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# Bringing codecision to agriculture: a hard case of parliamentarization

Christilla Roederer-Rynning and  
Frank Schimmelfennig

**ABSTRACT** The Lisbon Treaty extended the codecision procedure to the Common Agricultural Policy. This is not only a hard case of parliamentarization but also a deviant case for existing explanations of the empowerment of the EP. We argue that the parliamentarization of agricultural policy in the EU cannot be explained by policy-seeking, inter-institutional bargaining or legitimacy-seeking behaviour – or by sectoral policy dynamics in general. In a process-tracing analysis we show that it was part of a broader process of legal rationalization and democratic constitutionalization in the constitutional Convention, which prevailed over the resistance of vested policy interests.

**KEY WORDS** Codecision; Common Agricultural Policy; democracy; European Convention; European Parliament; parliamentarization.

## INTRODUCTION

The empowerment of the European Parliament (EP) is one of the most relevant constitutional developments of the European Union (EU). The Treaty of Lisbon is the last in a series of treaty revisions that have gradually strengthened the legislative and budgetary powers of the EP. In particular, it has greatly expanded the applicability of the codecision procedure, which accords the Council and the EP roughly the same power. Indeed, codecision is now referred to as the ‘ordinary legislative procedure’ of the Union.

A remarkable – if largely unnoticed – feature of the Lisbon Treaty is the extension of codecision to the Common Agricultural Policy (CAP). Before Lisbon, the EP did not have control over either the agricultural policy-making process or the agricultural budget, which was considered ‘compulsory expenditure’. After Lisbon, legislation relating to the ‘common organization of agricultural markets . . . and the other provisions necessary for the pursuit of the objectives of the common agricultural policy and the common fisheries policy’ is regulated by codecision (Art. 43.2 Treaty on the Functioning of the European Union, TFEU). Only measures relating to ‘fixing prices, levies, aid and quantitative limitations and on the fixing and allocation of fishing opportunities’ (Art. 43.3 TFEU) are to be adopted by Council on a proposal from the Commission. In terms of budgetary competences, the Lisbon Treaty abolishes

the distinction between compulsory and non-compulsory expenditure, thus providing for budgetary equality between Parliament and Council – including expenditure on agriculture.

For research on the parliamentarization of EU politics, and constitutional change in the EU more generally, this case is relevant for several reasons. First, it marks a significant step in the parliamentarization of EU politics in so far as agriculture represents a massive share of all EU legislation and commands nearly 45 per cent of the EU budget.<sup>1</sup> Agriculture also represents the most important redistributive policy of the EU. Second, the CAP represents an unlikely case of parliamentarization: the decision to grant Parliament legislative rights contrasts with a pattern of entrenched intergovernmentalism in agricultural matters. Member-states have always been jealous of their prerogatives in this field, which are expressed in a series of institutional devices to protect their power: from the institutionalization of a separate Agriculture Council with a separate Council sub-formation (Special Committee on Agriculture [SCA]) to the sanctuarization of agriculture expenditure through the creation of a ‘compulsory expenditure’ budget rubric in the late 1960s (Roederer-Rynning 2010). Given both the stakes involved and its institutional history, agricultural policy is thus a hard and improbable case of parliamentarization. Such cases are particularly well-suited for systematic hypothesis-testing: if a causal condition or mechanism is effective in a hard case, it will work *a fortiori* in easier cases. Finally, we argue that it is a deviant case, too. As we will show in detail below, agricultural policy constitutes a puzzle for the most important explanations of parliamentarization in the EU. It cannot be explained as the outcome of policy-seeking by powerful member states, inter-institutional bargaining or the democratic legitimization of policy reform.

We contend that the extension of codecision to agriculture was not rooted in sectoral politics at all: it was for the most part the result of a larger process of constitutionalization, which was shaped by a powerful discourse of legal rationalization, deployed by extraordinary actors in an unusual institutional setting. Crucially, we argue that the Convention on the Future of Europe played a key role. It represented the formative phase during which a paradigm of rationalization of EU law developed, which limited the policy responses that vested interests (national or sector-based) could choose from. And it advanced the paradigm of the EU as a parliamentary system representing the states and peoples of the Union. The parliamentarization of the CAP shows how the new legal and political principles imposed themselves in a hard case.<sup>2</sup>

We proceed in four parts. In the first part, we contrast our theoretical argument about constitutionalization with three major explanations of parliamentarization. In the second part, we briefly sketch out how parliamentarization in agriculture undermines all of these three explanations. In the third part, we trace the process leading to the parliamentarization of the CAP in the Convention to support our argument. In the conclusion, we reflect about the implications of our findings for the case and, beyond, for theorizing on parliamentarization.

## EXPLANATIONS OF EU PARLIAMENTARIZATION

Parliamentarization is one of the most remarkable institutional and constitutional developments in European integration. Under the 1957 Treaties of Rome, the Parliamentary Assembly (as it was then called) was composed of delegates from national parliaments and only had a consultative role in legislation. Starting with the co-operation procedure of the Single European Act (SEA) in 1986, the legislative powers of the EP – now directly elected – were gradually expanded. The Treaty of Maastricht introduced codecision. The Treaty of Amsterdam further strengthened the powers of the EP while subsequent treaties extended the areas of legislation in which codecision was applicable. According to the Treaty of Lisbon, codecision is now the ‘ordinary legislative procedure’ (Articles 289 and 294 TFEU) applied to the bulk of the EU’s legislation – including agriculture. Under codecision, the EP is put on an equal footing with the Council in deciding legislation.

