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# Democracy in Parliament vs. Democracy through Parliament? Defining the Rules of the Game in the EP

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## Abstract

While an extensive (US) literature stresses the importance of procedural rules in the evolution of parliaments as well as in the legislative process, very few studies have focused on the European Parliament rules. As a result, the role played by the organization of parliamentary work in this evolution remains understudied. Apparently however, the EP's trajectory was significantly influenced by its rules of procedure, which have allowed the assembly to optimize its competency and internalize reforms established by the treaties. This paper aims to contribute to the theorization of the EP's institutional dynamics in light of the North-American theories. It examines the challenges faced by the EP due to the rationalization of its deliberation and the consequences of the procedural changes for the institution, its members and its public image. On the basis of a qualitative analysis of the revisions of the EP rules of procedure from April 1979 to January 2017, we will show that institutional efficiency has become an objective in itself, taking precedence over MEPs' freedom of action. The various reforms have strengthened 'democracy through parliament' at the expense of 'democracy in parliament', which could have tremendous consequences for the EP's image among public opinion.

**Keywords:** European Parliament, parliamentary rules, legislative politics, democracy

## Introduction

The empowerment of the European Parliament (EP) within the EU institutional system is a well-known fact for political scientists. Moreover, it is widely recognized that the EP has been an active agent in its own empowerment. It has adapted strategically to its changing environment by reforming its working methods to maximize its influence on the EU system (Rasmussen and Toshkov, 2011). Nonetheless, the role that the organization of parliamentary work has played in this evolution remains comparatively understudied. Only few researches have focused on the EP rules and their internal consequences. For a long time, the organisational structure of the supranational assembly has been overlooked but even “modern analyses of the EU very rarely delve into the internal operating procedures of the European Parliament beyond a brief description of the hierarchical structures” (Kreppel, 2002, p. 91). Research has been conducted on the parliamentary commissions, the role of rapporteurs, the supranational party structure, the organization of the political groups and the individual MEPs (Bowler and Farrell, 1995; Daniel, 2013; Hix, Noury and Roland, 2007; Hoyland, 2006; Kaeding, 2004; Settembri, 2006; Tsebelis and Garrett, 2000), but the rules regulating the daily work of those actors have been largely overlooked (Williams, 1995). Several authors have described how the EP’s work has been progressively rationalized and streamlined but these studies were quite general and adopted a broad-brush approach (Corbett et al., 2007; Costa, 2001). Others have analysed the internal rules to focus on specific issues such as the development of a party structure at the EU level (Kreppel, 2002), the definition of a political group (Settembri, 2004), the impact of treaty reforms on the EP (Kreppel, 2003), the changes in EU inter-institutional relations (Hix, 2002) or MEPs voting behaviour (Trumm, 2015). Finally, legal scholars have paid some attention to the internal rules but in a quite descriptive manner, to study the development of a European parliamentary law (Clinchamps, 2006). Whereas the EP rules of procedure (RoP) structure how the institution actually works and determine the rules of the game for its actors, it has not been studied in a systematic way.

On the contrary, US-based legislative studies have produced a rich literature on Congress procedures. Several authors stress the role of the procedural rules in the evolution of parliaments as well as their impact on the legislative process (Cox, 2000; Hedlund, 1985; McKelvey and Ordershook, 1984; Shepsle and Weingast, 1984). They also show that changing a legislature’s procedural rules and organizational arrangements is far from being a neutral decision. Rules are not purely exogenous or stable and can have important effects on individual members (Davison, Krassa and Reagan, 2005; Sheingate, 2010). Different theories have been developed to explain the factors that influence procedural choices and legislative organization from an endogenous point of view.

This article aims to explore what drives legislative organization at the European level and what are the core internal issues that MEPs are trying to solve through their choices of rules of procedure. Inspired by the governing theory (Adler and Wilkerson, 2007, 2013), we argue that the quasi permanent reforms of the EP's rules are related to a certain amount of efforts to reinforce its influence in the EU's political system by virtue of legislative efficiency. Indeed, the EU policy-making relies to a very large extent on alternative procedures and norms of legitimation: rationality and expertise, legality, consultation of member states representatives and stake-holders. The notion of "good governance"<sup>1</sup> and the objective of "better regulation"<sup>2</sup>, which are key to the EU policy-making since the beginning of the 2000s, do not refer much to representation, but rather to efficiency.

To test the hypothesis of internal reforms driven by the search of efficiency, this article analyses the internal challenges related to the rationalization of the EP's functioning with the aim of determining its impact on three key elements: the leadership structure and political groups, the deliberation in plenary sessions and the behaviour of MEPs. We demonstrate that the argument of "global efficiency" of parliamentary work has become an objective in itself, taking precedence over parliamentarians' room for manoeuvre. But these reforms, under the cover of the efficiency argument, have had distributive consequences: some actors maximize their interests through the revisions of the rules.

