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Playing the co-decision game: Is the European Parliament striking a balance between liberty and security?

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ABSTRACT

The introduction of co-decision has deeply transformed the European Parliament as a polity, changing the patterns of behaviour inside the institution. It has also modified the strategies of political groups as well as the outcomes of policies, due to the necessity to find consensus among decision-makers. This paper aims to analyse whether the patterns of behaviour developed under co-decision are now making their appearance in the committee for civil liberties and justice and home affairs (LIBE). A newcomer in the area of co-decision, the LIBE committee is an ideal ground for examining the effects of co-decision on the internal workings of an EP committee. To this effect, the paper will evaluate to what extent the LIBE committee has been normalised, i.e. brought closer to the patterns of behaviour set by co-decision, in terms of its polity, politics and policies. The analysis of legislative texts and a set of interviews indicate that the LIBE committee still possesses an exceptional character. Recently, it has developed a dual behaviour, whereby its working methods vary depending on the decision-making procedure (consultation or co-decision), hindering the normalisation of the polity, politics and policies of the committee.

INTRODUCTION

In a European Parliament (EP) in constant change, every institutional development opens up the door for innovation in any of its elements: polity, politics and policies. The relationship between these three elements is often at odds, especially in an institution that does not fit either a parliamentarian or a separation-of-powers model and that some have described as part of a compound democracy (Fabbrini, 2005; Schmidt, 2006). The extension of co-decision has made a major difference in the institution. In terms of polity, the newest decision-making procedure has fortified the committee structure and given rise to rapporteurs as key figures in inter-institutional negotiations. Co-decision has also changed the functioning of politics, creating a new intra- and inter-EP party

groups' dynamic. Finally, by establishing the EP as a co-legislator, it has introduced a new player in the policy process, opening both new opportunities and constraints.

Policies are also key to the functioning of the EP. In fact, variation between policy fields accounts for the different practices used under co-decision, given that parliamentary committees, usually organised around these policy fields, have had to adapt their working methods to their area of expertise. It is indeed this policy-related variance that makes the committee on civil liberties and justice and home affairs (LIBE) an interesting case study. Working mostly under consultation until 2005, the extension of co-decision to most first-pillar issues of the Area of Freedom, Security and Justice (AFSJ) has allowed the EP to become a co-legislator with the Council of the European Union (hereafter the Council) in matters as distinct as asylum, irregular immigration, data protection, borders and visas or civil law[1]. The long-awaited change to co-decision has been seen as crucial for two reasons: first, under consultation the EP had only the power to issue an opinion, often disregarded by the Commission and the Council (Kostakopoulou, 2000, p. 498; Peers, 2006, p. 26), thus the extension of co-decision has been seen as a substantial gain in power for the institution. Secondly, during the consultation period, the LIBE committee rose as an advocate for civil liberties, producing recurrent clashes with a Council showing a tendency to emphasise the security element of the Area of Freedom, Security and Justice (Geddes, 2003, p. 5; Kostakopoulou, 2000, p. 498; Uçarer, 2001, p. 14). It was thus expected that with more opportunities to influence and change legislation, the balance between security and liberty would be redressed.

Given these particular dynamics observed in the LIBE committee in the past, the passage to co-decision offers a perfect case study for the effects of a change in elements of the polity (understood as the institutional structure of the organisation), on the politics as well as on the policy position of the committee. In this sense, the paper will analyse to what extent the LIBE committee has undergone a process of normalisation, both in terms of polity and politics, and what effect this might have had on policy outcomes. In this paper, 'normalisation' will be understood as a process whereby the LIBE committee becomes closer to the norm (i.e. to those patterns established by co-

[1] Police and judicial cooperation in criminal matters are still in the third pillar and, together with family law and legal immigration; they continue to be ruled by consultation with the EP and unanimity in the Council.

decision) without assuming that there is any such thing as a 'normal' committee in the European Parliament. In order to understand and evaluate the extent of the changes in the LIBE committee and the degree of normalisation, I will first address the characteristics of co-decision and the effects it has on the structure of both the institution and its politics and subsequently compare these patterns to the present LIBE committee.