From an intergovernmentalist perspective, parliamentarization is a puzzling development (Rittberger and Schimmelfennig 2006: 1151–5). Intergovernmentalism assumes that governments are the dominant actors in European integration, design European integration according to their autonomy and welfare interests, and seek to remain in control of the integration process. Why then would governments – the masters of the treaties – decide to redistribute decision-making power away from themselves? The main reasons why governments delegate competencies to supranational organizations have to do with efficiency and credibility. In the preparatory stage of decision-making, supranational organizations (such as the Commission) may reduce transaction costs, speed up the negotiation process and propose efficient deals. At the implementation stage, they help ensure the compliance of national governments with EU decisions and policies.

Codecision does not fit this picture, however. It complicates the legislative process by introducing another veto player and additional readings; it reduces decision-making speed (Golub 1999; Schulz and König 2000); and it provides no instruments for improving member state compliance. Three explanations have been advanced to account for this puzzle: a rational-institutionalist policy-seeking hypothesis; a normative-institutionalist legitimacy-seeking hypothesis; and an explanation emphasizing the importance of inter-institutional bargaining and informal institutional changes.

### Policy-seeking

The policy-seeking hypothesis assumes that governments are primarily interested in attaining policy goals. In treaty negotiations, they choose those formal institutions and rules which promote the policies they prefer. Under the condition of unanimity required in treaty-making, Thomas Bräuninger *et al.* hypothesize that changes in the status quo rule ‘can only come about if all member states expect to be better off’ (2001: 50). This hypothesis has three implications for explaining parliamentarization. First, there is a pareto-superior policy outcome

that differs from the policy status quo. Second, this pareto-superior policy cannot be achieved, or is difficult to achieve, under the existing decision-making rules. Third, empowering the Parliament would make it possible or easier to attain the better policy.

In the absence of pareto-superiority, constitutional change may still result from bargaining. Countries that do not benefit, or even lose out, from constitutional change agree nevertheless if they are compensated in other policy areas or if they fear costly adverse reactions from the winners in the event of a veto. Therefore, small and weak states are likely to give in if they face a large or powerful coalition in favour of parliamentarization (Bräuning *et al.* 2001: 50–1). In sum, parliamentarization depends on constellations of issue-specific preferences and bargaining power. It varies by issue – depending on its contribution to policy reform desired by all (or by a powerful coalition of) member states.

### Legitimacy-seeking

The normative-institutionalist explanation of legitimacy-seeking (Rittberger 2005; Rittberger and Schimmelfennig 2006; Schimmelfennig 2010) explains constitutional change as a result of inter-institutional conflict in a community of liberal-democratic values and norms. Regardless of their conflicting positions on the EU's constitutional rules, all institutional actors share the core values of liberal democracy and accept them as fundamental standards of political legitimacy. One of these standards is parliamentarianism – understood as the principle that assemblies of representatives elected by the people make and/or decide on the state's laws and budget, appoint state officials and hold the executive accountable.

If this is a core community norm, why was the EP not invested with legislative power from the beginning? This is because the formal chain of democratic accountability remained intact as long as the Council decided with unanimity. Each member state government could veto supranational legal acts, and because each government was accountable to its national parliament, (national) parliaments were in principle, albeit indirectly, in control of Community legislation. As Rittberger (2006) shows, European federalists who had long wanted to strengthen the legislative powers of the EP could therefore not claim convincingly that such a step was necessary in order to uphold the legitimacy of the Community – and failed.

When the member states launched the Internal Market Program, however, they committed themselves to qualified majority voting (QMV) in the Council. QMV was deemed necessary to increase the speed of decision-making and to overcome opposition to market-enhancing regulation by individual member states. At the same time, however, QMV allowed national governments and parliaments to be overruled. The chain of democratic accountability was thus broken and indirect democratic legitimacy suffered. This impending democracy deficit was successfully criticized by members of parliament in national parliaments – as well as in the EP – who demanded that the loss of

indirect democratic legitimacy be compensated by expanding the legislative competences of an organization invested with direct democratic legitimacy: the EP (Rittberger 2005: 150–152). In order to compensate for the legitimacy deficit created by QMV, the legislative powers of the EP were strengthened.

In sum, if the redistribution of competences in the EU undermines shared norms of parliamentarianism, it creates a legitimacy problem. Because governments do not want to forego the efficiency gains of integration (such as in the case of QMV) but also need to maintain the democratic legitimacy of the EU, they consent to expanding the powers of the EP. In contrast to the policy-seeking hypothesis, the legitimacy-seeking hypothesis does not assume that parliamentarization leads to pareto-superior policies but, instead, that it provides democratic legitimacy for more efficient Council voting rules. In an extension of this argument, Goetze and Rittberger claim that the link between QMV and codecision has now become ‘taken for granted’: whenever QMV is introduced to a policy area, codecision follows automatically (2010: 48).

### **Inter-institutional bargaining**

The final explanation sticks to the rational-choice institutionalist framework but extends it beyond the domain of formal treaty negotiations. Stacey and Rittberger (2003) and Farrell and Héritier (2003, 2007) argue that treaty provisions are incomplete contracts: they cannot regulate every contingency and are subject to controversial interpretations. If such contingencies and controversies arise, and third-party enforcement is unavailable, the actors enter into a bargaining process. As a result of this process, informal institutions are created, which reflect the preferences of the actor with superior bargaining power. If governments collectively come to see these informal institutions as beneficial, they are formalized in the next round of treaty revisions.