This article is based on a qualitative analysis of the revisions of the EP rules of procedure from April 1979 to January 2017. More particularly, it focuses on the reforms adopted in the aftermath of the Maastricht treaty. Indeed, they deal with the internal organization of the assembly in a detailed manner, while the main objective of the previous revisions had been to strengthen the role of the EP within the EU regime (Kreppel, 2002, 2003).

## **1. Theories of legislative organization**

Three main theoretical approaches have proposed analytical framework to understand the organization of legislatures, especially the Congress: the distributive, the informational and the partisan perspectives.

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<sup>1</sup> See: European Commission, *European Governance: a White Paper*, Brussels, 25 July 2001, doc. COM(2001) 428.

<sup>2</sup> See: European Commission, *Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Region: Better regulation for better results - An EU agenda*, Strasbourg, 19 May 2015, doc. COM(2015) 215.

The *distributive perspective* sustains that the organization of Congress depends on the distribution of potential electoral gains among members. These gains come from policy benefits, target expenditures, committee assignments and other legislative mechanisms relevant to constituents. From this point, a logic of cooperation and exchange is developed, in which members collaborate with each other in order to secure their own interests (Shepsle and Weingast, 1994). The committee system with its jurisdiction rules contributes to this arrangement as it institutionalizes mechanisms for exchanging support (Shepsle and Weingast, 1987). Scholars also explored the committee-floor relationship, asserting that committees are not representative of the assembly as they are composed of members interested only in a given policy area due to its level of demand in their district (Adler and Lapinski 1997). In other words, congressmen are motivated to serve the economic interests of their electoral basis and they are best able to do so if they are members of committees that affect their constituencies. In this theoretical perspective, rules of procedure matter and any change of those rules are seen as an endogenous attempt to reduce transaction costs (Shepsle and Weingast, 1984).

*Informational theories* oppose the individualistic, conflictive and demand-side view of the distributive model. They argue that legislative organization is based on an informed process of decision-making where collective objectives are added to individual rational behaviour. These theories assume congressmen are not perfectly informed or are asymmetrically informed about policy procedures, contents and implications (Gilligan and Krehbiel, 1989). Therefore, institutional arrangements such as organizational rules may reflect the need to acquire and disseminate information in addition to the need to solve distributional issues (Gilligan and Krehbiel, 1990). Informational and distributive perspectives are not necessarily contradictory, since even legislators seeking distributional gains benefit from reducing uncertainty about the consequences of a given policy (Gilligan and Krehbiel, 1989). But this decrease of uncertainty also corresponds to a collective good that enhances the efficiency of rules.

Following the collective approach and the majoritarian premises of informational theories, *partisan perspectives* stress the role of the party (more precisely, the role of the majority party), which acts in order to secure control of the legislative agenda for its members. The party uses its hierarchical positions to influence legislative rules in the sense of its political priorities and its legislator's welfare. Caucuses represent therefore a factor of extra-legislative organization, which contributes to institutional equilibrium (Cox and McCubbins, 1994). Intra-party cooperation is a means of securing gains as they organize

procedural coalitions and determine the agenda, providing therefore intra-legislative and electoral benefits. In this view, parties, not committees, are the main actors of legislative production, as the latter act according to the ends of the former. Agenda control is partially decentralized, but subjected to strong and efficient regulatory efforts of party leadership. And rules are determined endogenously: members make their own rules, or, more precisely, rules are entrenched by majority party caucus (Cox and McCubbins, 2005). It is mostly on the basis of this theory that scholars have examined rule changes in the US Congress, with a focus on whether institutional change should be explained from a partisan perspective or not (see Binder, 1996; Dion, 1997).

More recently, alternative explanations to legislative organization have been developed. Adler and Wilkerson (2007, 2013) “*governing theory*” derives from the distributive perspective in the sense that it assumes that behaviour of lawmakers is grounded in their electoral motivations, therefore in their will to satisfy voters’ demands. Nevertheless, it implies a collective commitment in improving institutional performance. Committees are considered as tools to assemble consensus on essential issues, which in turn benefits especially the majority party. But committees, rather than parties or specialists, are the primary agenda setters in Congress. Institutional productivity and individual electoral interests are directly related to committees’ efficiency in dealing with collective governing issues.

When examining what drives the reforms of the legislative organization at the EU level, we will draw on the insights of governing theory. We will argue that the reforms of the EP’s institutional design are related to efforts in enhancing its influence in the EU’s political system through the idea of legislative efficiency. Indeed, Adler and Wilkerson’s governing theory seems to provide useful roots of analysis of the EP’s procedural evolution, although we must consider the EP’s specificity where hierarchical organs may replace committees in the role of agenda setters.