POLITY, POLITICS AND POLICIES: EP COMMITTEES UNDER CO-DECISION

Co-decision, in its current Amsterdam form, has utterly transformed decision-making in the EU. The new procedure has not only changed the institutional triangle but also the working methods and cultures inside the European Parliament (Maurer, 2003). More than just a rule of procedure, co-decision has grown to form a set of norms that guide actors' behaviour. Members of Parliament (MEPs) have seen their routines and roles transformed by co-decision, be it at committee level or in Plenary. Co-decision has reinforced some structures and tendencies that were already present and simultaneously it has changed the importance of particular roles, thus affecting the organisation of political groups and the outcome of policies.

First and foremost, co-decision has reinforced the role of parliamentary committees. Committees have existed since the creation of the Common Assembly in 1953 (Neuhold, 2001, p. 3) and they are organised around policy areas or specific thematic fields such as human or women's rights. In consequence, committees act under different decision-making procedures, depending on the legal base of their particular policies indicated in the treaties. Committees such as ENVI (environment) are now functioning mostly under co-decision, giving the EP the power to co-legislate alongside the Council, while other committees such as AGRI (agriculture and rural development) function mostly under consultation; the extreme case being the AFET committee (Foreign affairs) where the Treaty (TEU) only specifies that the EP has to be consulted, not when or how. Nevertheless, even when only consulted, the EP, as a plenary assembly, casts its vote on the committee report rather than on the Commission's proposal. In consequence, most of the discussions take place at committee level, making the leading committee largely responsible for examining the details of the proposal and starting negotiations with the Council and the Commission. In consequence, debates in plenary

do not go into details (Neuhold, 2001) and very rarely introduce new amendments. Interventions in plenary tend to be more an explanation of the forthcoming vote than an attempt to change the outcome of that vote.

Committees are thus the central bodies of the polity (McElroy, 2006, p. 6). At the core of the institutional structure, they organise and influence what forms both the politics and policies of the EP take. In terms of politics, co-decision has had a major impact on the way political groups organise themselves both internally and among groups inside the EP but especially inside committees. Essentially, co-decision requires very high majorities both in committees and plenary, especially if no agreement is found during the first reading[2]. These high thresholds create a norm of consensus-seeking inside the EP as well as with the other institutions. This norm puts new constraints on the political groups. First, it changes the dynamics inside these groups, shifting the importance attributed to different political roles. Traditionally, committee chairmanships were regarded as key roles but they are now losing influence in front of rapporteurs and group coordinators (Farrell & Héritier, 2004), who are now better able to access and steer negotiations. The culture of consensus has also increased the necessity to create informal channels of negotiation with the Council and the Commission. Informal trialogues bringing a small number of actors together – usually rapporteurs, shadow rapporteurs and Commission and Council officials, plus the Presidency – are now formed at the very beginning of the procedure (Settembri & Neuhold, 2009, p. 144) and often seek to find an agreement at the earliest possible stage. As a consequence, those actors who have direct access to information and negotiations have acquired a major role inside committees (Yordanova, 2009a) but also inside political groups. The role of the rapporteurs is essential to finding consensus among groups and thus their ability to influence the outcome of legislation should not be overlooked (Benedetto, 2005). There is thus now a growing element of competition for rapporteurships, introducing a new ingredient that creates tension not only inside committees but also inside political groups (Hausemer, 2006; Yordanova, 2009b), especially when other members feel they are losing control over debates and negotiations (Farrell & Héritier, 2003a, p. 11).

[2] During the first reading, amendments have to be accepted by simple majority while during the second reading, an absolute majority is necessary. After the conciliation committee, the agreement has to be approved by the majority of the votes cast in the EP. Note also that there is no time limit to reach an agreement during the first reading while the second reading is restricted to three months (that may be extended to four months).