Farrell and Héritier (2003) list several asymmetries that favour the EP in its conflict with the Council over legislative powers. First, whereas the Council is primarily interested in the substance of the legal act, Parliament has an institutional interest in legislative power. It is thus willing to capture and block individual pieces of legislation in order to advance its prerogatives. Second, it can do so owing to the fact that it has a longer time horizon and a lower sensitivity to failure. Because the EP lacks a formal right to initiate legislation, the drafts introduced in the legislative process reflect the concerns and interests of the Commission (formally) and the governments (informally). The EP therefore has little to lose in blocking legislation. And whereas Council presidencies rotate every six months, the EP has a full election period of five years. Under these circumstances, the EP is often in a stronger position in the conflict over the interpretation and elaboration of treaty provisions. In order to unblock the legislative process, the Council is therefore willing to consent to informal rules and practices that follow the Parliament’s institutional preferences. If these informal institutions provide for a smooth decision-making process and allow the Council to achieve better results than would be achieved in a situation

of conflict over the original treaty rules, governments reap efficiency gains. These gains create an incentive to change the original rules and formalize the informal institutions (Farrell and Héritier 2007: 290–1). This is also how Simon Hix (2002) explains the reform of the codecision procedure in the Treaty of Amsterdam, which strengthened the powers of the EP and simplified the procedure at the same time. Thus, the formal empowerment of the EP is an indirect outcome of informal inter-institutional agreements.

### Constitutionalization

We contend that the parliamentarization of the CAP followed a constitutional logic. Unlike the explanations sketched above, the constitutional logic is both macro-institutional and principled. From this perspective, the empowerment of the EP is not rooted in a putative dissatisfaction with the process and outcomes of sectoral policies – either for instrumental (policy-seeking) or for normative reasons (legitimacy-seeking). Nor can it be attributed to the formalization of informal practices produced by inter-institutional bargaining. Rather, parliamentarization results from the application of general constitutional principles that are disconnected from policy-specific exigencies. Constitutional principles are higher-order principles that do not regulate specific policies but create a legal order for making and enforcing rules.

We assume that both sectoral and constitutional considerations are at play in the EU's treaty negotiations. Whether one or the other set of considerations prevails depends on the participants, negotiating frames and procedural rules that are favoured in specific negotiating contexts. The more that the participants in the negotiations consist of general policy-makers and/or members of parliament (rather than sectoral policy-makers), the more the negotiating mandate is oriented towards constitution-making (rather than policy reform) and the more the procedural rules disadvantage sectoral interests (and favour general principles), the more the logic of constitutionalization will gain the upper hand.

We argue below that the Convention on the Future of Europe, which exhibited all of these favourable features, played a key role in promoting the logic of constitutionalization. First, it was the task of the Convention to draft a 'constitution' for the EU rather than to draft another partial treaty revision. Second, it was composed predominantly of members of parliament (national and European). Third, the agenda-setting and working procedures were oriented towards macro-institutional issues and accorded priority to generalists. Finally, it had a more deliberative mode of decision-making than intergovernmental conferences (Risse and Kleine 2010). The Convention represented the formative phase during which a paradigm of rationalization of EU law developed, which limited the repertoires of policy responses that vested interests (national or sector-based) could choose from. Under the innocuous label of 'simplification', the Convention accomplished a far-reaching and lasting work of legal rationalization, whose object was to reduce drastically the number of legal instruments and outline a hierarchy of legal norms. The thrust of this process was to limit

the scope for ad hoc compromises by compelling spokespersons for 'areas of special political sensitivity' to justify their exceptional treatment on legal-normative grounds. As legal rationalization was guided by accepted principles of rule of law and political liberty in liberal democracies, it advanced the paradigm of the EU as a parliamentary system representing the states and peoples of the Union. In the following two sections we show that the parliamentarization of agriculture is best explained by the logic of constitutionalization.

## **THE PARLIAMENTARIZATION OF AGRICULTURE – AN ANOMALY**

### **Cui bono?**

Does the parliamentarization of agricultural policy reflect the desire of the member states – or powerful coalitions among them – to embed their preferred policy course? Such a hypothesis would be sustained if we could establish that there was a clear perception among policy-makers, or at least a powerful coalition of them, that codecision would move the CAP closer to their policy preferences. The evidence shows, however, that no such powerful coalition existed in favor of codecision. Whereas Denmark supported both CAP reform and the shift to codecision in agriculture (Laursen 2008, 254–5), the status quo countries rejected a change in the decision-making rules. The Irish government was opposed to abolishing compulsory expenditure in order 'to protect CAP expenditure' (Benedetto and Høyland 2007: 574) and France, a key player in agriculture, opposed the growing role of the EP in agriculture (Beach 2008: 330; Norman 2005: 83, 175).

Moreover, the connection between decision-making rules and policy outcomes appears not to have been well understood. A case can be made that codecision might actually strengthen the hand of status-quo oriented players in the CAP by giving them the legitimacy of EP-backed legislation. After all, the EP's agricultural committee had always been notorious for the salience of territorial politics and its conservatism in farm affairs, and the prospect of MEPs being able to bring (CAP) money back home could be seen as a potential contributor to policy inertia.<sup>3</sup> A senior Commission official evaluated that with codecision, possibilities for future CAP reform depend on whether the Commission is 'going to be sufficiently strong to maintain a coherent line, or... going populist'.<sup>4</sup> In sum, the parliamentarization of agriculture is difficult to explain from the perspective of policy-seeking. The policy implications of empowering the EP were unclear or poorly understood by the member states, and there was no powerful coalition pushing to give the EP a greater say in agricultural policy.