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

The rules of procedure frame closely the EP daily activities. Unlike many national parliaments whose organization depends on constitutional rules, organic laws or a priori control of their procedural rules by external bodies (Sieberer et al., 2011), the EP has full autonomy in defining its organization. MEPs are therefore free to determine their deliberation methods. They can change their RoP as they want (Costa, 2010). Hence, this text has been at

the heart of power struggles as the distribution of resources and influence among actors in the chamber is at stake (Brack et al., 2015; Kreppel, 2002). It has been frequently reformed: in the 30 years after the first direct elections of MEPs, there were 17 editions of the RoP (1979-2009). The text was again deeply reformed after the adoption of the Lisbon treaty, and is now systematically reviewed twice during each legislature, after each election and at mid-term, thus every 2.5 years. The document has become increasingly precise but also very complex. While in 1979 it counted 42 pages, 54 rules and 2 annexes, in 1988 it had 167 rules and 9 annexes; in September 2017, it contains over 230 rules and 7 annexes, for a total of 158 pages. These changes were necessary for the EP to face its new powers after each treaty reform but also to cope with the increasing number of MEPs after each enlargement and deal with new situations, such as behaviours deemed inappropriate by MEPs. But the changes went beyond what was technically required and deeply modified the internal organization of the EP as well as the intra-institutional relationships between actors within the EP (Kreppel, 2003, p. 898). It is impossible to retrace and analyse the changes in a systematic way here. Therefore, we concentrate on the evolution of the rules, focusing on three aspects of the “rationalization” process that the EP has experienced: the power and coordination role of the leadership structures and political groups, the organization of debates and the individual rights of MEPs.

### *2.1. The growing power of the hierarchic bodies*

The leadership structures of the EP consist of the President, the Bureau and the Conference of Presidents (of the political groups)<sup>3</sup>. They take all the important decisions related to the organization of work in the assembly and are responsible for the main part of the “rationalization” of its functioning (Corbett et al., 2007; Costa and Brack, 2017).

The Bureau is responsible for matters regarding the budget and administration. Composed of the President of the EP, the 14 Vice-Presidents and 6 Quaestors elected by the assembly, it has seen its responsibilities gradually growing. Until 1993, it was only in charge of financial and organizational questions concerning the EP and its bodies, questions concerning civil servants and Quaestors, the nomination of the General Secretary and the preparation of the preliminary budget. Since then, its responsibilities have been extended to the conduct of the proceedings and questions concerning the behaviour of Members within

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<sup>3</sup> One could also mention the Quaestors, the Conference of the Presidents of the parliamentary committees and the Conference of the Presidents of the delegations that play a less important role. As the prerogatives of those three organs have not much changed, we do not take them into account in the analysis.

all EP's buildings, the situation of non-attached members, the responsibility to authorize meetings of committees away from the usual working places, hearings and fact-finding journeys by rapporteurs and the implementation rules relating to the status and the funding of the European political parties.

The President has equally seen its powers extended. In addition to his representative function and his prerogatives in the legislative and budgetary process, he plays a leading role in the EP by chairing the plenary sessions, the Conference of Presidents and the Bureau. He also ensures the respect of the internal rules through his supervision on whole activities of the assembly and its bodies (Costa, 2013). During the first half of the 6<sup>th</sup> legislature (2004-2009), his influence was extended by an interpretation of the rules intended to discourage abuses of the rules by some MEPs. Rule 22 stipulates since then that the President has the full powers necessary to preside over the deliberations of the EP and to ensure the rules are respected. He has several tools at his disposal such as the right to put an end to an excessive use of motions, explanations of vote and requests for separate, split or roll-call votes when the President "is convinced that these are manifestly intended to cause and will result in, a prolonged and serious obstruction of the procedures of the House or the rights of other Members". Consecutively, the President also has the authority to decide about sanctions for deputies in case of non-respect of those rules of conduct. Thereby, this reform has limited the filibustering strategies in which some – especially Eurosceptics – had become experts.

The Conference of Presidents is the most important body in the hierarchy of the EP and the one that has evolved the most, in terms of its composition, its functioning and its areas of responsibility. Before the implementation of the Maastricht treaty and the resulting reform of the rules of procedure (1993), the enlarged Bureau (predecessor of the Conference of Presidents) was composed of the Bureau, the presidents of the political groups and two non-attached MEPs (without the right to vote). It decided upon all questions concerning the internal organization of the EP, notably to establish the agenda of the plenary sessions and the relations with other institutions (rule 24, 1991). The 1993 reform of the internal rules changed its composition. It became a more restricted body, consisting only of the President, the presidents of the political groups and one non-attached MEP. The reform of 1993 also changed its decision-making process by introducing the principle of a weighting of the votes depending on the size of the groups: if no consensus is reached, the Conference of Presidents proceeds to a vote subject to a weighting based on the number of Members in each political group.