The large majorities and a culture of consensus have also created a movement towards the centre in the shape of an informal 'grand coalition'. Although left/right competition seems to have increased in recent parliaments (Kreppel & Hix, 2003), the amount of competition remains low, especially during the first stages of negotiations (Settembri & Neuhold, 2009, pp. 139,148). As a result, smaller groups are easily left aside during negotiations, leaving the EPP and PSE as the main players in co-decision (Farrell & Héritier, 2003b, p. 591). As Hausemer expresses it, the largest group enjoy the "tyranny of the majority", forcing rapporteurs from smaller political groups to find the support of at least one of the largest groups to reach the necessary threshold in plenary (Hausemer, 2006, p. 513; Rittberger, 2000, p. 560). As we will see later, this necessity to ensure the support of the largest parties has been key in some negotiations, ending with the resignation of rapporteurs after their report has been displaced by political groups' amendments in plenary. As a direct consequence, policy options and proposals in EP reports do not have large room for manoeuvre. The necessity to please the central parties in order to reach the majority required in a given reading leaves no room for radicalism (Kreppel & Tsebelis, 1999, p. 958). This institutional constraint comes combined with the aforementioned culture of consensus, creating a feeling of legislative and electoral responsibility in the EP. The passage to co-decision has transformed the EP into a co-legislator, increasing the workload of committees and individual members – as the reduction of own initiative reports shows (Maurer, 2003, p. 237) – and giving them a sense of shared responsibility towards the electorate. Polity, politics and policies are undergoing a transformation that can be observed in all those committees working under co-decision. As a consequence, it is interesting to analyse how these general trends affect the LIBE committee after the extension of co-decision.

THE LIBE COMMITTEE: HEADING TOWARDS A 'NORMAL' COMMITTEE?

In January 2005, the LIBE committee experienced some major developments as a polity. A notorious exception among EP committees, the civil liberties committee had until that moment worked mostly under consultation. That decision-making form had introduced very clear patterns of behaviour among its members, with direct consequences on the politics and policies of the committee. First, party groups inside the committee followed very different patterns from those revealed in other committees, especially those under co-decision. Not only was the left/right divide less apparent, but it was also difficult to find grand coalitions. In fact, the typical cleavage in the

committee ran rather between advocates of higher standards in civil and human rights and those more moderate and ready to agree with the views of the Commission and even the Council, who were more prone to prioritise security. Yet, in practice, the committee had won a reputation for being apparently united and very vocal in their defence of civil liberties (Acosta, 2009, p. 21), especially when dealing with data protection (European Parliament, official, interview, 2009). It seems also, that the organisation of the polity, with the EP having only a right to give opinions, helped smaller or minority party groups to be more visible than in other committees. Smaller groups such as greens, the more left-wing delegations of the socialist group and even ALDE (liberals) were able to mobilise the entire committee and also an EP devoid of electoral stakes so as to develop a long-term engagement in favour of civil liberties. Members with divergent views were not successful in enforcing their views; the reasons claimed being their inability to gather the necessary majorities (Speiser, interview, 2009). It is also probable that some members did not see a political benefit in tempering the views of the committee in order to achieve consensus with the other two institutions. There was thus a clear policy outcome that persisted, although the consensus depended on the policy issues, data protection being their favourite and most consistent topic whereas other topics such as immigration hid stronger divergences (Lahav & Messina, 2005).

Given these particularities, the LIBE committee is an ideal ground on which to study the effects that co-decision – as a major change in the organisation of the polity – has had on the politics and policies of the committee. Has the LIBE committee been turned into a 'normal' co-decision committee? The answer to this question seems apparently to be a straightforward yes. On the surface, the committee appears to have adapted to the existing patterns of co-decision. The polity has developed highly consensual behaviour and different forms of informality. The politics have become more competitive and produced larger coalitions. The policies have also changed, becoming closer to the traditional policy position of the Council. The committee appears largely normalised, however, as part three will show, there are important caveats to a full adjustment of the polity, politics and policies of the committee.

In terms of institutional organisation, co-decision has largely introduced the same patterns of behaviour that exist in other committees. These patterns have been incorporated into the behaviour of its members to the point that the LIBE committee has

