously within the Council. An inter-institutional agreement gives the EP the possibility to negotiate with the Council.²¹ In the annual budgetary procedure the EP has the last word on the compulsory expenditures, the European Council decides over the non-compulsory expenditures (mainly farm guarantees which represent almost the half of the annual budget).

Governmental positions: France and UK against extended rights

Since the agreement that the EP has the last word on the non-compulsory expenditures and the Council on the compulsory expenditures, the budget procedure was no longer a big question in the last treaty revisions. As in the convention the debate about the budget began, France repeated its old position that it would not accept an interference of the EP in the obligatory expenditures. “In the budget procedure the concept of obligatory expenditures has to be

²¹ 1999/C172/01

maintained” (Villepin, debate at 5 December 02; translation A.B.). Also Hain demonstrated his reluctance to extend the budgetary rights of the European Parliament: “We need a strong EP which concentrates on what it does best – *improving* (accentuation, A.B.) legislation (...) and its right that the European Parliament’s *voice should be heard* in all annual decisions on the EU spending” – be heard and improving is not the same as to decide. The position of the German government to give the EP the full budgetary control is only partly reflected in the Franco-German compromise paper of January 2003 which wishes a discussion about the possibility to give the EP more competences in the budgetary procedures, provided it cannot increase the global amount of expenses.

The evolution in the Convention and IGC: Successful extension of budgetary rights – Unsuccessful demand for EU-taxes and EP-competences in the system of own resources

The budget power of the EP was treated in the working group on simplification.²² The group proposed to abolish the distinction between compulsory and non-compulsory expenditures and replace it with a budget procedure similar to the co-decision – giving the last word to the EP on expenditures. As to the revenue the group proposed the current system of unanimity in the Council and the following ratification in the member states.

In the plenary debate on 5 December 2002 some conventionneers wished to give the EP additionally a say in the revenue side of the budget; or to introduce ‘Qualified Majority Voting’ (QMV) in the Council in order to avoid a blockade in an enlarged Union. Notably the Commission, the Belgian and Austrian government were in favor of Union taxes. Concerning the budget procedure a majority was in favor of the abolition of the distinction between

²² CONV 424/02

compulsory and non-compulsory expenditures. But it was highly contested if – as consequence – the EP should have the last word over the whole budget.

The first draft on the Union finances²³ reflected this gap in the convention. The presidium did not change article 269 TEC on the Union resources (art. 38). But it wondered whether unanimity in the Council and ratification in the member states “is able to guarantee in the future the adoption of the measures required for the financing of the Union policies, bearing in mind the weight of number”. The budget procedure (art. 40) only says that “the EP and the Council shall jointly adopt the Union’s annual budget”. Afterwards coordination groups on own resources and on the budget procedures were put in place. The only consensus among the members was the idea that the financial perspective should be institutionalized in the constitution. Dissension persisted on the budget procedure, on EP participation in the system of own resources and on the involvement of the EP in the adoption of the financial perspective via consent or co-decision.

The controversy about the budget procedure and about EP competences in the revenues (as to decide about a community tax) dominated the plenary debate on 4 April. A majority tendency appeared to be emerging in favor of applying co-decision to the budget procedure, although there is also still considerable resistance. The notion of a 'Community tax' remains much more controversial.

The revised Part I of 26 May²⁴ did not transfer new competences to the EP in the system of own resources. Unanimity in the Council remained. However it left open the possibility to create European taxes by unanimity (art. I-53). The financial perspective – renamed as multi-annual financial framework – was institutionalized (art. I-54). As many representatives of the

²³ CONV 602/03

²⁴ CONV 724/03

governments insisted on a limited influence of the EP in the financial framework as condition for their acceptance to abolish the distinction between compulsory and non-compulsory expenditures the EP can only consent on the financial perspective, which leads maybe to less influence than in the current inter-institutional agreement²⁵ to negotiate the ceilings jointly with the Council. The budget procedure in which the distinction between compulsory and non-compulsory spending was dropped gave - after a failed conciliation procedure - the final word over the budget to the EP (art.III-306,8²⁶, final version of draft constitution III-310,8).