While those modifications can appear to be minor, in fact the role of the different hierarchical bodies became much more important in order to face the increasing heterogeneity of the EP and to ensure a political coordination of its activities at the highest level (interview with a civil servant of the Afco Committee, 23 June 2010). These evolutions equally contributed to reinforce the influence of the two largest political groups on the activities of the EP. In a way, they institutionalized the co-management of the EP's organization by the two main groups (EPP + S&D). Bringing together between half and two thirds of the MEPs (54% in December 2017), they share the presidency and most of the vice-presidencies of the EP since the mid-1980s as well as many chairmanships of committees and delegations because of the D'Hondt rule. The EPP and S&D groups can impose their point of view to the Conference of Presidents as a result of the weighted votes.<sup>4</sup> Since the 2014 EP elections and the nomination of J-C. Juncker as President of the Commission with the support of the EPP, S&D and ALDE, the cooperation between these political groups has even increased. The EPP and S&D form a "bloc" which supports important initiatives from the Commission. And with the increased presence of Eurosceptic MEPs, these two groups cooperate even more closely in the daily parliamentary work. However, this new political configuration is fragile; hence, in December 2016, the socialists refused to support the candidacy of EPP's (A. Tajani) to the EP Presidency and presented they own candidate. As a result, Tajani was only elected at the third round, with a limited score (291 voices, against 199 for Pittella), thanks to the support of the ADLE and ECR groups.

## *2.2. Political groups as increasingly powerful actors*

The rationalization of parliamentary work went hand in hand with the empowerment of political groups. Since the creation of the ECSC assembly, the groups have been recognized by the internal rules as a result of the deputies' decision to seat according to ideology rather than nationality. For a long time, their prerogatives remained limited. Before the direct election of the EP (1979), the political groups were mentioned by less than 10 rules; many of their rights were also granted to a small proportion of MEPs who did not belong to any group and therefore were relatively free to stay independent. Since 1979, the number of paragraphs mentioning the groups grew rapidly whereas the proportion of individual MEPs necessary to exercise the same rights as a group increased gradually. For instance, candidates

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<sup>4</sup> This coalition also restricts the access of small groups to positions within the EP as the vote on the committees' vice-presidencies and the exclusion of the EFDD evidenced at the beginning of the 8th legislature.

to the EP presidency can be nominated by a political group, whatever its size or one-twentieth (5%) of Parliament's component Members, whereas it was possible for 4.59% of the chamber to nominate a candidate in 1994 and for 2.44% in 1981 (art. 12, 1981). Similarly, a committee, a political group or at least 5% of MEPs may put a question with oral answer whereas it was possible for 1.95% to do so in 1991 (rule 58). Political groups have progressively received exclusive prerogatives: only a group may designate a coordinator or shadow rapporteur. Overall, "groups control the deliberation because of the extended rights the Rules of Procedure grant them, because of the control they have over the hierarchical bodies of the assembly (...)" (Costa, 2001, p. 306).

This type of rule penalizes individual deputies but particularly those who do not belong to any group, the so-called 'non-attached members'. Since the 1980's, they have seen their rights diminished step by step as the political groups, in particular the two large ones, strengthened their role in the functioning of the parliament and as the conditions to form a group became more constraining. Since 1999, it is impossible to form a group with deputies from only one member state and since 2009, the threshold is 25 MEPs, coming from one quarter of member states – i.e. 7 in the EU 28. Because of their position on the national political scene and of their ideological orientations, most of non-attached members are unable or unwilling to join a group or to fulfil the conditions to form one. It is especially the case for right-wing nationalist parties (Halikiopoulou and Vasilopoulou, 2014). Usually, they do not succeed to act in a coordinated way, which excludes them from some rights opened to a certain number of MEPs (interview with a civil servant of the EP, 6 June 2010). Because of their inability to cooperate, non-attached MEPs have been deeply impacted by the gradual reduction of individual member's rights granted by the RoP: "I have seen that colleagues who are non-attached are in fact very limited in their actions and have a lot of obstacles by the actual rules of procedure" (Interview with a MEP, 2 December 2015).

These obstacles are one of the main drivers behind the attempts by radical right MEPs to form a group, as exemplified by the efforts of Marine Le Pen to create the group ENF during the 8<sup>th</sup> legislature. Non-attached MEPs are given less logistical and financial resources and are excluded from most of the organizational aspects of the institution (Clinchamps, 2006, p. 282). They are unable to influence the decision-making process within the institution as they no longer have the right to choose their own representative to the Conference of Presidents and cannot vote in that body. Indeed, the two largest groups sought (and achieved) to reduce the representation (without voting right) of the non-attached in the Conference of

the Presidents from two to one representatives. After the implementation of the Lisbon Treaty, the RoP was changed again: whereas, historically, non-attached MEPs could choose their representative, it is now the EP President who designates the representative.<sup>5</sup>

Additionally, non-attached members cannot nominate shadow rapporteurs or coordinators due to the RoP. They are therefore excluded from the very strategic coordinators' meetings, i.e. the meetings of the group members in charge of each parliamentary committee. Indeed, coordinators play a key role in the management of committee work and reports and it is during these meetings that report allocations, agenda-setting and the political priorities of the committee are debated and decided (Corbett et al., 2007, p. 133; Kaeding and Obholzer 2012): "we cannot attend the coordinators and chairmen's meetings and as a result, we are cut off from the actual functioning of the Parliament because everything is decided there" (Interview MEP, 27 May 2015). Today, shadow rapporteurs or coordinators are also systematically involved in the dialogues with the Commission and the Council, which are the fundamental place of negotiation for 90% of the legislative texts (Roederer-Rynning & Greenwood 2017).