now more instruments available to seek consensus than other committees that have been working for longer under co-decision. Looking for instance at the legal instruments agreed under co-decision since 2005, it is striking the number of directives and regulations that have been passed during the first reading. In fact, since 2005, only one directive on biometric identifiers and visa applications has reached the second reading (European Parliament & Council of the European Union, 2009a). The extent of first reading agreements indicates two different tendencies in the committee. First, members of the committee have adopted consensual behaviour and sought to please the Council by showing a spirit of cooperation (Alvaro, interview, 2009; Council of the European Union, official A and B, interviews, 2009). Second, the committee has adopted those instruments available in co-decision to reach early agreements. Informal negotiations among a small number of representatives are now habitual. These informal meetings, or trialogues, do not always gather the same actors. Depending on the political level, they will be more or less informal and reunite a different number of representatives. Usually, informal trialogues reunite those Council and Commission officials responsible for the dossier and rapporteurs. Some rapporteurs are willing to include shadow rapporteurs (members of other political groups following the negotiations of a specific dossier), although this occurs less in the LIBE committee than in other committees (Council of the European Union, official B, interview 2009). The role of the Commission is usually perceived to be that of an honest broker, giving legal advice on the proposed modifications to the initial proposals and trying to strive for consensus between the EP and the Council (Monar, 2006, p. 500; Speiser, 2009; Council of the European Union, Official A, interview, 2009). However, some difficult negotiations have required that the necessary impetus comes from a very high political level, in more formal informal trialogues. In the case of the 'Returns' directive (European Parliament & Council of the European Union, 2008) for instance, the intervention and personal interest of the Slovenian Minister of Interior was necessary to find an agreement that could be accepted by both institutions and receive the necessary majority in the EP at first reading (Council of the European Union, official B, interview, 2009). The rapid development of informality in the LIBE committee has led to a feeling of unease among members, who have had the impression of being left in the dark during negotiations and presented with a take-it-or-leave-it deal when voting the report at committee level (European Parliament, official, interview, 2009). These fears are now leading to a formalisation of informal procedures, with the introduction of an orientation vote at the

beginning of negotiations with the Council (European Parliament, official, interview, 2009). This orientation vote is supposed to give an idea to rapporteurs of what might be acceptable for members in the committee and what are their main concerns. This process of formalisation of previously highly informal processes is not new in the EU. Informal negotiations with the Council have been periodically formalised, even institutionalised, by Treaty changes (Farrell & Héritier, 2003b). However, this development shows progress in formalisation, extending the process from inter-institutional general developments to very specific intra-institutional dynamics as well. The inclusion of an orientation vote also gives a new twist to the co-decision procedure, including a semi-first reading in committee, transforming the official second reading into a more distant possibility, equated almost to a third reading.

Co-decision has also changed the politics of the committee. The dynamics inside and between party groups have changed, giving new opportunities to groups and delegations previously marginalised. As explained previously, co-decision requires very high majorities that, combined with a sense of sharing responsibility for the outcome, has led the two largest groups to enter into a logic of coalition formation and consensus seeking. In consequence, party groups that were central to the process under consultation, such as ALDE, are now left with a more difficult choice: participate in coalitions even without being completely convinced by the content or become marginalised (see the declarations of the ALDE members in European Parliament, 2008a, 2008b). Some members clearly expose their frustration in either being excluded when the two largest parties gather the necessary votes or needing to ensure the support of the largest parties when drafting a report in order to ensure its viability in the plenary (Alvaro, interview, 2009). The example of the 'Data retention' directive (European Parliament & Council of the European Union, 2006a) is telling. The directive stipulates under which circumstances national authorities, such as police forces, can keep information on calls or internet communications and for how long. The data retained should be used when investigating serious criminal offences. In the case of the 'Data retention' directive, the interplay between small and large party groups was clear. The rapporteur, a member of the ALDE group, reached an agreement at committee level, but this agreement was bypassed by the leaders of the two largest groups (EPP-ED and PES) when the report reached the stage of the plenary vote. They were afraid that the Council could not agree to it and that in consequence the EP would miss a chance to

establish a pattern of cooperation and consensual behaviour under co-decision (Ripoll Servent, 2009). The rapporteur was outvoted in the plenary and a new political agreement proposed by the two largest groups was passed instead.