### **Loss of accountability?**

Does the parliamentarization of agricultural policy reflect a wish to compensate for losses of indirect legitimacy occurring with the search for increased efficiency

and the adoption of QMV in the Council of Ministers? In order to substantiate this argument, one needs to establish that a perception of inefficiency led to the adoption of QMV in the Council, and that a link was thereafter established between enhancing efficiency in the Council and adopting codecision as a means to restore accountability. The main problem with this interpretation is that there was no formal change in the Council voting procedure at or before Lisbon, as QMV had been its legal basis since the Treaty of Rome. The puzzle can be framed in two ways. First, if the legitimacy-seeking hypothesis of parliamentarization was right, why was codecision only introduced in the Lisbon Treaty? If democratic legitimacy was the major concern, codecision should have been introduced much earlier. Second, if QMV in agriculture had been regarded as normatively unproblematic throughout the history of European integration, why was it combined with codecision now?

### **Pull of informal practice?**

Does the parliamentarization of agricultural policy reflect the formalization of informal practice? This argument requires that we be able to trace the development of informal practices associating the EP with the Council on the subject of agricultural policy-making. This argument has something to it given that there is scattered evidence that the EP has been able to carve a place of its own in negotiations where it formally should not play any significant role. Regarding budgetary aspects, for example, Beach (2008, 330) notes that ‘the Inter-institutional agreement of 6 May 1999 on budgetary discipline and improvement of the budgetary procedure... weakened the distinction between compulsory (primarily CAP spending) and non-compulsory expenditure as the EP was given a say over compulsory (CAP) spending in the ad hoc conciliation procedure.’ There is also evidence that the Fischler CAP reform of 2003 involved the active participation of the EP, and would probably not have been possible had the Commission not sought to establish a support coalition in the EP.<sup>5</sup> Yet these examples fall short of a robust informal practice of codecision that could have been formalized in the Lisbon Treaty.

In sum, while each of these explanations seems to capture some aspect of parliamentarization, none of them can explain why member states in this policy area decided to introduce codecision at Lisbon. From each of these perspectives, the parliamentarization of the CAP is a deviant case. In order to solve this puzzle, we need to grapple with the actual process through which parliament gained new powers.

### **HOW DID THE EP GAIN CODECISION RIGHTS IN AGRICULTURE?**

The process leading to the parliamentary achievements validated by the Lisbon Treaty in 2007 started out more than a decade earlier. It had its roots in the institutional crisis that developed in the aftermath of the Maastricht Treaty,

created by the inability of EU member-states to reform EU institutions. In the following, we make two main arguments. First, we argue that the Convention on the Future of Europe of 2002-2003 was a critical juncture in the parliamentarization of the CAP. Indeed, by the end of the Convention, a decision to extend codecision to agriculture was pretty much set in stone. Second, peering inside the Convention, we find that a battle between principled ideas and sector-specific interests took place, in which ideas, at the end of the day, won. Indeed, by the end of the Convention, it was established that, to the extent that CAP decisions are still allowed to deviate from codecision, this can only be justified by reference to generic distinctions between legislative and non-legislative acts.

### **The Convention on the Future of Europe: a critical juncture**

The Convention was by all means a 'different' body: 'Never before had EU governments gone so far in sharing the tasks of plotting constitutional change... not only had the Union's national leaders been willing for the first time to involve others in mapping the EU's future, they had set up a body in which government representatives would be in a minority' (Norman 2005: 33). Its task was to 'prepare' the subsequent Intergovernmental Conference (IGC), but by July 2003 it had actually produced a full-fledged draft treaty. This draft represents the actual date of birth of most of the Lisbon Treaty provisions on agriculture.

Regarding the legislative aspects, two articles of the draft treaty specified the procedures to govern agricultural policy-making. Article III-127&2 sanctioned the general application of codecision by stipulating that 'European laws or framework laws shall establish the common organization of the market provided for in Article III-124(1) and the other provisions necessary for the achievement of the objectives of the common agricultural policy and the common fisheries policy. They shall be adopted after consultation of the Economic and Social Committee.' The application of codecision was indicated by the reference to 'European laws or framework laws', which, in the Convention, were defined as legislative acts produced through codecision. Article III-127&3 further specified the policy-making procedure in agriculture by exempting a series of acts from parliamentary purview: specifically, 'the Council of Ministers, on a proposal from the Commission, shall adopt the European regulations or decisions on fixing prices, levies, aid and quantitative limitations and on the fixing and allocation of fishing opportunities.' Regarding the budgetary aspects, Article 55 provided that 'the European Parliament and the Council of Ministers shall, on a proposal from the Commission and in accordance with the arrangements laid down in Article III-310, adopt the European law determining the Union's annual budget'—with Article III-310&3 and 4 crucially suppressing the distinction between compulsory and non-compulsory expenditure.

The legislative provisions of the Convention draft treaty are essentially identical to those of the Lisbon Treaty. Particularly important is the fact that the

draft treaty already establishes a distinction between CAP measures subject to codecision (future Article 43.2 measures) and CAP measures subject to Council decision only (future Article 43.3 measures). Regarding the budgetary procedure, the Lisbon Treaty retreated on some points, following the recommendations of member states in the 2004 IGC (Piris 2010: 296). These retreats had the effect of strengthening intergovernmental control of the budget and making it harder for the EP to cut expenditure (Benedetto and Høyland 2007). Yet the budgetary procedure adopted by the IGC was now very closely modelled upon codecision as well.