In a nutshell, non-attached members are, comparatively to other MEPs, marginalized by the RoP of the EP. They do not have influence in the Conference of Presidents or on the decisions made between political groups and they are excluded from the coordinators' meetings and legislative dialogues. Furthermore, because of the formal rules, they have very limited access to responsibilities within the chamber and a restricted impact on the legislation making process. The discrimination against non-attached members entailed by the rationalization of deliberation is a recurring issue within the EP. Non-attached members consider they should have the same rights as their colleagues belonging to a group, in the name of political pluralism and democracy. MEPs and leaders from large groups tend to argue that the efficiency of parliamentary work is the best guarantee for the legitimacy of the institution and the implementation of parliamentary democracy at the EU level.<sup>6</sup> The latter point of view usually prevails: any upgrade in the rights of non-attached members tends to be followed by other rules constraining their room for manoeuvre (see Settembri, 2004).

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

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<sup>5</sup> Officially this was decided to put an end to the incapacity of the non-attached members to designate a representative. But as a matter of fact, it is more than likely that the President will choose a compliant deputy (interview with a civil servant of the EP, 6 June 2010).

<sup>6</sup> See for instance the speeches of non-attached members during the debate on the report on the reform of the rules of procedure after the Lisbon Treaty, 23 November 2009, report D. Martin A7-0043/2009.

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

Since 1979, the organization of the plenary work has undergone an evolution towards a strict limitation of speaking time. Legislative debates now occupy the bulk of the agenda. This went hand in hand with an increased codification of the parliamentary proceedings and a limitation of speaking time. The internal rules provide members with various possibilities to get more speaking time, but they were gradually limited. Interventions on the minutes and on the agenda, procedural motions – such as a motion on the inadmissibility of a matter or the closure and the adjournment of a debate or a vote – and personal statements do allow individual members to speak in plenary session. However, because some members abused these opportunities, their use has been gradually controlled and reduced. Speaking time attached to it was decreased from three to one minute per MEP. Similarly, points of order must now be limited to one minute (cons 3 previously) and members are required to quote the precise rule they refer to.

Question Time is another opportunity for open debate. This procedure was introduced consecutively to the accession of the United Kingdom, modelled on the question time of the House of Commons. It allows any member to ask a question orally to representatives of other institutions, which are required to respond immediately. Again, a trend towards reduction of debate is noticeable. Whereas until the early 1990s, Question Time could be followed by a one-hour discussion at the request of a political group or at least seven members (rule 61, 1991), this possibility was abolished in 1993. Moreover, whereas the regulation still stipulated in 1991 that any Member could ask one question to the Commission, one to the Council and one to the Ministers of Foreign Affairs, but also a supplementary question on each item appearing on the Question Time agenda, the post-Maastricht Reform (1993) restricted the number of supplementary questions to 2 for the Commission and one for

the Council. The current rules set a maximum of 2 additional questions for each member (Annex II).

The reforms have also limited speaking time for questions. The post-Maastricht reform removed the possibility of oral questions without debate (whereas half a day during each plenary session used to be allocated to those). It also reformed the procedure of oral questions with debate, by increasing the number of MEPs required to ask one (from 7 to 40) and reducing the number of minutes to do so (from 10 to 5).

The 'debates on topical and urgent subjects of major importance' were an important part of the EP deliberation as MEPs could discuss freely for 3 hours on 5 topics during each session. These debates were much more spontaneous and passionate than the legislative ones, because of the issues under discussion (prospects of European integration, the political situation in Member States or third countries, violations of human rights, armed conflicts, natural disasters...) and because of the reduced level of constraint on speaking time. In addition, the adoption of final resolutions is by simple majority of voting members, not by a majority of all members, as it is often required for legislative and budgetary matters. The opinions of speakers are therefore less constrained by the need to preserve the compromise negotiated behind the scenes between the political groups. To give more space to legislative debates, these debates were replaced in 2002 by the 'debates on breaches of human rights, democracy and the rule of law', limited to one hour. To partially compensate for the reduction of free debates due to this reform, the rules introduced the 'extraordinary debates', for one hour on a major issue of EU policy.

Vote explanations are the last opportunity for members to intervene in plenary. But here again, the time allowed by the rules has been changed so that an individual MEP has now 1 minute instead of 1 minute and a half and a political group has 2 minutes instead of 3. In addition, in 1994, an amendment to the rules allowed the President to place vote explanations after the final vote, rather than before it. Most members were in fact using these explanations to continue a closed debate and convince their peers of the relevance of their position or amendments. Today, as most members leave the chamber or cease to pay close attention after an important vote, members who wish to explain their vote have often to do so in an almost empty hemicycle (Corbett et al., 2007, p. 57), which strongly discourages them from explaining their vote at all.