This example shows the importance accorded by the EP to developing good working relationships with the Council. The result has been a clear change in the patterns of behaviour when using co-decision and, in consequence, their sense of responsibility has increased. This change of behaviour has had a clear impact on policy outcomes as well. Those legislative acts agreed under co-decision show more moderate dispositions and language and their positions are closer to those traditionally adopted by the Council. This impression of moderation is shared by all the institutions, that agree with the view that a continuation of the old confrontational behaviour is no longer possible (interviews, Council of the European Union, officials A and B, 2009; European Commission, officials, 2009; European Parliament, official 2009; Speiser, 2009). Legislative acts such as the 'Schengen Borders Code' (European Parliament & Council of the European Union, 2006b) as well as the 'Data retention', the 'Returns' or the 'Sanctions' directives (European Parliament & Council of the European Union, 2006a, 2008, 2009b) all show a more moderate stance towards the protection of civil liberties. The 'Returns' directive is a good example of such moderation, or pragmatism as an advisor to the rapporteur (Weber) has called it (Speiser, interview, 2009).

The 'Returns' directive seeks to harmonise national conditions dealing with the voluntary or compulsory return of irregular immigrants, by creating common dispositions regulating the periods of time during which irregular immigrants may voluntarily decide to go back to their country of origin as well as stipulating the modalities for issuing return decisions, that will force third country nationals to leave the country. The directive also regulates the conditions for detention while awaiting removal in cases where it is suspected that the person will abscond. Although the outcome of the directive would have probably been more restrictive if the Council had been solely responsible for it, the impact of the EP in the decision-making process drives the institution far away from the standards claimed previously under consultation. As Acosta has put it, "[the EP´s] reputation as the 'Good' is now tarnished by its all-to[o]-eager acceptance of a deficient piece of legislation" (Acosta, 2009, p. 39).

In conclusion, we do see a process of normalisation of the LIBE committee under co-decision. The committee now presents similar features to those committees with a long-standing tradition of co-decision. It has adopted the same patterns of behaviour and developed parallel tendencies in terms of early agreements, informal negotiations, large coalitions giving a pre-eminence to the two largest groups and more consensual policy outcomes. However, this normalisation is luring. The LIBE committee is not yet a committee like any other. Its behaviour is not constant over the board and the persistence of consultation in the decision-making process is the main reason which slows down normalisation.

DUAL BEHAVIOUR IN THE LIBE COMMITTEE: DISRUPTING NORMALISATION

Consultation is still largely used in the LIBE committee. It applies to the third pillar (police and judicial cooperation in criminal matters) and to certain issues under the first pillar, namely family law and legal immigration. Thus, since 2005, an important number of proposals still fall under consultation. The sheer number of opinions given under consultation[3] blurs the impact of co-decision. Some members understate the shift to co-decision, considering the LIBE committee to be ruled still in its majority by consultation (Alvaro, interview, 2009). Certainly, files under co-decision are qualitatively different. Although some important measures have been discussed under consultation, it can be said that those acts with a broader and long-term impact have been dealt with under co-decision (see the examples above). Consultation has remained present mainly among international agreements, such as PNR, readmission and short-stay visa agreements with third-countries or via the incorporation of new Schengen members. Technical decisions regarding the introduction of the new Schengen Information System (SIS II), staff regulations or sanctions against particular countries such as Sudan and Congo have also increased the number of consultation files. However, the quality of the dossiers is not always taken into account when assessing the daily routine of the committee.

The existence of two very distinct procedures does not only have consequences in terms of organisation, powers and influence but it does carry with it two very distinct modes of behaviour, that have been constructed in very different frameworks, entering often

[3] In October 2008, 117 consultation procedures had been started since 2005, while only 30 had been dealt with under co-decision (LIBE committee database).

into conflict. In contrast to the general institutional developments in the EP as a whole, where co-decision is perceived to be the normal procedure, in the LIBE committee consultation is considered to be the mainstream decision-making method, given that since its inception the majority of negotiations have taken place under this procedure. Thus, in the LIBE committee, consultation is the norm and co-decision is still the exception. In consequence, the new modes of behaviour introduced by co-decision are seen as an element of disruption, questioning the previous patterns of behaviour that regulated the polity, politics and policies of the committee. Co-decision is now challenging both the existing forms of cooperation inside the committee as well as its meaning and character. By modifying the existing patterns in the politics and policies of the committee, it is having a direct effect on the way the committee perceives itself and is perceived by outsiders. From being the 'good' in the fights against the Council, the committee has now to readjust this self-portrayed image to the new configuration of the polity.