It is in this sense that the Convention represents a critical juncture. In the following section, we open the black box of the Convention and trace the process leading to the adoption of the codecision procedure in agricultural policy.

### **The central logic of constitutionalization**

It is curious that, although the Convention was a critical juncture in the parliamentarization of agriculture, agricultural policy-making was never discussed as such: there was no working group on agricultural policy and no specific debate on this issue. Rather, the fate of the CAP was intertwined with the search for general rules that would make the institutions of an enlarged EU more democratic and efficient. This logic was spearheaded at the highest level of the Convention and was institutionally embedded in the working group on simplification.

The Convention was undeniably part of a broader process of constitutionalization that had developed well before the Convention, though largely outside the formal framework of treaties. Legal rationalization is a central element of constitutionalization. In the Convention, legal rationalization was developed through the prisms of ‘subsidiarity’, ‘legal personality’, and ‘simplification’, which were institutionalized in three working groups (WG I, III, and IX, respectively).<sup>6</sup> Yet simplification deserves to be highlighted given that it generated all the key ideas leading to the enhancement of the EP. Chaired by Convention Vice-Chairman Giuliano Amato, WG IX on simplification singled out two general issues of concern: how to bring codecision into *general* use; and how to simplify the budgetary procedure, possibly through the abolition of different categories of expenditure.

The reports drafted by the working groups were discussed in plenary meetings. The debate about codecision was formally launched with a paper of May 15, 2002 (CONV 50/02) circulated by the Praesidium to all members of the Convention. The objective of this paper was to prepare the debate for the plenary meeting of May 23–24, which was devoted entirely to the theme of ‘The European Union Carrying Out Its Missions: Efficiency and Legitimacy.’ This debate can be traced in the documents emanating from the Praesidium (CONV 162/02, 13 June 2002), the working group on simplification (CONV 424/02, 29 November 2002), and plenary meetings (CONV 449/02, 13 December 2002; EP verbatim reports of the plenary sessions of 5

December 2002 and 17 March 2003). These sources provide important insights into how codecision came onto the agenda. The relevant process can be summed up as a search to define general rules of simplification of EU law-making.

The first rule established that *EU laws are to be adopted by codecision*. This rule was quite far-reaching, as, first, it entailed the development of a unified pyramid of legal norms; second, for each legal norm, it sought to establish a specific legal decision-making procedure; and third, it assimilated EU legislative acts to ‘laws’ — thus evoking the political vocabulary of the state. Since at least the early 1990s, policy discussions at the highest level had drawn a link between, on the one hand, simplifying EU legal instruments and, on the other hand, bringing codecision into general use. In the Convention, efforts revolved around drawing a distinction between legislative and non-legislative acts (or ‘executive acts’), whereby the former (only) would be amenable to codecision.

The evocation of the term ‘law’ was not the only analogy to the state. Another principle that was first formulated by the Convention was ‘representative democracy’. Article 45 of the Constitutional Treaty stipulated that the ‘working of the Union shall be founded on the principle of representative democracy’ and also paid tribute to the double representation emanating from the EU’s character as a union of states and peoples:

Citizens are directly represented at the Union level in the European Parliament. Member states are represented in the European Council and in the Council of Ministers by their governments, themselves accountable to national parliaments, elected by their citizens.

These norms had not been formulated in earlier treaties as a matter of principle, and they are systematically related to the legislative procedure of codecision.

Indeed, it was the principle of representative democracy that gave substance to the formal idea of simplification. After all, ‘simplification’ as such does not specifically point in the direction of codecision. The final report of the Convention’s working group on simplification explained:

To simplify therefore firstly means ‘to make comprehensible’, but also to provide a guarantee that acts with the same legal / political force have the same foundation in terms of democratic legitimacy. The democratic legitimacy of the Union is founded on its States and peoples, and consequently an act of a legislative nature must always come from the bodies which represent those States and peoples, namely the Council and the Parliament. Procedures must therefore be reviewed to ensure that they respect this simple principle: acts which have the same nature and the same legal effect must be produced by the same democratic procedure.

This brings us directly to a clearer hierarchy of legislation, which is the consequence of a better separation of powers. This is not with the aim of paying tribute to Montesquieu, but out of concern for democracy (CONV 424/02 of 29 November 2002, 2).

The Convention, it is clear, envisaged no less than ‘a general turn to codecision’; it was driven by the ambition to define overarching principles for rationalizing and democratizing EU law — not to solve concrete policy problems.

The second rule established by the Convention specified that *QMV and codecision should go hand in hand*. In the name of simplification, the Convention undertook two important tasks: first, it mapped out EU decision-making practice regarding the existing combinations of Council voting rules *and* the involvement of Parliament; second, it defined formulae for rationalizing EU praxis. Nine procedural combinations were inventoried for the first Community pillar only, reflecting whether the Council adopted legislation by QMV or unanimity and whether Parliament had the right to codecision, co-operation, assent and opinion — or no rights at all (CONV 50/02, 11–2). As the Praesidium put it, practice largely reflected historical contingency:

[T]he application of a particular procedure to a particular subject is explained more by history (diplomatic negotiation at the time of the successive reforms of the Treaties) than by any systemic logic. *The only principle which it is possible to identify is the tendency towards a generalization of qualified majorities at the Council, accompanied by the power of codecision to the Parliament* (CONV 50/02, 12; emphasis added)

This latter principle, however, suffered several inconsistencies (CONV 50/02, June 13 2002, 12–3), including agricultural policy-making and the budgetary procedure.