The final draft²⁷ didn't change the articles on the Union Finances (art.53). But the IGC changed the budgetary procedure and took away the final decision of the EP after a failed conciliation procedure: If the conciliation does not reach a consensus the Commission has to present a new draft for the budget²⁸ (art.III-404). Still the budget cannot be adopted without the consent of the EP, but – contrary to the draft constitution of the convention – also not without the consent of the Council.

Normative standards in negotiation processes: Salience and Coherence as explaining factors

In view of the unwillingness of many governments to extend the budgetary competences of the EP it is puzzling that the EP has gained new competences, even if they are counterbalanced through the multi-annual financial framework. That no new competences were transferred to the EP in the system of own resources reflects the refusal of many governments. An analysis of the plenary debates of 5 December 2002 and 4 April 2003 maps the argumentative constellation.

²⁵ OJC 172, 18.6.1999

²⁶ in revised Part III, CONV 725/03

²⁷ CONV 850/03

²⁸ CIG 87/04

Mapping of arguments concerning the adoption of the budget. The category ‘stronger role’ for the EP in the budgetary process, consists of proposals that want an abolition of the distinction between compulsory and non-compulsory expenditures, more power for the EP in the multi-annual financial perspective and the last word in the budgetary procedure. Speech acts which are in favor of the abolition of the distinction but refuse a stronger role of the EP in other aspects, are part of the ‘contra’-category. This category consists of proposals preferring the current system. The introduction of QMV in the multi-annual financial perspective and the connected stronger say of the EP is refused, also the last word over the budget for the EP.

The most used argument in favor of a stronger role for the EP in the budget procedure is salience (need for democratic control over the whole budget; 42% of pro-arguments), followed by the coherence-argument (26%), that the EP has to become the right of co-decision in the multi-annual financial framework because the inter-institutional agreement has informally already given the EP such a right. The opponents of a change of the status quo could only counteract these claims with the rather empty principle of the institutional balance which should not be changed (50%) and the warning of a more complicated budget process (33%).

Changes in the positions. It is plausible that the supporters of a stronger role of the EP could put other actors under normative pressure with salience- and coherence-arguments. Whereas the French government refused the abolition of the distinction between compulsory and non-compulsory expenditures at the beginning, it accepted the abolition in the plenary debate on 4 April. “After a while France has understood that it could not eternally demand to be privileged in the agriculture policy”²⁹ (French MEP Alain Lamassoure, translation A.B.). Also the British government announced on 4 April that it could accept the abolition of the

²⁹ Interview in Strasburg, 13.1.2005

distinction, if the Council maintains the predominance in establishing the ceilings in the financial perspective.

Reactions to normative pressure. The influence of normative pressure can be shown in the reaction to it. So the opponents of a stronger EP didn't argue from a normative standpoint but used the empty norm of institutional balance. This is a hint that they feel themselves in a weak normative position and avoided an open normative confrontation. They formally accepted the standard of the EP as budget authority but tried at the same to limit its rights: They insisted on a financial framework which is decided unanimously by the governments, the EP can only consent on it. Then they tried to frame the consent procedure as equivalent to the current inter-institutional agreement, thus rhetorically accepting that EP rights should not be weakened.

Changes in the IGC. Beyond the public, the normative pressure was lower. In the IGC several governments tried to limit the budget power of the EP again. Especially France and the UK, but also Germany were against the last word of the EP over the budget. But the Irish Presidency insisted that modification of the draft constitution could only be made with the consent of the representatives of the EP. For the first time the voice of the EP delegation had the same weight as the voice of a member state. This explains why the compromise changed the budget procedure only a little bit – giving Council and EP the same rights to decide over the budget.