Indeed, the existence of consultation alongside co-decision involves the appearance of a dual behaviour among committee members. On the one hand, their behaviour under co-decision has become largely consensual but, on the other hand, under consultation the old confrontational behaviour opposing the LIBE committee with the Council persists. As a consequence, the policy outcomes under consultation and under co-decision are not always consistent. In some cases, issues that have not been successful when negotiating under co-decision are taken up at a later stage under consultation, where they often acquire a more confrontational shape. For, the case of data protection is telling. After the unsatisfactory result of the 'Data retention' directive (see above), the LIBE committee has engaged in a long-term battle to obtain higher standards of data protection in any proposal that guards any relation to it. Since data protection has been at the core of the committee's activities, giving it a good reputation and popularity, the setback of the 'Data retention' directive was deeply felt and all subsequent data protection instruments have been strongly contested. Probably, the best example of such a struggle has been the proposal for a 'European PNR' (European Commission, 2007). Passenger Names Records have been a long-standing conflictive issue between the EP and the Council. PNR contain not only information provided by travel documents (known as API, Advanced Passenger Information) but also additional information that can help create travellers' profiles. PNR agreements have been agreed with the United

States (European Union, 2007), Canada (European Community, 2006) and Australia (European Union, 2008) but not without the EP trying to challenge the substance and form of the agreements, both during and after negotiations. For instance, the first US agreement was brought, without much success, in front of the Court of Justice[4], obliging member states to renegotiate a new instrument with the USA (European Court of Justice, 2006). In consequence, it comes as no surprise that the recent Commission proposal to create a European PNR for law enforcement purposes has seen strong opposition from the LIBE committee (Alvaro, interview, 2009). The EP has expressed its concerns in relation mainly to the necessity of such a measure as well as to the use made of the data collected and the protection of personal information. An EP resolution voted with a very large majority (512 votes in favour, 5 against and 19 abstentions) has conditioned the completion of the EP report to an appropriate answer from the Council, where the latter addresses all the concerns expressed in the resolution by the European Parliament (European Parliament, 2008e).

Data protection is probably the clearest case of opposition between the LIBE committee and the Council. The call for the introduction of a data protection framework covering third pillar measures appears repeatedly in reports connected to data protection (see for instance, European Parliament, 2006b p. 82). This Council framework decision is in itself a good example of the confrontation opposing the EP and the Council. In the related EP report, the rapporteur clearly states that she regrets "that the Council has emptied the original Commission proposal of its content and has reached political agreement on the lowest possible denominator" (European Parliament, 2008c, p. 24). The Council has eventually agreed on a text that has not retained some of the key modifications proposed by the EP and that has received criticisms also from Peter Hustinx, the European Data Protection Supervisor (EDRI, 2009).

Yet, this confrontational tone is not only to be found in data protection-related opinions. Under consultation, reports do acquire a fiercer tone than those drafted under co-decision. For instance, when giving her opinion on the Framework decision on combating terrorism, the rapporteur concludes that "although tackling the problem is essential, particular care should be taken over how this is done, since in such a sensitive

[4] The EP challenged the agreement, but the ECJ decided that it would only examine the formal part, considered as incorrect (it decided the agreement should have been negotiated as a third pillar instrument instead of a Community instrument), leaving the substantial aspects (breach of data protection) unexamined.

area the risk is that efforts to increase the security of European citizens will in practice result in restrictions on those citizens' rights and freedoms" (European Parliament, 2008d, p. 19). The contrast between both procedures is especially clear when comparing reports written by the same rapporteur on similar topics. As an example, the rapporteur giving an opinion on the introduction of biometrics in EU citizens' passports raised several important questions regarding the purpose of the proposal and the protection offered to citizens' rights by such technology. He was especially worried that the introduction of a European register for passports would derive into "function creep", i.e. using data for other purposes than those originally foreseen (European Parliament, 2004, p. 16). Four years later, and under co-decision, the second report on biometrics in EU passports had a more conciliatory tone, acknowledging the progress made since the last report and stating that the "measures proposed by the Commission are necessary but wishes to take this opportunity to introduce further improvements" (European Parliament, 2008f, p. 13). Such language is now more commonly found in co-decision reports; the latter refer to 'shortcomings' and 'closing gaps' whereas consultation reports continue to talk about serious concerns and questionable proposals.