The increasing restrictions on public speaking and the strict supervision of the plenary work eventually tend to deprive the public deliberation of its interest. As the deliberation process first takes place in committee and group meetings, MEPs speak rather

briefly in plenary session, without real debate between them. Deliberation is more visible during the discussions that follow some speeches from a representative of the Commission or during the adoption of an initiative resolution, but these activities only occupy a limited place on EP's agenda. The House is also livelier during Question Time as members are overwhelmingly present, but again, the rules of procedure do not allow them to discuss freely among themselves or with representatives of other EU institutions.

This situation raises the recurring controversy on the functioning of the EP between the advocates of a more open and spontaneous debate on the one hand and the leadership structures and the chairs of the major groups on the other hand. The latter believe that this is the price to pay to ensure the efficiency of the EP's actions in the inter-institutional relations and to fight against filibustering: "Parliament will have more legislative powers and we must get ready to place legislating at the heart of our work" (J. Leinen, S&D).<sup>7</sup> On the other hand, members of smaller groups denounce this vision, considering that these reforms "to turn our Parliament into a bureaucratic machine where the role of individual MEPs and minority groups and even the committees must be subject to the growing, partly arbitrary, decision-making power of the Conference of Presidents and the administration" (M. Frassoni, Greens/EFA).<sup>8</sup> Several Eurosceptic MEPs argued, during the revision relating to the standards of conduct of MEPs, that this reform "flouts parliamentary democracy" (C. Lang, Non-attached)<sup>9</sup>, considering that "interruptions in debates and a visible display of different opinions are part and parcel of normal parliamentary practice" (E. Meijer, GUE/NGL)<sup>10</sup> and that the reform is "an attempt, in the name of the smooth functioning of Parliament, to use policing and sanctions in order to restrict and control the expression of reaction, protest or disagreement and terrorise those Members who wish to express their opposition" (A. Pafilis, EUL/NGL).<sup>11</sup>

In order to address the sterilization of the debate, while discouraging filibustering, the possibility of one-minute speeches was introduced in the internal rules in 2002. Like in the US Congress, the agenda includes 30 minutes during the first part of each session for any member to intervene during one minute on any subject that he/she considers important. The 2009 reform also introduced the "blue card", allowing any member to raise his card to ask the

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<sup>7</sup> Debate on the general revision of the Rules of Procedure (report A6-0273/2009 R. Corbett), 5 May 2009.

<sup>8</sup> *Idem*.

<sup>9</sup> Voting explanations on the Onesta report (A6-0413/2005), on the amendments to be made to the European Parliament's Rules of Procedure relating to standards for the conduct of Members of the European Parliament, 18-19 January 2006.

<sup>10</sup> *Idem*.

<sup>11</sup> *Ibid*.

Chair the permission to put a question of no longer than 30 seconds during a member's speech, if the latter agrees and if the Chair believes that this is not likely to disrupt the debate.

#### *2.4. A strong impact on MEPs' room for manoeuvre*

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

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

Secondly, the rights available to individual members have also been weakened. Today, in addition to vote explanation, the rules guarantee any parliamentarian a few rights. The first is to ask a written question to the other EU institutions. It constitutes an important resource for any representative, whereby he may obtain information or control the action of the Commission and the Council, or prove to his constituents or national party that he is active on a key issue (Raunio, 1996). Since the 2008 reform this activity is framed by the principles laid down in Annex II, stating that questions should be concise (no more than 200 words), contain an understandable interrogation, not include offensive language and not relate to strictly personal matters. Moreover, since January 2017, the number of written questions has been limited to 20 by MEP over a rolling period of 3 months. Second, an MEP can also make a personal statement, that is to say, to speak in order to correct his own declarations or refute statements made against him during the debates; however, the MEP cannot speak on substantive matters and his speech is limited to three minutes. Finally, a parliamentarian can table a motion for resolution; it is however limited to 200 words and to one per month. This type of personal initiative rarely leads to the adoption of a resolution by the EP but allows a member to enjoy some publicity, especially vis-à-vis his constituents.

These rights are important and give some freedom to individual representatives in the EP. However, in the early 1990s, members enjoyed three additional options, that were much more essential. They have lost the right to table amendments in plenary session (rule 69,

1991) and to request referral back to committee (rule 103, 1991). Today, an individual member can only table amendments in committee, provided of course that he is a member of that committee. Similarly, the request for referral back to committee, which leads to the suspension of the debate in plenary, is now the sole prerogative of a political group or at least one-twentieth of Parliament's component Members (rule 188). More recently, individual MEPs have been deprived of another right: the one to submit a written declaration.