Mapping of arguments concerning the revenue side of the budget. Proposals are part of the 'pro-EP'-category if they argue for EU-taxes and against unanimity in the Council when fixing the contributions – implying a certain participation of the EP. Proposals and positions are part of the 'contra-EP'-category if they refuse any change in the current system of

unanimity in the Council and the introduction of EU-taxes. The most used 'pro EP'-argument was efficiency (unanimity in Council does not work any more in an enlarged EU; 44%), followed by salience (competence on revenues as democratic right of parliaments, 38%) and coherence (EU taxes needed in order to revive the system of 'real' own resources; 22%). The opponents of a stronger EP used the frame of the nation-state as primary source of legitimacy (EU taxes would be a move away from the EU as union of member states; 60%). And they attacked the salience argument of the 'pro-EP'-camp, stating that national parliaments decide upon the national budget including the contributions for the EU – therefore there is no legitimacy-gap (20%).

Evaluation: Normative pressure impossible. Whereas normally the supporters of the EP mobilized normative pressure by referring to a lack of input-legitimacy, this time this argument was less used and less successful. This is plausible because it is almost consensus that on the revenue-side of the EU budget no big legitimacy deficit is looming: The Council decides with unanimity and the national parliaments have to ratify the national budget – including the contribution for the EU. It can hardly be argued that a shared norm is violated. This shows: Supranational intensions to increase the power of the EP are not successful as long as they cannot be connected to an obvious legitimacy deficit of the status quo.

VI. The Role of National Parliaments in EU legislation

The conflict: Strengthening as additional or alternative democratization strategy

Two declarations attached to the treaty of Maastricht acknowledged for the first time the participation and control rights of national parliaments (NP). Amsterdam transferred these declarations into the binding protocol number 9. Beside the information rights the protocol fixes the involvement of NP at the European level via the COSAC, who can submit (non

binding) contributions about the legislative activity of the Union – inclusive the application of the subsidiarity principle (Title II, 6).

The conflict in the convention was how far the involvement of NP at the European level should reach. The control of the subsidiarity principle via an early warning mechanism without the right to stop Commission proposals is part of an additional democratization strategy which does not interfere with the prerogatives of the EP. Veto rights of NP in the early warning system or the demand for an institutional representation of NP in the institutional architecture of the Union via a second chamber, are part of an alternative democratization strategy at the cost of the EP and a deeper integration of the Union. This strategy can be justified with the deficits of the EP to increase the legitimacy of the EU but can also be used as a rhetorical strategy to escape the normative pressure to do something against the democratic deficit of the Union, and as a tool to avoid a further parliamentarization via the European Parliament.³⁰

The governmental positions: ‘Strengthening’ of national parliaments at the cost of the European Parliament

The democratization of the EU via the empowerment of the EP was a highly contested strategy during and after negotiations leading to the Treaty of Nice. Even federalists such as the German Minister for Foreign Affairs Fischer argued against the EP. In his speech at the Humboldt University Berlin³¹ he proposed to go back to the system before 1979 – a parliament composed of national parliamentarians. He argued that the EP has not enough legitimacy because the connection of the EP to the political reality and the citizens is not

³⁰ see Maurer (2003:26)

³¹ 12.5.2000, <http://www.bundesregierung.de>

satisfactory. He said that the national state remains the frame number one for the citizens, a European demos does not exist.³²

The British prime minister Blair promoted the idea of a new chamber composed of national parliaments only a couple of months after Fischer's speech³³. The task of this chamber would be "to provide political review by a body of democratically elected politicians" – what can be interpreted that he believes that the EP does not have enough democratic legitimacy. Although Tony Blair did not demand for a second chamber anymore in the year 2002, he still proposed that "if a sufficient number of national parliaments" is against a Commission's proposal, the latter would have to revise its proposal³⁴. Denmark tried to strengthen the COSAC during its presidency in the second half of the year 2002 and to establish a permanent secretariat that would continuously monitor EU legislation and become a real institution.