The parliamentarization of agriculture was by no means self-evident in the Convention. Plenary debates on 5 December 2002 indicate resistance from vested interests. On the subject of codecision,

a number of Convention members emphasised the need to allow exceptions in some areas of special sensitivity for particular Member States. Social affairs, taxation and agriculture were mentioned’ (CONV 449/02, 13 December 2002, 5)

Concerning the simplification of the budgetary procedure,

a number of speakers felt such a change to be unacceptable. In particular, the removal of the distinction between compulsory and non-compulsory expenditure would mean that the Council would no longer have the final say on agricultural expenditure which was judged to be sensitive (CONV 449/02 13 December 2002, 5)

Verbatim reports from the EP archive help specify this resistance.<sup>7</sup> In particular, France’s government representative, Dominique de Villepin, demanded exceptional treatment for the CAP on both legislative and budgetary accounts. Though codecision must become the general legislative procedure, he stated,

a few exceptions must be maintained, as for example in the field of the Common Agricultural Policy. Besides, as far as the budgetary procedure is

concerned, the concept of compulsory expenditure must, in our opinion, be maintained (authors' translation).

More curiously, perhaps, UK national representative Mr Hain also referred to the CAP as an area where special treatment could be considered: 'As we consider using codecision in place of other procedures', he argued, 'there are areas of high political sensitivity, such as monetary union, the role of the European Central Bank in financial regulation, indirect and other taxes, the common agricultural policy and state aids and competition, where we will have to live with some complexity both to reach agreement and to deliver results.' Importantly, both positions undermined simplification by favouring political rather than legal considerations. As Britain's representative Hain advocated, political considerations required a case-by-case approach: 'we must examine each case on its own merit'. This contrasted with Germany's position, expressed by foreign minister Fischer, that exceptions to the principle of codecision as the central legislative procedure may only be very limited and justified by objectively assessable criteria.

This conflict was still very much alive in March 2003, when the plenary discussed Article 25 on legislative acts. After a lengthy debate on exceptions to the ordinary legislative procedure, a clearly irritated (integrationist MEP) Andrew Duff declared that:

[A]rticle 25 involves an obligation on those who would wish to exclude the European Parliament from the legislative procedure, to justify and specify precisely what those exclusions should be. One hour into the debate, I have not heard a single practical example. If the intention is solely to safeguard classical interests in the field of farm policy, that is not sufficient for me to be convinced that Parliament should be excluded. With great respect to you, Mr President, the phrase "exceptionally strong interests of Member States", which you used at the start of the session, does not seem to me to be a juridical concept.<sup>8</sup>

This plenary debate took place against the background of a first report on Part Two of the Constitution drafted by a working party of experts nominated, on request by the Praesidium, by the legal services of the EP, the Council and the Commission to help make concrete amendments to the treaties. Concerning the CAP, the experts proposed the following 'modifications':

~~The Council shall, on a proposal from the Commission and after consulting the European Parliament, acting by a qualified majority, make~~ **The Council, on a proposal from the Commission, shall adopt by a qualified majority European laws/European regulations<sup>1</sup>, European framework laws, issue directives or take European decisions and without prejudice to any recommendations it may also make. It shall act after consulting the European Parliament.** (CONV 618/03, 50; original emphasis)

This text thus maintained the status quo in agricultural affairs. Clearly, this proposal was a double anomaly with regard to the above-mentioned rules: that laws

are adopted by codecision; and that codecision and QMV go hand-in-hand. Yet, importantly, the reason given for this discrepancy supported the legal logic. In particular, the working party of experts justified its proposal by the fact that, as ‘the Council may adopt *either laws or regulations, the Convention should identify the cases in which, in the area covered by this Article, the Council might adopt either or both type of act*’ (CONV 618/03, 17 March 2003, 50; emphasis added). In other words, the experts could not introduce codecision in the draft treaty formulation before the legal nature of the variety of acts involved in regulating this policy area had been clarified. In addition, and presumably as an indication of the political nature of this issue, they deemed it to be not their role, but that of the Convention, to ascertain this distinction.

Following this report, the Praesidium gave the working party of experts a second mandate, in April 2003, to prepare a new draft report on Part Two of the Constitution. Regarding agriculture, the Praesidium attempted to differentiate the legal logic from the political logic by subjecting the different aspects of agricultural policy-making to the juridical distinction between legislative and non-legislative acts. Accordingly, the ordinary legislative procedure (i.e., codecision) should apply to the ‘legislative aspects only—Article 37(2)’ (CONV 729/03 of 12 May 2003, 3). This proposal was first reflected in the draft treaty text of 12 June 2003 (CONV802/03)<sup>9</sup> and the formulation was sustained in spite of concerns for agriculture expressed in the plenary sessions of 13 June (by the French representative Villepin) and 4 July (by the French representative Andreani and the Finnish representative Tiilikainen).<sup>10</sup>

In retrospect, it is clear that parliamentarizing agriculture was far from an uncontested, ‘habitualized’ or ‘scripted’ response (Goetze and Rittberger 2010: 50) to QMV. The final decision was made in the very last phase of the Convention, as vested interests fought to protect intergovernmental control over this area. However, at the end of the day, the ideas developed by the WG on simplification, in combination with sustained leadership by the Praesidium to impose legal concepts, won the battle of simplification in agriculture. It was clear that, however resistance was expressed by farm and national interests, in the end, the scope of codecision in agriculture was to follow clear lines of demarcation between acts of a legislative nature and acts of a non-legislative nature. In other words, by proposing to differentiate between areas of CAP policy-making subject to codecision and others to be decided by the Council (upon Commission proposal), the Praesidium did not have the creation of a special legislative procedure in mind, but rather intended to establish the force of legal reasoning. This provides support for the view that the Lisbon provisions on agriculture were influenced by constitutional motives rather than vested interests.