However, two other factors shape the tone and character of reports under consultation. First, the personality of the rapporteur has evidently an influence on the tone of the report and the stress put on civil liberties. The different reports on readmission agreements, for instance, show such diversity. While the report on an EU-Russia agreement is full of references to human rights and the basic rights of migrants (European Parliament, 2007a), the other reports stress rather the need to manage jointly irregular immigration and the benefits of clear rules and information campaigns in the countries of origin (European Parliament, 2007b, 2007c). Second, but more importantly, some proposals are linked to other negotiations taking place in co-decision. These cases of 'junctions', legislative packages both in the first and third pillar, make negotiations more complex, transforming consultation into a "quasi-co-decision" procedure, where rapporteurs are wary of being too forceful which might make them lose opportunities later on when negotiating under co-decision (Council of the European Union, official C, interview, 2009). This is clearly the case in the reports dealing with the introduction of the new SIS II (see above), where the tone is more moderate because the rapporteur is involved in parallel negotiations under consultation and co-decision (European Parliament, 2006b). Usually, these cases of 'junctions' or those where the legal bases

are contested, give rise to a call for the transfer of the third pillar to the normal community method and most consultation reports include a mention to the necessity to involve the EP in decision-making to ensure transparency and more democratic control (see for instance, European Parliament, 2005, 2006a).

All things considered, the LIBE committee seems to follow a 'last resort' strategy, leaving consultation as the last field of battle for higher civil liberties standards. However, this strategy renders the political organisation of political groups more difficult. Since coalitions in the EP are not stable, groups need to find the necessary number of votes to find a majority for each proposal, both at the level of the committee and of the plenary. Finding coalitions is easier if policy dimensions are well established and actors have enough information to know where the other groups stand. Therefore, the current situation makes coalition-building more complicated, since, depending on the decision-making procedure, political groups place themselves differently on the policy dimension opposing security and liberty. Such dual behaviour is often displayed by ALDE. While desiring to maintain their old behaviour, advocating for high standards of civil liberties and human rights, its members acknowledge that under co-decision this behaviour is difficult to maintain. Therefore, whereas under consultation they continue to show a clear preference for high standards of civil liberties, especially in data protection, in those cases where a member of the party group is the rapporteur, the necessity to secure votes from the two largest parties compels the group to compromise and portray more moderate points of view (Alvaro, interview, 2009). Similarly, the EPP-ED has also experienced difficulties in streamlining their strategies. They welcome co-decision because it allows them to be more pragmatic and have more 'reasonable' positions. For them it puts an end to the legislative "Christmas wishing lists", as they perceived previous resolutions and reports (Speiser, interview, 2009). In fact, the EPP-ED is the group that has probably benefited the most with the shift to co-decision. From being a slightly marginalised, or at least silent, group in the LIBE committee, it has become a central key player in negotiations and a necessary partner for reaching the required voting thresholds. However, the persistence of consultation frustrates their willingness to transform the committee into a normal body with a left/right dimension and structural tendency to form a grand coalition, instead of the current security/liberty cleavage (Speiser, interview, 2009).

The duality between consultation and co-decision has also created new dividing lines inside parties. The socialist group is probably the best example of such a fragmentation. While some delegations inside the group would like to maintain the confrontational behaviour developed under consultation, other sectors of the PES are willing to engage in consensual behaviour with the Council in order to ensure that the EP will be taken seriously in co-decision. The 'Returns' directive is a good example of such a division. During the last stages preceding the votes, the socialist group was divided into those delegations wishing to reject the agreement in order to show their opposition to the proposed mainstreaming of expulsion and deportation, while other delegations preferred to support the agreed outcome in order to ensure the existence of common legislation and to show a responsible behaviour (European Parliament, 2008a). Eventually, the group decided to abstain in order to keep some consistency inside the group (European Parliament, official, interview, 2009). This internal struggle exemplifies the current division in the committee, split into a more idealistic side and a more realistic side, with the latter taking the lead in co-decision (European Commission, officials, interview, 2009).