In addition to this, since the end of the 80s, the control of MEPs' behaviour has become a recurrent issue in the rules reforms. Several events have created a great agitation in the chamber and led, almost systematically, to a tightening of the RoP concerning the behaviour of MEPs in plenary. The first reform took place after two specific events. In October 1988, the Reverend Ian Paisley, leader of the Democratic Unionist Party of Northern Ireland, created a scandal in the House during the visit of Pope John Paul II. He was struck by another member and expelled by the Chair with the applause of his colleagues<sup>12</sup>. The following year, members of the Technical Group of the European Right – created on the initiative of extreme-right members – provoked unrest in the chamber to protest against their exclusion from the leadership structures of inter-parliamentary delegations, leading to a brawl and the suspension of the meeting. The EP voted a strengthening of the powers of the Chair to face such situations: he could decide the immediate expulsion of the troublemaker from the Chamber and propose a vote to exclude him for a period ranging from 2 to 5 days.

Despite this reform, other events disturbed the conduct of the proceedings. In 1995, many MEPs reacted vehemently to the announcement by French President Chirac to resume nuclear testing in the Pacific. Unluckily enough, Chirac had to intervene in front of the EP on the 11<sup>th</sup> of July to take stock of the French presidency of the Council but the assembly turned into a forum for protest from the left-wing of the chamber<sup>13</sup>. Dozens of deputies interrupted the presidential speech but the President of the Assembly could not do anything to stop the protest. For the first time in the history of the institution, a significant proportion of the members refused to applaud a Head of State or Government. But given the scale of the protest, no action was taken to punish the troublemakers.

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<sup>12</sup> Video of this even can be found on: <http://www.youtube.com/watch?v=hRxtkIEhY8w>

<sup>13</sup> Journalist Jean Quatremer gave this title to his article in the French newspaper *Libération*: "Cries, protest, banners and even a few blows, it is a real parliamentary bronca that welcomes Jacques Chirac to take stock of the French Presidency" ("Cris, protestations, calicots et même quelques horions, c'est une véritable bronca parlementaire qui a accueilli Jacques Chirac venu dresser le bilan de la présidence française"), *Libération*, 12 July 1995.



A second important reform took place after some incidents caused by the growing presence of Eurosceptic members within the EP, especially during debates on European integration. The plenary session of January 2005 was particularly troubled when British and Polish Eurosceptic MEPs came with large banners opposing the vote of the European Constitution. Their action disrupted the launch of the official information campaign on the EU constitution, causing unrest, fights and scuffles inside and outside the chamber and eliciting an internal investigation<sup>14</sup>.

Such incidents led to a new revision of the rules to further regulate the behaviour of MEPs in 2006. Leadership structures of the EP were defenceless against the perpetrators of so-called 'violent behaviour' and existing sanctions were rarely implemented as they interfered with the exercise of the representative mandate of parliamentarians. The rules governing the conduct of the members were thus deeply reformed in 3 aspects: the principles that MEPs must comply to, the available sanctions in case of trouble and the authority competent to impose them. For the first time, the EP included in its RoP some principles that members must respect: "Members' conduct shall be characterized by mutual respect, be based on the values and principles laid down in the basic texts on which the European Union is founded, respect the dignity of Parliament and not compromise the smooth conduct of parliamentary business or disturb the peace and quiet of any of Parliament's premises". Since January 2017, the rules also state that "Members shall not resort to defamatory, racist or xenophobic language or behaviour in parliamentary debates, nor in that context shall they unfurl banners." Members have however been cautious during the reform, adding that the application of this paragraph shall in no way detract from the liveliness of parliamentary debates nor undermine Members' freedom of speech.

New penalties were introduced in 2006 and strengthened in 2017. They may now consist of one or more of the following measures: a reprimand, forfeiture of entitlement to the daily allowance for a period of between two and thirty days; temporary suspension from participation in all or some of the activities of Parliament, for a similar period, without prejudice to the right to vote in plenary; prohibition of the Member from representing the Parliament on an interparliamentary delegation, conference or forum, for up to one year and, in the case of a breach in the obligations of confidentiality, a limitation in the rights to access confidential or classified information for up to one year. These measures may be doubled in case of repeated offence.

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<sup>14</sup> N. Smith, 'Vote no' protest sparks EU scuffles, *The Telegraph*, 13 January 2005.

The application of these sanctions has been however controversial. It was not until 2010 that sanctions stipulated in the internal rules were applied, when Nigel Farage, leader of the UKIP and the British co-chairman of Europe of freedom and democracy (EFD), insulted in plenary session the President of the European Council<sup>15</sup>. He lost his allowance for a period of 10 days, which represents a bit less than 3,000 Euros.<sup>16</sup>

Nevertheless, EP leaders seem actually unable to stop outrageous behaviours of some members, such as those from the radical left or right, separatists or Eurosceptics<sup>17</sup>. These MEPs argue that they were elected to assert, by any means, their positions and ideas, and not to comply with what the authorities expect from them. The sanctions have had only a limited impact on them. If the penalty consists of reprimands or financial sanctions, they bring to the troublemakers the publicity they seek (Brack, 2018). If it goes beyond, and takes the form of a ban on participation in the proceedings, it makes those MEPs martyrs of the European integration and raises the question of the legitimacy of excluding regularly elected members from the room. It is indeed in reference to excessive constraints on MEPs' behaviours and to the fundamental principles of representative democracy, mainly freedom of speech, that these members usually justify their excesses.