In sum, our process-tracing of how codecision was introduced at the Convention yields three relevant findings. First, the parliamentarization of agriculture was not automatic or uncontested. Members of the Convention were aware of the political sensitivity of agriculture and initially sought to preserve some of its intergovernmental decision-making features. Second, these policy-specific

considerations were overruled by the logic of constitutionalization that dominated deliberation and decision-making in the Convention. Decision-making rules for agriculture had to fall in line with the principles of legal rationalization and representative democracy that produced a general thrust towards codecision. That some areas of decision-making on agriculture were not parliamentarized does not weaken the argument because the differentiation results from the categorization of legal acts as legislative and non-legislative. Finally, the logic of constitutionalization operated in ways that are different from the legitimacy-seeking mechanism posited by the normative-institutionalist hypothesis. Codecision was introduced as a matter of principle following a constitutional template for the EU polity – and not as a legitimacy-preserving compensation for efficiency-oriented, policy-specific institutional reforms.

## CONCLUSIONS

In this article, we examined the introduction of codecision in the Common Agricultural Policy – a hard and deviant case of parliamentarization in the EU. It is a hard case because of its budgetary relevance, entrenched vested interests and institutional history. And it is a deviant case because the major theoretical perspectives on parliamentarization – policy-seeking, legitimacy-seeking and inter-institutional bargaining – have problems accounting for it. To explore this case, we conducted a process-tracing analysis based chiefly on documents of the Constitutional Convention provided by the Convention itself and supplemented by the archives of the EP.

The analysis showed that the move to codecision in agricultural policy cannot be attributed to policy-specific motives or processes. Codecision was not engineered by agricultural policy-makers; it did not follow from a reform of Council decision-making on agriculture; and it did not reflect prior informal practice in the CAP. To the extent that they were present in the Convention, policy-specific considerations were brought up *against* the empowerment of the EP. By contrast, the parliamentarization of agriculture was part of a more general process of constitutionalization promoted by the Convention and rooted in the principles of legal rationalization and representative democracy. These principles stipulated that the type of legal act determined the decision-making procedure and that legislative acts required the approval of the representatives of both the states and the people to be democratically legitimate. The combination of QMV and consultation in agriculture ran counter to these principles. Codecision was therefore introduced for legislative acts in agriculture, whereas non-legislative acts could still be decided by the Council alone.

The counter-attack of vested interests failed to unravel those provisions that most closely followed the logic of democratic simplification: 1) the link between QMV and codecision; 2) the justification of 43.2 and 43.3 on legal principles; and 3) the simplification of the budgetary procedure through the abolition of compulsory and non-compulsory expenditure. National and sector-specific interests had to operate within the frame of simplification in order to protect

their specific advantages. In particular, the changes introduced by the 2004 IGC further enhanced simplification by bringing the budgetary procedure even more closely in line with the codecision procedure. This model was adopted because it was more simple, a powerful rationale that explains why governments (long opposed to modelling the budget procedure along co-decision) eventually rallied to it, and why the EP did not seek to pursue alternative procedures that would have given it more power but would have failed to respond to the criterion of simplification (Benedetto and Høyland 2007).

As a hard and deviant case, the parliamentarization of agriculture sheds new light on the long-term process of institutional democratization in the EU. First, it demonstrates how codecision could be introduced against vocal and powerful opposition and in an area characterized by redistributive policy and high financial stakes. If the logic of constitutionalization prevailed under these circumstances, it should work all the more easily in other policy-areas. Second, it demonstrates the singular relevance of constitutional principles. The many other policies in which the Lisbon Treaty did or did not introduce codecision conform well to the legitimacy-seeking hypothesis. Codecision was introduced together with QMV (as, for instance, in Articles 48 and 91(1) and in many former third-pillar articles), and was not introduced where unanimity in the Council was maintained (e.g., in Articles 21(3) and 22(1) and the area of taxation). In agriculture, however, QMV had for decades existed without codecision. In the absence of strong policy-seeking interests, the need for legitimacy-seeking compensation, or prior informal agreement, only the constitutional logic of democratic legal rationalization could have revealed and corrected this inconsistency.

We have argued that the Convention, with its institutional features and discursive focus, favoured the logic of constitutionalization. One may in fact speculate that the parliamentarization of the EU entered a new phase with the Convention, in which the principled, constitutional logic of parliamentarization has replaced the issue-specific logic that was dominant in the period between the Single European Act and Nice. Future constitutional change in the EU will tell.