Co-decision has not yet been able to substitute consultation as the normal legislative procedure, neither in terms of quantity nor in the understanding of actors. The co-existence of two decision-making procedures with very different, even opposed, patterns of behaviour is problematic because it creates confusion inside and outside the committee. It leads members of the committee to adopt a dual behaviour that renders the strategies and values of the institution confusing both for those having to work inside it but also for external agents needing to interact with the committee. Polity, politics and policies present different standards depending on the procedure; this blurs the character of the committee and means that relationships with the other institutions become confused.

CONCLUSION

Has the LIBE committee changed its patterns of behaviour and become normalised? To a certain extent yes, but this process of normalisation has given the committee a new exceptional character. The LIBE committee presents more similar features to other committees where co-decision is the norm. It has developed very consensual patterns of behaviour when negotiating agreements, both inside the committee and with other

institutions. It also presents the same tendencies that one finds at a larger scale in the EP: the politics of party groups are more dependent on a big coalition formed by the EPP and PES, marginalising smaller party groups; policy outcomes are also affected by this dynamic, with less room for radicalism. The LIBE committee has also very rapidly developed new forms of informality, to the point that its members have tried to formalise informal negotiations to reach early agreements by introducing an orientation vote that provides some guidance to the rapporteur.

In this sense, the LIBE committee has internalised the patterns of behaviour provided by co-decision and developed new working methods that reproduce those existing in other committees. However, the LIBE committee is not yet a committee like any other. It is precisely the introduction of co-decision that gives it its exceptional character. Since, co-decision has not completely substituted the previous decision-making method, not even become quantitatively and qualitatively the main procedure, the committee exhibits now a dual behaviour. Therefore, alongside the new norm of consensus introduced by co-decision, the LIBE committee refuses to abandon its previous confrontational behaviour when working under consultation. This duality blurs the culture and structure of the committee, making it more difficult for its members individually and its political groups to find log-term patterns and points of reference.

As a consequence, the internal and external image of the LIBE committee is at present tangled. With different party groups' strategies and different policy preferences depending on the decision-making procedure, the committee is now in a standby mode, not sure where to go from here. Neither the challenging actor of the past, nor a fully normalised committee, the confusion permeates the internal and external relationships of the committee. In a way, the LIBE committee seems to be at a crossroads; it has to decide whether it continues to work as the LIBE committee, perpetuating the norm of confrontation that has given it its reputation or whether it becomes a proxy of the EP, losing its particularities and becoming a mere delegate of the political spectrum represented in the parliament, one among other voices of the institution.

The choice might be easier if the Lisbon Treaty sees the light. The new Treaty would extend co-decision (or the ordinary legislative procedure as it is to be named in the future) to almost all the issues of the AFSJ, since it would integrate the current third pillar into the EC framework. Some matters would remain outside the community

method though. Family law would still be ruled by consultation with the EP and unanimity in the Council. Other issues such as maintenance of law and order, internal security cooperation and coordination among national security authorities, passports and other identification documents would continue to have an intergovernmental character or be outside the EU framework (Carrera & Geyer, 2007, p. 7). In spite of these exemptions from the rule, which would mean a continuation of exceptionality in the AFSJ, the Treaty of Lisbon would mainstream the use of co-decision, leaving consultation for only a minority of cases. As a result, the LIBE committee might eventually regard co-decision as the normal rule of behaviour and be driven out of its dual behaviour.

The introduction of the Lisbon Treaty presents thus some wider questions in relation to treaty reforms and their long-term informal effects. Changes of the legal dispositions seem to not only have an impact on the formal working of the polity, understood as the institutions and its members, but also on the structure of its politics and the output of its policies. The Lisbon Treaty might not only streamline the use of co-decision in the AFSJ but also the strategies of political groups inside the LIBE committee (as well as in relation to the plenary) and even offer an opportunity to its members to choose the direction of their policy preferences and their inter-institutional strategies. Whether this is positive or negative in terms of transparency, democracy and policy outcomes is a question that remains to be seen in the longer term. In order to evaluate the repercussions of these dynamics, it will also be necessary to examine how the new Parliament, elected in June 2009, interprets the previous patterns of behaviour and whether it maintains a dual behaviour and a taste for confrontation with the Council.

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