## Conclusion

The analysis of the EP's rules evolution shows that a constant flow of reforms has occurred since the mid-eighties in the name of 'efficiency' of parliamentary work. Leadership structures have seen their power extended over time and the influence of the EP but also of the two major political groups have been strengthened, while the individual role of MEPs has significantly decreased (especially the rights of non-attached members). Deliberation has always been strictly organized within the EP, but lately debates are even more regulated and rationalized.

Discussions about the organization of parliamentary work in fact reflect two opposing conceptions of the role of the EP: a working parliament vs. a talking parliament. It also refers to two approaches to democracy in the EU: *democracy through parliament* and *democracy in parliament*. In the first case, democratization of European decisions is achieved by

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<sup>15</sup> Video of that plenary session is available on: <http://www.youtube.com/watch?v=bypLwI5AQvY>

<sup>16</sup> See the Letter of Jerzy Buzek to Nigel Farage, 02 February 2010.

<sup>17</sup> Again, on the 24 November 2010, an Eurosceptic MEP shocked the EP by insulting another member with a Nazi slogan, revealing the impotence of the EP President to face that kind of behaviour and raising once again the controversy of the rules and their application. See for instance G. Durand, «Des propos fascistes choquent le Parlement européen», *Le Soir*, 24 November 2010.

maximizing the EP's influence and thus the rationalization of its functioning. The second approach requires a talking parliament, based on principles such as diversity and representativeness – with free and public deliberation – that encourage the expression of diverse political opinions. The complexity of the EU's institutional structure and legislative system has led the EP to favour the first approach and to adapt its procedures in order to intervene more efficiently in the EU decision-making process. This would increase its chances to have its positions taken into account by other institutions and, therefore, contribute to increase its role in the supranational political system. The partisans of such an evolution consider that it is especially important in the context of the generalisation of the early agreements between the EP, the Council and the Commission on legislative matters (Reh, 2014).

The bipartisan coalition model, reflected in the EP, shows that members of both political groups (S&D and EPP) have reasons to work together and care about the collective performance of the assembly. This does not mean MEPs do not try to promote their constituents' interests; but as legislation is not attributed to individual members, the efficiency of the institution as a whole is a better artefact for MEPs to show voters they are doing their job. Ultimately, the search for efficiency within the EP results from a distributive concern expressed in a collective way, as Adler and Wilkerson's governing theory predicts: it is through the reinforcement of the role of their institution that MEPs seek to improve their individual image vis-à-vis their voters.

However, the trade-offs made by MEPs during the successive reforms of the rules have prioritized efficiency at the expense of clarity of deliberation or proximity with citizens or stakeholders. It has led to an increasingly bureaucratic functioning, which could damage the EP's image among citizens. The EP appears more and more like a non-conflictual and non-political institution, in which MEPs search for consensus through expertise and, then, try to influence the Commission and the Council using a technical rather than a political discourse. The generalisation of legislative dialogues is another symptom of this evolution. The increasing presence of Eurosceptics could attest the existence of plurality and conflictuality within the EP but, again, this potential asset does not work as the rationalization of the deliberation has renewed the relevance of the pro/anti-EU division within the chamber. After the 2014 EP elections, the emergence of the "block", composed of the groups EPP, S&D and ALDE, has reinforced this phenomenon by further reducing the relevance of the left-right cleavage and the clarity of EU politics for citizens. The election of Mr Tajani in

December 2016 has challenged this new political situation, but it is supported on the long run by the effects of the *Spitzenkandidaten* procedure.

The analysis reveals that the use of theories of congressional organization to explain the EP's procedures is useful. It shows that the evolution of EP rules results not only from external challenges, like the adaptation to the dynamic EU system and the demand for more powers, but also from internal factors, such as the EP's institutionalization, the strengthening of efficiency and power struggle. More particularly, this exploratory analysis shows that the governing theory has much to contribute to the understanding of the evolution of the EP's organizational rules in the sense of efficiency and law-making productivity. Further studies are necessary. One key avenue for future research is the role of committees, conceived as central agenda-setters, compared to political leadership structures. Governing theory suggests that the committee system was conceived to increase parliamentary law-making capacity. This is consistent with the evolution of the EP, that has always adapted the structure of its committees to mirror the organization of the Commission and the Council, so as to favour scrutiny and influence in policy making (Neuhold, 2001; Whitaker, 2011). Future work should then investigate the extent to which the EP still relies on its committees and what is the balance of power between committees and hierarchical bodies. It seems that, in the European case, political leadership organs (especially the Conference of Presidents) replace committees as the actors responsible for defining political priorities. The assumption according to which the objective of increasing the legislature's decision-making capacity motivated the formation of a permanent issue-based committee (Adler and Wilkerson, 2007, 2013) may need to be nuanced, in the case of the EP, by the reinforcement of its political leadership powers. If this is the case, partisan perspectives should also be considered in the study of the EP's rules.

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