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## NOTES

- 1 The exact figure was 43.6 per cent in 2008 (Official Journal of the European Communities L71-2008).
- 2 We explore the introduction of codecision in the CAP chiefly with a view to contributing to the scholarly debate on the parliamentarization of the EU (rather than agricultural policy). However, this article also provides the first account of EP empowerment in the CAP.
- 3 The case of US farm policy reform also serves to remind us of the difficulties in engineering farm policy retrenchment when parliamentary actors are involved in the policy-making process.
- 4 Interview 2, December 2010. In fact, former EU Agriculture Commissioner Marianne Fischer Boel is said to have publicly declared before leaving her post — and much to the dismay of her colleagues in Parliament — that the EU would never have been able to carry out so many reforms under her mandate, had codecision been in place (Interview 5, Commission official, DG Agri, December 2010).
- 5 Interview, senior Commission official, Brussels, December 9, 2010.
- 6 Working groups were established in order to carry out focused work and formulate propositions to be debated in the plenary (Norman 2005). A first generation of working groups started in September 2002.
- 7 EP's verbatim report at: [http://www.europarl.europa.eu/Europe2004/textes/verbatim\\_021205.htm](http://www.europarl.europa.eu/Europe2004/textes/verbatim_021205.htm) (accessed 5 August 2011).
- 8 Plenary session of 17 March 2003, accessible at: [http://www.europarl.europa.eu/Europe2004/textes/verbatim\\_030317.htm](http://www.europarl.europa.eu/Europe2004/textes/verbatim_030317.htm)
- 9 The new draft report prepared by the working party of experts had not modified the text on the ground that the complementary mandate of 29 April 2003 states that 'it will be necessary to specify later which aspects of agricultural policy are to be regarded as legislative and which as non-legislative' (CONV 729/03, 76 of 12 May 2003).
- 10 Plenary session of 13 June accessible at: [http://www.europarl.europa.eu/Europe2004/textes/verbatim\\_030613.htm](http://www.europarl.europa.eu/Europe2004/textes/verbatim_030613.htm). Plenary session of 4 July accessible at: [http://www.europarl.europa.eu/Europe2004/textes/verbatim\\_030704.htm](http://www.europarl.europa.eu/Europe2004/textes/verbatim_030704.htm)

## REFERENCES

- Beach, D. (2008) 'A new pragmatism – the role and impact of the European Parliament in the Constitutional Treaty negotiations', in F. Laursen (ed.), *The Rise and Fall of the EU's Constitutional Treaty*, Leiden: Martinus Nijhoff, pp. 323–42.
- Benedetto, G. and Høyland, B. (2007) 'The EU Annual Budgetary Procedure: The existing rules and proposed reforms of the Convention and Intergovernmental Conference 2002–04', *Journal of Common Market Studies* 45(3): 565–87.

- Bräuninger, T. *et al.* (2001) 'The dynamics of European integration: a constitutional analysis of the Amsterdam Treaty', in G. Schneider and M. Aspinwall (eds), *The Rules of Integration. Institutional Approaches and the Study of Europe*, Manchester: Manchester University Press, pp. 46–68.
- Farrell, H. and Héritier, A. (2003) 'Formal and informal institutions under codecision: continuous constitution-building in Europe', *Governance* 16(4): 577–600.
- Farrell, H. and Héritier, A. (2007) 'Codecision and institutional change', *West European Politics* 30(2): 285–300.
- Goetze, S. and Rittberger, B. (2010) 'A matter of habit? The sociological foundations of empowering the European Parliament', *Comparative European Politics* 8(1): 37–54.
- Golub, J. (1999) 'In the shadow of the vote? Decision making in the European Community', *International Organization* 53(4): 737–68.
- Hix, S. (2002) 'Constitutional agenda-setting through discretion in rule interpretation: why the European Parliament won at Amsterdam', *British Journal of Political Science* 32(2): 259–80.
- Laursen, F. (2008) 'Denmark and the Constitutional Treaty: a difficult two-level game', in F. Laursen (ed.), *The Rise and Fall of the EU's Constitutional Treaty*, Leiden: Martinus Nijhoff, pp. 249–80.
- Norman, P. (2005) *The Accidental Constitution: The Making of Europe's Constitutional Treaty*, Brussels: Eurocomment.
- Piris, J. (2010) *The Lisbon Treaty: A Legal and Political Analysis*, Cambridge: Cambridge University Press.
- Risse, T. and Kleine, M. (2010) 'Deliberation in negotiations', *Journal of European Public Policy* 17(5): 708–26.
- Rittberger, B. (2005) *Building Europe's Parliament. Democratic Representation beyond the Nation-State*, Oxford: Oxford University Press.
- Rittberger, B. (2006) "'No integration without representation!" European integration, parliamentary democracy, and two forgotten communities', *Journal of European Public Policy* 13(8): 1211–29.
- Rittberger, B. and Schimmelfennig, F. (2006) 'Explaining the constitutionalization of the European Union', *Journal of European Public Policy* 13(8): 1148–67.
- Roederer-Rynning, Christilla (2010) 'The Common Agricultural Policy: the fortress challenged', in H. Wallace, M. Pollack and A. Young (eds), *Policy-Making in the European Union*, 6th edn, Oxford: Oxford University Press, pp. 181–206.
- Schimmelfennig, F. (2010) 'The normative origins of democracy in the European Union: towards a transformationalist theory of democratization', *European Political Science Review* 2(2): 211–33.
- Schulz, H. and König, T. (2000) 'Institutional reform and decision-making efficiency in the European Union', *American Journal of Political Science* 44(4): 653–66.
- Stacey, J. and Rittberger, B. (2003) 'Dynamics of formal and informal change in the EU', *Journal of European Public Policy* 10(6): 858–83.