Also the French president Chirac recommended "the transfer of new competences to national parliaments in EU legislation" (translation A.B.)³⁵. The French prime minister Jospin argued for a Congress of national parliaments, "which would meet regularly to monitor the application of the principle of subsidiarity and would hold an annual debate on the state of the Union".³⁶ Convention president Giscard strongly promoted the idea of a Congress³⁷ with tasks including more than just the monitoring of the subsidiarity principle, namely the consultation on enlargement decisions or the election of high officials of the EU.

³² plenary debate in Bundestag, 19.5.2000, Ausschuss für die Angelegenheiten der Europäischen Union, Texte und Materialien, Band 11, p. 221

³³ Speech at the Polish stock exchange, Warsaw, 6.10.2000, <http://www.number-10.gov.uk>

³⁴ in Cardiff, 28.11.2002, http://www.number_10.gov.uk

³⁵ Speech in Strasburg, 6.3.2002, SG-2002-09523, <http://www.europa.eu.int/constitution/futurum>

³⁶ Speech in Paris, 28.5.2001

³⁷ Speech to the College of Bruges, 2.10.2002, quoted in Norman 2003:151

The evolution during the Convention and the IGC: Limited strengthening of national parliaments without concurrence to the EP

The role of NP was treated in the working group on subsidiarity chaired by Mendez de Vigo and in the working group on national parliaments chaired by the British Labour MP Gisela Stuart. Her group became “the battle ground between supporters of an additional parliamentary chamber and MEPs who were determined – successfully as it turned out – to protect the legislative prerogatives of the European Parliament” (Norman 2003:98). The group proposed³⁸ to give COSAC a greater role in monitoring EU policies. Further they suggested periodic meetings of NP and the EP to debate important issues in an European Congress. The working group on subsidiarity was less enthusiastic about a far reaching involvement of NP in EU legislation. In their report³⁹ they concluded that the subsidiarity principle is already controlled by the Commission. Still they suggested improvements. Among them the introduction of an early warning mechanism that gives NP the right to question a Commission’s proposal (but no power to block the legislation process) and a right to appeal the European Court of Justice.

The conclusions of the working groups were discussed in plenary at 3/4 and 28 October 2002. The idea of a second chamber did not play a role any more. Instead the institutional involvement of NP was debated in the context of a Congress of national and European parliamentarians. The focus of the debate was the controversy between a modest early warning system (yellow card) and a far reaching warning system (red card) giving a certain number of national parliaments the right to stop the legislation process. In the modest version the Commission would decide autonomously whether it maintains, alters or withdraws its proposal after a certain number of parliaments have stated a breach with the subsidiarity

³⁸ CONV 353/02

³⁹ CONV 286/03

principle. In the far reaching version parliaments had the right to draw the red card and the right to bring ex-post subsidiarity-related proceedings in the Court of Justice.

On 27 February 2003 the presidium published the first draft protocols on applying the principles of subsidiarity and proportionality⁴⁰. In the protocols the presidium confirmed the moderate control of the subsidiarity principle. Furthermore, it did not follow the recommendation of Stuarts working group to give COSAC more competences. And it modified the working group's proposal to appeal the Court. According to the draft it is up to the member states to appeal the Court at the request of their national parliaments – not directly up to the parliaments.

The following plenary debate on 18 March was characterized by the effort of some conventioners to alter the presidium proposal towards more rights for national parliaments – through a strengthening of COSAC, a right to appeal the Court directly and the equipment of the early warning system with more power, whereas others tried to limit the influence of national parliaments.

Although Giscard achieved to keep his idea of a Congress alive in the presidium's draft of 22 April⁴¹ the revised text of part I on the institutions dropped on 31 May the idea of a Congress.⁴² In the final version of 18 June the subsidiarity protocol was not modified. In the IGC the UK raised again the issue of a national parliamentary veto on all EU legislation, but without success. The subsidiarity protocol remained unchanged.

⁴⁰ CONV 579/03

⁴¹ CONV 691/03

⁴² CONV 770/03

Normative standards in negotiation processes: Weak power of salience-arguments due to a lack of coherence and credibility

Compared with the governmental discourses at the beginning of the new millennium and the Laeken declaration the results of the Convention are puzzling. Neither a new chamber was created, nor did NP receive competences where the EP has no competences. COSAC remains a forum of exchange and the Congress – despite the strong support of Gisacrd – was not given birth. The NP-related results of the convention do not “constitute a major departure from the present situation” (Raunio 2005:1). An analysis of the plenary debates of 3/4 October, 18 March, 24 April and 15 May maps the argumentative constellation.

Mapping of arguments. Positions, which demand a veto-power in the early warning system, a new role for COSAC, a participation in the election of the Commission president and a Congress are part of the category ‘far reaching involvement of NP in EU-legislation’. The ‘modest involvement category’ consists of positions and proposals which support the early warning mechanism (but without veto rights), refuse a Congress or a new role for COSAC, point out that the participation of NP can only be a supplement and must not become a competitor for the EP. Being against the Congress is only categorized with ‘modest participation’ in conjunction with other elements of this category.

The supporters of a far reaching involvement of national parliaments tried to mobilize normative pressure with the salience-argument (bringing the Union closer to its citizens; 42%) in connection with nation-arguments (nation state as primary source of legitimacy; 32%). But they could neither denounce the opponents of a congress or a stronger COSAC as violators of common normative standards, nor could the demand for a stronger involvement of NP at the European level refer to a well established constitutionalization path. The supporters of an only

modest involvement of NP attacked the salience-argument (29%) as follows: A far reaching participation cannot solve the problems of procedural legitimacy, because of the probability that governments will dominate the parliamentary majority and send rather a 'delegate' of the government to the congress or instrumentalize the early warning mechanism as a political tool – with the consequence that the control of the subsidiarity principle would rather be an extra power resource for governments to block European legislation. Further they used efficiency-arguments (new institutional structures will create new complexities, 32%) and coherence-arguments (no mixture of national and European level, 26%).

Evaluation. Salience-arguments used for a far reaching involvement of national parliaments in EU legislation could not exercise normative pressure on their opponents. This is due to two reasons. The opponents could successfully demonstrate the limits of such a strategy to solve the problems of procedural legitimacy of the EU and they questioned the sincerity of the supporters of a far reaching involvement of national parliaments. A dual mandate involving national parliamentarians in a second chamber that was busy enough to justify its existence would place so onerous burden on an individual parliamentarian that, in reality, it would not be possible to do both jobs effectively. And, if a second chamber claimed legitimacy equal to that of the European Parliament it would be not clear who would be accountable to the electorate for policy outcomes. Finally it would be difficult to ensure that national governments did not seek to pack their delegations with loyal supporters.

Conclusion

The case studies support the constitutionalization-hypothesis. It is plausible that normative reasoning with salience arguments (in combination coherence-arguments) could shift the outcome of the negotiations to more EP-friendly results because: (1) The results of the

Convention do not reflect the initial constellation of the governmental positions. Despite reluctance among the member states at the beginning of the Convention the constitution gave the EP the right to elect the Commission president with simple majority, restricted the role and competences of the European Council president and gave the EP full competences in the annual budget procedure. (2) The evolution of the draft articles took step by step into account the salience- and coherence arguments of the supporters of a further strengthening of the EP. (3) Actors under normative pressure changed their position. (4) Actors who were against a further parliamentarization didn't argue openly against the European Parliament (although the parliamentarization strategy has its limits). They avoided a normative debate about appropriate legitimating strategies and used instead empty abstract principles like the institutional balance-norm or tried to deny conflicts between their positions and well established normative standards.

However, salience-arguments couldn't exert normative pressure to strengthen the national parliaments because the opponents could successfully demonstrate the limits of such a strategy to solve the problems of procedural legitimacy of the EU. And salience-arguments were also without impact where a clear violation of the standards of parliamentary democracy was not obvious – as in the revenues of the EU. This shows that integrationist intentions to increase the power of the EP are less successful if they cannot be connected with an obvious legitimacy deficit of the status quo (see also Rittberger 2006).

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